

**Testimony of Chelsea Davis, Chief Strategy Officer, Office of the First Deputy Mayor
Oversight Hearing--The City's Policing Reform Process
City Council Committee on Public Safety
January 11, 2021**

Good morning Chair Adams and members of the Public Safety Committee. My name is Chelsea Davis, Chief Strategy Officer in the Office of the First Deputy Mayor. I am joined by Thomas Giovanni, a Deputy Executive Assistant from the Law Department who is helping support the collaborative, and Marcos Soler from The Mayor's Office of Criminal Justice. I am also joined by a few colleagues from the New York City Police Department: Juanita Holmes, Chief of Patrol, Danielle Pemberton, Deputy Commissioner for Strategic Initiatives, Chauncey Parker, Deputy Commissioner for Community Partnerships, Elizabeth Daitz, Executive Director of Strategic Initiatives, and Michael Clarke, Managing Attorney of the Legislative Affairs Unit. Thank you for inviting us to discuss this important topic.

The Mayor has seized the opportunity presented by Executive Order 203 to fully engage all communities in creating a shared vision of public safety and rebuilding mutual trust between the police and the people they serve. I will provide a brief overview of the Executive Order; describe the framework of the Reform and Reinvention Collaborative working group under the leadership of the First Deputy Mayor; explain the City's engagement strategy; and discuss top-line themes that you are likely to see in the Reform Plan that will be posted for public comment, though all policy change is still under careful consideration pending the release of the draft Reform Plan.

I want to begin by saying that while Executive Order 203 outlines a process and timeline for developing and approving a reform plan to increase community-police relationships and reduce racial disparities in policing, we will continue to work to ensure that policing reflects the needs of the communities we serve long past the April 1st deadline for this reform plan. While this EO is an opportunity to focus on the most urgent and impactful policy changes in collaboration with community members and leaders, police reform experts, and justice advocates, our mission must also be to set up permanent structures for ongoing reform that will last far past April 1st into future Administrations and Departments. We aim to continue finding ways to address long-standing policing concerns raised by communities that have historically borne the brunt of over-policing, and we know that cannot happen overnight.

The administration committed to police reform more than seven years ago, and we will continue to seek and find ways to address long-standing concerns raised by communities most impacted by historical "over-policing." We are equally committed to ensuring that the NYPD recruits, retains, trains, and promotes diverse and resilient professionals who always reflect the values of the communities they serve. Finally, we recognize that public safety and quality of life in NYC is not the sole responsibility of the NYPD. We will continue to find ways to allocate City resources appropriately across agencies to ensure that not every condition or even crisis triggers a law enforcement response.

Overview of EO 203

Executive Order 203 requires every local government in New York State to create a Police Reform and Reinvention Collaborative. It was signed during a period of national and local unrest,

following a number of incidents with police that resulted in the recent deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, among too many others. The Order, which recognizes the “long and painful history of discrimination and mistreatment” of communities of color in New York State also specifically lists some of the New Yorkers, including NYC residents who have been killed by police officers: Anthony Baez, Amadou Diallo, Ousmane Zange, Sean Bell, Ramarley Graham, Patrick Dorismond, Akai Gurley, and Eric Garner. The Order directs police departments across the state to perform a comprehensive review of all current procedures and practices, as well as to consider creating new practices and structures entirely.

The Executive Order directs “local governments” to adopt a policing reform plan by April 1, 2021. The Order directs the “chief executive of such local government [to] convene the head of the local police agency, and stakeholders in the community” to develop a plan “to adopt and implement the recommendations resulting from its review and consultation, including any modifications, modernizations, and innovations to its policing deployments, strategies, policies, procedures, and practices, tailored to the specific needs of the community and general promotion of improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing.” On August 17, 2020, the State published “Resources & Guide for Public Officials and Citizens,” a workbook to aid governments and communities with the Reform and Reinvention Collaborative process and final product. The plan must be offered for public comment to all citizens and then after consideration of such comments, presented to the local legislative body for adoption by April 1, 2021. All of this work starts with meaningful community and stakeholder engagement.

Reform & Reinvention Collaborative

The City’s Reform and Reinvention Collaborative was convened by the First Deputy Mayor, in partnership with the Police Commissioner as required by the Executive Order, and includes leaders across City Hall, the Mayor’s Office of Criminal Justice, Community Affairs Unit, Legislative Affairs Unit, and the NYC Law Department, along with three extraordinary community leaders – Jennifer Jones Austin (Federation of Protestant Welfare Agencies), Wes Moore (Robin Hood Foundation), and Arva Rice (New York Urban League). Let me take this opportunity to thank them for their time, commitment, hard work, and service to the City of New York.

Community and Stakeholder Engagement

In the first phase of community engagement, the NYPD hosted eight (8) open meetings across all patrol boroughs plus one citywide multi-lingual meeting simultaneously translated into 10 languages. These meetings consisted of a brief presentation on recent policing reforms, and an open dialogue facilitated by co-sponsors, community members and leaders including generous volunteers from the NY Peace Institute, Cure Violence community, Center for Court Innovation, YouthBuild Staten Island, Queensbridge Tenants Association, and others. All event videos remain available on NYPD YouTube channel.

The collaborative also hosted separate session to engage those from communities most impacted by policing led by the initiative’s co-sponsors. “Impacted communities” were identified using NYC DOH data on incarceration rates overlaid with community board boundaries, and an

aggregate of 311, 911, Use of Force, Shooting Incidents, Shooting Victims, and CCRB Rate per 100,000 Population. Our co-sponsors, Jennifer Jones Austin, Arva Rice, and Wes Moore, hosted meetings that encouraged and supported individuals who spoke candidly about their lived experiences, often in economically disadvantaged BIPOC neighborhoods.

During the second phase of the engagement strategy, the collaborative hosted an additional 32 meetings with external stakeholders including CBOs, advocacy groups, clergy, racial justice advocates, cure violence providers, ethnic and religious organizations, non-profits, LGBTQI+ community leaders, the deaf and hard of hearing community, tenants' associations, shelter-based and affordable housing communities and providers, justice-involved persons, crime victims, policy experts, prosecutors, oversight bodies, elected officials, and many others.

In order to succeed, we understand that reform must happen with police, rather than to them. To that end, the collaborative also hosted 13 meetings with uniform and civilian members of the NYPD. These meetings paralleled the impacted community meetings, focusing on members assigned to work in those very same neighborhoods. Uniform and civilian members of all ranks, ages, races, genders, orientations, ethnic backgrounds, and assignments participated, along with leaders from NYPD's police unions and 36 different fraternal organizations.

Framework for Reform

The City recognizes that fulfilling the Order's directive requires the creation of a plan that seeks to achieve several fundamentally important outcomes: to eliminate unnecessary and excessive force, eliminate racially biased policing; to create policies that respect and reflect the perspectives of the most heavily policed communities; to apply principles of Restorative Justice and Reconciliation to increase community trust; to address areas of police culture that act as impediments to the achievement of reform; and, perhaps most importantly, create new and permanent structures to achieve, monitor, and develop new and ongoing policy reforms through genuine community and stakeholder engagement with the NYPD. Achieving reforms in these areas, both as to outcomes and processes, will result in a better, safer, more lawful environment for all New Yorkers, but most especially those in heavily impacted communities.

The City has identified key parts of a reform agenda that can bring us closer to achieving our goals, lead us to develop a shared vision for public safety with all New Yorkers, and address the needs identified in the Executive Order. Taken together, this framework offers a vision of policing in New York City that delivers better results for communities, as well as all members of the NYPD.

One area with near-universal support, including members of the NYPD, is improving the disciplinary process. The plan will ensure greater transparency into accountability and discipline within the NYPD, and the City will take long-term steps to ensure robust, consistent external oversight.

We will also continue to work closely with local with communities to implement a shared vision for service response and public safety that includes law enforcement as a supportive partner, but does not force officers into roles that other service providers can satisfy more effectively.

The plan will also focus on improving interactions between police and communities through both cultural change, policy change, and some very tactical changes, such as implementing recommendations made by DOI and Law after investigating this summer's protests. The collaborative is also exploring new, robust programs that combat racial bias, and create strong and lasting bonds between the police and communities they serve.

Additionally, the City will provide New Yorkers with opportunities to give their feedback to the Department in the development of both policy and training – a model that was imperative in the development of the agency's new disciplinary penalty guidelines, which will be published on January 15th. All New Yorkers are critical stakeholders in how they are policed, and the NYPD is committed to including more voices in all manners of processes that were previously internal to the Department.

Finally, the City is committed to greater diversity, equity, and inclusion throughout the NYPD, and will support Members of Service with the tools they need to promote mental health and safety as a means toward resiliency and improving officer performance.

Before closing, I must note that at every public event so far held, the single most common word used by community members as well as our police is "respect." While not a policy itself, concepts of respect can and will be infused into measurable policies and practices. We must do this. We look forward to coming back to Council after the draft plan is published for feedback from members and the public.

This process is iterative, collaborative, and ongoing, even now. We are confident that this framework reflects what is being voiced by community members and demanded by the times. But at the same time, we all recognize that large scale policing reform is a long-term, multi-layered, evolving commitment, that requires flexibility and continuous communication. We are fully committed to this process.

We look forward to future conversations with the Council and working with you to create a plan that will make our city safer and more equitable for generations to come. Thank you and my colleagues and I am happy to answer any questions you may have.

REBNY Testimony | January 13, 2021

The Real Estate Board of New York to The New York City Council Committee on Land Use Intro. 1572 – Requiring a Racial Disparity Report for Certain Land Use Actions

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY supports the goals of Intro 1572 to require a racial disparity report for certain land use actions. The impact of zoning on racial disparities warrant attention by the legislative body and study by the City. Thank you to the Council for the opportunity to offer technical comments on the methodology and proposed data sources for such a study.

New York City's success depends upon increasing our supply of housing, strong infrastructure, and a skilled workforce. Yet, the city has not kept pace with the housing needs of our existing population. The Department of City Planning's 2019 report *The Geography of Jobs*¹ found that job growth has outpaced housing production by a rate of .28 housing units permitted for each net new job in the last decade, which has resulted in the city adding 362,900 more net new jobs than new housing units produced over two decades. This pressure on existing supply has driven up housing costs throughout the New York City region, which has impacted various races differently, due to disparities that include educational attainment and income. While it is important to study zoning's impact on racial disparities, it is imperative that their examination does not lead to the suppression of housing construction, which will create further distance between the available supply and demand of housing, in turn increasing housing costs and decreasing opportunities for neighborhood integration. Academics have noted that housing development is not the cause of residential displacement, but rather the symptom of larger economic trends.² Importantly, research from the Upjohn Institute and Philadelphia Federal Reserve Bank found that new market-rate buildings lower nearby rents 5 to 7 percent and cause more people from lower-income neighborhoods to move in, fostering more integrated and economically diverse neighborhoods.³ It is clear that this academic evidence proves that neighborhood construction can be a force for good if it allows for integration, access to greater employment opportunities and support of local businesses,

¹ <https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/nyc-geography-jobs2-1019.pdf>

² https://www.theatlantic.com/ideas/archive/2021/01/anti-growth-alliance-fueled-urban-gentrification/617525/?utm_source=facebook&utm_medium=social&utm_term=2021-01-02T11%3A30%3A44&utm_content=edit-promo&utm_campaign=the-atlantic&fbclid=IwAR2VMxqgLM1EuMHJvh-xDLuJbDK-8XyUuXXMi-5CiEvuY8s2Exp_2IFSTE8

³ https://research.upjohn.org/cgi/viewcontent.cgi?article=1334&context=up_workingpapers

which should be considered in a racial disparity report. Conversely, we encourage the Council to also consider potential racial disparities caused or perpetuated by restraining housing construction through downzoning's and historic district designations alike, and how those actions impact residential displacement.

REBNY believes that policy makers should make decisions based on facts and data, and the proposed bills are a step in the direction to make better informed decisions about the City's growth and equitable development. US Census Bureau Data, including the American Community Survey (ACS), is provided by several surveys at varying geographies and currencies. Some examples of data the US Census Bureau releases that capture different lengths of time or are collected at varying frequencies are ACS 1-year estimates, and ACS 5-year estimates. ACS 1-year estimates include 12 months of collected data and is the most current, but less reliable data, whereas ACS 5-year estimates, are 60 months of collected data and is the most reliable but the least current of all ACS's.

The US Census Bureau also releases the US Decennial Census, which is released every 10 years. As previously stated, the US Census Bureau releases the Decennial Census and ACS at different levels of geography for different metrics. These geographies capture vastly different numbers of households. Relevant to the bill being heard today, depending on the survey used, information may be available at the block group level or Census tract level. Census tracts, according to the U.S Census Bureau, are "relatively permanent statistical subdivisions of a county or equivalent entity... [that] generally have a population size between 1,200 and 8,000 people." Comparatively, block groups are not actual city blocks, but are also determined by population size and generally contain between 600 and 3,000 people, and are divisions within a Census tract. In order to protect individual's privacy, Census data is not available at a household or building level. This restriction makes it impossible to draw an exact half mile radius boundary around a development site, and capture the desired demographic indicators within that boundary.

Instead, due to the fact that both block group and Census tract data are mapped as polygons, any radial boundary will capture households outside of that boundary. The smallest geography available, the block-level data, would allow for the closest precision to a half-mile radius, however it poses the issue of relevancy, as some of the requested metrics are made available by block group only every ten years at the release of the Decennial Census, including median income by race, which is critical to this report. If the Council would prefer more relevant data, such as that distributed in the ACS, the smallest geography median income by race is available by is Census tract. As previously identified, Census tracts can contain between 1,200 and 8,000 people. This means that drawing a half mile radius around a tax lot will in some cases lead to several surrounding Census tracts containing up to 8,000 individuals being captured within the reported data, when only hundreds, or less, individuals live within the half mile radius of the development site. Therefore, given that any analysis should utilize data from the same time period, and that time is relevant to these reporting requirements, it may be preferable to use ACS data, however the geographies cannot be precise to the half mile radius requirement, as thousands of additional households outside of that boundary will be captured. It may be advisable for the Council to utilize the methodology of CEQR's Environmental Assessment Survey (EAS) to rectify this technical challenge. The

EAS process analyzes population demographics by Census tracts that are 50% within the radial boundary surrounding the development area.

In regard to rent stabilized building data, the most recently available data is provided by the Department of Homes and Community Renewal with a two year delay in PDF format. While the list does include buildings that contain rent stabilized units at an address level, it does not include how many units are rent stabilized within each building, and historic files are not made publicly available. Additionally, PDF files are not mappable, and even if the file can be converted to a CSV to match with a SHP file, the list does not currently contain a BBL field, making the process extremely arduous. An alternative source of data on rent stabilized units is The New York City Housing and Vacancy Survey (HVS), which is released every three years, making it impossible to report on rent stabilized units every four years as required by the text of this bill. Furthermore, the smallest geographic area the HVS is released by is sub-borough areas, which are neighborhoods that map to collections of Census tracts, presenting the same issue of radial boundaries posed by other Census data.

As proposed in the bill and given the aforementioned disconnect between the geocoding and update cycles between the various data sets, the current framework is not conducive to accurate and consistent reporting metrics across development proposals, and does not follow best practices in data truth and reporting. The lack of a consistent standard also leaves individual projects open to litigation on such, which would further delay necessary housing units or preclude them altogether. The obligations outlined in this report will require highly technical expertise and abilities to produce, and it is imperative that the Council meaningfully engage with technical experts at the relevant agencies and in the field in order to establish the data available to developers and at what geographic levels and time periods. This data should be standardized across all reports, and not structured in such a way that each developers consultant create their own unique methodology, so that no two reports can be compared. The input of specialists will be instrumental when determining the value of precision versus currency as it pertains to data, and the implications these decisions will have on the veracity of these reports. One possible solution would be for the City to hold a competition among graduate students obtaining degrees in public policy, urban planning, sociology, statistics, or another related field, in order to generate possible standardized frameworks from individuals who are familiar with the data being discussed presently. For the relevant technical experts to develop an appropriate methodology, we recommend that the effective date of the bill be delayed for six months minimally.

REBNY fully supports the goal of studying the impact of zoning on racial disparities. We recommend that the bill be amended so that the intended goal can be technically attained.

Thank you for the opportunity to provide our comments to the committee.

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WRITTEN TESTIMONY OF THE NEW YORK CITY BAR ASSOCIATION
NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY
OVERSIGHT HEARING T2021-7023: THE CITY'S POLICING REFORM PROCESS
January 11, 2021

On behalf of the New York City Bar Association (City Bar), we respectfully request that the appended report be included in the written record for the oversight hearing being conducted by the New York City Council Committee on Public Safety regarding the City's policing reform process. The report, entitled "Police Reform Efforts in New York State and New York City: More to Do," argues that "substantial and systemic change is the only appropriate response to address abusive – and sometimes deadly – use of force by police officers, often deployed without consequence, and the only way to ensure that police officers are held to the highest standard as public servants," and outlines several areas in which policymakers should focus on reforms.¹

The report is divided into two sections: Section I focuses on the reactive processes and policies that follow allegations of police misconduct; Section II focuses on proactive policies and makes recommendations intended to reduce violence and police misconduct.

On November 19, 2020 the City Bar hosted an expert panel -- including representatives from the Mayor's Office, Bronx Defenders and Communities United for Police Reform, and the First Deputy Commissioner of the NYPD -- to discuss the various proposed pathways and approaches to address historic policing problems. The panel discussed some of the principal tensions confronting our society today and address the challenges of advancing change in how policing and law enforcement is carried out by the NYPD. A video of the event is available on our website.²

We hope these resources can be helpful to the Committee as it reviews New York City's approach to policing reform. We stand ready to assist and, as always, thank you for your consideration.

Contact

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¹ A copy of this report can be found online at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/additional-police-reform-efforts-ny-abuse-and-violence>.

² See <https://www.nycbar.org/media-listing/media/detail/policing-black-and-brown-communities-in-nyc-reckoning-with-the-past-and-envisioning-a-better-future>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org



POLICE REFORM EFFORTS IN NEW YORK STATE AND NEW YORK CITY: MORE TO DO

“Through our criminal justice system, we show what is important to us and who is important to us.”

- *Former U.S. Attorney General Loretta Lynch
July 22, 2020, New York City Bar Association*

“[S]afety and fairness are not in conflict, but mutually reinforcing.”

- *Eric Gonzalez, Brooklyn District Attorney, and Rev. David K. Brawley, Senior Pastor of St. Paul Community Baptist Church and member of the Governance Board and Strategy Team of East Brooklyn Congregations.
August 13, 2020, Gotham Gazette**

**REPORT BY THE CIVIL RIGHTS COMMITTEE,
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
CRIMINAL COURTS COMMITTEE,
CRIMINAL JUSTICE OPERATIONS COMMITTEE,
NEW YORK CITY AFFAIRS COMMITTEE AND
PRO BONO AND LEGAL SERVICES COMMITTEE**

SEPTEMBER 2020

INTRODUCTION

In the wake of the killing of George Floyd and nationwide public protests, New York State and New York City have seen an unprecedented number of police reform bills pass, some even with bipartisan support.¹ On a broader scale, there is a growing and collective determination to have difficult – and sometimes uncomfortable – conversations in an effort to right past wrongs committed against Black and Brown communities, particularly in criminal justice, law enforcement and policing.

One of those conversations occurred at the (virtual) City Bar on July 22, 2020, at which City Bar President Sheila S. Boston moderated a discussion, *The Policing of Black and Brown Bodies*, with former U.S. Attorney General Loretta Lynch; former U.S. Attorney for the District of New Jersey, Paul Fishman; Nicole M. Austin-Hillery, Executive Director, U.S. Program, Human Rights Watch; J. Scott Thomson, former Chief of the Camden County Police Department and former President of the Police Executive Research Forum (PERF); and Lorenzo M. Boyd, Vice President for Diversity and Inclusion, Chief Diversity Officer, University of New Haven, and a former police officer (the “July 22 Panel”).² The City Bar intends to play a continuing role in convening and facilitating these conversations, as well as to offer policy recommendations when appropriate.

To that end, and in furtherance of the City Bar’s work to support a fair, equitable and anti-racist criminal justice system,³ this report is offered to policymakers to identify a few areas that we believe call for additional consideration and action. It is not meant to be an exhaustive list; rather, we focus on policing/law enforcement reform proposals at the state and local levels, and we limit ourselves to what represents a consensus among our committee members who occupy a wide variety of law-related positions in the criminal justice field.

In sum, we argue that substantial and systemic change is the only appropriate response to address abusive – and sometimes deadly – use of force by police officers, often deployed without consequence, and the only way to ensure that police officers are held to the highest standard as public servants. Policymakers have attempted in the past to make modest changes to our policing forces,⁴ but video after video has revealed that, even in the midst of protests about police violence

* Eric Gonzalez, Rev. David K. Brawley, “Opinion: The Path to Better Policing and Safer Communities in Brooklyn and Beyond,” Gotham Gazette, Aug. 13, 2020, https://www.gothamgazette.com/opinion/9677-more-justice-better-policing-stronger-communities-brooklyn-da-new-york-city?mc_cid=db7b85142e&mc_eid=1f2b70501e (all websites last visited Sept. 18, 2020).

¹ See Appendix. In particular, we applaud the repeal of Civil Rights Law 50-a, which acted to keep police misconduct records shrouded in secrecy. Press Release: City Bar Applauds Repeal of CRL 50-a, June 9, 2020, <https://www.nycbar.org/media-listing/media/detail/crl-50-a-city-bar-applauds-repeal>.

² Audio and video recordings of this program are available at <https://www.nycbar.org/media-listing/media/detail/the-policing-of-black-and-brown-bodies>.

³ See <https://www.nycbar.org/member-and-career-services/committees/criminal-justice-police-reform-and-civil-rights>.

⁴ Some of these changes are related to or arise out of the work of oversight agencies which, if given the proper independence, tools, enforcement power and funding, can play an important role in reforming policing policies. For the NYPD, this includes the Office of the Inspector General for the NYPD (OIG-NYPD) and the Civilian Complaint

and calls for racial justice, one can clearly see unnecessary and abusive use of force aimed by the police at protesters. In order to permanently alter this cycle, sweeping changes are required, bolstered by the commitment of individuals who occupy leadership positions in the field.

First, though, as noted by *every* speaker at the July 22 Panel, the success of any reform measures depends on the involvement and leadership of the community members most impacted by over-policing and the use of force. The reforms identified below are based, in large part, on the experiences of lawyers representing individuals in those communities, as well as lawyers representing the State and the City, and working at other government agencies, in academia, and in private practice. We recognize, however, that no conversation on police reform is complete without the important voices of police officers and community members themselves. We offer these suggestions with that understanding and in the spirit of adding to, and hopefully advancing, the larger conversation.

This memorandum is divided into two sections: Section I focuses on the process that occurs after police misconduct⁵ has been alleged, and makes recommendations regarding police discipline, investigations of misconduct, and information-sharing among District Attorneys. Section II focuses on proactive policies and makes recommendations to reduce violence and police misconduct, including, creating and funding alternatives to police, shifting priorities of the New York City Police Department (NYPD), enhanced police training, and the continued decriminalization of low-level offenses.

I. REACTIVE POLICIES: AFTER POLICE MISCONDUCT HAS OCCURRED

a. Discipline Process

Outside of New York City - in most counties, towns and in the state police - the discipline process of police officers is subject to union negotiation; within New York City, decisions regarding police discipline, ultimately, reside with the Commissioner of the NYPD. Both forms of discipline are beset by inordinate delays and, often, a failure of consequence for police misconduct. We hear, again and again, that police leadership and rank-and-file officers support the discipline and removal of “bad apples,” but the actual results fall well short and public trust suffers.

Review Board (CCRB). While many believe that a reform agenda must include ways to improve the efficacy and increase the independence of these agencies, such measures are outside the purview of this report, although as a general matter, the City Bar fully embraces the function of independent oversight bodies as an important accountability measure. At a minimum, any conversations around police reform should include these agencies and utilize their knowledge, data collection, statistical findings and any previously recommended policy changes (whether implemented or not). For example, the OIG-NYPD released a report in April outlining the status of its recommendations made to the NYPD since 2015. *See* Annual Report 2020, OIG-NYPD, April 2020, https://www1.nyc.gov/assets/doi/reports/pdf/2020/OIGNYPD_SixthAnnualReportFinal_4.9.2020.pdf (hereafter “OIG-NYPD Report”).

⁵ The term “police misconduct” used in this report is meant to cover actions by police officers that deprive an individual of his or her rights, such as, false arrest, unreasonable or excessive use of force, abuse of power, unlawful searches and seizures, perjury, etc. It is not meant to cover low level issues, such as failure to be on time or wear appropriate uniform attire or other internal/administrative-type infractions.

The State Legislature should immediately conduct public hearings⁶ to examine whether the State should ban from collective bargaining the process of disciplining officers for misconduct.⁷ The goal should be to create a modern, fair and transparent system for investigating and disciplining officers accused of misconduct.⁸ Using various research studies as a tool for inquiry and policy proposals, public hearings can explore studies that have found: (i) that collective bargaining by law enforcement officers regarding discipline leads to an increase in violence and incidents of misconduct;⁹ (ii) that the largest predictor of a police officer's use of force is whether the officer has been found to use excessive force in the past;¹⁰ and (iii) that unchecked use of force is contagious, and that officers who use excessive force create a culture that leads others in their immediate team to use excessive force as well.¹¹ Allowing for discipline structures that insulate

⁶ In light of COVID-19 concerns, public hearings on the discipline process, or on any issue discussed in this report, can and should be conducted virtually until it is safe to resume in-person hearings.

⁷ While a critical first step, public hearings are the bare minimum that should be undertaken and we urge legislators and other elected officials to comprehensively address this issue through the various means at their disposal. Changing culture and laws around policing requires persuasion and consequence. For example, Governor Cuomo recently issued an Executive Order, entitled "New York State Police Reform and Reinvention Collaborative." It authorizes the Division of Budget to withhold funds from any local government that does not undertake a series of steps to address, among other things, "the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color." See Executive Order 203, June 12, 2020, <https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>.

⁸ Nebraska has enacted a version of this law which restricts State Patrol's union contract from interfering with police accountability. Neb. Rev. Stat. 81-1377 and 81-1425 (2018), available at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB791.pdf>. We urge hearings to discuss and consider a more comprehensive law that bans police union contracts statewide from including language regarding misconduct investigations and discipline.

⁹ Dhammika Dharmapala, Richard H. McAdams, and John Rappaport, "Collective Bargaining Rights and Police Misconduct: Evidence from Florida," University of Chicago Law School (2018), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2145&context=public_law_and_legal_theory. It is worth noting that Florida is unique in its ability to study this issue because collective bargaining was banned for a period of time, and then permitted, which allowed for a direct comparison.

¹⁰ Researchers with the University of Chicago "found that the most potent predictor of adverse interactions in a given year was an officer's own history. Cops with many instances of adverse interactions in one year were the most likely to have them in the next year." See Rob Arthur, "We Now Have Algorithms To Predict Police Misconduct," FiveThirtyEight, March 9, 2016, <https://fivethirtyeight.com/features/we-now-have-algorithms-to-predict-police-misconduct/>. Derek Chauvin, who has been charged with the murder of George Floyd, has a long history of use of lethal force; see Derek Hawkins, "Officer charged in George Floyd's death used fatal force before and had history of complaints," The Washington Post, May 29, 2020, <https://www.washingtonpost.com/nation/2020/05/29/officer-charged-george-floyds-death-used-fatal-force-before-had-history-complaints/>. One of the officers who shot and killed Breonna Taylor has a history of allegations of sexual misconduct; see Janelle Griffith and Doha Madani, "Louisville police investigating sexual assault accusations against officer in Breonna Taylor shooting," NBC News, June 10, 2020, <https://www.nbcnews.com/news/nbcblk/louisville-police-investigating-sexual-assault-accusations-against-officer-breonna-taylor-n1228896>. An officer in Florida who was suspended after shoving a kneeling protester "had been reviewed by internal affairs for using force 79 times in his roughly three-and-a-half years on the force." See Charles Rabin, "Lauderdale officer suspended for shoving protester has history of using force, drawing weapons," Miami Herald, June 3, 2020, <https://www.miamiherald.com/news/local/crime/article243234261.html>.

¹¹ See *i.e.* Thibaut Horel, Trevor Campbell, Lorenzo Masoero, Raj Agrawal, Andrew Papachristos and Daria Roithmayr, "The Contagiousness of Police Violence," The University of Chicago The Law School, 2018, https://www.law.uchicago.edu/files/2018-11/chicago_contagiousness_of_violence.pdf; Katherine J. Wu, "Study

officers who abuse their power harms not only communities, but also police forces themselves, which suffer from public perception that officers are not held accountable for unwarranted use of force. One can be a supporter of organized labor while also recognizing that we “need a release valve to get bad officers out.”¹²

In New York City, the law already provides that NYPD discipline is not subject to collective bargaining.¹³ Although the process is lengthy (with many arguing that delays are largely attributed to the NYPD moving slowly), the Commissioner ultimately has the authority to discipline and fire officers. When he wants to move quickly, he can. The problem is that, in many cases substantiated by the Civilian Complaint Review Board (CCRB), the NYPD does not discipline officers beyond providing verbal admonishments or additional training or departs downward from the discipline recommended by the CCRB, and even internal NYPD recommendations, with little to no transparency.¹⁴ An independent report from 2019 provides a good overview of NYPD discipline issues and provides a comprehensive guide to smart policy recommendations.¹⁵ Although NYPD implemented some of these recommendations,¹⁶ policymakers, other agencies and members of the public should continue to make inquiries and hold NYPD accountable so that all of the report’s recommendations are implemented or, at a minimum, publicly addressed by NYPD.¹⁷

finds misconduct spreads among police officers like contagion,” NOVA, PBS.org, May 27, 2019, <https://www.pbs.org/wgbh/nova/article/police-misconduct-peer-effects/>.

¹² Statement of Mr. Boyd at July 22, 2020 City Bar program, *supra* note 2.

¹³ Press Release: Court of Appeals Rules That All Police Disciplinary Matters Are Reserved to the New York City Police Commissioner and Not Subject to Collective Bargaining, New York City Law Department Office of the Corporation Counsel, <http://www.nyc.gov/html/law/downloads/pdf/pr032806.pdf>.

¹⁴ See Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd, New York State Office of the Attorney General, July 2020, at 41. See also N.Y. City Civilian Complaint Review Bd., 2018 Annual Report, Appendix, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018_annual-appendix.pdf; see also John Teufel, “Opinion: Time to Fire NYC’s Bad Cops,” City Limits, June 30, 2020, <https://citylimits.org/2020/06/30/opinion-time-to-fire-nycs-bad-cops/>; *infra* note 20. Notably, in cases where CCRB conducts an administrative trial, the NYPD concurred with the recommended discipline in only 21 % of cases. CCRB 2019 Bi-Annual Report, at 51, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019_semi-annual.pdf.

¹⁵ “The Report of the Independent Panel on the Disciplinary System of the New York City Police Department,” Jan. 25, 2019, <https://www.independentpanelreportnypd.net/>.

¹⁶ Press Release: NYPD Announces 60-Day Update on Disciplinary System Reforms, New York City Police Department, April 1, 2019, <https://www1.nyc.gov/site/nypd/news/pr0401/nypd-60-day-on-disciplinary-system-reforms#/0>.

¹⁷ See also NYPD-OIG Report *supra* note 4 at 8 (“Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training”) and 48 (“Addressing Inefficiencies in NYPD’s Handling of Complaints: An Investigation of the ‘Outside Guidelines’ Complaint Process”).

One of those recommendations was that NYPD consider adopting a disciplinary matrix, a recommendation that was supported by the City Council¹⁸ and which NYPD recently acted on.¹⁹ The NYPD's proposed disciplinary matrix was released for public comment and reflects "presumptive penalties to be imposed for specific offenses, with potential aggravating and mitigating factors that may be considered when assessing a disciplinary penalty, in order to meet the goals of the disciplinary system."²⁰ The proposal suggests penalties for different types of misconduct and criminal activities, but ultimately leaves the decision for any penalties to the NYPD Commissioner.²¹ On September 17, 2020, the CCRB held a public board meeting at which NYPD officials discussed the matrix and heard responses and feedback from CCRB staff and board, public officials, advocacy organizations, and members of the public. Most speakers applauded the matrix as a positive first step, but the nature of the feedback reveals several areas that require further study, deliberation and consideration by the NYPD, including the decision to leave final disciplinary determinations with the Commissioner.²²

b. Independent Prosecutor for Police Misconduct

The State should establish an independent office that investigates all allegations of on-the-job criminal activity by police officers, and not just police shootings resulting in death. District Attorneys (DAs) tasked with prosecuting officers are often placed in an untenable situation because normally DAs are required to partner with these same officers to fulfill their duties. Regardless of whether there is an actual conflict of interest that impacts the decisions of DAs, the

¹⁸ Local Law No. 69 [2020] of City of New York, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3786105&GUID=419AD715-FF13-4932-85DE-4C7E18DCF723&Options=&Search=>.

¹⁹ Draft Policies for Public Comment, New York City Police Department, <https://www1.nyc.gov/site/nypd/about/about-nypd/public-comment.page>.

²⁰ "Disciplinary System Penalty Guidelines: Draft for Public Comment," New York City Police Department, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf (hereafter "Proposed Discipline Matrix").

²¹ Rocco Parascandola and John Annese, "NYPD creates new 'discipline matrix', required by city law, to make penalties for officer misconduct less arbitrary," NY Daily News, Aug. 31, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-discipline-matrix-20200831-mg6rfl3mkfgbxe7uspedkenvpq-story.html> (also referencing a seven-month study by the Daily News in 2019 which "showed the NYPD was wildly inconsistent in how it punishes errant cops, and offenses against the public were punished with slaps on the wrists, while protocol violations resulted in heavier punishment." See Thomas Tracy, "Probe finds inconsistent disciplinary punishments give rogue NYPD cops wrist slaps for harming everyday people," NY Daily News, May 28, 2019, <https://www.nydailynews.com/new-york/nyc-crime/ny-no-method-to-maddening-discipline-results-nypd-20190528-jdmdw5y6indkfmixc54mwp4lk4-story.html>).

²² Testimony from the Sept. 17, 2020 hearing is available at <https://www1.nyc.gov/site/ccrb/about/news/previous-board-meetings.page>. See also Thomas Tracy, "New NYPD disciplinary matrix gets mixed results," NY Daily News, Sept. 6, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-discipline-matrix-20200831-mg6rfl3mkfgbxe7uspedkenvpq-story.html>; Christopher Robbins, "NYPD's New 'Discipline Matrix' Would Recommend, For The First Time, Specific Penalties For Misconduct," Gothamist, August 31, 2020, <https://gothamist.com/news/nypds-new-discipline-matrix-would-recommend-first-time-specific-penalties-misconduct>.

public perceives that there is a conflict, undermining public trust in both DAs and law enforcement in general. An independent body is needed to effectively, and objectively, investigate these cases.

This body should also be tasked with reviewing annual use of force statistics²³ and recommending changes, as appropriate, to reduce use of force by law enforcement throughout the state.²⁴ The independent office could reside within the Attorney General's Office or be an independent body with an independent appointment process and commissioner. The importance of creating this position and giving it substantial authority to investigate and punish police misconduct should outweigh any political considerations.

Of course, an independent prosecutor is charged with investigating incidents after the fact. As discussed below, internal discipline and other proposals related to hiring, training, and department mission are equally, if not more, important. This is especially true because the criminal law is an imperfect tool for reining in and deterring police misconduct. The law gives officers wide latitude to use force,²⁵ which creates a significant gap between what is legally permitted and what is good practice.

c. Require Information Sharing Among District Attorney's Offices in New York City

New York City is unique in that the jurisdiction of individual DAs' offices is narrower than that of local law enforcement. Thus, when an individual DAs' office determines that a law enforcement officer has acted in a manner that requires disclosure to defense counsel, that information remains within the county where that determination is made. Typically, such incidents may include individual case-based determinations that an officer has been untruthful even if perjury cannot be proved, or instances in which a judge found an officer not credible when the officer testified. If that officer then conducts an arrest in another county, the other District Attorney's office is likely to be unaware of the determination made by the first District Attorney's office or the judge in the other county, and therefore is unable to act accordingly.

²³ Teri Weaver, "NY creates use-of-force database to track police actions," Syracuse.com, April 4, 2019, <https://www.syracuse.com/news/2019/04/ny-creates-use-of-force-database-to-track-police-actions.html>. See also OIG-NYPD Report *supra* note 4 at 33 ("An Investigation of NYPD's New Force Reporting System").

²⁴ The City Bar has supported efforts in the past to increase oversight over the NYPD. See *i.e.* Report in support of Int. 1079-2013, creating an Inspector General for the NYPD, Civil Rights Committee, June 2013, <http://www2.nycbar.org/pdf/report/uploads/20072424-CreationofanNYPDInspectorGeneral.pdf>. Over twenty years ago, the City Bar issued a report calling for the appointment of special prosecutors in cases of police corruption and severe police brutality, see "Need for a Special Prosecutor for Criminal Justice", Criminal Law Committee, Feb. 1993, http://www2.nycbar.org/pdf/report/uploads/93001-the_need_for_a_special_prosecutor_for_criminal_justice.pdf. See also "The Authority of the New York Attorney General When Police Abuse their Authority", Civil Rights Committee, May 2002, <http://www.nycbar.org/pdf/report/Report%20on%20the%20Auth%20of%20the%20AG.pdf>. In response to a 2015-16 Executive Budget proposal, we noted that the question of a special prosecutor is one worthy of further exploration because it would provide an important reform, see Report on 2015-16 Executive Budget Proposal, the Criminal Justice Reform Act of 2015, March 2015, <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-2015-16-executive-budget-proposal-the-criminal-justice-reform-act-of-2015>.

²⁵ Whether and how use-of-force policies should be modified is beyond the scope of this report.

DAs' offices in the City that have discoverable material relating to an NYPD officer should be required to share that information with other DAs' offices in the city. We recommend that the New York City Council pass a law requiring information-sharing among DAs' offices in the five boroughs when they determine that an officer has acted in such a way that disclosure of his or her actions may be required under the law in future cases.²⁶

II. PROACTIVE POLICIES: REDUCING VIOLENCE AND RETHINKING PUBLIC SAFETY

a. Create Alternatives to Police and Invest in Communities²⁷

Policymakers, in consultation with all stakeholders and experts, should establish alternative responses to numerous categories of circumstances that police officers currently respond to, including welfare checks, behavioral health responses, noise complaints and many other categories.

Here in New York City, police officers are often required to respond to situations outside their areas of expertise or training. Specialized personnel such as violence interventionists, social workers, mediators, trained community members and mental health care professionals are better positioned to answer routine calls that currently are handled by the NYPD. Circumstances that require the response of armed personnel should be carefully considered.

New York City, as the home of the largest police force in the country, should pilot further programs that seek to reduce the necessity of sending armed police officers to respond to routine calls from thousands of individuals who are currently forced to rely unnecessarily on police for assistance. New York City should undertake, with the input of all stakeholders, a comprehensive study and informed re-thinking of the NYPD so that its resources can be put to the best use.

Ultimately, it makes good policy sense to move away from having the police be the only government agency dispatched to respond to every manner of emergency, including those that they are not well-positioned to resolve. As so aptly put by Ms. Austin-Hillery during the July 22 Panel, we need to stop asking the police “to be the panacea for all that ails the country.” Routinely arresting, charging and imprisoning people is not a successful approach to solving societal ills and maintaining public safety and community trust. With this in mind, and in coordination with

²⁶ The City Bar has supported other efforts to increase information sharing about police conduct as a way to identify problem officers and provide a systematic view of misconduct; *see i.e.* Report in support of Int. 0119-2014, requiring the Inspector General of the NYPD to submit quarterly reports to the City Council, Comptroller and Civilian Complaint Review Board detailing the number of disposition of civil actions filed against the NYPD, New York City Affairs Testimony, May 2014, <http://www2.nycbar.org/pdf/report/uploads/20072720-SupportforRequiredQuarterlyReportsfromNYPDInspectorGeneral.pdf>; and “The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change”, New York City Affairs Committee, March 2000, http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=32&searchterm=civilian%20complaint%20review%20board.

²⁷ Some refer to this as “defunding” the police. At the July 22 Panel, Ms. Austin-Hillery referred to it as “divesting and reinvesting” which is a better description of what is being sought, *i.e.*, the need for investment and economic opportunity in communities of color, considered also as a way to advance public safety (*supra* note 2).

community members and other stakeholders, the missions and mandates of the various units of the NYPD should be reconsidered and resources shifted as appropriate.

b. Review Mental Health and Ableist Practices

New York City must undertake a holistic review of the impacts of disability, ableism,²⁸ and audism²⁹ in its policing policies and practices and within the criminal justice system in conjunction with all stakeholders, including people with disabilities and mental illness and experts in the fields. Studies have shown that between one-third to one-half of those killed by police have disabilities.³⁰

Specifically, with respect to emergency calls involving mental health, New York City could follow the example of Eugene, Oregon, which established a Crisis Assistance Helping Out On The Streets (CAHOOTS) program.³¹ CAHOOTS sends a mobile crisis intervention team to respond to calls related to behavioral health. Right now, in New York City, conversations are ongoing as advocates and policymakers debate how best to respond to emergency calls implicating an individual's mental health or condition. The City Council, the Mayor's Office, and the Public Advocate, among others, have written, explored and debated proposals for several years, and there may now be political will to make beneficial changes.³²

We urge stakeholders to resolve the final issues surrounding emergency calls involving mental health concerns, which seem to be centered around when a police officer should be part of a response team, and when not. One approach could be to establish pilot projects in order to examine best practices, best results, and plans for more wide scale rollout.³³ In the end, the need

²⁸ Ableism is a set of beliefs or practices that devalue and discriminate against people with physical, intellectual, or psychiatric disabilities and often rests on the assumption that disabled people need to be 'fixed' in one form or the other." Center for Disability Rights, "#Ableism," <http://cdriys.org/blog/uncategorized/ableism/>.

²⁹ "Audism is the belief that people who hear, and people who have the ability to behave like a hearing person, are superior to Deaf people." "Addressing Audism," Hearing, Speech and Deaf Center, Sept.17, 2019, <https://www.hsdcc.org/2019/09/equity-team-update-addressing-audism/>. "Deaf and hard of hearing people face audism every day, in the form of communication barriers, discrimination, or hostile attitudes." *Id.*

³⁰ Abigail Abrams, "Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities," Time Magazine, June 25, 2020, <https://time.com/5857438/police-violence-black-disabled/>.

³¹ See <https://whitebirdclinic.org/services/cahoots/>.

³² Caroline Lewis, "The NYPD Currently Responds To Mental Health Crisis 911 Calls. Advocates Have Another Approach," Gothamist, June 14, 2020, <https://gothamist.com/news/nypd-currently-responds-mental-health-crisis-calls-advocates-have-another-approach>.

³³ See also recommendations made in the OIG-NYPD Report *supra* note 4 at 50 ("Putting Training Into Practice: A Review of NYPD's Approach to Handling Interactions with People in Mental Crisis"). For example, the NYPD has implemented a Crisis Intervention Team (CIT) program, which provides officers with training to help them manage individuals in mental health crisis. However, while NYPD has enacted most of the training aspects of CIT, it has not implemented the program as a whole. "Most notably, NYPD's dispatch system could not direct individuals trained in the CIT approach to all crisis incidents. The assignment of officers to assist individuals in distress remained random, undermining the intention of the training to ensure universal access to first responders with CIT awareness." (OIG-NYPD Report at 50).

to change the role police play in responding to individuals with disabilities, particularly mental health issues, is essential.³⁴

c. Invest in Violence Intervention Programs

In addition, violence intervention strategies are an important component of any effort to reallocate resources and increase public safety. Programs like New York City's Cure Violence³⁵ should be supported and funded, and the State should consider implementing programs like Baltimore's Hospital Based Violence Intervention Program.³⁶ New York City hospitals have already successfully targeted those at risk of overdose by responding in the hospital setting. Similar steps should be taken to provide assistance in the hospital setting to those experiencing violence.³⁷

d. Reduce and Reimagine School Safety Officers

Schools in New York City provide another opportunity for change. The City Council has taken initial steps towards removing School Safety Officers from the purview of the NYPD. We support this step, and urge the Council to continue engaging all stakeholders, including school administrators, teachers, parents and students, in order to further the goal of reducing the number of school safety officers, changing the mandate of those that remain, and integrating them fully into schools as a resource for children rather than simply as law enforcement officers meant to police children in their schools.³⁸

e. Rethink Traffic Enforcement

Likewise, traffic enforcement agents could be moved out of NYPD and perhaps into the Department of Transportation. Such a move might help to address the longstanding problem of

³⁴ See "People with Untreated Mental Illness 16 Times More Likely to be Killed by Law Enforcement," Treatment Advocacy Center, <https://www.treatmentadvocacycenter.org/key-issues/criminalization-of-mental-illness/2976-people-with-untreated-mental-illness-16-times-more-likely-to-be-killed-by-law-enforcement->. Resolution of these issues will, of course, require adequate funding for mental health services in communities. For example, a youth may receive treatment for both mental health and trauma while in a juvenile detention center but, once released, the options for continuing treatment in the community are much harder to access. Mental Health Courts also present opportunities to ensure that individual receive the mental health treatment they need, as opposed to entering the criminal justice system

³⁵ Sheyla A. Delgado, Laila Alsabahi, Kevin Wolff, Nicole Alexander, Patricia Cobar, and Jeffrey A. Butts, "The Effects of Cure Violence in the South Bronx and East New York, Brooklyn," John Jay College of Criminal Justice Research and Evaluation Center, Oct. 2, 2017, <https://johnjayrec.nyc/2017/10/02/cvinsobronxeastny/>; <https://johnjayrec.nyc/>; Save Our Streets (S.O.S), Center for Court Innovation, <https://www.courtinnovation.org/programs/save-our-streets-sos>.

³⁶ Violence Intervention Program, University of Maryland Medical Center, <https://www.umms.org/ummc/community/classes-events/health-improvement/violence-intervention-program#:~:text=The%20VIP%20is%20a%20hospital,necessary%20resources%20and%20social%20support>.

³⁷ Although this statement is focused on state and local issues, as discussed by former Attorney General Loretta Lynch during the July 22 Panel, federal funding has an important role to play in supporting local police reform and initiatives such as those discussed here (*supra* note 2).

³⁸ We recognize that being part of a resource in the school environment may now require involvement in COVID-19 related safety protocols.

unlawful parking and the abuse of parking placards that allow members of the NYPD and other City officials to park their personal cars in areas off limits to others. Despite being granted this extraordinary privilege, there is overt noncompliance with the rules applicable to such placards and “neighborhoods across the city are plagued with cars that park with impunity, blocking sidewalks and bike lanes, in front of hydrants, double-parking,” as City Council Speaker Corey Johnson recently stated.³⁹ Civilian employees of the NYPD are not in a position to stop this practice and there is no reason that the other functions of traffic enforcement agents, such as writing parking tickets for expired meters, need to be part of the NYPD.

f. Change Priorities of the NYPD

The NYPD emphasizes the use of statistics in assessing the success of its precincts and officers.⁴⁰ Superior officers are required to describe the number of summons issued, arrests made, search warrants executed, use of electronic supervision, etc. These statistics are then used in promotion decisions. By prioritizing these statistics, the focus remains on maximizing enforcement and punishment, rather than on keeping communities safe and whole. Serious questions have been raised, for instance, as to whether the number of arrests should be a factor in promotional decisions. Recognizing that we live in a world that requires statistics and reporting of information, one approach is to exclude certain statistics from promotional decisions and change how statistics are prioritized overall so that more focus can be placed on solving reported crimes, not on arrests and citations. Further measures can be developed to track an officer’s positive interactions with a community. Ultimately, to the extent officers feel pressured to increase the number of summons, arrests and searches, this comes at great human cost. And, in the long run, this reward system does significant - and hard to reverse - damage to police-community relations and law enforcement’s ability to build trust, obtain community cooperation and solve crimes.⁴¹

g. Enhance Police Training

Police training hours should be readjusted so more hours are spent on learning concepts like de-escalation tactics, bias training and respectful community engagement. This sort of training is equally as important as hours spent on weapons training and other training related to how to use

³⁹ Shant Shahrighian, “NYC Council passes bills to crack down on parking placard abuse,” NY Daily News, Nov. 26, 2019, <https://www.nydailynews.com/news/politics/ny-placard-abuse-new-york-20191127-eibtb4xqizavjehgncqkwd2liu-story.html>.

⁴⁰ See, e.g., NYS Office of Attorney General, Preliminary Report on New York City Police Department’s Response to Demonstrations Following the Death of George Floyd, July 2020 at 34 (referencing letter by Chris Monahan, President of the Captains’ Endowment Association calling for the termination of CompStat, NYPD’s system for tracking crime data and arrest because it causes NYPD officers to unnecessarily target and arrest individuals in communities of color to satisfy implied arrest and ticket quotas.)

⁴¹ A related issue that calls for further action is the persistent lack of diversity at the top NYPD ranks. Three out of four police officials with a rank above captain are white, and 62% of captains are white. (Ranks above captain are based on merit, not civil service exams.) In addition, and affecting the pipeline to top positions, Black patrol officers have *decreased* from 18% to 15.5% representation between 2008 and 2020. An NYPD spokesperson points to the hampering effects of civil service rules and low turnover at the top ranks. See Greg B. Smith, “Number of Black Patrol Cops Falls as NYPD Upper Ranks Remain Majority White,” The City, June 24, 2020, <https://www.thecity.nyc/2020/6/24/21302335/number-of-black-cops-falls-as-nypd-upper-ranks-remain-white>.

force.⁴² And, although 60 hours of college credit are required to join the NYPD, there is no core set of courses all candidates have to take. Future officers could be required to take core courses such as Dispute Resolution, Effective Communication, and Ethics before joining the force, and a continuing training requirement could be instituted, perhaps one that educates officers on the intricacies of the disciplinary process and what takes place after a complaint is filed. Policymakers should work with police departments to support and fund efforts to make trainings more frequent, and trainings should be accompanied by explicit buy-in from precinct leadership.⁴³ When training is not followed, there should be discipline; otherwise, training is meaningless.

h. Demilitarize the Police and Reduce Use of Military Tactics During Protests

The right of citizens to engage in large-scale peaceful protests is fundamental. New York State should ban the use of military equipment and military tactics on protestors as crowd control measures, including the use of pepper spray, sound cannons⁴⁴ and tear gas.⁴⁵ Policymakers should examine the NYPD's response to the latest protests and determine – and publish – best practices for future protests so as to prevent the unnecessary escalation of violence and use of force.

Relatedly, policymakers should conduct hearings and give close scrutiny to the purchase of military equipment by law enforcement. Topics that can be explored during hearings include: the link between the use of military equipment by law enforcement and escalated violence during community interactions; when it is necessary – and *not* necessary – for the NYPD to carry and use military equipment; and, to the extent military equipment and SWAT-type tactics are used by police – what are they being used for, when can the use bring about escalated violence, and when should such use be absolutely banned. Even if one believes that certain military equipment is necessary under certain circumstances, its use should be narrowly circumscribed going forward.

⁴² While training is important, it is crucial that it not be the sole or primary method in which the City and State seek to change policing. For example, Garrett Rolfe, who has been charged with the murder of Rayshard Brooks, had a nine-hour de-escalation training less than three months before he killed Mr. Brooks. *See* Jorge L. Ortiz, “Lawful but awful’: Atlanta police had better options than lethal force in Rayshard Brooks shooting, experts say,” USA Today, June 15, 2020, <https://www.usatoday.com/story/news/nation/2020/06/14/rayshard-brooks-atlanta-police-killing-lawful-but-awful/3189478001/>.

⁴³ In recent years there have been many calls for both increased training and new types of trainings for police. Some of these trainings have been successfully implemented by NYPD, others remain incomplete or insufficient (*see generally* OIG-NYPD Report, *supra* note 4). We would urge policymakers and NYPD to take a comprehensive look at all of the Department's existing trainings to identify not only gaps, but areas that may be duplicative, need reform or need broader implementation.

⁴⁴ Nick Pinto, “NYPD Use Of Sound Cannons For Crowd Dispersal Can Qualify As Excessive Force, Judge Rules,” Gothamist, June 14, 2018, <https://gothamist.com/news/nypd-use-of-sound-cannons-for-crowd-dispersal-can-qualify-as-excessive-force-judge-rules>.

⁴⁵ NYPD reports that it does not use rubber bullets or tear gas as crowd control measures, though it does use pepper spray, but the use of all of these measures should be banned at the state level. To view the City Bar's recent writings on treatment of protestors, *see* <https://s3.amazonaws.com/documents.nycbar.org/files/2020726-LafayetteSquareInvestigationCongress.pdf> (concerning Lafayette Park protests) and <https://www.nycbar.org/media-listing/media/detail/statement-on-detention-of-legal-observers> (concerning detention of legal observers at protests in New York City).

Hearings could also explore, relatedly, the use of military equipment and tactics as part of the execution of “no-knock” warrants, where the police do not knock or identify themselves prior to entering someone’s premises. In New York State, no-knock warrants are authorized as a matter of course in most search warrants relating to drug-related crimes, out of fear that evidence might be destroyed if the police were to identify themselves. While it is true that evidence may be destroyed without the use of no-knock warrants, the destruction of drugs, on its own, is an insufficient reason to risk the loss of life that can stem from no-knock warrants. A better approach, and one that limits the risk of unwarranted violence, would be to limit no-knock warrants to only the most extreme circumstances involving unusual safety concerns.

i. Continue to Decriminalize Low-Level Crimes

There are tens of thousands of criminal court summons handed out by the NYPD on an annual basis, and there is extreme racial disparity in these summonses.⁴⁶ Relying on armed law enforcement personnel to enforce these low-level offenses creates unnecessary friction between community and police with no corresponding benefit to public safety.

In previous reports, the City Bar has argued that New York State should legalize marijuana,⁴⁷ repeal the law criminalizing loitering for the purposes of prostitution,⁴⁸ and that New York City should decriminalize failure to pay fares for public transportation,⁴⁹ all of which are disproportionately enforced to the detriment of communities of color without any corresponding public benefits. In addition, both the State Legislature and the City Council should examine those offenses for which summonses are given and hold public hearings in order to consider which offenses should be decriminalized or, at a minimum, remove enforcement of these low-level offenses from the purview of law enforcement.

⁴⁶ The NYPD publishes quarterly reports on summonses. For example, in the Fourth Quarter of 2019, the NYPD issued 9,879 summonses to individuals (an additional 8,535 were issued to businesses), 47% of which were issued to Black individuals, 33.3% to Hispanic individuals and only 10% to white individuals, despite the NYC population being 24.3% Black, 29.1% Hispanic and 32.1% White (QuickFacts, New York City, New York, U.S. Census Bureau, accessed Aug. 12, 2020, <https://www.census.gov/quickfacts/newyorkcitynewyork>). The most common summons was for federal motor vehicle safety registration (6,177 summonses) and Marijuana in the Second Degree (2,950 summonses). Other common summonses included Alcoholic Beverages in Public (307) and Non-Payment of Fare (428). Criminal and Civil Court Summons Reports, New York City Police Department, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/c-summons.page>.

⁴⁷ Marijuana Legalization & Regulation resource page, New York City Bar Association, <https://www.nycbar.org/member-and-career-services/committees/marijuana-legalization-and-regulation>.

⁴⁸ A.654 (M. of A. Paulin) / S.2253 (Sen. Hoylman), 243rd Session (N.Y. 2019); *see* Repeal the “Walking While Trans” Ban, New York City Bar Association, Feb. 3, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>.

⁴⁹ The Kings County District Attorney and the New York County District Attorney already decline to prosecute most arrests made for failure to pay subway and bus fares. *See e.g.* Maura Ewing, “Will New York Stop Arresting People for Evading Subway Fares?” *The Atlantic*, Aug. 4, 2017, <https://www.theatlantic.com/politics/archive/2017/08/new-york-subway-fares/535866/>. The City Bar supported the adoption of the Fair Fares program, *see* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-fair-fares-campaign>.

In this moment it is incumbent on those in power to do everything they can to ensure that the protests and ensuing public debates do not end up being a squandered opportunity to create real change. Together we can achieve a systematic re-configuration of policing in New York State and New York City for the benefit of all stakeholders. The New York City Bar Association urges the State Legislature and City Council to act on these fundamental reforms and to continue to carefully and critically consider the future of policing in New York.⁵⁰

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⁵⁰ As discussed earlier, this memorandum focuses on items that we believe deserve continued consideration and action and is based on the experience and expertise of our members who work in the criminal justice field. It is not meant to be exhaustive or to suggest that these areas should be priorities over other reform proposals, some of which we may address in subsequent reports. For instance, areas not explored here include, (1) the issue of police officer health and wellness (like attorneys, officers in need of mental and behavioral health services should be supported, not stigmatized, and their needs addressed in a way that is confidential and responsive, as discussed in DOI's September 2019 report, "An Investigation of NYPD's Officer Wellness and Safety Services), https://www1.nyc.gov/assets/doi/reports/pdf/2019/sep/REVISED_FINAL_DOIOIGNYPD_OfficerWellnessandSafety_9242019.pdf); (2) the need to critically examine and reform policies (e.g., housing, education and mental and physical health care) that result in prioritizing the protection of white lives and property, and the attendant cost to Black and Brown communities, as discussed by the former Mayor of Minneapolis Betsy Hodges (*see* "Opinion: As Mayor of Minneapolis, I Saw How White Liberals Block Change," N.Y. Times, July 9, 2020, <https://www.nytimes.com/2020/07/09/opinion/minneapolis-hodges-racism.html>); (3) the crucial and continuing importance of post-arrest diversion models for drug charges and the need for buy-in from District Attorneys across the State (e.g., the "LEAD" model used in Albany, and elsewhere, which diverts people in lieu of arrest); (4) the question of residency requirements for New York City police officers; (5) how best to revise use-of-force policies; and (6) the doctrine of "qualified immunity" and how it is used to shield police officers from liability for their misconduct.

APPENDIX - RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION

As of July 16, 2020

NEW YORK CITY

BILL / LAW NUMBER	SUBJECT
Int. 0721B-2018, 2020/067	Affirms the right to film police activities generally, and establish a cause of action enabling individuals to sue in state court for any violation of this right.
Int. 0536B-2018, 2020/066	Criminalize the use of restraints that restrict the flow of air or blood by compressing another individual's windpipe or arteries on the neck, or by putting pressure on the back or chest, by police officer making an arrest. This would cover chokeholds, as well as maneuvers like placing a knee on a person's neck. Any officer found guilty of using such a restraint could be found guilty of a class A misdemeanor. Such an act would be criminalized only if used while the officer is trying to make an arrest – not, for example, acting in self-defense.
Int. 1962-2020, 2020/070	Require officers to display their shield number or rank designation at all times when the officer is performing their duties. This bill would also create a private right of action for individuals who are subject to refusal of officers to display a shield number or rank designation.
Int. 1309B-2018, 2020/069	Requires the NYPD to develop a “disciplinary matrix,” which gives a recommended range of penalties for each type of violation. The NYPD Commissioner would retain the ultimate discretion to override the recommendation of the matrix, but the Department would be required to report on how often the Commissioner deviated from the matrix. The bill also requires public reporting on the development of the matrix, including the factors that were considered.
Int. 0760B-2018, 2020/068	Requires the New York City Police Department (NYPD) to expand the categories of information included in its Early Intervention System (EIS) to include information like certain types of arrests made, incidents of excessive force, and ongoing disciplinary proceedings. The NYPD would also be required to increase transparency around its system by regularly reporting on the information included and how it's utilized.
Int. 0487A-2018, 2020/065	Requires the reporting and evaluation of surveillance technologies used by the New York City Police Department (NYPD). The Department would be required to issue a surveillance impact and use policy about these technologies, including a description and capabilities, rules, processes and guidelines, and any safeguards and security measures designed to protect information collected. The Department of Investigation's Inspector General for the NYPD would audit the surveillance impact and use policy to ensure compliance with its terms.

APPENDIX: RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION
As of July 16, 2020

NEW YORK STATE

BILL / LAW NUMBER	SUBJECT
A1531-B / S8492, Chp. 93	Establishes a private right of action for a member of a protected class when another person summons a police or peace officer on them without reason to suspect a crime or an imminent threat to person or property existed.
A1360-A / S3253-A, Chp. 100	Clarifies that a person not under arrest or in police custody has the right to record police activity and to maintain custody and control of that recording, and of any property or instruments used to record police activities.
A8226-B / S6601-B, Chp. 103	Amends the Civil Rights Law by adding a new section that affirms New Yorkers' right to medical and mental health attention while in custody
A10611 / S8496, Chp. 96	Repeals section 50-a of the civil rights law, allowing the disclosure of law enforcement disciplinary records
A10609 / S1830-C, Chp. 102	The Police Statistics and Transparency (STAT) Act, will require courts to compile and publish racial and other demographic data of all low-level offenses, including misdemeanors and violations. The bill also requires police departments to submit annual reports on arrest-related deaths to be submitted to the Department of Criminal Justice Services and to the Governor and the Legislature.
A1601-C / S2574-B, Chp. 95	Creates an Office of Special Investigation within the Department of Law, under the Attorney General, which will investigate, and, if warranted, prosecute any incident of a person whose death was caused by a police officer or peace officer.
A6144-B / S6670-B, Chp. 94	The "Eric Garner Anti-Chokehold Act" will prohibit the use of chokeholds by law enforcement and establish the crime of aggravated strangulation as a Class-C felony to hold officers accountable for using a chokehold and seriously injuring or killing a person in violation of the ban.
A10002-B / S3595-C, Chp. 104	Establishes the Law Enforcement Misconduct Investigative Office within the Department of Law to review, study, audit, and make recommendations regarding operations, policies, programs, and practices of local law enforcement agencies. The goal of this legislation is to enhance the effectiveness of law enforcement, increase public safety, protect civil liberties and civil rights, ensure compliance with constitutional protections and local, state, and federal laws, and increase the public's confidence in law enforcement.
A8674-A / S8493, Chp. 105	The New York State Police Body-Worn Cameras Program; will direct the Division of State Police to provide all State police officers with body-worn cameras that are to be used any time an officer conducts a patrol and prescribes mandated situations when the camera is to be turned on and recording.

APPENDIX: RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION*As of July 16, 2020*

BILL / LAW NUMBER	SUBJECT
A10608 / S2575-B, Chp. 101	Requires state and local law enforcement officers, as well as peace officers, to report, within six hours, when they discharge their weapon where a person could have been struck, whether they were on or off duty.



**New York City Council Hearing
Committee on Public Safety
The City's Policing Reform Plan
January 11, 2021**

Testimony of the Legal Aid Society

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This summer, in the wake of George Floyd's murder, hundreds of thousands of New Yorkers took to the streets to confront white supremacy and police violence. Their demands were part of a global movement for racial justice and a national reckoning with police brutality. Mayor Bill de Blasio is undermining efforts to heed the call for reform issued by this summer's uprising by failing to implement the Governor's executive order requiring a plan to "reform and reinvent" policing. As the body whose approval is required to finalize the City's plan, the City Council can correct this problem by demanding the Mayor restore integrity to the planning process and ensuring that the concerns of impacted communities are at the heart of the plan.

As the protests roiled New York and the nation, Governor Andrew Cuomo issued an executive order directing local governments, police departments and community stakeholders to come together to create a police reform plan. The Governor specifically directed that stakeholders come from communities with high numbers of police interactions, non-profit and faith-based community groups, and public defenders, among others. The mandate is to create a comprehensive plan for police reform to be presented to and passed by the City Council no later than April 2021.

Seven months later, New York City has made no progress toward a police reform plan informed by community input. Community stakeholders were convened and then disbanded. Efforts by community organizers and stakeholders to build trust and revive the process have been ignored. Drafting of the plan appears to have been turned over entirely to police leaders. NYPD-dominated "listening sessions"—designed to create the appearance without the reality of community engagement—have been widely condemned and further eroded the legitimacy of this process. The transparency and collaboration contemplated by the executive order are nowhere to be found. New York City's police reform plan is on the road to failure.

This plan is important because it is the only step taken, to date, that promises to deliver the transformative change demanded by this summer's protests. If this process does not succeed, New York City will have further depleted the hope of the New Yorkers – primarily Black and brown – who have for too long suffered from discriminatory and abusive police practices and will perpetuate the disenfranchisement and disillusionment that drives people to the streets to protest. The City Council can and must demand that City Hall fix the police reform process and send a clear signal that any plan that fails to answer the calls from impacted communities will be rejected when the plan is presented to the Council in April.

Mayor de Blasio Is Failing to Implement the Governor's Police Reform Order

On June 12, 2020, Governor Andrew Cuomo issued [Executive Order 203](#) (“E.O. 203”), directing the executives of local governments to convene the head of the local police agency and various stakeholders to develop a plan to improve policing “for the purposes of addressing the particular needs of the communities served by such police agency and [to] promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.”¹ The order specifically requires that those stakeholders include members of the community with an emphasis on areas with high numbers of police interactions, non-profit and faith-based groups, public defenders, and elected officials and to ensure their involvement in the development of a policing plan. An operations plan was meant to have been issued by September of last year, stakeholders were to have been convened in the early autumn, collaborative drafting was to have taken place in November and December, and a public comment period was contemplated to launch this month.

None of this has happened. For months, the Mayor's office did nothing. In October of last year, City Hall, through the Mayor's Office of Criminal Justice (“MOCJ”) reached out to Legal Aid and several other community-based organizations and prominent community leaders asking to form a leadership committee. In the absence of the operations plan contemplated by the executive order, some of the invitees requested information in advance of joining about how the process would unfold, hoping to find in that information some assurance that their input would be valued and that the process would not be dominated by the NYPD leaders and City Hall officials on the committee. It is important to acknowledge that many of those community invitees carried personal histories of violence and harassment by the police. Others were advocates from impacted communities wearied by long years of being ignored and disrespected by police and City leaders. Building trust should have been understood and foreseen as a critical prerequisite to the success of this process.

Unfortunately, it was not. Officials from Deputy Mayor Dean Fuleihan's office and other executive agencies failed to provide any information about the process in advance of the meeting and issued public statements about the process that directly contradicted representations made to committee invitees, leading some to decline to attend. Those of us who did attend the meeting

¹Executive Order 203 (June 12, 2020) available at <https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>.

made a good faith effort to help the Mayor's staff understand the need for clarity around the process – as a confidence-building measure that could address concerns of community members that their presence in that space was not merely a “check-box” endeavor, and that their voices would not be drowned out or simply sidelined when police officials took the pen to draft the plan. Those efforts failed. After first promising to provide some response to attendees' concerns, City Hall suddenly disbanded the committee by email on November 20, 2020.

As the leadership committee collapsed, the NYPD took the police reform process into its own hands. In October, the NYPD launched a series of “listening sessions” sessions that had the net effect of angering and further alienating communities. The sessions were rolled out chaotically, often with little notice. In-person invitations were limited to carefully selected individuals that created the appearance of bias (for example, in Staten Island, the district attorney was one of only a few in-person attendees, and there was no public defense representation); most of the public was relegated to online participation, and questions were carefully curated through online chat and Q&A functions. Community members played no role in setting the agenda for any of these meetings. Some were dominated by presentations by NYPD officials rather than focusing on community input, creating the impression that the Department was more interested in public relations than in listening. Many people felt ignored. Several sessions involved tense exchanges, including one in the Bronx in which Commissioner Dermot Shea at first ignored a question about the NYPD's brutal beating of protesters on June 4 in the Mott Haven section of the Bronx—where hundreds were trapped by the police and then beaten and arrested for a manufactured curfew violation—and then defended the Department's actions and dismissed community concerns out of hand. In other sessions, community members directly challenged the legitimacy of the sessions as they unfolded, leading to awkward dynamics. The listening sessions have been [publicly criticized](#) and undermined community confidence rather than engaged community input.²

Mayor de Blasio has ceded control of this process to the NYPD, alienating impacted communities and other stakeholders and ensuring that whatever plan emerges from this process will reflect the same systemic and cultural flaws that have long plagued the NYPD's efforts to cure

²Alice Fontier, Stan Germán, Tina Luongo, Justine Olderman and Lisa Schriebersdorf, *This is Sham Reform, But as Usual the Mayor and Commissioner are Dodging*, N.Y. Daily News (Dec. 15, 2020) <https://www.nydailynews.com/opinion/ny-oped-this-time-we-need-fundamental-nypd-reform-20201215-kg4hyd3jdnc57ntyq6smq27o2e-story.html>

itself. Any sincere effort to transform policing should bring together people with a diversity of experiences, perspectives, and voices; prioritize the calls of people whose lives have been directly affected by police harassment and violence; and ensure that the already powerful police department did not dominate the promised inclusive process.³ And, indeed, this is what is specifically required by the Governor's executive order. Unfortunately, the Mayor's Office has not demonstrated such sincerity in this process, all but ensuring that the plan it puts before City Council will fall far short of the transformative action required by this moment in history and guaranteeing that the plan will lack legitimacy in the eyes of the New Yorkers it is intended to benefit.

The City Council Must Demand Immediate Action to Put Community Needs at the Center of the City's Police Reform Plan

As the body whose approval is ultimately required for the police reform plan, the City Council has the authority to demand changes to this process and salvage the opportunity it presents for meaningful change. If the City Council is serious about living up to progressive ideals that New Yorkers have demanded, then it must respond to the voices of those who took to the streets in the wake of George Floyd's murder and radically re-imagine the role of police. We ask that this Committee consider a resolution:

- condemning the Mayor's failure to implement the Governor's executive order;
- demanding public disclosure of an operations plan setting forth in full the process the Mayor will undertake to produce its police reform plan within the next four weeks;
- requiring the public disclosure of all data that will be considered in the development of the plan; and
- signaling that the Council will not accept any plan that fails to center the voices of impacted communities and to fully engage the community stakeholders specified in the executive order.

³ In contrast, the City of Albany hosted an extensive series of series of working group meetings, open to public comment and publicizing meeting minutes. *See* Albany Police Reform & Reinvention Collaborative Public Meeting Schedule, <https://www.albanyny.gov/641/Police-Reform-Reinvention-Collaborative>

About The Legal Aid Society

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles more than 300,000 cases for low income families and individuals and is the largest public defense organization in the country. By contract with the City, the Society serves as the primary defender of low-income people prosecuted in the state court system, the overwhelming majority of whom are Black and brown. The Law Reform and Special Litigation Unit of the Criminal Defense Practice engages in affirmative litigation and policy advocacy on systemic legal issues affecting the rights of Legal Aid's criminal defense clients, including issues of police violence, harassment and abuse.

**Testimony of Michael Sisitzky
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committee on Public Safety
Regarding the City's Policing Reform Process**

January 11, 2021



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Donna Lieberman
Executive Director

Olivier Sylvain
President

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding New York City’s police reform process. The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

The police killings of George Floyd, Breonna Taylor, Daniel Prude, and too many Black and Brown people sparked uprisings throughout the country and across the state. The mass mobilization of New Yorkers demanding justice for Black lives propelled New York lawmakers to finally act on long-overdue police reform measures to increase transparency and accountability. Important as these measures are, it is clear that reforms alone are not sufficient to address the structural and cultural problems inherent in law enforcement.

On June 12, 2020, Governor Cuomo issued Executive Order 203, directing every local government entity with a police agency to create a Police Reform and Reinvention Collaborative tasked with developing additional reform plans for adoption by local legislatures no later than April 1, 2021.¹ With less than three months until this deadline, New York City has made appallingly little progress. Neither the public nor City lawmakers have seen any draft proposals or even outlines for proposals, and the process thus far has been subject to far too much control by the New York Police Department (“NYPD”), an agency which has made clear time and time again that it is incapable of reforming itself. If New York City is to accomplish anything meaningful as part of this process, it will require the City Council to assert real leadership and to center the demands of communities most impacted by police violence.

The amount of work needed to truly “reinvent” existing structures and to create new, alternative models of community safety is far beyond what can realistically be accomplished by April 1. But this Council has

¹ N.Y. Exec. Order No. 203 (June 12, 2020), <https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>.

the opportunity to begin that work by committing to a framework centered on the urgent need to reduce the size, scope, and power of the NYPD. That begins with defunding the NYPD. We have chronically overinvested in policing and underinvested in the types of services that are actually capable of meeting people's basic needs and enabling communities to thrive. Fixing this fundamental flaw requires that we pursue measures to defund the police and invest in Black and Brown communities, including by advancing and adopting measures that directly confront and reduce the size of police departments, the scope of their powers, and the degree to which policing has become the default response to every social challenge.

Defund the NYPD



The history of policing in the United States is rooted in violence against Black and Brown people. From slave patrols created to maintain slavery,² to police officers participating in or condoning lynching,³ to the use of police to enforce Jim Crow-era prohibitions,⁴ police departments have been given enormous amounts of power and funding to target Black and Brown communities as part of a system meant to uphold white supremacy and privilege. As agents responsible for enforcing the laws and policies of the state and those in positions of power, police have been deployed to suppress labor movements,⁵ attack protesters,⁶ and engage in massive surveillance of those who criticize the government.⁷

While spending on antipoverty programs and social services has decreased since the 1960s, spending on law enforcement has steadily

² Chelsea Hansen, *Slave Patrols: An Early Form of American Policing*, National Law Enforcement Museum, July 10, 2019, <https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>.

³ Michael S. Rosenwald, *A Black Man Accused of Rape, a White Officer in the Klan, and a 1936 Lynching that Went Unpunished*, The Washington Post, July 19, 2020, <https://www.washingtonpost.com/history/2020/07/19/atlanta-lynching-police-ku-klux-klan/>.

⁴ Connie Hassett-Walker, *The Racist Roots of American Policing: From Slave Patrols to Traffic Stops*, Chicago Reporter, June 7, 2019, <https://www.chicagoreporter.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops/>.

⁵ *Notable Labor Strikes of the Gilded Age*, http://faculty.weber.edu/kmackay/notable_labor_strikes_of_the_gil.htm.

⁶ PBS, *Black Culture Connection: The Birmingham Campaign*, <https://www.pbs.org/black-culture/explore/civil-rights-movement-birmingham-campaign/>.

⁷ ACLU, *Leaked FBI Documents Raise Concerns about Targeting Black People Under 'Black Identity Extremist' and Newer Labels*, Aug. 9, 2019, <https://www.aclu.org/press-releases/leaked-fbi-documents-raise-concerns-about-targeting-black-people-under-black-identi-1>.



increased, and police officers themselves began taking on responsibility for the types of public health and social service interventions that had been defunded along the way.⁸ Indeed, owing to increasing reliance of police officers outside of their purported anti-crime roles, even as crime levels fell throughout the 1990s and into the first two decades of the 2000s, spending on police continued to increase.⁹

This history of overfunding of police while defunding the very services that meet people's basic needs is why calls for mere "reform" of police departments fall so short of what is needed. The ever expanding scope of policing is the issue that, first and foremost, must be addressed. And it is why plans for defunding, shrinking, transforming, and ultimately abolishing policing as it exists now are called for.

The NYCLU urges the City Council to meet this moment with a bold new vision for community safety that starts with removing police as the default solution to address social issues like physical and mental health needs, housing and food insecurity, student discipline, and inequities in education and employment.

NYPD officers are neither mental health professionals nor are they social workers, yet far too often, they are dispatched to respond to crises where a trained, licensed, civilian professional could better assess, deescalate, and resolve the situation. Nowhere is this more apparent than in the NYPD's handling of calls related to people experiencing a mental health crisis. The police killings of Mohamed Bah, Deborah Danner, Saheed Vassell, Kawaski Trawick, and far too many others are tragic reminders of our city's failure to develop a mental health response that actually prioritizes getting people the healthcare and services that they need. Reinventing policing and defunding the NYPD must include a removal of police officers as first responders to mental health calls.

Police are likewise not an adequate substitute for school counselors and other supports for young people. Their presence in schools has resulted in the further criminalization of Black and Brown youth while leaving young people's underlying needs unmet. Reinventing policing in New York City and defunding the NYPD must include a full removal of school safety agents from their permanent stations in public schools. Former Mayor Giuliani's decision to give cops free reign over school discipline has hurt a generation of Black and

⁸ Emily Badger & Quoc Trung Bui, *Cities Grew Safer. Police Budgets Kept Growing*, N.Y. Times, June 12, 2020, <https://www.nytimes.com/interactive/2020/06/12/upshot/cities-grew-safer-police-budgets-kept-growing.html>.

⁹ *Id.*



Brown students and must come to an end. Merely moving these police officers to the Department of Education is not sufficient.

This moment also calls for a reassessment of the vast amounts of money spent on surveillance technologies and military equipment that police use to terrorize communities and treat entire populations with suspicion. Thanks to the passage of the POST Act last year, the NYPD's extensive surveillance infrastructure will finally be subject to public scrutiny. But we already know that the NYPD is using invasive, inaccurate, and racially-biased technologies like face recognition, and that they have been using this technology without any meaningful oversight for years. New York City should join the growing movement of cities throughout the country that are rejecting and banning face recognition. And as more of the NYPD's surveillance infrastructure begins to see the light of day, the Council must be more assertive in challenging abusive tools and practices and in redirecting the moneys spent to acquire and maintain these technologies toward better use in enabling communities to thrive.

To be clear, this does not mean that the Council should continue to delay action on more limited measures that, while not decreasing police power directly, still serve a vital public interest. The Council should move forward on a number of measures that have been pending for years, including Intro. 1551 to expand reporting on so-called "consent searches" and Intro. 1671, which mandates comprehensive data collection and reporting on vehicle and traffic stops. These measures have the support of communities most impacted by these very practices and will serve an important function in identifying and challenging disparate patterns of enforcement. As such, they should be part of the Council's proactive agenda, but they cannot be the sum total of that agenda if we are truly to reinvent policing and reimagine public safety.

The Council Must Assert Leadership in this Process and Not Cede Control to the NYPD

Lastly, and perhaps most critically, this process can only succeed if we clearly acknowledge and account for the complete lack of credibility from the NYPD and this administration in any conversation on reform. Thus far, however, it appears that the NYPD is very much in control of this process, and so we have every reason to doubt the utility and sincerity of whatever proposals eventually emerge from it.

Governor Cuomo issued Executive Order 203 in June 2020, but it was not until October that the City took any public steps in response. In October, the NYPD hosted a series of public listening sessions – the first of which was announced with only a day's notice – which served largely



as platforms for the NYPD to justify its practices and priorities to those in attendance. Since then, as reported to us by partners involved in conversations with City agencies, the administration has not pursued a good faith effort to convene community stakeholders to work as part of the Reform and Reinvention Collaborative. That we are seven months into this process and still without even so much as a working outline of proposals to review is an indictment of the administration's refusal to engage seriously with the process mandated under the executive order.

Given the lack of any real ability for communities most directly harmed by policing to have any meaningful power or voice in setting the agenda for this process, we urge the Council to approach its (eventual) recommendations with skepticism and not to blindly accept or approve any plan without first directly incorporating the demands of Black and Brown communities, themselves. The City Council should not ascribe any credibility to a process that is not led by the communities most directly impacted by NYPD practices, especially when that process is taking direction from the current mayoral and NYPD administration.

Under this administration, the NYPD has loudly objected to basic transparency measures and has sought to delay or water down nearly every bill that city legislators have put forward.¹⁰ Under this administration, the NYPD pushed for and won a dramatic expansion of section 50-a, which was only undone due to the unprecedented mobilization of thousands of New Yorkers last summer demanding the law's repeal.¹¹ Under this administration, NYPD officers have misrepresented crime data and broken rules against political messaging while in uniform to advocate for rollbacks of historic bail reform measures.¹² And under this administration, we have seen a complete unwillingness to hold officers accountable for egregious misconduct, from the five years that it took to fire the officer who killed Eric Garner

¹⁰ See Annie McDonough, *NYPD Stands Firm Against Reporting Requirements in POST Act*, City & State New York, Dec. 19, 2019, <https://www.cityandstateny.com/articles/policy/policy/nypd-stands-firm-against-reporting-requirements-post-act.html>; Johanna Miller, *The NYPD's "Cult of Compliance"*, NYCLU, Jan. 25, 2018, <https://www.nyclu.org/en/news/nypds-cult-compliance>.

¹¹ See Nick Pinto, *After Opposing NYPD Transparency for Years, de Blasio's Promise of Reform Rings Hollow*, Gothamist, June 2, 2020, <https://gothamist.com/news/after-opposing-nypd-transparency-years-de-blasio-promise-reform-rings-hollow>.

¹² Christopher Robbins, *Cops aren't Supposed to Talk "Public Policy," But Bail Reform is a Different Matter*, Gothamist, Feb. 4, 2020, <https://gothamist.com/news/cops-arent-supposed-talk-public-policy-bail-reform-different-matter>.



to the repeated failures to take responsibility for the unprecedented violence directed at protesters last summer.¹³

We cannot reform and reinvent policing if the people leading the process are the same officials who have resisted and actively sought to undermine the very reforms that communities have long worked towards.

Conclusion

Defunding the police is a critical step toward disrupting the cycle of surveillance, fear, punishment and criminalization that targets and threatens the safety of Black and Brown people. Proposals that begin from this framework will help New Yorkers to create alternative systems for community safety by investing in and promoting community well-being. The NYCLU urges the City Council to adopt this framework as its guiding principle, and we look forward to working with the Council to advance measures that are truly responsive to the needs of communities.

¹³ See Ashley Southall, *Daniel Pantaleo, Officer Who Held Eric Garner in Chokehold, Is Fired*, N.Y. Times, Aug. 19, 2019, <https://www.nytimes.com/2019/08/19/nyregion/daniel-pantaleo-fired.html>; Dana Rubinstein & Jeffery C. Mays, *De Blasio Denounced after Police Forcefully Clash with Protesters*, N.Y. Times, June 4, 2020, <https://www.nytimes.com/2020/06/04/nyregion/De-blasio-protests-curfew.html>; Jake Offenhartz, et al., *NYPD's Ambush of Peaceful Bronx Protesters was "Executed Nearly Flawlessly," City Leaders Agree*, Gothamist, June 5, 2020, <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx-protesters-was-executed-nearly-flawlessly-city-leaders-agree>.

**New York City Council
Committee on Public Safety
Oversight Hearing on the City’s Policing Reform Process**

January 11, 2021

**Written Testimony of The Bronx Defenders
By Justine Olderman**

Chairperson Adams and Committee Members, my name is Justine Olderman and I am the Executive Director of The Bronx Defenders (“BxD”).¹ Thank you for the opportunity to testify today.²

Introduction

The Bronx Defenders represents over 15,000 people in criminal cases every year. Each one of the 15,000 people we represent has had some interaction with the New York Police Department. In the 23 years since we opened our doors, we have heard so many stories of abuse, degradation, harassment, and violence at the hands of “New York’s Finest”—hundreds of thousands of them—that if all of them were written down and bound into books, the accumulated volumes would serve as a monument to state-sponsored brutality and a stunning indictment, not just of the NYPD, but of the City that has failed to effectively address the problem. The City’s response to the anguished cries of New Yorkers demanding transformation of the NYPD has been anemic at

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

² A version of this testimony was previously submitted in response to the City Council Hearing held on December 16, 2020 regarding Racism, Bias and Hate Speech in the NYPD.

best. We are squandering the opportunity of Governor Cuomo’s Executive Order 203, which created the “New York State Police Reform and Reinvention Collaborative.”

How We Got Here

The call for a fundamental reimagining of the role of police in the lives of New Yorkers is not new. In the 2013 landmark decision in *Floyd v. City of New York*, Judge Shira Scheindlin held that the NYPD’s practice of stop-and-frisk—the centerpiece of the City’s policing strategy for over a decade—was racially discriminatory and violated the Equal Protection Clause of the Fourteenth Amendment. At issue in the case were the over 4.4 million stops—legal seizures—conducted by the NYPD on the streets of New York City between January 2004 and June 2021.³ Stop-and-frisk flooded low-income communities of color with police officers who subjected residents to pervasive surveillance, harassment, and physical stops. When criticized as being oppressive and racist, the NYPD argued that it was merely going where the crime was and justified the practice as an effective and proven strategy to keep communities safe and to get weapons off the streets. The data painted a different story.

At the height of the stop-and-frisk era, in 2011, the NYPD stopped over 685,000 people in a single year. 83% of people stopped were Black or Latinx, despite representing only 52% of the city’s population. Not only were people of color stopped and frisked at a disproportionate rate, but the Court found that the NYPD was more likely to use force against people of color during a stop. Upon examination, only 6% of stops resulted in an arrest, and an even smaller percentage resulted in the recovery of contraband or a weapon. The Court concluded that “the evidence at trial revealed that the NYPD has an unwritten policy of targeting ‘the right people’ for stops. In practice, the policy encourages the targeting of young black and Hispanic men based on their prevalence in local crime complaints. This is a form of racial profiling.”⁴

While stop-and-frisk has declined since Judge Scheindlin’s ruling, surveillance, harassment and racial disparities persist unabated. The COVID-19 crisis has only magnified how low-income communities and communities of color are targeted by police. This summer, the NYPD released data on its own enforcement of social distancing rules that showed massive and unconscionable racial disparities. Countless New Yorkers have posted videos to social media showing in disturbing detail the violent harassment and forceful arrests of people of color for purported violations of social distancing laws, while in white communities, people are respectfully handed masks.⁵ The NYPD’s data puts the racial disparities in stark relief:

³ Unless otherwise noted, statistics referenced are drawn from *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013).

⁴ *Id.* at 561.

⁵ Ashley Southall, “N.Y.C. Commissioner Denies Racial Bias in Social Distancing Policing.” (May 13, 2020). *The New York Times*. <https://www.nytimes.com/2020/05/13/nyregion/nypd-social-distancing-race-coronavirus.html>

- Between March 16 and May 5, NYPD officers issued 99 social distancing summonses in the Bronx; of those, 98 were issued to people of color.
- Over the same time period, officers issued at least 374 social distancing summonses citywide, 300 of which were to Black and Latinx people.⁶

Beyond the daily indignities, harassment, and racist policing, the NYPD's antagonistic stance towards the city's low-income communities of color lays the groundwork for the rampant physical abuse and repeated killing of Black and brown New Yorkers by the police. The killing of Eric Garner in 2014, and the City's continued refusal to face it head-on, serves as a constant reminder of police impunity. And in the Bronx, the memory of Black people who have died at the hands of the police—Amadou Diallo, Ramarley Graham, Deborah Danner, and Eleanor Bumpurs are just a few—looms over every interaction with police on the streets.

Summer 2020: A Reckoning

The endemic culture of harassment, abuse, and violence in the NYPD provided the foundation for the events of this past summer, when, in the aftermath of George Floyd's murder, tens of thousands of people took to the streets to protest to demand a radical reimagining of the role of the police in the lives of New Yorkers. Instead of listening, taking stock, and doing some soul-searching, the NYPD's true colors were put on full display as protesters were met with a show of premeditated, militarized force. Nowhere was this response more pronounced than in the Bronx.

On the evening of June 4, 2020, the NYPD conducted a violent mass arrest of individuals who had gathered in the South Bronx to protest systemic racism and the police killing of Black people in this country. As Gothamist reported the next day, while large scale arrests had occurred in both Brooklyn and Manhattan, "it was the Bronx that saw the most aggressive show of NYPD force to date, as part of a planned mass arrest operation that Police Commissioner Dermot Shea described Friday as 'executed nearly flawlessly.'"⁷ A recent report published by Human Rights Watch provided a different assessment, finding that the NYPD's conduct on June 4 constituted "serious violations of international human rights law."⁸

⁶ Josiah Bates, "Police Data Reveals Stark Racial Discrepancies in Social Distancing Enforcement Across New York City." (May 8, 2020). *Time*. <https://time.com/5834414/nypd-social-distancing-arrest-data/>

⁷ <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx-protesters-was-executed-nearly-flawlessly-city-leaders-agree>

⁸ Human Rights Watch, "Kettling" Protesters in the Bronx: Systemic Police Brutality and Its Costs in the United States, available at https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states#_ftn361

Members of BxD staff witnessed the brutality first-hand, either as protestors or as designated legal observers. BxD attorneys provided volunteer jail support at the 40th and 41st Precincts and Queens Central Booking, where hundreds of people arrested in the Bronx were later taken and processed for curfew violations. Our criminal defense attorneys staffed a 24-hour legal hotline that received hundreds of calls from family members and friends looking for loved ones who went missing after the mass arrest. In these capacities, we witnessed the NYPD's mistreatment of the protestors at multiple stages and from varying perspectives. What we saw was devastating.

Just before 8:00pm on the evening of June 4, protestors marching down 136th Street in Mott Haven were abruptly blocked by a wall of heavily armored police officers with bicycles. The officers began pushing the protestors, using their bikes as weapons. Within a matter of seconds, police transport vans and buses arrived on scene. Armored police officers jumped out of the vehicles with their batons out, blocking protestors in and employing a tactic known as "kettling."⁹ The police then began systematically arresting people, pushing them, beating them, and spraying pepper spray indiscriminately. Protestors who wished to disperse were not allowed to do so, and the few who were allowed to "leave" were deceptively guided in the direction of police blockades, where they were ultimately arrested.

One criminal defense attorney from BxD, there as a volunteer legal observer, witnessed multiple protestors telling officers that there was a pregnant woman keeled over on the ground going into labor. The officers not only ignored their pleas for help, but arrested those attempting to get the woman to a hospital.

A senior attorney at our office, a Bronx resident, was among those arrested during the protest. He described his experience:

I was hit on the head with a shield, and indirectly sprayed with pepper spray. I tried to use my body to get in the way of officers hitting people with batons and shields but was pushed into a crush of bodies and could not move. My handkerchief used as a face covering was untied from around my neck and removed by an officer, and the surgical mask I was wearing underneath was lost on the ground. I did not have any PPE for the remainder of the night. I was arrested sometime after 8pm and released from Queens Central Booking as the arrest processing site around 3am.

In addition to the physical injuries sustained, this individual's phone was lost and his camera broken by the NYPD. His situation was not unique. The NYPD confirmed that officers arrested approximately 260 people at the June 4 protest alone.¹⁰ By its own account, the NYPD laid a

⁹ <https://www.vox.com/2020/6/6/21282509/george-floyd-protests-kettling-new-york-nypd>

¹⁰ <https://www.norwoodnews.org/mott-haven-corralling-and-beatings-by-police-at-protest-260-arrested-including-bystanders-nypd-changes/>

“flawlessly” executed trap from which there was no escape.¹¹ It was traumatizing for those present.¹²

After pepper spraying, tackling, and beating people with batons on the evening of June 4, the NYPD compounded that violence by forcibly disappearing and separating New Yorkers from their loved ones for long periods of time. Anyone who attempted to contact or locate their loved ones or clients were met with silence, ridicule, or blatant disregard for constitutional rights—often all at once.

While the NYPD’s conduct during the June 4 protest was brutal, violent, and inhumane, sadly, it was not surprising. For years the NYPD has targeted citizens of the Bronx, the borough with the highest proportion of people of color, for arrest and enforcement at rates disproportionate to other boroughs. It is not a coincidence that protestors were treated with the same lack of basic dignity. Indeed, the NYPD’s response to the protests only served to further confirm the legitimacy of the protestors. Without meaningful accountability there can be no justice, and no peace.

Reflecting on the incremental reforms undertaken by the NYPD since Judge Scheindlin’s decision in *Floyd*, the Human Rights Watch report concludes: “None of these policy changes, trainings, or additional guidelines prevented the police from engaging in the violent crackdown on protestors in Mott Haven, and there is little evidence that they have had any meaningful impact in reducing police violence and abuse in New York City more broadly.”¹³

A Squandered Opportunity for Real Change

In response to the uprising this summer, Governor Cuomo issued an Executive Order requiring New York City and all other police departments statewide to come up with a plan to reform and reinvent policing in New York. Rather than rise to the occasion, however, Mayor de Blasio has ceded complete control of the process to the NYPD¹⁴ and has rolled out a process that amounts to little more than smoke and mirrors, designed to reinforce and justify the status quo.

Central to the “reform and reinvent” process set out by the Governor is the inclusion of “members of the community, with an emphasis in areas with high numbers of police and

¹¹ See FN1, *supra*.

¹² This harrowing account of the arrests posted by Twitter user @gradepeating_ was confirmed by numerous Bronx Defenders who were present at the protest: https://twitter.com/gradepeating_/status/1268765464727113733

¹³ Human Rights Watch, “Kettling” Protesters in the Bronx: Systemic Police Brutality and Its Costs in the United States, available at https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states/#_ftn361

¹⁴ See <https://www1.nyc.gov/site/nypd/about/about-nypd/reformcollaborative.page>.

community interactions; interested non-profit and faith-based community groups; the local office of the district attorney; the local public defender; and local elected officials.”¹⁵ Despite this mandate for inclusivity, the City has quietly rolled out a process that is designed to marginalize critical voices and stymie efforts that might threaten the status quo.¹⁶

The committee selected to lead the effort does not include any of the city’s district attorneys or public defenders. Even more alarming, the committee does not include a single impacted person, grassroots organizer, or leader of the police reform movement. An honest effort to “reform” and “reinvent” policing would bring together people with a diversity of experiences, perspectives and voices and it would reflect a commitment to put all options on the table. It would also ensure that those closest to the problem would play a key role in the development of recommendations that are required by the Executive Order.

The “listening sessions” held recently and run by the NYPD as part of the initiative do little more than pay lip service to community engagement while discouraging meaningful participation. The sessions have been hastily put together and not widely publicized in impacted communities, and the few spots available for in-person attendance go to people hand-selected by the City and the NYPD. Questions from the public, participating through Zoom and Facebook Live, are carefully screened by an NYPD facilitator. While dubbed “listening sessions,” these meetings more closely resembled an NYPD public relations campaign. The Executive Order also emphasizes the importance of transparency, including making public all planning and deliberation, as well as all research and data collected as part of the process. None of this is happening.

Conclusion

The City is on the verge of squandering a once-in-a-generation opportunity to radically rethink policing and the meaning of public safety. To meaningfully eradicate the pandemic of harassment, abuse, and violence that has been raging within the NYPD unabated for decades, we must end its stranglehold on this City by divesting from policing and investing in alternatives to addressing our complex social problems. Truly “reimagining” policing in the City will require courage and vision. The Mayor’s current response lacks both. That is why we are urging the City Council to demand transparency from the City and support the work of grassroots organizations that are conducting authentic listening sessions, centering the voices of directly impacted individuals, and working on their own recommendations. Only then it will be possible for this initiative to result in a true plan to reform and reinvent the police.

¹⁵ *Id.*

¹⁶ Portions of this section have been excerpted from an op-ed that appeared in the Daily News on December 15, 2020. Alice Fontier, Stan German, Tina Luongo, Justine Olderman, and Lisa Schriebersdorf, “This Is a Sham NYPD Reform: But as Usual, the Mayor and Commissioner are Dodging,” *Daily News*, Dec. 15, 2020, available at <https://www.nydailynews.com/opinion/ny-oped-this-time-we-need-fundamental-nypd-reform-20201215-kg4hyd3jdn57ntyq6smq27o2e-story.html>.



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Research. Development. Justice. Reform.

Courtney Bryan, Director

Center for Court Innovation Testimony
New York City Council
Committee on Public Safety
January 11, 2021

Spurred by ongoing police violence, there is public support to allocate resources from police budgets into sustainable community-driven solutions. Policymakers, communities, residents, and organizations are committing themselves to finding solutions that build safety and limit the role of police.

The Center for Court Innovation has worked with communities to build public safety for decades. Based on lessons learned, we believe that this is not the work of a moment, but rather a long-term shift in both thought and action. And it will take many different strategies to achieve change. Jurisdictions should rethink public safety—what it is and how to achieve it. Solutions should be locally-driven. Communities must no longer be subject to systemic racism, and their residents must have the ability to live without the undue harm of arrest, prosecution, and incarceration. This is especially true of Black and brown people who have been disproportionately represented in the justice system. And, supporting these communities means supporting Black- and brown-led organizations that engage in justice work in their neighborhoods.

This testimony is intended to provide several possible ways to approach these issues, but is by no means an attempt to include all of the changes that would be needed, such as increased accountability and other structural changes. We are including programmatic ideas New York City could consider, with which we have firsthand experience and, in some instances, research to support their impact and success. These programs rely on strong community investments, and collaboration. If implemented, they could bring communities a significant step closer to a world where the role of police is limited and public safety is enhanced.

Community Organizing around Justice Investment

When given a chance, communities can create their own conditions for safety by unlocking their existing potential. Community programming should begin with the underlying premise that communities are already strong and powerful, and that investments will build upon their fundamental strengths. Indeed, there are incredible entrepreneurs, producers, architects, and artists in every community. Programming should be crafted so that these individuals can enrich their own neighborhoods. This could look like a community-led technology center for aspiring coders, a music lab for artists in training, or entrepreneurship support for fledgling start-ups.

Addressing Trauma and Preventing Violence at Home

Violence begins with structural racism, including neighborhood segregation and a historic failure to make equitable investments in communities. Underinvestment in predominantly Black and Hispanic/Latinx communities combines with violence at the hands of law enforcement to contribute to collective trauma, cynicism, and more violence. Domestic violence and traditional mental health providers often reflect these same patterns of disinvestment and harmful intervention. Rethinking these interventions demands community leadership and partnering with those directly affected. These culturally-competent programs could include engaging men of color who have experienced violence and trauma, building public awareness of intimate partner violence within communities, and promoting holistic community healing.

Violence Interruption

Research has shown that community-led efforts can create community safety without involving the police. Community violence is seen as an illness, and much like illness is cured through prevention, community violence is cured through prevention programs. These programs “interrupt violence” without the use of police, and are staffed by what are known as credible messengers—people from the community who reflect the demographic of the community, and reflect the lived experiences of residents. The resulting trust and respect are especially crucial to the success of these programs. It also results in empowerment for residents.

Restorative Justice

Restorative justice offers an entirely different approach to addressing harm by focusing on healing relationships across families, communities, and neighborhoods. Restorative justice programs focus on the needs of those who have been harmed, without rejecting the humanity of the person who has caused harm. To build robust restorative justice programs, New York City should look outside of traditional systems and to paid community members and volunteers for support. In schools, restorative programs can help end the school-to-prison pipeline; this approach can also reduce the deployment of school safety agents as a way to support safer schools. And, while shifting school safety agents out of policing in the near term is a path to shrinking the NYPD, merely creating a new means of oversight for these agents is insufficient. In the short term, school safety agents would be retrained in restorative practices, and over the long term, schools would divest from security personnel in order to onboard a counseling staff that reflects the school’s needs and demographic makeup. (Denver’s school district, for example, cut ties with police after investing in restorative justice practices.)

Youth Development

Young people need positive programming to help them build skills and develop their leadership ability. This programming is particularly important in the summer months when young people have unstructured time. Such programs should rely on people from the community—including artists, computer programmers, and business owners. These mentors teach concrete skills, from photography to entrepreneurship to youth organizing, and offer young people, particularly people of color, an opportunity to realize their full potential. Credible messenger models can be especially effective with youth, bringing services and positive role models to them where they are, instead of expecting vulnerable youth to show up at programs operating out of fixed locations.

Parent Support

The family is both where an individual’s notions of safety begin and where they can seek security. Structural racism and oppression have created obstacles to this for many in Black and brown communities.

Parent support programs can be seen as opportunities to build familial supports and create security in the home. New York City should look beyond entities like child protective services. Instead, they should consider programs that are informed by an understanding of underlying systemic and individual trauma, and that are trauma-responsive. This programming can reduce child maltreatment with the result of less system-involvement for the children involved. These programs are opportunities to avoid police involvement in the first instance. Parent support programs can also support families through increasing employment and parent-child connections, and create opportunities for parents to make meaningful contributions to their child's development.

We thank City Council for its continued partnership and can be available to answer any questions that you may have.



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January 11, 2021

**Testimony of Marinda van Dalen, Senior Attorney,
Disability and Health Justice Programs on behalf of
New York Lawyers for the Public Interest before the
Council of the City of New York Committee on Public
Safety regarding New York City's Response to
Individuals Experiencing Mental Health Crises**

Thank you for the opportunity to present testimony today regarding the critical issue of how New York City must reform its system for responding to individuals who are experiencing mental health crises by eliminating the police from the equation entirely. My name is Marinda van Dalen and I am a senior attorney with the Disability and Health Justice Programs at New York Lawyers for the Public Interest (NYLPI). We are deeply committed to ensuring people experiencing mental health crises receive the medical help they need, rather than criminalizing a problem with often tragic, deadly results.

The City must ensure that individuals who experience a mental health crisis receive appropriate services which will de-escalate the crisis and ensure their wellbeing and the wellbeing of all other New Yorkers. The most appropriate individuals to respond to a mental health crisis are health care providers and mental health advocates.¹ Certainly, only those who are trained in de-escalation practices should respond to a mental health crisis. And above all, police are not suited to deal with individuals experiencing mental health crises. New York's recent history of its police killing 16 individuals - 14 of whom were Black or other people of color - who were experiencing crises, and seriously injuring two others, in the last five years alone, is sad testament to that. Eliminating the police as crisis responders will result in people who experience mental health crises recovering more quickly, becoming connected with long-term healthcare services and other community resources, and averting future crises.²

The scores of people experiencing mental health crises who have died at the hands of the police over the years is a microcosm of the police brutality inflicted upon marginalized communities around the world. Due to systemic racism embedded in our health and economic systems, disability is disproportionately prevalent in the Black community and other communities of color,³ and individuals who are shot and killed by the police when experiencing mental health crises are disproportionately Black and other people of color.⁴ The City Council simply cannot stand by while the killings continue. Now is the time for major transformations. Now is the time to remove the police as responders to mental health crises. Lives are literally at stake.

[Correct Crisis Intervention Today – NYC](#) (CCIT-NYC), of which NYLPI has long been a member, has developed the needed antidote. CCIT-NYC has drafted a proposal which will provide 24/7 responses to mental health crises by emergency medical technicians and trained peers – those with lived mental health experience – not the police.

Our proposal is modeled on the [CAHOOTS](#) (Crisis Assistance Helping Out On The Streets) program in Eugene, Oregon, which has successfully operated for over 30 years without any major injuries to respondents or responders. More details about our proposal are attached as Exhibit A.

As you know, in November, the City announced a pilot non-police program to respond to mental health crises which recognizes the tragic and needless loss of lives our communities have seen at the hands of law enforcement. While this is a step in the right direction, we strongly urge changes be made to the pilot program prior to its implementation so that it more closely mirrors the proposal put forth by CCIT-NYC. In particular, we are enormously concerned about the following components of the pilot: (1) the mental health teams do not include peers – those with lived mental health experience, (2) the teams will include New York City’s Emergency Medical Service, who work closely with the NYPD, rather than unaffiliated, independent emergency medical technicians, (3) the teams will be dispatched by NYPD’s 911 service, rather than via an independent agency with a separate call-in number, which will increase the likelihood of defaulting to a police response, and (4) the pilot appears to be run by the ethics-plagued Thrive-NYC, rather than by community organizations, which are deeply connected with, and trusted by, the communities they serve.

In closing, I would also like to urge the Committee and Council to do everything within its power to bring the New York City Police Department into compliance with the New York Freedom of Information Law (FOIL) – and, in particular, to assure that the public has timely access to unedited footage from body-worn cameras. New York Lawyers for the Public Interest has brought multiple Article 78 actions against the NYPD for footage of police shootings of people experiencing mental health crises. Each time, the NYPD has denied production of footage or made self-serving edits and redactions to shield its officers from public scrutiny. Our litigation, brought with Milbank LLP, has been enormously successful in gaining access to footage previously denied – but it should not take a lawsuit and the attendant delays for the public to have access to footage to which it is entitled by law. The footage we obtained of the police killings of Miguel Richards and Susan Muller shows the violent, often fatal results of treating mental health crises as criminality. Body-worn camera footage must be promptly available, as mandated by FOIL and relevant case law. *See, e.g., New York Lawyers for the Public Interest v. New York Police Department*, 64 Misc.3d 671 (Sup. Ct. N.Y. Cty. June 12, 2019) (“*NYLPI v. NYPD I*”) and *N.Y. Lawyers for the Pub. Int. v. NYPD*, N.Y. Slip Op. 31778 (Sup. Ct. N.Y. Cty. June 1, 2020) (“*NYLPI v. NYPD II*”)

Thank you for your consideration. I can be reached at (212) 456-5863 or MvanDalen@NYLPI.org, and I look forward to the opportunity to discuss the implementation of the CCIT-NYC proposal to eliminate the police as first responders to individuals experiencing mental health crises.

¹ Martha Williams Deane, *et al.*, “Emerging Partnerships between Mental Health and Law Enforcement,” *Psychiatric Services* (1999), http://ps.psychiatryonline.org/doi/abs/10.1176/ps.50.1.99?url_ver=Z39.88-2003&rft_id=ori%3Arid%3Aacrossref.org&rft_dat=cr_pub%3Dpubmed&#/doi/abs/10.1176/ps.50.1.99?url_1_ver=Z39.88-2003&rft_id=ori%3Arid%3Aacrossref.org&rft_dat=cr_pub%3Dpubmed.

² Henry J. Steadman, *et al.*, “A Specialized Crisis Response Site as a Core Element of Police-Based Diversion Programs,” *Psychiatric Services* (2001), http://ps.psychiatryonline.org/doi/10.1176/appi.ps.52.2.219?utm_source=TrendMD&utm_medium=pc&utm_campaign=Psychiatric_Services_TrendMD_0.

³ Mayor’s Office for People with Disabilities, “Accessible NYC” (2016), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessiblenyc_2016.pdf.

⁴ CCIT-NYC, Testimony before the Committee on Public Safety (June 9, 2020)

About New York Lawyers for the Public Interest

For over 40 years, New York Lawyers for the Public Interest (NYLPI) has been a leading civil rights advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through our community lawyering model, we bridge the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. Our work integrates the power of individual representation, impact litigation, and comprehensive organizing and policy campaigns. Guided by the priorities of our communities, we strive to achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, strengthen local nonprofits, and secure environmental justice for low-income communities of color.

NYLPI's Disability Justice Program works to advance the civil rights of New Yorkers with disabilities. In the past five years alone, NYLPI disability advocates have represented thousands of individuals and won campaigns improving the lives of hundreds of thousands of New Yorkers. Our landmark victories include integration into the community for people with mental illness, access to medical care and government services, and increased accessibility of New York City's public hospitals. Working together with NYLPI's Health Justice Program, we prioritize the reform of New York City's response to individuals experiencing mental health crises. Last week we achieved our second court victory forcing the New York Police Department to turn over the body-worn camera footage from the officers who shot and killed an individual experiencing a mental health crisis.

EXHIBIT A

Piloting a Peer-Driven Mental Health Crisis Response Program

The need:

The New York Police Department (NYPD) began providing Crisis Intervention Team (CIT) training in June 2015. In the four and a half ensuing years, sixteen mental health recipients were fatally shot by the police, and four others were shot and arrested.

Not surprisingly, many mental health recipients, family members, and health providers fear calling 911 because of these and other similar tragedies. This causes many people to delay reaching out for help until circumstances have escalated to a critical stage.

Mental healthcare responses to mental health crises are universally considered the best practice. For example, the leaders of CIT international –a group consisting primarily of police, which created CIT training 35 years ago – now argue that [only a mental healthcare response is appropriate for a mental health crisis](#). In the CIT International's [recent best practice guide](#), they note that even a co-response model (police and mental health workers) is an inappropriate response because it still involves the police.

Although New York City created a taskforce to determine an appropriate mechanism for responding to mental health crises, the initiatives put forth by the taskforce do not systematically address how to best respond to the *180,000 crisis calls per year* received by the NYPD. The taskforce failed to recognize that responding to mental health crises is a public health issue, and it continued to view the NYPD as the first responder for the vast majority of crisis calls.

In response to the taskforce's suggestions, the City proposed adding only five mobile crisis teams to respond to crisis calls. However, the minimal increase in mobile crisis teams does not even come close to serving a city of 9,000,000 people and countless visitors. And critically, the mobile crisis teams cannot respond to 911 emergency calls. Mobile crisis teams also do not have a means to transport people to drop-in centers, hospitals, or other appropriate healthcare resources. If transport is required, mobile crisis team members must call 911.

In addition, mobile crisis teams at best respond to the immediate crisis at hand, and do little to ensure the mental health recipient is connected to longer-term community resources. Mobile crisis teams do not always have a peer – an individual with lived mental health experience – on staff and they utilize the no-longer acceptable "medical model," which often focuses narrowly on medication rather than a person's ability to recover and live well. Moreover, mobile crisis teams consist of five staff members and are relatively expensive.

New York also has Health Engagement Assessment Teams (HEAT teams) which consist of one peer and one clinician. But HEAT teams are only used by police for areas of outreach that do not involve any active risk, and, like mobile crisis teams, they cannot be deployed to 911 mental health crisis calls and they cannot transport anyone.

The Solution:

We propose forming a mental health crisis response team that would embody existing best practices in non-police alternative mental health crisis response. The team would consist of one peer trained as a crisis counselor and one emergency medical technician (EMT).

What is the role of the peers?

During all stages of the pilot (planning, design, implementation, maintenance, evaluation), peers from low-income Black, Latinx and other communities of color within the areas in which the pilot is taking place, who do not have a governmental interest, will be included in the discussions and given the ability to weigh in on key decisions, including the hiring and training of peers, dispatch personnel and other personnel. During the planning for the pilot, multiple forums will be held in the pilot communities, at times that allow working people to attend, in order provide input into the pilot.

Where would the pilot be located?

In order to provide complete coverage to a given geographical area, the pilot will be located in two police precincts with the highest number of "emotional health crisis" calls (formerly derisively referred to as "Emotionally Disturbed Person" or "EDP" calls): Midtown South's 14th Precinct with 4,356 mental health crisis calls in 2018 and Brooklyn's 75th Precinct with 5,428 mental health crisis calls in 2018. The selected precincts are among those with the highest number of mental health calls per capita.

What would the peer-driven mental health crisis response teams look like?

The new mental health crisis response team would embody existing best practices in non-police alternative mental health crisis response, and consist of one peer trained as a crisis counselor and one emergency medical technician (EMT). Having a peer on the team is essential, as a person with lived experience, a person who has "been there," can best relate to the fear of an outsider responding in a moment of crisis, and can prove that recovery works. An EMT worker is needed as many crisis calls may involve physical health issues which are masked by the mental health crisis.

The Office of Consumer Affairs in the New York City Department of Health and Mental Hygiene (DOHMH) will contract with non-governmental agencies which will deploy the mental health crisis response teams.

The mental health crisis response teams will consist of peers who have worked with people in crisis, such as those who have worked in crisis respite centers, and also have experience in de-escalating crises. It would be desirable for the peers to either have lived or worked in the areas in which they are hired to serve.

The teams must operate 24/7, 365 days a year, in three consecutive shifts per precinct (8 a.m. to 4 p.m., 4 p.m. to 12 a.m., and 12 a.m. to 8 a.m.), with two teams in place for the day and evening shifts, and one team for the overnight shift. Since each team consists of two people, the staffing need for the pilot requires 38 total FTE's for the two precincts for all shifts.

In addition, the pilot requires one Project Director, two Supervisors and one Administrator.

The pilot also requires two vans per precinct so that the team can transport individuals to drop-in centers, safe havens, the new support and connection centers, urgent care centers, or hospitals.

What type of training will the pilot provide?

The agency with which DOHMH contracts, operating with consensus from peer-driven organizations and peers from low-income Black, Latinx and other communities of color, who do not have a governmental conflict of interest, will be responsible for training all mental health crisis response teams, NYC Well staff involved in the project, as well as all 911 operators who will likely still be responsible for directing some of these calls .

How would people call for the mental health crisis response team?

The pilot will establish a new number dedicated to mental health crisis calls such as "WEL" or 988, which anyone can call. The calls would go to NYC Well's hotline and will be staffed by NYC Well staff who would automatically send the calls to the mental health crisis response teams. Since NYC Well operators will be dispatching mobile crisis teams in the next few months it will be cost-effective to have NYC Well also dispatch the mental health crisis response teams.

What would the average response time be for the mental health crisis response teams?

The average response time for the mental health crisis response teams will be the same as the current average response of police to non-mental health crises – or less time.

How long will the pilot last?

The pilot will last five years, thereby allowing sufficient time for start-up and evaluation.

If after 18 months the data reveal the pilot is having a positive impact based on established metrics, two additional pilots will be funded at that time.

How much will the pilot cost?

The pilot will cost roughly \$3.5 million to \$4.0 million annually for the two proposed precincts. Costs are estimated.

Notably, Eugene, Oregon, which is the size of one New York City police precinct, uses a similar mental health crisis response model which includes two workers and has an annual budget of \$1.9 million.

The pilot requires training and data collection/evaluation (see below), which is not part of the Eugene budget, but is pivotal to determine how the pilot is working and what changes need to be made to it. Additional costs above those in Eugene will also be incurred by the pilot in order to keep salaries commensurate with the cost of living in New York City.

A draft budget is attached.

Which entity will run the pilot?

DOHMH will contract out with a non-governmental agency which will run the pilot.

Who will monitor the pilot?

The pilot will be monitored by an oversight board whose membership will be decided upon after soliciting recommendations from peers from low-income Black, Latinx and other communities of color.

Such a board must include independent peers from low-income Black, Latinx and other communities of color who do not have a governmental conflict of interest. These peers will constitute 51% of the board. Additional board members might include staff of NYC Well, the support and connection centers, the crisis respite centers, DOHMH, the New York State Department of Health (DOH), the New York State Office of Mental Health (OMH), the New York City Department of Homeless Services (DHS), the New York City Human Resources Administration (HRA), the New York City Fire Department (FDNY) and other Emergency Medical Service (EMS) providers, the Office of the Comptroller, the Community Board for the relevant precinct, the Public Advocate, the relevant Borough President, and members of the City Council and the New York State Legislature from the relevant precincts.

The oversight board will be empowered to request and obtain data from law enforcement agencies necessary to carry out this pilot. Law enforcement agencies will not at any point have access to identifying data related to participants in the pilot.

How will the pilot be monitored?

The oversight board will:

- hire an independent evaluation entity which will evaluate the pilot
- review data from the pilot project
- suggest changes to the pilot
- meet at least quarterly
- issue meeting agendas
- publicly list all agendas
- issue minutes of meetings
- publicly list all minutes
- ensure all meetings are open to the public
- pay stipends to those members who are not receiving a salary for participating in oversight board activities

There will be one oversight board for all pilot precincts.

How will data be collected?

Data will be collected and analyzed by an independent evaluation entity every three months once the pilot is operational. The data will be provided to the oversight board which will also have the right to request additional data, as needed.

The data evaluation entity must protect the privacy and autonomy of those receiving services from the mental health crisis teams. Data from this project will not be admissible in criminal cases. Summaries of the data collected, as well as the management and privacy plans, will be made transparent and accessible to the public.

How will the pilot be funded?

Primary funding will come from New York City's budget. New York City should also reach out to New York State for funding, possibly from money allocated statewide for CIT but never used for New York City.

How will the pilot be publicized?

NYC Well and all other City and State agencies which comprise the oversight board will work closely with CCITNYC and other advocates to develop an extensive list of agencies, community organizations, and individuals who will receive direct notice of the pilot. In addition, NYC Well will utilize its best efforts to obtain extensive media coverage of the pilot, and will prominently promote the pilot via social media and other campaigns to raise awareness amongst the public in the identified precincts.



City Council Public Safety Committee Hearing – 11 January 2021

Testimony by student/staff of The Brotherhood/Sister Sol

Police reform is (1) divesting monies from the NYPD and investing in things that make our communities better and (2) explicitly removing both police and policing culture from schools. Failure to do so is not at all what our communities have demanded. Our city continues to fail our youth. Today, New York City is far from where it need be to ensure student success as our schools face troubling realities:

- NYC has the most segregated school system in America. According to the New York City Council, in our public schools, 74.6% of Black and Latinx students attend a school with less than 10% white students. Additionally, 34.3% of white students attend a school with more than 50% white students.^[i]
- School segregation leads to chronic underfunding of schools in New York state which has negative and disparate impacts for Black, Latinx and low-income students given subsequent resource disparity.^[ii]
- Only 77.3% of the 1.1 million children in the DOE system will graduate on time and only 55% of NYC high school graduates will graduate college-ready.^{[iii] [iv]}
- 1 in ten NYC public school students is houseless.^[v]

Additionally, in a nation in which 14 million students are in schools with police but no counselor, nurse, psychologist, or social worker^[vi], New York City has more school safety agents (SSAs) than any other school district in the U.S. The presence of police in our schools has disproportionately impacted students who are low-income, Black, and Latinx, who are more likely to be the subject of exclusionary discipline and police response at school than their white peers.

Everyone in the City Council, however, has the power to shift this – beginning with meaningfully shifting funds from the police, reforming their responsibilities, and reinvesting in our communities.

Our vision for education in New York City includes safe, restorative, healing environments where all students have the opportunity to learn and grow. To meet this goal, we must pursue policies that value and respect the dignity of students, caregivers, and their communities. This requires providing schools equitable resources, adopting a culturally responsive curriculum, preventing trauma, repairing harm, and promoting restorative practices.

To do this, we at The Brotherhood/Sister Sol, alongside a number of other youth organizations and organizers, demand:

STRUCTURAL SHIFTS:

- Police-Free Schools
- An end to all structures that systemically push students out of classes as part of policing culture
- Fully-funding our schools so as to center student success and socio-emotional support
- Expanding and transforming youth civic power

CULTURAL SHIFTS:

- Educators center trauma-informed approaches
- City leaders reimagine, fund, and staff meaningful student and community-led safety strategies.
- Schools that center healing
- Expanded, evidence-based training for school teams so as to eliminate the criminalization of marginalized students

PEDAGOGICAL SHIFTS:

- Schools institutionalize & fund comprehensive sex education in NYC; culturally responsive education; and civic education
- Equitable distribution of technological resources to all students
- Language access for families and students
- Equitable access for students and families with disabilities and/or who are neurodivergent

All youth deserve safe, high-quality, holistic, and positively transformative educational experiences. If we believe in equity and want to create the futures all New Yorkers deserve, we must build within our schools systems of accountability, restorative justice, and behavioral management that does not include the NYPD. We must close the billion-dollar funding gap that exists for our schools so that we can begin to address the systematized oppression our students face as a result of a legacy of ignoring the needs of Black, Brown, and low-income communities.

We must deconstruct the school-to-prison pipeline; end Broken Windows policing; and truly decriminalize low-level offenses that lead to our youth having negative contact with the state and carceral systems. And, we must do this now.

For more information regarding our campaign and the interactive exhibit, please contact Dr. Marsha Jean-Charles (mjc@brotherhood-sistersol.org, 212.283.7044).

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- [i] New York City Council, School Diversity in NYC. 2019, <https://council.nyc.gov/data/school-diversity-in-nyc/#::~:~:text=However%2C%20New%20York%20City%20public,more%20than%2050%25%20white%20students.>
- [ii] Alliance for Quality Education, Chronic Underfunding. 2018, <https://www.ageny.org/2018/09/11/report-new-yorks-chronic-underfunding-of-schools-the-disparate-impact-on-black-latino-students/>
- [iii] NYC's 2019 Graduation Rate Inches Up to 77% . January 16, 2020, <https://ny.chalkbeat.org/2020/1/16/21121757/nyc-s-2019-graduation-rate-inches-up-to-77>
- [iv] More NYC High School Students are College-Bound – and 'College Ready'. November 21, 2019, <https://ny.chalkbeat.org/2019/11/21/21121750/more-nyc-high-school-graduates-are-college-bound-and-college-ready>
- iv] The Children in the Shadows: New York City's Homeless Students. September 9, 2020, <https://www.nytimes.com/interactive/2020/09/09/magazine/homeless-students.html>
- [vi] ACLU, Counselors and No Cops: How the Lack of School Mental Health Staff is Harming Students. 2019, <https://www.aclu.org/report/cops-and-no-counselors>



Testimony for the New York City Council Committee on Public Safety Re: Oversight – The City’s Policing Reform Process

January 11, 2021

Good afternoon Chair Adams and members and staff of the Council Committee on Public Safety. Thank you for bringing much-needed transparency to the City’s process and response to the Governor’s Executive Order 203, and for the opportunity to comment today.

Girls for Gender Equity (GGE) is an 18-year-old, Brooklyn-based youth development and policy advocacy organization committed to removing systemic barriers that prevent girls, and gender-non-conforming and non-binary youth of color from living self-determined lives. We also testify today as an organizational member of Communities United for Police Reform.

Our testimony will focus on two key themes: (1) the need to reduce the contact that youth of color have with the NYPD including the School Safety Division (SSD), and (2) concerns with transparency around ballooning youth policing, specifically in regard to the youth policing strategy formally announced in January 2020 and any shifts in direction of youth policing as a result of this reform process.

On School-Based Policing

The Governor’s August guidance packet, “New York State Police Reform and Reinvention Collaborative: Resources & Guide for Public Officials and Citizens,” offers a response to the question “Should Law Enforcement Have a Presence in Schools?” with the suggestion “consider how police officers are deployed in your schools.”¹ In 2005, the City Council overrode the Mayor’s veto to pass legislation (Int 0322-2004 or Administrative Code §14-150) requiring the New York City Police Department to provide data for each school operated by the Department of Education (DOE) to which school safety agents are assigned, the number of school safety agents, averaged for the quarter, assigned to each of those schools.² As we understand it, there is no public transparency, or transparency for young people attending hyper-policed schools, about how schools are disproportionately policed and how those decisions are being made.

¹ At Page 18. New York State Police Reform and Reinvention Collaborative: Resources & Guide for Public Officials and Citizens. (August 2020). Retrieved from

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf.

² Int 0322-2004 Retrieved from

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=441953&GUID=81A98203-6837-4339-8097-C2052A1CBCB1&Options=Advanced&Search=>.

Accumulating research demonstrates that where police are deployed to schools, school police respond to student behaviors with policing responses.³ Across the City, those schools commonly known to be hyper-policed, some of which are known to have been designated as “Impact Schools” under the Bloomberg administration that led to the increased deployment of police officers in tandem with school safety agents, are the very schools most often reported in Council’s Student Safety Act. **We raise this as GGE calculates that for every 1,000 students, the City offers 5 school safety agents, but just 2.6 school counselors, 1.3 school social workers, 0.9 school psychologists, and 0.6 school nurses.**

Further, while every public school student in NYC attends a school with a school safety agent:

- 87,274 students attend a school without a full-time guidance counselor;
- 300,148 students attend a school without a full-time social worker;
- 52,464 students attend a school without a full-time gym teacher;
- 105,029 students attend a school without a full-time art teacher;
- 191,500 students attend a school without a full-time music teacher; and
- 286,509 students attend a school with class sizes over 34 students.

In September, we heard from the Department of Education (DOE) that due to the lack of staffing – an issue resulting from a legacy of underinvestment – school safety agents would be trained to conduct temperature checks of everyone who enters a school building as well as collect student health screenings. This raises concerns with police enforcement, and generally the continued outsourcing of non-policing responsibilities to the police. In response to uprisings across the country, the City had also proposed a shift of funding and responsibility for school safety from the NYPD to the DOE over a more than two year process. Months later, the only change we see is that school police have been given a new responsibility that will ultimately increase their interactions with young people. This is a change in the wrong direction.

Youth organizers have also raised concern that the **NYPD has not complied with Local Law 93 of 2015 requiring the NYPD to report on the use of permanent and temporary metal detectors in each school.** When we dig into the Council’s Student Safety Act data and cross-list school sites with Inside Schools’ independent search site, a time-intensive process, we are able to identify roughly 224 schools where scanning with metal detectors happens every day, on a full-time basis, impacting roughly 117,000 students. Across all those schools, there are only 208 full-time social workers, and 98 schools have zero. According to the City’s Fair Student Funding data won by the City Council, the average school budget spends roughly \$20,800 on each student each year. In metal detector schools, however, where average school enrollment is 87% Black and/or Latinx, spending averages \$17,600, or 15% less. **The NYPD has concentrated policing and the instruments of surveillance and control in schools with the least resources.**

Time and time again, students, community, and education advocates have made clear that young people do not need police to serve as counselors or aides to them, instead, this city must

³ See, for example, “Research on the Impact of School Policing” by Aaron Kupchik. (August 2020). Retrieved from <https://www.endzerotolerance.org/impact-of-school-policing>.

make real investments in building positive school climate where students have ample (non-law enforcement) staff, restorative practices, and the resources to meet their educational, mental health, and emotional needs. **Healthy, equitable schools are police-free schools.**

The Governor's guidance packet also suggests, "If you have SROs in your schools, consider the creation of a memorandum of understanding or agreement between the police department and the school district so as to clearly establish their roles and responsibilities."⁴ The newest memorandum of understanding (MOU) was the result of multiple years of stalling and negotiations that ultimately undermined its potential impact and left school policing to the discretion of the NYPD through the inclusion of language like "when possible," "where appropriate," and "on a case by case basis."⁵

Consistently, the School Safety Division and the NYPD when called into schools, has resulted in students facing juvenile or criminal court charges that will negatively impact their relationship to the academic environment, personal safety, and dignity. The NYPD's presence has exacerbated racial disparities in school policing, for example during the 2018-2019 school year, there were 4,560 police interventions targeting girls in New York City public schools reported by the NYPD through the Student Safety Act – Black girls represented 57% of all interventions while representing only 25% of all girls. This is not only alarming, but a reflection of the ways that the City's most harmful and racially discriminatory policing practices extend to students in schools.

The MOU that went into effect last school year has thus far not impacted total NYPD interventions (4,589 to 4,539 year to year change). That reform was primarily focused on arrests, but as arrests dropped, disproportionality for Black girls (when compared to all girls in NYC schools) got worse – jumping from representing 65% of all girls arrested in school to 74%.⁶ We also see this in cases of reported stop and frisks, as citywide stops grew 22%, stops experienced by Black girls grew 35%.

Finally, even with the shift to remote learning, the quarterly Student Safety Act data continues to include police removals and forced hospitalizations of young people attending school or regional enrichment centers in-person. In prior school years, thousands of students were forcibly removed by police and hospitalized under the category of "child in crisis" incidents, disproportionately targeting students of color with disabilities. **We are demanding that no**

⁴ At Page 19. New York State Police Reform and Reinvention Collaborative: Resources & Guide for Public Officials and Citizens. (August 2020). Retrieved from

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf.

⁵ Memorandum of Understanding Among Department of Education of the City of New York, New York Police Department of the City of New York, and City of New York, on the Performance of School Security Functions by the New York City Police Department for the Benefit of the City School District of the City of New York and It's Students and Staff. (2019). Retrieved from

<https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/nypd-doe-mou.pdf>.

⁶ Student Safety Act Data, analysis by GGE, see, for example,

https://www.ggenyc.org/wp-content/uploads/2020/01/GGE-Policy-Brief_-NYPD-School-Policing-Data-Impact-on-Girls-of-Color.pdf.

student in emotional distress or crisis be responded to with police during in-person learning – now with the pandemic and in school years to come.

On the Youth Policing Strategy

We are also calling for a halt to the NYPD’s “youth strategy” and attempts to further entrench law enforcement in the day to day lives of young people. The hyper-criminalization of young people must end, and that does not mean reinventing the role of police.

GGE has been and continues to be a leader in the work to end gender-based violence, including sexual harassment and sexual abuse for close to two decades. We have provided programming for girls and gender expansive youth and survivors for more than 15 years. A young person from one of GGE’s programs has previously testified before the Council about the leering and uncomfortable flirting that she and her classmates received at the hands of members of the SSD. The experience of police sexual misconduct is often an ignored part of the conversation about school policing or youth policing, but it is one for which GGE will remain vigilant, and continue to demand significant changes to budget allocations, including demands to stop stationing police, SSD or otherwise, in and around schools serving youth of color.

The Department’s new “youth policing strategy” has four stated prongs: Youth Coordination Officers, Leveraging School Safety Division; “YouthStat”; and “Activate Spaces,”⁷ and we have been seeking out greater transparency on these pieces. The “NYPD in Focus” presentation put forward as part of the Police Reform and Reinvention Collaborative and featured in the Listening Sessions’ Presentation, includes the following:

*The NYPD has renewed its commitment to proactively reach young people at risk of engaging in criminal activity before they do... This new structure will increase the number of officers solely dedicated to helping young people.*⁸

With the January 2020 announcement of the strategy , the Commissioner tweeted:

*We’ll be engaging with ALL young people, the large majority of whom aren’t committing any crimes at all. But some might end up as victims. We should engage with them – not only because it’s the right thing to do ... but because we know today’s victims can be tomorrow’s offenders.*⁹

The practice of targeting and controlling young people under the boundless surveillance power of the Department must be opposed by the Council. Further, with the incorporation of the

⁷ “Building on Neighborhood Policing, Commissioner Shea Outlines New Strategy to Prevent and Address Youth Crime.” (January 29, 2020).

<https://www1.nyc.gov/site/nypd/news/pr0129/building-neighborhood-policing-commissioner-shea-outlines-new-strategy-prevent-address#/0>.

⁸ “NYPD in Focus.” Retrieved from <https://indd.adobe.com/view/2114a389-4855-4be8-b343-8eb534bfab>.

⁹ Commissioner Shea. [@NYPDShea]. (2020, January 29). Twitter. Retrieved from <https://twitter.com/NYPDShea/status/1222516436129677315?s=20>.

Youth Coordination Officer (YCO) in the patrol guide at the end of June, we were startled to find the following responsibilities:

- Coordinate, guide, and develop youth programs to foster positive relationships with youth and families;
- Identify underutilized spaces that could be activated or repurposed for youth programs and coordinate with Youth Strategies Division;
- Visit schools and confer with school principals and school safety personnel to help reduce and prevent violence; and
- Serve as an information resource and advise command personnel, parents and community groups on youth matters.¹⁰

We demand that the City of New York invest in meeting the needs of young people rather than packing resources into precincts. As we understand it, the initiative deploys 316 YCOs. During the June 9, 2020 hearing of the Public Safety Committee, the question was asked of the Department for the personnel and OTPS costs of the new youth strategy, to which the Department responded “We’ll get you that information.”¹¹ **We urge the Council to follow-up publicly on that ask, and bring that information forward to young people and the public.**

GGE strongly opposes the outsourcing of youth work to the police. GGE observed each of the nine public-facing Community Engagement Sessions and was alarmed by the Department’s insistence on growing and investing in NYPD youth programs. This comes after the City defunded the Department of Youth and Community Development (DYCD) in FY2021, most notably chopping 75,000 SYEP slots to 35,000 “SYEP Summer Bridge” slots, a severely downsized version of SYEP’s offerings compared to prior years. **We urge the Council to block any attempt to expand the reach of NYPD youth programs especially in the aftermath of these austerity measures – whether through the NYPD reshuffling their own existing resources or otherwise.**

As another example, we’ve heard of NYPD/DYCD collaboration at Beacon Centers, SYEP, Cornerstone Centers, and the Interagency Coordinating Council.¹² On SYEP, we understand the NYPD is one of the larger SYEP worksites where youth are placed at precincts, 1 Police Plaza, and other NYPD units/commands. We understand the NYPD/SYEP collaboration was set to expand with the Department’s Youth Strategy, with “summer interns at each precinct with a record number of kids” working with Youth Coordination Officers.¹³ We urge the Council to pursue the decoupling of the NYPD from DYCD. **We ask that the City divest from youth policing to invest in young people.**

¹⁰ See PDF page 79. Retrieved from https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf.

¹¹ “Hearing Transcript 6/9/20” at page 156. Retrieved from <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=791488&GUID=AF936D7B-EDE6-48C9-B856-C30B9E6672F9&Options=info&Search=>.

¹² See, for example, NYC Youth Board and NYC Workforce Development Board Youth Committee Meeting. Available at https://www.youtube.com/watch?v=4YD_EUY_8Q&ab_channel=NYCYouth%26CommunityDevelopment.

¹³ See, for example, “NYPD begins program to have juveniles work as precinct interns.” (2020, March 9). Available at <https://nypost.com/2020/03/09/nypd-begins-program-to-have-juveniles-work-as-precinct-interns/>.

We thank the council for the Fiscal 2021 terms-and-conditions that stipulated as a condition of the funds in all units of appropriation:

The NYPD shall submit a report to the Council, no later than January 31, 2021, on private budget funding sources and the expenditures from such sources. This report shall provide detail on entities providing funds to the NYPD, including the budget lines for related expenditures, and the program areas, and units receiving the funds.¹⁴

We raise this in this context to ask that the Council look into private budget funding for NYPD youth initiatives and various “Cops & Kids” projects, some of which have been profiled publicly – for example the “Options” Program and new “Options VOLT” program involving an officer-led virtual reality situation.

Conclusion

As part of the City’s Policing Reform Process, but not exclusively, we recommend that the Council ensure any resolution or reform plan moved forward by the Council reject the expansion of youth policing. We are calling on the City to immediately reduce the size, scale, and scope of school policing and youth policing across New York City, including the following steps:

- Freeze all hiring of school police personnel, school safety agents or other personnel of the police department charged with policing schools, including replacement hires as a result of retention, and freeze police department training of school police;
- Disband the “Unified Task Force” of the School Safety Division, the 220-officer armed police force charged with policing schools;
- Restrict police entry into schools and amend the NYPD Patrol Guide to remove any police “duties” or “responsibilities” to routinely enter schools for the purposes of information gathering or relationship building;
- End school safety “mitigations,” or any law-enforcement facilitated efforts to interact with young people, mediate or attempt to intervene in conflict – interactions that inherently carry the threat of escalating police force;
- Resolve to equip school communities with primary authority to build conflict prevention and response practices separate and apart from law enforcement, and invest in those practices through School Allocation Memorandums and direct funding to schools; and
- Pursue amendments to Chancellor’s Regulation A-412 to reduce the hyper labeling of student behavior as “crime” and downsize principal reporting requirements.

We again thank the Council for attention to these issues and for the time to testify today. For questions or more information, please contact Charlotte Pope at cpope@ggenyc.org.

¹⁴ New York City Council Fiscal 2021 Terms and Conditions. Reference at PDF Page 16. Available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/10/Fiscal-2021-Terms-and-Conditions-PDF.pdf>.

Testimony

**New York City Council Committee on Public Safety
January 11, 2021**

Hawa Bah
Mother of Mohamed Bah
Justice Committee Member

My name is Hawa Bah. I am the mother of Mohamed Bah, a son who gave me great pride. I lost my son at the hands of the NYPD on Sept. 25, 2012. Since then, I have not stopped fighting for justice for my son and all those killed by the NYPD. I have not stopped fighting to create the change we need so that no more Black and brown New Yorkers are murdered by the police.

Thank you, Chair Adams, for having the families speak first today. I remember you because you voted with us against the bill that Ritchie Torres watered down in the Right to Know Act. And you voted with us for Reynoso's bill. You spoke of the families that day.

I am here today because I am very concerned that – in response to Governor Cuomo's executive order – the City is doing a "police reform" process that is basically being led by the NYPD and has, up until now, not created any real way for New Yorkers who are directly impacted by the NYPD to give input.

Unless reforms come from the communities who are abused by the NYPD every day, especially us families who have lost our loved ones, we are not going to get any real change and we will continue to be abused and killed.

It's important that you are creating space to hear from some of the families today, but just listening is not enough. You have to take action. You have to do what we say.

I want to share a little bit about what happened to my son: When Mohamed was 16, he traveled alone from our home in Guinea to America, to go to school. He said to me "America will be proud to have me as a student and Africa will be proud to have me as a child."

Mohamed was a hard worker. He was a Muslim man, an honors student and a taxi driver. Mohamed was someone who always helped people and was loved by his neighbors in Harlem. That's who he was.

At one point, before Mohamed was killed by the NYPD, he was attacked in the street, maybe for money. He was beaten. After this happened, I left Africa, my company, my factory, to come to America because I noticed something was going on with my son. He wasn't as happy and he was having a hard time.

I called 911 to get an ambulance to take him to the hospital, but the police came first. Instead of helping him, they treated him like a criminal.

When NYPD got there, I told them, "I didn't call the police, I called for an ambulance," and told them to leave. They told me this is how the system works, which is why we need to change the whole system.

I begged the police to let me talk to my son, but they refused.

Edwin Mateo, Andrew Kress and Michael Green shot Mohamed eight times. Lt. Michael Licitra was supervising them and allowed this to happen. Officer Edwin Mateo fired the last shot, at close range to my son's head while he was on the ground.

The officers lied about killing Mohamed. They claimed Mohamed stabbed them, but it was later proven that one of the officers shot another one was his Taser. I still can't believe Mohamed was killed like this.

Even though some of the truth came out during the civil trial, none of these officers were ever held accountable.

There is so much you can learn from my son's story about what need to be changed about the NYPD and about our society.

First: We need accountability.

The officers who murdered Mohamed are still working in our community. They are still collecting pay checks and getting raises. It's like they are being rewarded for killing my son.

This always happens. It has happened to all of us families who are speaking today. The NYPD unjustly takes our loved ones lives without any consequences.

Officer Mateo, Lt. Licitra and all of the other officers involved must be fired from the NYPD. The plan to reform the NYPD must make accountability a top priority. Without this the violence will only continue. I need you to commit to pushing for these officers and the officers who killed others like Delrawn Small, Antonio Williams and Kawaski Trawick to be fired.

Second: The City must remove the NYPD from any response to those who are in emotion distress like my son. We need a better system to take care of New Yorkers' health.

The NYPD cannot be involved in responding to people who are experiencing emotional or mental health crises. They have to be completely removed. It doesn't make any sense for officers with guns to come unless the purpose is to criminalize and kill the person who is suffering.

Instead, when someone is in crisis, they need people who are trained in mental health response, who can give them support, and listen. We need the people who come to involve families, friends, and neighbors who know the person, and who the person in crisis can trust.

More training for the NYPD will not work. After Mohamed was killed, the City said they would re-train their officers. They always talk about more training, but now, years after Mohamed's death, nothing is any better. None of the training has stopped them from killing others, like Kawaski Trawick or Saheed Vassell.

We also need better healthcare for our communities. Rather than giving the NYPD money for training and keeping them involved when people are in emotional distress, that money should go to better mental health services for our communities.

This leads me to my last point: The Mayor and City Council should defund the NYPD so that we have more money for the services our communities really need.

The NYPD has too much money, power, and they keep killing and hurting families like mine. Every year they use millions of dollars to respond to people in emotional distress. They also pay millions of dollars to keep giving paychecks to officers like Edwin Mateo and the other officers who murdered Mohamed. The City pays out hundreds of millions more because of police brutality civil suits.

Why does the City continue to spend so much money on brutalizing and killing Black and brown people? The only way to help stop police violence and make our communities safe is to defund the NYPD and put that money into mental health care, jobs, housing, education, and other services we need.

Thank you for listening. It's important that you are creating space to hear from some of the families today, but just listening is not enough. You have to take action. You have to do what we say.

Testimony by Iris Baez, mother of Anthony Baez (killed by NYPD in 1994)

Submitted to the New York City Council Public Safety Committee Oversight Hearing on The City's Policing Reform Process January 11, 2021

I am Iris Baez, the mother of Anthony Baez. As many of you know, my son Anthony was murdered by NYPD Officer Francis Livoti in 1994 after Livoti put him in a chokehold that was banned by the police department. That was 20 years before Eric Garner was killed.

I want to thank Councilmember Adrienne Adams, the chair of the Public Safety Committee and the City Council for hearing from the families first today.

More than anyone, we – the mothers, the sisters, the brothers, the family members of those the NYPD murdered - we understand the danger of letting the NYPD keep killing with no accountability.

I have been fighting non-stop against police brutality and racist violence since my son Anthony was murdered – it's been 26 years.

I helped pass City Council laws like the Community Safety Act and Right To Know Act.

I helped pass state laws like the repeal of 50a and the special prosecutor law.

I sat next to Gwen Carr every day of the Pantaleo discipline trial to make sure she had support from someone who had gone through that – most of us have never even been able to see the officer who killed our loved one be fired.

I'm probably the only mother in NY who can say that I saw the officer who murdered my son go to federal prison.

But that doesn't mean I've seen justice.

None of us families has seen justice.

I have a serious message to deliver to you today.

We are tired. Us mothers, and families are sick and tired of promises and words from the government.

Talk is cheap and laws don't create change if you don't have the courage to back it up.

You have other families on this panel with me who are still fighting to fire the police who killed their loved one.

Victoria and Victor have been fighting for almost FIVE YEARS now for their brother Delrawn and for Officer Wayne Isaacs to be fired.

That is unacceptable.

I've been hearing about what Governor Cuomo is asking all the cities to do and I can tell you now that the way NYC is handling it is terrible.

When there's a lot of protests and we make a lot of noise, the NYPD and elected officials always say they're going to reform the police.

They say what they think we want to hear and then go behind closed doors and do whatever they want.

They don't make real change.

The townhalls the NYPD have been doing won't change anything.

After Anthony was killed 26 years ago, I organized a townhall meeting. Police came. Elected officials came. They said they were going to make all these changes. But there was no change.

20 years later they choked Eric Garner to death and his mother had to fight for more than 5 years just to get Pantaleo fired. de Blasio still hasn't fired the other officers.

After Anthony was killed, they retrained police. After Eric Garner was killed they retrained police.

We don't want to hear about any more trainings – trainings don't hold police accountable, trainings don't lead to firings, trainings only give the police more money.

The Mayor and NYPD's process is fake and will make no change. The only way to make change is to have other people – not the NYPD and not de Blasio - have control of the process and families like mine need to help lead that.

We need you in the City Council to be the peoples' voice.

We need you to help make sure that the officers who killed Delrawn Small, Mohamed Bah, Kawaski Trawick, Antonio Williams, Allan Feliz are all fired immediately.

We can't keep making families fight for years and years just to try to get an officer fired.

We need you to understand why the families support defunding the NYPD, and we need you to support us.

We and our Black and Latino youth are the ones who have suffered the most because of police violence.

We need you to work with us so that we can move some of the money from the police department to our communities – so our communities can be safe from violence, including violence from the NYPD.

We need you to work directly with us families and the people to pass strong laws and pass a strong plan for the Cuomo process – not a fake plan and fake reforms.

I've been doing this a long time. I didn't ever plan to be an activist and a leader but when the NYPD murdered my son, I had no choice.

Will you work with me so we don't have to keep fighting the same fight year after year and so we can really end police violence? Please let me know that.

Thank you and God Bless.

Testimony

**New York City Council Committee on Public Safety
January 11, 2021**

Samy Feliz
Brother of Allan Feliz
Justice Committee Member

I am Samy Feliz, the brother of Allan Feliz. On October 17, 2019, my brother was unjustly stopped in his car, beaten, tasered, shot and killed by NYPD Sgt. Jonathan Rivera and Officers Michelle Almanzar and Edward Barrett at the intersection of Bainbridge Ave. and East 211 St. in the Bronx.

I clearly remember one day, when I fell into a well while visiting relatives in the Dominican Republic. Even though he was very young, Allan jumped into the well to help me. He could have run away to get help, but he risked his life to be with me and help me himself. His personality was already mature and caring. He stayed that way for the rest of his life, until the NYPD took it. That's who the NYPD stole from me and my family.

Over a year ago, Rivera, Almanzar and Barrett pulled my brother's car over, falsely alleging Allan wasn't wearing his seat belt. However, when they got to the car door, they admitted that he was wearing his belt. There is video evidence of this. The stop should have ended there. The NYPD had no legal justification for continuing the stop, but they escalated, and moments later, my brother, who was unarmed, was dead.

After Sgt. Rivera shot Allan, Officer Barratt aggressively yanked his limp body from the car, exposing his genitals in the process. After this, none of the officers even had the decency to cover Allan up. Instead they left him bleeding in the road, cuffed and exposed.

In spite of all of this, Attorney General James did not charge these officers. Mayor de Blasio has said nothing, the NYPD has taken no disciplinary action and Rivera, Almanzar & Barrett are all still collecting NYPD paychecks.

My family and I are calling for the NYPD to be removed from traffic enforcement so that no one else is killed as my brother was. We are also calling for the firing of Sgt. Jonathan Rivera, and Officers Edward Barrett and Michelle Almanzar.

Sadly, my family's story is not unusual. So many other families are fighting for accountability just like us. I am here to stand with these other families by calling for the firing of:

- Officer Wayne Isaacs for killing Delrawn Small
- Officers Justin Damico, Mark Ramos, Craig Furlani and Lt. Christopher Bannon for killing of Eric Garner
- Officers Brian Mahon, Robert Wichers, and Keith Figueroa, Dt. Beddows and Sgt. Valentino for killing Antonio Williams.
- Officers Brendan Thompson and Herbert Davis in the killing of Kawaski Trawick,
- Officers Edwin Mateo, Andrew Kress, and Michael Green, Sgt. Joseph McCormack and Lt. Michael Licitra for killing Mohamed Bah

I am also here today to make three main points:

- **First, NYPD violence is a very serious problem, and so is the city's process to fix it.**
- **Second, we must defund the NYPD and invest in communities to make New York safer.**
- **Third, the City Council and Mayor must take action to address these problems.**

1. NYPD violence is a very serious problem and so is the city's process to fix it.

We're all here because we want to stop police violence. Of course, police killings are the most devastating – I just named a few of the worst cases over the years – but there is also daily, non-fatal police violence, including racial profiling, abuse of power, abusive social distancing enforcement and police brutality at recent protests.

Comment [CPR1]: It's fine to include this, but since the Council has no power over state offices, and Tish has no power over his job, think you should be clear about accountability for their jobs

The NYPD even has problems with the basics. If you are Black or Latinx, just having a conversation can be abusive: officers are combative and intimidating. Yes, they have badges but that doesn't give them the right to harass and disrespect us.

On top of this the City's "reform process" following Gov. Cuomo's executive order is its own big problem.

Mayor de Blasio's response to the EO has been a sham from the start. He waited until the last minute to announce public meetings and has let the NYPD dictate the process from the very beginning. Community engagement has been an illusion, and the meetings have been nothing more than NYPD propaganda sessions.

We want community meetings but not if they are nothing but a NYPD public relations strategy.

There is no reason to believe that the City's process will result in any more safety from police violence for Black, Latinx and other communities of color when the NYPD are the ones in charge.

Instead of a completely non-transparent city process that's led by the NYPD and will not bring any real change, the City Council must take decisive action. We need to reframe this process: if you want reform the police to make the City safer, we have to ensure police accountability and take money from the NYPD and invest it in our communities.

This brings me to my second point.

2. We must defund the NYPD and invest in communities to make New York safer

The pandemic has devastated our city, making inequality worse and heightening police abuse in communities of color. We cannot afford for our communities to continue to be starved for resources during the pandemic while the NYPD's budget is given special protection by the Mayor and the City Council.

We need resources for our education system. We need teachers, counselors and cleaning and sanitation during the health crisis. We need community centers and programs so young people can get off the streets before they get into trouble. There are kids in my neighborhood that work on cars and have other skills. They could be helped to go into business, but they have no place to learn a trade.

We need resources for healthcare. I work in a nursing home. Last year we didn't even have the money for enough PPE. If some of the NYPD's bloated \$6billion budget had gone to this nursing home for proper protection, we could've saved 30 lives just where I work.

The call to #DefundNYPD is a grassroots demand to reduce public dollars invested in policing and mass criminalization and redirect them to public infrastructure, services and other needs in Black, Latinx and other communities of color.

3. The City Council and Mayor must take action to address these problems.

To the City Council and Mayor: you must substantially defund the NYPD in the FY22 City Budget. This can be done by:

- Reducing the NYPD's role in our daily lives. Get the NYPD out of traffic enforcement, mental health response, schools and other social services roles and cut their headcount.
- Firing abusive officer, like Sgt. Rivera and Officers Barrett and Almanzar, who killed my brother, all of the other officers I named in the beginning, and others who have committed brutality and misconduct and defund the NYPD for the amount of their salaries and benefits.

- Defund the NYPD for the costs of police misconduct civil suit judgments and settlements from the previous year. Money for civil suit outcomes doesn't come from the NYPD budget – it comes from taxpayers' pockets – but the Mayor and City Council can push the NYPD to discipline and fire abusive officers to avoid civil suits through the budget process. The worse police units and precincts, which are sued much more, should get even bigger cuts.

Finally, I want to close by saying: to those of you who are watching this hearing live, or seeing or reading about it later – put pressure on the police commissioner, the Mayor and the City Council to make real change. That means taking it to the streets and marching for justice Allan Feliz, Delrawn Small, Eric Garner, Kawaski Trawick, Mohamed Bah, Antonio Williams and others who have been unjustly killed by the NYPD in our own city – just like so many marched for George Floyd.

Comment [CPR2]: Took out police unions bc it's not abt "pressuring" them



@ the Urban Justice Center:
40 Rector Street, 9th Floor
New York, New York 10006
www.StopSpying.org | (646) 602-5600

**STATEMENT OF
ALBERT FOX CAHN, ESQ.
EXECUTIVE DIRECTOR
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)**

**BEFORE THE
COMMITTEE ON PUBLIC SAFETY
NEW YORK CITY COUCNIL**

**FOR A HEARING CONCERNING
THE CITY’S POLICING REFORM PROCESS**

**PRESENTED
January 11, 2021**

Good morning, my name is Albert Fox Cahn, and I am the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”), a New York-based privacy and civil rights group. I appreciate the opportunity to testify today about the policing reform process in New York City.

In May of 2020, George Floyd was murdered by a Minneapolis police officer, and this country – and this city – erupted in fury and grief. It was heartbreaking and moving to watch New Yorkers turn out in droves to rally against the unjust death of Mr. Floyd. New Yorkers demanded better. And this Council met a small portion of that demand through legislation.

Among your bills: a ban on chokeholds.¹ A guarantee of the right to film interactions with officers.² And the POST Act, which finally draws back the curtain on what technology the NYPD is using to surveil us.³ These reforms were long-overdue, but they are just the first step to meaningful change. But we also so this council fall painfully short of public cries to defund the NYPD by at least a billion dollars.

It should not have taking so many dead for us to see the progress of recent months, and we cannot wait for even more New Yorkers, particularly Black New Yorkers, to die before we have the courage to enact sweeping changes. We owe every New Yorker, but particularly New Yorkers of color and those victimized by police violence, to act.

In August, Governor Cuomo mandated that New York’s 500 localities that host police departments adopt a plan for reform by April 1, 2021.⁴ This mandate came with guidance, which proposes for consideration what the functions of police should be, what constitutes smart and effective policing standards, how to involve the community in policing, and the importance of hiring and maintaining good personnel.

But it doesn’t take an expert to observe that New Yorkers currently have a trust problem with the NYPD. Governor Cuomo’s advice is for the whole state; any plan for the NYPD must be specific to policing here, in our city.

I. Legislative Recommendations: Banning Facial Recognition Software

¹ Kathleen Culliton, *City Council Passes Chokehold Bill Mayor Promises to Sign*, PATCH (Jun. 18, 2020), <https://patch.com/new-york/new-york-city/city-council-passes-chokehold-ban-mayor-promises-sign>.

² Press Release, Office of New York City Public Advocate Jumaane Williams, NYC COUNCIL PASSES RIGHT TO RECORD POLICE TRANSPARENCY LEGISLATION, (Jun. 18, 2020), <https://advocate.nyc.gov/press/nyc-council-passes-right-record-police-transparency-legislation/>.

³ Nathan Sheard, *Victory! New York’s City Council Passes the POST Act*, EFF (Jun. 18, 2020), <https://www.eff.org/deeplinks/2020/06/victory-new-yorks-city-council-passes-post-act>.

⁴ Press Release, Office of Governor Andrew Cuomo, Governor Cuomo Announces New Guidance for Police Reform Collaborative to Reinvent and Modernize Policing (Aug. 17, 2020), <https://www.governor.ny.gov/news/governor-cuomo-announces-new-guidance-police-reform-collaborative-reinvent-and-modernize>.

This Council must act swiftly to ban the police use of facial recognition software. This software is biased, broken, and, when it does work, is antithetical to a democratic society. Numerous people, disproportionately Black, have been wrongly arrested by facial recognition.⁵ According to researchers at MIT and the National Institute of Standards and Technology, facial recognition is more error prone for Black and Latin/x individuals, most of all Black women.⁶ Given this spy tool's bias, it has no place in New York policing.

And yet it does. New York Police Department Officers Reported in recent open-records litigation that the city has used facial recognition more than 22,000 times in just the past three years. Even worse, officers use pseudoscientific tactics that exacerbate the risk of error, such as running facial recognition scans of celebrity lookalikes.⁷ There are also reports that police used this technology to target Derrick Ingram for his leadership of a peaceful Black Lives Matter protest. Police later surrounded Derrick's home with more than 50 officers as part of a retaliatory raid.⁸ Using facial recognition to monitor political demonstrations chills the freedom of assembly at the heart of our First Amendment.

II. Legislative Recommendations: Banning Geofence Warrants

The Council must urgently work to ban NYPD misuse of geolocation data, including so-called "geofence warrants." Geofence warrants allow officers to track thousands of individuals through a single court order, obtaining phone records every everyone within a specified area (or "geofence") at a specified time.⁹ These warrants are repugnant to the Fourth Amendment, as is the police practice of purchasing geolocation data on the open market.

We have already seen this kind of warrant misused by the Manhattan DA in a high profile case, and we have reason to believe that the NYPD uses this tactic as well.¹⁰ While this Council may lack the authority to curtail the abuses of district attorneys, it is urgent that you act to prevent further misuse of this tactic by the NYPD. These warrants sweep up countless New Yorkers' data, and they often never even know that they've been tracked..

⁵ Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. TIMES (Dec. 29, 2020), <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>.

⁶ Karen Hao, *A US Government Study Confirms Most Face Recognition Systems are Racist*, MIT TECHNOLOGY REVIEW (Dec. 20, 2019), <https://www.technologyreview.com/2019/12/20/79/ai-face-recognition-racist-us-government-nist-study/>.

⁷ Khari Johnson, *NYPD used facial recognition and pics of Woody Harrelson to arrest a man*, VENTURE BEAT (May 16, 2019), <https://venturebeat.com/2019/05/16/nypd-used-facial-recognition-and-pics-of-woody-harrelson-to-arrest-a-man/>.

⁸ George Joseph and Jake Offenhardt, *NYPD Used Facial Recognition Technology In Siege Of Black Lives Matter Activist's Apartment*, GOTHAMIST (Aug. 14, 2020, 7:08 PM), <https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment>.

⁹ Jennifer Lynch and Nathaniel Sobel, *New Federal Court Rulings Find Geofence Warrants Unconstitutional*, EFF (Aug. 31, 2020), <https://www.eff.org/deeplinks/2020/08/new-federal-court-rulings-find-geofence-warrants-unconstitutional-0>.

¹⁰ George Joseph and WNYC Staff, *Manhattan DA Got Innocent People's Google Phone Data Through A 'Reverse Location' Search Warrant*, GOTHAMIST (Aug. 12, 2019), <https://gothamist.com/news/manhattan-da-got-innocent-peoples-google-phone-data-through-a-reverse-location-search-warrant>.

III. Legislative Recommendations: Banning the Gang Database

It is imperative for the Council to ban the use of the so called “Gang Database.” This expansive NYPD database, has swept in data from more than 42,000 New Yorkers at times, often with no evidence of a crime.¹¹ The criteria for inclusion can be as overbroad as wearing the colors of a gang or associating with known gang members.¹² This can have the effect of criminalizing communities: turning brother against brother, or neighbor against neighbor, when there may be no actual gang activity.¹³ Furthermore, once in the database, these individuals face an uphill battle to get out, with no notice that they have been admitted to the database in the first place. If they happen upon that knowledge, there is still no clear process to get off the list and out from under the scrutiny of the NYPD.

Troublingly, children as young as 13 have been included on this list.¹⁴ This is a grotesque expansion of the school-to-prison pipeline that does nothing to improve the safety of New Yorkers. These children deserve better. To start with, this Council must ban the inclusion of children in this database, but the NYPD cannot be trusted to have this database at all. This is the spiritual heir of stop-and-frisk, criminalizing communities of color based on associations with other people of color – and it must end.

IV. Legislative Recommendations: Banning the DNA Database

Despite promises to do otherwise, the NYPD has continued to grow their DNA database kept in the City Medical Examiner’s office. This database is filled with the DNA of more than 33,000 New Yorkers, some of whom were not even charged, much less convicted of, a crime.¹⁵ Their DNA can be collected without consent, from trash, and then kept in the database for years. This degrades New Yorkers’ due process rights, and the City Council must ban it.

This can be done through an outright ban or appropriations restrictions. Whatever the methodology, the ban must be swift – to protect New Yorkers from this unconstitutional and reprehensible violation of their privacy.

V. Legislative Recommendations: Banning Police Drones

¹¹ Yasmeen Khan, *Damning Report On NYPD Gang Database Increases Calls To End 'A Tool Of Mass Criminalization'*, GOTHAMIST (Dec. 13, 2019), <https://gothamist.com/news/damning-report-nypd-gang-database-increases-calls-end-tool-mass-criminalization>.

¹² *Groups Urge NYPD Inspector General to Audit the NYPD “Gang Database.”* HUMAN RIGHTS WATCH (Sep. 22, 2020), <https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database>.

¹³ *Id.*

¹⁴ Nick Pinto, *NYPD ADDED NEARLY 2,500 NEW PEOPLE TO ITS GANG DATABASE IN THE LAST YEAR*, THE INTERCEPT (Jun. 28, 2019), <https://theintercept.com/2019/06/28/nypd-gang-database-additions/>.

¹⁵ Dean Meminger, *Exclusive: NYPD DNA Database Continues to Grow, Legal Aid Society Says*, NY1 (Jul. 2, 2020), <https://www.ny1.com/nyc/all-boroughs/news/2020/07/02/nypd-dna-database-continues-to-grow-legal-aid-society-says>.

Finally, the Council must ban the growing and visible threat from NYPD drones. The drones as they stand now are sophisticated, airborne and record in 4k – and as such, will serve to chill free speech activities.¹⁶ But even worse, the NYPD recently expanded its drone fleet to include costly new Boston Robotics “dog” drones. These drones, which can cost nearly \$100,000, serve no policing purpose and have no role in our city.

The NYPD has said these devices will be used to monitor large crowds, but there are no safeguards to stop this technology from being systematically targeted at communities of color and anti-police demonstration.¹⁷ And while of the NYPD agrees to avoid real-time facial recognition, there is nothing to stop officers from analyzing footage through facial recognition after the fact.

Chief of Department Terrance Monahan promised at the launch of the program behind these devices that these drones “will not be used for warrantless surveillances.”¹⁸ Yet, these devices are poised to do just that. Maintaining a constant eye on the attendees of the Women’s March and BLM protests.

And during this historic crisis, the NYPD sought to make its drone fleet into part of the COVID-19 response. The NYPD explored a “pandemic drone” which they claimed could monitor for COVID-19 symptoms, despite the fact the technology does not work.¹⁹

VI. Legislative Recommendations: Changing the Charter

Lasting police reforms will require last changes to the New York City Charter. Last summer, this Council passed the POST Act. What the POST Act gives New Yorkers is the first hint of NYPD transparency about surveillance. But transparency is the limit of what the council could mandate through its existing powers. We call on the City to follow the lead of Oakland, San Diego, and numerous other cities that have established independent surveillance review commissions to not only promote transparency, but to approve or deny police requests for surveillance equipment. This step is needed to reaffirm democratic oversight and public trust.

Second, we must expand the power of the Council to hold police officers accountable. Expanded subpoena authority and investigatory staff, along with the elimination of anti-commandeering

¹⁶ Michael Sisitzky and Simon McCormack, *New NYPD Drone Policy Represents a Serious Threat to Privacy*, ACLU (Dec. 7, 2018), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/new-nypd-drone-policy-represents-serious-threat>.

¹⁷ *Id.*

¹⁸ Dennis Romero, NYPD to deploy drone fleet, stoking fears of Big Brother, NBC News (Dec. 4, 2018, 9:11 PM), <https://www.nbcnews.com/news/us-news/nypd-deploy-drone-fleet-stoking-fears-big-brother-n943876>.

¹⁹ NYPD considering ‘pandemic drone’ rejected by Conn. Police, POLICE1 BY LEXIPOL (Jun. 7, 2020), <https://www.police1.com/police-products/police-drones/articles/nypd-considering-pandemic-drone-rejected-by-conn-police-IlmDiwYdsRawat7Z/>.

concerns through an express authorization for the Council to regulate the police department in whatever ways it sees fit, would rebalance the scales between our police department, our mayor, and the people's council.

Conclusion

The goals of police reform are admirable. These legislative suggestions will not bridge the whole divide. But they acknowledge a starting point: where New Yorkers are scared of the police and what they can do, and how transparency is necessary.

I mentioned the POST Act as one of the bills made into law last summer by this Council at the beginning of this testimony. The report on the Department's surveillance technologies mandated by that law is due to be made public today, January 11. The transparency that law offers is a model for the first step on the long road to fixing the NYPD. Before we can address the City's problems with its police force, we must know the extent of them. Only then can we begin reform.

Thank you.



Testimony of
Coalition for the Homeless
on
Oversight - The City's Policing Reform Plan
submitted to
New York City Council Committee on Public Safety

Giselle Routhier
Policy Director
Coalition for the Homeless

January 11, 2021

Homelessness in New York City

In November 2020, the number of single adults sleeping in Department of Homeless Services shelters each night reached an all-time record 20,515. October 2020 marked the first time the number of homeless single adults in the shelter system topped 20,000. This drastic increase arises from multiple economic and policy failings, including the lack of affordable and supportive housing for single adults, as well as an increase in homelessness among individuals who were precariously housed prior to the pandemic.

Since the beginning of the pandemic, Coalition programs have seen increased demand for services, particularly among people bedding down on the streets – many of whom report being afraid for their safety in congregate shelters. Unsheltered homeless New Yorkers have long faced daunting challenges and cruel indignities as they draw on meager resources and their own perseverance to survive life on the streets. Their day-to-day struggles include meeting the basic needs for food, clothing, and restrooms, as well as avoiding abuse, including unnecessary, traumatic interactions with law enforcement personnel.

Criminalization of Homeless New Yorkers

Interactions with law enforcement personnel are unfortunately all-too-common for homeless individuals, particularly those who are unsheltered. People of color experience disproportionate rates of homelessness, and the systemic oppression of homeless people of color makes these interactions with law enforcement even more fraught. Depending on where they are located, homeless New Yorkers routinely encounter representatives from multiple law enforcement agencies, including NYPD, MTA Police, DHS Police, Amtrak Police, and Port Authority Police. People who sleep in public spaces encounter frequent interactions with police and are often targeted for a variety of low-level offenses related to their basic survival needs.

The most effective way to reduce unnecessary interactions between police and homeless individuals is to provide affordable and supportive housing on a scale to match the need. The solutions to homelessness are simple: supportive housing, affordable housing, and low-threshold shelters such as single-occupancy hotel rooms.

Ending the criminalization of homelessness in the immediate term will require action by both the City and the State. To that end, the City and State must immediately:

- Prohibit NYPD from responding to 311 calls requesting assistance for homeless individuals and remove NYPD from all homeless outreach functions. Calls to 311 should only result in the deployment of contracted DHS outreach workers.
- Cease encampment-clearing operations and street sweeps, and focus instead on connecting people to resources they want.
- Implement the CCIT-NYC campaign's proposal for non-police responses to mental health crises.

- Administratively clear all summonses issued to homeless individuals for violating transit rules as part of the now-defunct Subway Diversion Program, and clear all other low-level summonses related to surviving unsheltered.
- Reinstate 24-hour subway service, and cease police profiling of homeless individuals in the transit system.
- Prohibit the use of CCTV to monitor unsheltered New Yorkers in the transit system and public spaces.
- Open and staff supervised consumption sites.

The efforts to reform policing in New York City are long overdue, but these discussions must center the voices and experiences of the most vulnerable New Yorkers through genuine engagement and bold solutions. We thank the Council for the opportunity to testify today, and for your steadfast commitment to addressing homelessness and reforming policing.

About Coalition for the Homeless

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes about 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, is now regularly serving more than 1,100 meals per night and distributing PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (212-776-2177) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.

Carla Rabinowitz
Community Access/CCITNYC
212-780-1400 x7726
crabinowitz@communityaccess.org

Thank you for hearing this testimony.

My name is Carla. I am the Project Coordinator of CCITNYC, a coalition of 85 organizations and 700 stakeholders whose mission is to transform how the city responds to mental health crisis by diverting responses to mental health recipients away from law enforcement.

I am also the Advocacy Coordinator at Community Access. Community Access is a 46-year-old nonprofit that helps people living with mental health concerns by providing quality supportive housing and award-winning peer led employment training and other outreach and recovery services

CCITNYC and Community Access thanks the Council on Public Safety and Council Member Richards for his role in forming the Mayor's Task Force on Behavioral Health and Criminal Justice. The first task force met in 2014 and the second task force, on Prevention and Crisis Services, met in 2018. But the recommendations of that task force do not match with current thinking.

CCITNYC is now of the view that resources need to be diverted away from NYPD to mental health teams to respond to the 200,000 911 calls the city receives annually for mental health crises.

CCITNYC supports redirection of funds away from NYPD to mental health responses so the city will have enough funds to create mental health response teams and this work will no longer be a role for NYPD.

We ask you to carve out \$16.5 million, \$3.3 million a year for a peer pilot project.

Two years ago, CCITNYC developed a detailed plan and detailed budget for a pilot project in two heavily-impacted precincts after consulting with experts and our mental health community led steering committee. The pilot will pair peer de-escalators with Emergency Medical Technicians. The EMTs and the peers-rather than the police- will be the first responders for people in mental health crisis. The project will provide 24/7 mental health team responses.

CCITNYC believes it is essential that the response to these 200,000 calls be peer driven.

The proposal CCITNYC created is much like New York City's Health Engagement and Assessment Teams (H.E.A.T.) which consist of a peer and a clinician.

However, the city's H.E.A.T. teams can not respond to any calls involving urgent need.

Nor can the general public, or even NYC Well, deploy the H.E.A.T. units. CCITNYC would tweak the H.E.A.T. model to allow the general public to access this team..

Further, we ask that the Division of Consumer/Recipient Affairs at the NYC Department of Health & Mental Hygiene be charged with overseeing this new program.

Even with additional training for police officers, the City will not be able to prevent the recurring injuries and deaths that occur when officers respond to mental health crisis calls.

The violent response we are seeing from the police in encounters to protestors is what we have been documenting for years when police respond to people in emotional distress. Police do not de-escalate crises, they are not mental health workers.

((From 1996 to 2001, I was one of those people in emotional distress. I was))
the one breaking furniture, screaming on the street, screaming at children,
who I love. I was sick and I needed help. I could have been killed by police.

((Instead I got help. I started working part time for Community Access in
2001. Then I became a full-time worker. Then I became a supervisor, a
manager. I restored as many family relations as I could, and boy do I have
family. I bought a co-op and even have a small Schwab account because I got
help. I even convinced the appellate court to give me my law license back
despite the fact that I live with mental health concerns.)))

Many mental health recipients in crisis never get mental health care. They
never got a second or third chance. They were killed by police who did not
want to and can never be asked to respond to people who are sick.

Since the NYPD started CIT training in 2015, at least 17 mental health
recipients have died or been shot in police encounters, including 15 deaths.

We need a new peer driven health care response to those experiencing mental
health crisis. We need a model like the one that has worked in Eugene Oregon
for 30 years, adjusted to fit with the current NYC model of the H.E.A.T. unit.

**Therefore, we urge you to examine our proposal and reserve \$16.5
million over the next 5 years for a peer driven crisis response program
in NYC.**

The program pays for itself in less lawsuits against NYPD. One colleague on
our committee says the city has paid out over \$3 million to her clients in one
year. And she is in a small office.

We need to stop the deaths and pain to mental health recipients and their
families

Get the police out of a health care job they were never designed for.

And bring in mental health teams to turn people's lives around

Mario Ocasio, Age 51– June 2015- Bronx – shot and killed

Rashan Lloyd, Age 25- June 2016 – Bronx - shot and killed

Deborah Danner, Age 66- October 2016 – Bronx – shot and killed

Ariel Galarza, Age 49-November 2016 -Bronx – shot and killed

Dwayne Jeune, Age 32- July 2017 -Brooklyn – shot and killed

Andy Sookdeo, Age 29-August 2017 – Brooklyn – shot and killed

Miguel Richards, Age 31 – September 2017 -Bronx – shot and killed

Cornell Lockhart, Age 67 – November 2017 – Bronx – shot and killed

Mario Sinabria, Age 69, December 2017 -Bronx-shot and killed

Dwayne Pritchell, Age 48 – January 2018 – Bronx – shot and killed

James Owens, Age 63, January 2018 -Brooklyn – shot and killed

Michael Hansford, Age 52, January 2018 -Bronx – shot and killed

Saheed Vassell , Age 34, April 2018 -Brooklyn – shot and killed

Susan Muller, Age 54, September 2018 – Queens – shot and killed

Michael Cordero, 34, March 2019 – shot and critical wounded

Jarrell Davis, Age 33, March 2019 – shot and critical wounded

Kawaski Trawick, Age 32, May 2019- Bronx – shot and killed

Kwesi Ashun, Age 33, October 2019 – Brooklyn- shot and killed

Male, Caucasian, Age 55 , June 2020-East Village- Shot and injured

(list may not be complete)



**NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY**

OVERSIGHT HEARING – THE CITY’S POLICING REFORM PROCESS

TESTIMONY OF DAVID NOCENTI

**EXECUTIVE DIRECTOR
UNION SETTLEMENT**

January 11, 2020

Chair Adams and members of the Committee on Public Safety, my name is David Nocenti, and I am the Executive Director of Union Settlement in East Harlem. Thank you for providing the opportunity to testify today regarding the City's Policing Reform Process.

Union Settlement, which was established in 1895, is the oldest and largest social service and social justice organization in East Harlem. Our programs include early childhood education, youth afterschool and summer programs, college prep, job readiness, adult education, mental health counseling, senior centers, Meals on Wheels, small business development and more – but just as importantly, we are strong advocates for the residents of East Harlem and other low-income communities of color throughout New York City.

Union Settlement is deeply involved in efforts to improve both public safety and police-community relations here in East Harlem. We oversee the East Harlem Youth Opportunity Hub, which is funded by the Manhattan DA's Office and coordinates the efforts of multiple organizations in East Harlem working together to provide positive youth development programs and services to at-risk and justice-involved youth in this community. In addition, we have an Advocate Intervene Mentor (AIM) contract with the NYC Department of Probation, as well as a privately-funded Career Academy, which seeks to help youth prepare for, find, and maintain gainful employment.

Of particular relevance to today's hearing, Union Settlement is one of the leaders of the REFORM NYPD NOW Coalition,¹ which is a consortium of over 60 organizations from throughout New York City, including social justice and advocacy organizations, religious congregations, and nonprofits providing vital education, health, housing, youth development, and other social services in low-income communities of color.

The Coalition has been working together since the late spring, and has put together a broad agenda of reforms that we believe can and should be implemented immediately. The proposed reforms seek to reduce incidents of police officer misconduct, improve the training of police officers, and enhance accountability for officers involved in misconduct.

¹ A full list of the current members of the REFORM NYPD NOW Coalition is available at <https://unionsettlement.org/reformnypdnow/>

For example, the agenda includes:

- **Adopting the “8 Can’t Wait” reforms** – which include requiring officers to de-escalate situations before using force, report all uses of force, give verbal warnings where possible before using deadly force, and intervene when they see other officers engaging in misconduct. These reforms are being advocated for nationally and have already been adopted by the police departments in Boston, San Francisco, Tucson, and elsewhere.
- **Strengthening the Civilian Complaint Review Board (CCRB)**, including providing the CCRB with the authority to impose discipline on officers when its investigations have resulted in findings of misconduct.
- **Making footage from body-worn cameras immediately available to the public**
- **Prohibiting the hiring of officers with a history of excessive force** or serious substantiated misconduct complaints.
- **Requiring annual training** for all officers in Diversity, Equity and Inclusion (DEI), community relations, de-escalation strategies, and preventing discriminatory profiling.

The REFORM NYPD NOW Coalition announced the list of proposed reforms on August 25, 2020,² and since then has been meeting with NYPD, CCRB, members of the City Council and others to explain the proposals, answer any questions that may arise, and emphasize the importance of getting these reforms enacted this session. As we have stated in almost every meeting, “The status quo is not acceptable.”

Simultaneously, members of the Coalition have been participating in the public process that NYPD created to obtain feedback from the community regarding potential reforms to NYPD policies and practices, including the “Police Reform and Reinvention Collaborative” listening sessions, as well as discussions at local NYPD Precinct Community Council meetings.

² The proposed reform agenda and the accompanying letter that was sent to Mayor de Blasio, NYPD Commissioner Shea and all members of the City Council is attached to this testimony.

The REFORM NYPD NOW Coalition, which engages in a collaborative decisionmaking process, has not met to discuss and take a formal position on the appropriateness or effectiveness of the process that the City is following in developing its policing reform proposals, but speaking in my capacity as the Executive Director of Union Settlement, I will note that the City's decision to appoint Arva Rice, Jennifer Jones Austin and Wes Moore to expand the community outreach efforts was a welcome development and certainly helped to expand the opportunities for community input.

Of course, creating a "process for process' sake" is neither adequate nor sufficient, and so it is impossible to truly evaluate the City's policing reform process until we see the specific reform recommendations that are made. Turning once again to the recommendations of the REFORM NYPD NOW Coalition, it will be important to see the following:

- **Reducing Police Officer Misconduct and Excessive Use of Force:** Will the City propose to codify the "8 Can't Wait" and other reforms, or will they simply propose to add language to the NYPD Patrol Guide – which would be wholly insufficient, because the patrol guide can be changed at any time?
- **Strengthening the Civilian Complaint Review Board (CCRB):** Will the City agree to support State legislation granting the CCRB the authority to impose discipline on officers when its investigations have resulted in findings of misconduct?
- **Enhancing Police Officer Qualifications and Training:** Will the City support the creation of a statewide board with authority to certify all police officers and to revoke an officer's certification for misconduct? Will they agree to prohibit the deployment of officers to any precinct prior to their completion of community relations training, and also require all newly-deployed officers to participate in an introductory two-week period focused on engagement with the community being served?
- **Body Worn Cameras and NYPD Rule Changes:** Will the City agree to make footage from body-worn cameras immediately publicly available, and also require that any NYPD rules governing interactions with the public follow the NYC Administrative Procedures Act?

Thankfully, Governor Cuomo's Executive Order No. 203 grants the New York City Council the power to review and approve the Mayor's policing reform proposal, and I would strongly urge the Council to ensure that the proposal include a robust agenda of reforms,

including those proposed by the REFORM NYPD NOW Coalition, and that the City Council also codify those reforms, so that they are not vulnerable to elimination by future mayors or police commissioners.

* * * * *

Thank you again for the opportunity to provide Union Settlement's views on this important issue.

ATTACHMENT

REFORM NYPD NOW Coalition Letter and Agenda of Proposed Reforms

August 25, 2020

August 25, 2020

Hon. Bill de Blasio
Mayor
City of New York
City Hall
New York, NY 10007

Hon. Corey Johnson
Speaker
New York City Council
City Hall
New York, NY 10007

Dermot Shea
Commissioner
New York City Police Department
One Police Plaza
New York, NY 10038

All NYC Council Members
City Hall
New York, NY 10007

Dear Mayor de Blasio, Speaker Johnson, Commissioner Shea and NYC Council Members:

The undersigned non-profit social service and social justice organizations represent and serve low-income communities of color throughout New York City. For years, we have both personally witnessed, and advocated against, the disparities in treatment of residents of communities of color by members of the New York City Police Department.

Over the past several months, the outrage that we have always felt has now spread throughout New York City, as amply shown by the many peaceful street demonstrations that have occurred. While we are saddened that it has taken the murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Rayshard Brooks and others to bring the issue of racist and unjust policing to the forefront, we are also inspired by having so many New Yorkers joining us in calling for an end to these practices.

We acknowledge that a few small steps have been taken on this issue – such as opening up police disciplinary records, banning chokeholds and affirming the public’s right to record police activity – but these minimal changes were long overdue, and will do little to change what is occurring every day in our communities.

Here is the reality: Substantial systemic changes are needed, and they are needed now.

Attached is the REFORM NYPD NOW agenda, which is a list of reforms that must be taken right away. **We are asking each of you to publicly state your position on these reforms, as well as the steps you intend to take to implement the reforms that you support.**

The REFORM NYPD NOW agenda starts with an acknowledgement of the NYPD’s history of mistreatment of communities of color, and a pledge to institute the changes needed to end that practice. There can be no reform if that past history of discriminatory treatment continues to be denied.

The agenda also proposes changes along a broad spectrum of areas – from police officer hiring and training practices, to how officers interact with the public, to the process for disciplining officers who engage in misconduct, and much more.

The listed reforms are not new, and they are not hard. Together, they will set the stage for fundamentally improving the relationship between the NYPD and the communities it serves. All that is needed is the will of our government leaders to adopt these reforms.

Two important points:

First, the REFORM NYPD NOW agenda does not purport to be a solution to the problem of the disparate treatment of communities of color. Instead, it focuses solely on the most urgently needed changes to NYPD policing structures, tactics and policies, and is just one component within a broader array of systemic reforms required to eliminate racial and ethnic inequities in housing, education, health care, employment, law enforcement and other areas. Nor does the package take a position on the appropriate amount of funding for the NYPD budget.

Second, while we strongly condemn racist policing, past and present, we do not condemn all police officers, individually or collectively. To the contrary, because our organizations are embedded in communities of color, we understand well the important role that police officers play in helping to keep our neighborhoods safe, and we often work side by side with dedicated officers of all races, ethnicities, religions and genders to achieve that goal.

But the hard work and good intentions of these dedicated officers has been completely undermined by the actions of officers who mistreat people of color, resulting in the deep chasm of distrust that now exists.

Bridging that chasm is the most important and urgent task that we face, and it starts with implementing the proposed reforms.

We are asking each of you, by Wednesday, September 9, 2020, to: (1) publicly state whether you support or oppose each of the items in the REFORM NYPD NOW agenda; and (2) set forth the specific steps that you will take to implement those reforms, including your timetable for doing so. Please provide your response by emailing David Nocenti, Executive Director of Union Settlement, at dnocenti@unionsettlement.org.

We hope that you will join us in this cause, and look forward to hearing from you.

Sincerely,

Rev. Dr. Cheryl F. Dudley
Regional Executive Minister
American Baptist Churches of Metropolitan
New York

Therese R. Rodriguez
Chief Executive Officer
Apicha Community Health Center

Gretchen Buchenholz
Founder and Executive Director
Association to Benefit Children

Bishop Carlton T. Brown
Senior Pastor & Chairman

Bethel Gospel Assembly, Inc.

Stephen Tosh
Executive Director
Boys' Club of New York

Muzzy Rosenblatt
CEO and President
BRC

Ellen Baxter
Executive Director
Broadway Housing Communities

Christopher Watler
Chief External Affairs Officer
Center for Employment Opportunities

Annetta Seecharran
Executive Director
Chhaya Community Development Corporation

Phoebe C. Boyer
President and CEO
Children's Aid Society

Sharon Content
Founder and President
Children of Promise, NYC

Abraham Jones
Executive Director
Claremont Neighborhood Centers, Inc.

Janice Bloom & Lori Chajet
Co-Directors
College Access: Research & Action (CARA)

Rubén Austria
Executive Director
Community Connections for Youth

Rose Duhan
President and CEO
Community Health Care Association of NYS

Robert Hayes
President and CEO
Community Healthcare Network

Maria Contreras Collier
Executive Director
Cypress Hills Child Care Corporation

Charles D. Chenet
Founder and Executive Director
Dare2Draw

Elisa Istueta
Executive Director
Directions For Our Youth

Dorothy Calvani and Mali Trilla

Co-Chairs
East Harlem Community Health Committee

Jeff Ginsburg
Chief Executive Officer
EHTP & East Harlem Scholars Academies

Celia Ramirez
President
East River North Renewal HDfC

Alan van Capelle
President and CEO
Educational Alliance

Julio Medina
President and CEO
Exodus Transitional Community

William Weisberg
Executive Director
Forestdale

JoAnne Page
President and CEO
The Fortune Society

Dr. Jocelynn Rainey
President and CEO
Getting Out and Staying Out/
Stand Against Violence East Harlem

Roderick Jones
Executive Director
Goddard Riverside

Michelle Yanche
Executive Director
Good Shepherd Services

Robert Cordero
Executive Director
Grand Street Settlement

Natalie Martinez
Director of Youth Employment Programs
HANAC Inc.

Chris Norwood
Executive Director
Health People

Walter Roberts
Executive Director
Hope Community

Ken Jockers
Executive Director
Hudson Guild

Christopher Hanway
Executive Director
Jacob A. Riis Neighborhood Settlement

Rachel Williams
Director of Marketing, Outreach & Advocacy
Joseph P. Addabbo Family Health Center

Margaret Della
Executive Director
Kingsbridge Heights Community Center

Reada Edelstein
Chief Executive Officer
LSA Family Health Service

Damyn Kelly, J.D.; PhD
President and CEO
Lutheran Social Services of NY

Fred Riccardi
President
Medicare Rights Center

Rev. Dr. Alfreda Griffin-Johnson
Outreach Minister
Mount Zion African Methodist Episcopal Church

Jack Doyle
Executive Director
New Settlement Apartments

Maria Lizardo
Executive Director
NMIC

AiLun Ku
President and CEO
The Opportunity Network

Ben Thomases
Executive Director
Queens Community House

Rachel Cytron
Executive Director
Row New York

Lucy Herz
Chief Operating Officer
Student Success Network

Judith Zangwill
Executive Director
Sunnyside Community Services

Gregory J. Morris
President and Executive Director
Stanley M. Isaacs Neighborhood Center

Lakythia Ferby
Executive Director
STRIVE New York

David Nocenti
Executive Director
Union Settlement

Kimberly Williams
President and CEO
Vibrant Emotional Health

Christine Quinn
President and CEO
Women In Need (Win)

Sharon Greenberger
President & CEO
YMCA of Greater New York

Diana Breen
Interim President and CEO
Young Audiences New York

Robert T. Taylor
Executive Director
Youth Action Programs and Homes

cc: Attorney General Letitia James
NYC Comptroller Scott Stringer
NYC Public Advocate Jumaane Williams
Bronx District Attorney Darcel D. Clark
Brooklyn District Attorney Eric Gonzalez
Manhattan District Attorney Cy Vance, Jr.
Queens District Attorney Melinda Katz
Staten Island District Attorney Michael E. McMahon

August 25, 2020

REFORM NYPD NOW AGENDA

Set forth below is a list of recommended actions that must be taken immediately to help address current deficiencies in the way that the NYPD treats communities of color.

A. Pledge to Reform

1. The Mayor and Police Commissioner should: (1) publicly acknowledge and apologize for NYPD's history of disparate treatment of persons of color; and (2) pledge to institute systemic reforms, including those noted below.

B. Reduce Police Officer Misconduct and Excessive Use of Force

1. Update all use-of-force policies to clearly set forth the maximum use of force allowable in response to specific types of conduct (*)
2. Require officers to de-escalate situations to the greatest extent possible before using force (*) (†)
3. Require police officers to exhaust all other reasonable alternatives before resorting to deadly force (*) (†)
4. Require officers to give a clear verbal warning, when possible, and give people a reasonable amount of time to comply with the warning before using deadly force (*)
5. Prohibit shooting at a moving vehicle, unless threatened with deadly force other than the vehicle (*)
6. Require officers to provide comprehensive reporting of all uses of force and threats of use of force (*)
7. Establish a "duty to intervene" for all police officers witnessing misconduct by another police officer, including but not limited to excessive use of force (*) (†)
8. Provide whistleblower protections for officers who report misconduct by another officer (†)

C. Strengthen the Civilian Complaint Review Board (CCRB)

1. Eliminate Police Commissioner review of CCRB recommended sanctions, thereby providing the CCRB with final disciplinary authority in the cases it investigates (†)
2. Expand the CCRB's jurisdiction to include: (1) allegations of biased policing and racial profiling; and (2) allegations against non-uniformed NYPD employees (†)
3. Codify the CCRB Administrative Prosecution Unit (APU), which now exists only pursuant to an MOU among the CCRB, NYPD and City Hall.
4. Fully fund CCRB's current operations, and any expanded duties granted to the CCRB

D. Enhance Police Officer Qualifications and Training

1. Create a statewide board with authority to certify all police officers, and to revoke an officer's certification for misconduct, which would prevent the officer from simply being hired by another jurisdiction (†)
2. Prohibit the hiring of officers with a history of excessive force or serious substantiated misconduct complaints
3. Implement mandatory annual training for all officers in the following areas:
 - a. Diversity, Equity and Inclusion (DEI)
 - b. Community relations, including effective youth engagement strategies
 - c. De-escalation and violence reduction strategies
 - d. Preventing racial, ethnic, religious and discriminatory profiling
4. Prohibit deployment of officers to any precinct prior to their completion of community relations training
5. Require officers deployed to any precinct to participate in an introductory two-week period focused on engagement with the community being served, including meetings with tenant associations, community groups, nonprofits, schools, business associations, youth and others

Note: CBOs must be involved in the design and implementation of the above trainings

E. Other Reforms

1. Make footage from body-worn cameras immediately publicly available (†)
2. Require that any NYPD rules governing interactions with the public, including those impacting arrests and use of force, follow the NYC Administrative Procedures Act process of public notice and comment (†)

Items marked with an asterisk () are part of the “8 Can’t Wait” agenda, which has been adopted by multiple police departments throughout the country, including those in San Francisco, Boston and Tucson. The “8 Can’t Wait” agenda also includes a ban on chokeholds, which has already been enacted into law by New York City.*

Items marked with an obelisk (†) are part of the reform agenda recommended by New York State Attorney General Letitia James

Note: The above NYPD reform agenda does not purport to be a comprehensive list of all actions that are needed, and instead intentionally focuses solely on essential immediate reforms to NYPD policing structures, tactics and policies. These improvements are just one component within a broader array of systemic reforms required to eliminate racial and ethnic inequities in housing, education, health care, employment, law enforcement and other areas. Finally, these reform proposals do not take a position on what amount of funding is appropriate for the NYPD.

January 11, 2021

To: Chair Adrienne E. Adams & the Committee on Public Safety

Submission by: Vidal Guzman

Subject: NYPD's Discriminatory Practice Goes Far Beyond a Single Officer; Written Testimony Submitted to the Committee on Public Safety hearing (T2021-7023)

In response to the racist behavior and writings of Officer James Kobel, I submit this testimony to share my experiences of both implicit and explicit bias at the hands of the NYPD as I know that the acts of explicit and implicit bias in the NYPD go far beyond one officer. I urge the council to strengthen oversight and accountability mechanisms over the NYPD, to declare the council's support for Ending Qualified Immunity in New York State, and to decrease funding for the NYPD in the upcoming City budget in earnest in order to begin to address the systemic issues of bias in the NYPD.

The issue of racism and bigotry within the NYPD is of the utmost relevance in the wake of the attack by white supremacists on the Capitol on January 6th, 2021 and -- in particular -- as allegations of participation of members of the NYPD and FDNY begin to emerge.

The revelations of the vile words by Kobel come as no surprise to someone like myself who has not only experienced direct harassment at the hands of NYPD police officers, but who has been a victim of the systemic harms resulting from the discriminatory policing of underfunded communities of New York City. While many from the NYPD have denounced the disgusting words published online by Kobel, the NYPD cannot be allowed to scapegoat him by saying this is just a problem of one individual. The NYPD must take accountability for its discriminatory practices that come from the same roots as Kobe's actions. The racism and bigotry displayed is a window into a wider systemic problem within the NYPD, and there must be avenues for real accountability.

I have been a victim of stop and frisk which was a manifestation of NYPD discrimination. I was a plaintiff in *Stinson, et al. Vs city of New York* in which the courts recognized that the NYPD was engaging in discriminatory behavior when stopping people of color without probable cause. If NYPD officers and leadership have opinions such as those expressed by Kobel, it is no surprise that the Courts found that Black and Brown New Yorkers greatly suffered at the hands of this discriminatory policy.

While the practice has -- theoretically -- stopped, the bigotry embedded in the NYPD that resulted in such a policy can now be seen in the way in which the NYPD created and acts on the Gang Database -- the department's latest tool to harass communities of color. Policing related to the Gang Database is yet another iteration of the discriminatory behavior of the NYPD. It is not difficult to draw a line from the vile words of Kobel to these damaging policies implemented by the NYPD as related to this approach to policing.

Most recently, we have seen how the departments implicit and explicit bias manifested in unreasonable and egregious use of force used against those fighting for the rights of black and brown New Yorkers in the wake of George Floyd's murder. The practices were not just limited to this summer, but continue to this day. The discriminatory behavior has been documented and affirmed by Human Rights Watchdogs and the City's Department of Investigations (DOI). Not unlike at the Capitol on January 6th, Black Lives Matters protestors have consistently been met with excessive force, while far-Right and pro-Trump supporters have not. Once again, protestors like myself find ourselves using the only avenue of redress available to us: suing the City for the excessive force used by the police even though what we want is real accountability from the officers who harm us.

Our elected officials continuously say that New York City is a progressive city, but it is not. The DOI report confirms that the NYPD is out of step with momentum for changing policing as seen in other cities throughout the country.

In the face of a complete failure of leadership, a broken culture at the NYPD, and inadequate police oversight in our city, as laid out in the Department of Investigations report, we urge the City Council to pass a resolution affirming support of the passage of New York Senate Bill [S8668B](#) to end qualified immunity in order to begin chipping away at the unchecked powers of the police.

In the absence of possible avenues for criminal liability -- we the taxpayers paid over [\\$230 million](#) last year for the mistakes of NYPD officers who egregiously violated our rights, adding salt to our wounds. We need an end to the 1033 program that militarizes the NYPD and allows them to respond to Black and Brown New Yorkers with excessive riot gear, further escalating situations. Most importantly, we need to actually divest from the NYPD's astounding [\\$11 billion](#) budget and instead reallocate that money to what communities deem as necessary to make their neighborhoods safer. The process must be consultative and include those most impacted by police violence.

These are the necessary steps to address the systemic issues of implicit and explicit bias that exist within the NYPD. This is not a problem of just one officer, and we must put measures into place to address the harms to Black and Brown New Yorkers perpetrated by the NYPD at large.



JAMES E. JOHNSON
Corporation Counsel

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December 22, 2020

VIA E-MAIL ONLY

Towaki Komatsu
Plaintiff pro se
802 Fairmount Pl.
Apt. 4B
New York, NY 10460
Towaki_Komatsu@yahoo.com

Re: Towaki Komatsu v. City of New York, et al.
18 Civ. 3698 (LGS) (GWG)

Mr. Komatsu:

On September 8, 2020, defendants served their responses to plaintiff's New Request for Production of Documents, dated August 6, 2020, and further supplemented those responses on October 7, 2020. Without waiving or in any way limiting defendants' previously stated objections to Document Request No. 8, as well as Document Request Nos. 9(a), 9(f), 9(g), 9(h), and 9(l) of plaintiff's New Request for Production of Documents, defendants refer plaintiff to the following documents, which will be produced upon execution and endorsement of an appropriate stipulation of confidentiality and protective order, and entry of an order pursuant to Fed. R. Evid. 502(d):¹

- Copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, bearing Bates Nos. D000158 through D000315.²

¹ A courtesy copy of the proposed stipulation of confidentiality and protective order, initially served to plaintiff on December 17, 2019, is annexed hereto. A proposed clawback agreement is also annexed.

² Information in these documents has been redacted in accordance with defendants' previously stated objections and responses. A privilege log will be provided under separate cover, as needed.

Thank you for your attention to this matter.

Regards,

Andrew B. Spears /s

Andrew B. Spears
Assistant Corporation Counsel
Special Federal Litigation Division

Encl.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TOWAKI KOMATSU,

Plaintiff,

- against -

CITY OF NEW YORK, et al.,

Defendants.

**STIPULATION OF
CONFIDENTIALITY
AND PROTECTIVE
ORDER**

-----X 18 Civ. 3698 (LGS) (GWG)

WHEREAS, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Defendants City of New York, Inspector Redmond, Lieutenant Nieves, Detective Gerola, Officer Beato, and Officer Liu must disclose certain documents and information to Plaintiff;

WHEREAS, Pursuant to Rules 33 and 34, Plaintiff seeks certain documents and information from Defendants pursuant to their discovery demands in this action;

WHEREAS Defendants deem and/or may deem some of this information and documents to be confidential, private and/or subject to a law enforcement and/or governmental privileges and/or other applicable privileges;

WHEREAS, Defendants object to the production of those documents unless appropriate protection for their confidentiality is assured; and

WHEREAS, good cause exists for the entry of an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and the attorneys for Defendants as follows:

1. This Action shall mean Towaki Komatsu v. City of New York, et al., 18 Civ. 3698 (LGS) (GWG).

2. As used herein, without waiving the right to later interpose any objections concerning these documents, “Confidential Materials” shall mean¹:

- (A) Employment/personnel related records for Defendants, including performance evaluations;
- (B) Any disciplinary histories or other records from Civilian Complaint Review Board, Internal Affairs Bureau, other New York City Police Department divisions, or any other governmental agency;
- (C) Full names and contact information of non-party individuals and/or witnesses;
- (D) NYPD training materials, including, but not limited to, the Patrol Guidelines, if not publicly available, Administrative Guide, Operation Orders, training manuals, and/or legal bulletins;
- (E) Other documents and information that may in good faith, during the pendency of this litigation, be designated “Confidential Materials” by the Defendants or the Court.

3. The documents and information as defined in Paragraph 2 shall not be deemed “Confidential Materials” to the extent, and only to the extent, that they are: (a) obtained by Plaintiff from sources other than Defendants, or (b) are otherwise publicly available.

4. Defendants shall designate in good faith particular documents “Confidential Materials” by labeling such documents “Confidential” and by designating such documents by

¹ The identification of any specific documents in Paragraph 2 does not waive the right to interpose any objection concerning same including to its production in this action.

bates number in a writing directed to Plaintiff. Defendants shall have a reasonable time to inspect and designate as “Confidential Materials” documents sought from third parties.

5. Any documents produced by a non-party pursuant to a subpoena in this Action and that are designated as Confidential Material by Defendants shall be governed by the terms of this Stipulation of Confidentiality and Protective Order.

6. Defendants reserve the right to designate any document confidential pursuant to this agreement if necessary after production of such documents to Plaintiff.

7. Inadvertent production of any document or information which is privileged, confidential, and/or was prepared in anticipation of litigation, is otherwise immune from discovery, shall not constitute a waiver of any privilege or confidentiality or of another ground for objecting to discovery with respect to that document, or its subject matter, or the information contained therein, or of Defendants’ right to object to the use of any such document or the information contained therein during any proceeding in this litigation or otherwise.

8. If Plaintiff objects to the designation of particular documents as “Confidential Materials,” they shall state such objection in writing to the Defendants, and the parties shall endeavor in good faith to resolve such objection. If such objection cannot be resolved, then, within fourteen (14) days of receiving Defendants’ response to Plaintiff’s objection, Plaintiff shall seek judicial intervention. Any such materials or information shall remain Confidential until the parties resolve the objection or there is a resolution of the designation by the Court.

9. Plaintiff and his counsel shall not use the Confidential Materials for any purpose other than for the preparation or presentation of his case in this Action.

10. Plaintiff shall not disclose the Confidential Materials to any person, except under the following conditions:

- a. Disclosure may be made only if necessary to the preparation or presentation of Plaintiff's case in this action, to those individuals described in the subparagraphs below.
- b. Disclosure before trial may be made only to Plaintiff, to an expert who has been retained or specially employed by his counsel in anticipation of litigation or preparation for this action, to a witness at deposition, or to the Court.
- c. Before any disclosure is made to a person listed in subparagraphs (a) and (b) above (other than to the Court), Plaintiff shall provide each such person with a copy of this Stipulation of Confidentiality and Protective Order for review, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution of this case and not to further disclose the Confidential Materials except in testimony taken in this case.

11. Deposition testimony concerning any Confidential Materials which reveals the contents of such materials shall be deemed confidential, and the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential Materials within the meaning of this Stipulation of Confidentiality and Protective Order.

12. Any party seeking to file papers with the Court that incorporate Confidential Materials or reveal the contents thereof shall first make an application to the Court for

permission to file under seal the specific portions of those papers disclosing Confidential Materials and shall indicate whether any other party objects to that request, or shall make an application to the Court to have the relevant materials de-designated as confidential, pursuant to Paragraph “8” of this Stipulation. No materials shall be filed under seal unless the Court has issued an order approving the filing, in which event the filing shall follow the rules of the District Court in which the Action is filed and/or the Individual Rules of the judge to whom the papers are directed.

13. Where the confidential information is not material to issues addressed in court submissions and the parties agree in writing that the redaction of personal, confidential and/or identifying information would be sufficient to protect the interests of parties or non-parties, Plaintiff and Defendants may file redacted documents without further order of the Court.

14. In addition, where reasonable advance notice is given by Plaintiff or and the parties agree in writing to the use of the confidential information in support of a motion for summary judgment or any other dispositive motion by Plaintiff, or at a trial on the merits in this matter, such information will not be subjected to the instant protective order. In the event that the Confidential Materials may be disclosed at a hearing or at trial, the Court may impose appropriate safeguards for the presentation of such Confidential Materials.

15. Within 30 days after the termination of this Action, including any appeals, the “Confidential Materials,” including all copies, notes, and other materials containing or referring to information derived therefrom (other than the Court’s copies of such materials), shall be returned to Defendants’ attorneys or, upon Defendants’ attorneys’ consent, destroyed (except as to privilege material which shall be destroyed), and all persons who possessed such materials shall verify their return or destruction by affidavit furnished to Defendants’ attorney.

Notwithstanding this provision, Plaintiff may retain a copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Materials, so long as appropriate safeguards are imposed to prevent the use of any copies for any purpose. Any such copies that contain or constitute Confidential Materials remain subject to this Stipulation of Confidentiality and Protective Order.

16. This Stipulation will survive the termination of the litigation and will continue to be binding upon all persons to whom Confidential Materials are produced or disclosed. All documents or information that has been deemed confidential pursuant to this order, including all copies and non-conforming copies thereof, shall remain confidential for all time. Once the Action has been resolved, including all appeals, the Confidential Materials, including all copies and non-conforming copies thereof, shall not be used by Plaintiff, or anyone receiving confidential documents pursuant to Paragraph “10” herein, for any purpose without prior Court approval.

17. This Stipulation shall be binding upon the parties immediately upon signature and shall be submitted to the Court for entry as an Order.

18. Plaintiff acknowledges that failure to comply with the terms of this Stipulation, following entry as an Order by the Court, may be grounds for dismissal of his claims with prejudice under Fed. R. Civ. P. 37(b).

19. The terms of this Stipulation and Protective Order shall be binding upon all current and future parties to this Action and their counsel.

20. Nothing in this Stipulation and Protective Order shall be construed to limit Defendants’ use of the Confidential Materials in any manner.

21. This Stipulation of Confidentiality and Protective Order may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation and Protective, which shall be binding upon and effective as to all Parties.

Towaki Komatsu
Plaintiff *pro se*
802 Fairmount Pl.
Apt. 4B
Bronx, NY 10460

JAMES E. JOHNSON
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007

By: _____
TOWAKI KOMATSU

By: _____
HANNAH V. FADDIS

SO ORDERED:

HON. GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

Dated: _____, 2019

EXHIBIT A

1. The undersigned hereby acknowledges that s/he has read the Stipulation of Confidentiality and Protective Order dated _____ 2019, entered into the action entitled Towaki Komatsu v. City of New York, et al., 18 Civ. 3698 (LGS) (GWG), understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with the prosecution of this case, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date: _____

Signature: _____

Print Name: _____

Occupation: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOWAKI KOMATSU,

Plaintiffs,

vs.

CITY OF NEW YORK, ET AL.,

Defendants.

**STIPULATION AND ORDER
REGARDING CLAWBACK
AGREEMENT**

18-CV-3698 (LGS) (GWG)

Subject to the Court's approval, the parties in the above-captioned litigation (this "Action") hereby stipulate to the clawback order and the procedures set forth herein for addressing the clawback of privileged, protected, personally identifiable, and non-responsive information and material. This Order shall be interpreted to provide the maximum protection allowed by FRE Rule 502(d), FRCP 26(c), and any other applicable law; and shall specifically exclude the application of FRE 502(b) to any Clawback Demand and/or Protected Material, as defined herein, requested under this Order.

1. This Stipulation and Order shall be applicable to and govern all documents and information, including electronically stored information produced by the Parties in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, affidavits, declarations, responses to any other discovery devices, and all other information or material produced, made available for inspection, or otherwise produced and/or

submitted by any of the Parties in this litigation as well as testimony adduced at trial, deposition, or during any hearing (collectively, “Discovery Material”).

2. Any Party’s production or disclosure in this proceeding of information or material that is not responsive, contains personally identifiable information, and/or is protected by any privilege or protection recognized by law (collectively, “Protected Material”), whether inadvertent or otherwise, shall not constitute or be deemed a waiver of any claim of privilege, protection, personally identifiable information, and/or non-responsiveness applicable to that material or its subject matter in this Action or any other federal or state proceeding, and shall be governed by the procedures set forth herein.

Clawback Demand by Producing Party

3. Any Party that produces Protected Material (the “Producing Party”), or any other party purporting to hold a privilege, may notify in writing the Party receiving Protected Material (the “Receiving Party”) that it has disclosed Protected Material without intending a waiver by the disclosure and demand that it be returned or destroyed (the “Clawback Demand”). Such demand shall be made after the Producing Party discovers that the Protected Material was produced or disclosed and shall identify the Protected Material to be returned or destroyed (including the Bates number of the document, or if no Bates number appears on the document, sufficient information to identify the document or information) and the basis for the claim of privilege, protection, personally identifiable information, and/or non-responsiveness.

Receiving Party to Immediately Notify Producing Party; Cease Inspection, Use and/or Disclosure of Protected Material

4. Immediately upon identifying a document or information produced by the Producing Party that appears to be Protected Material, the Receiving Party shall (i) notify the Producing Party in writing of its receipt of the potentially Protected Material, including the Bates number of the document, or if no Bates number appears on the document, sufficient information to identify the document so that the Producing Party may make a Clawback Demand; and (ii) cease any inspection, use, or disclosure of the Protected Material, and of any work product, analyses, memoranda, or notes that were generated by the Receiving Party (and/or Receiving Party's consultants, experts, and/or agents) based upon such Protected Material.

5. Immediately upon receiving a Clawback Demand, regardless of whether the Receiving Party agrees with the claim of privilege, protection, personally identifiable information, and/or non-responsiveness, the Receiving Party shall cease any inspection, use, or disclosure of the Protected Material, and of any work product, analyses, memoranda, or notes that were generated by the Receiving Party (and/or Receiving Party's consultants, experts, and/or agents) based upon such Protected Material.

6. In the absence of an Order permitting otherwise, after the Receiving Party has identified a document or information produced by the Producing Party that appears to be Protected Material, or after it receives a Clawback Demand, the Receiving Party will not introduce the Protected Material into evidence, disclose it to any person or entity, or use it for any purpose in this or any other action.

Receiving Party to Destroy or Return Protected Material & Related Material

7. The Receiving Party, within ten (10) business days of receiving a Clawback Demand, regardless of whether the Receiving Party agrees with the claim of privilege, protection, personally identifiable information, and/or non-responsiveness, shall: (a) destroy the Protected Material or return it to the Producing Party, including any paper or electronic copies, (b) notify any third party to whom the Receiving Party sent or disclosed such identified Protected Material to return it to the Producing Party or destroy it; and (c) destroy any work product, analysis, memoranda, or notes reflecting the content of such produced Protected Material and/or which were generated by the Receiving Party (and/or Receiving Party's consultants, experts, and/or agents) based upon such Protected Material. If any additional work product, analyses, memoranda, or notes are later discovered, they shall immediately be destroyed. The Receiving Party shall provide written assurance to the Producing Party that these actions have been completed within ten (10) days of receiving a Clawback Demand. If the document or information subject to the Clawback Demand contains Protected Material only in part, then the Producing Party shall, in a timely manner, produce redacted versions of the documents subject to the Clawback Demand.

Seeking an Order to Produce Protected Material

8. Notwithstanding the directives of paragraph 7, if a Receiving Party disagrees with a Producing Party's claim that certain documents or information constitute Protected Material, then, within ten (10) business days of receiving the Clawback Demand (and upon the fulfillment of any obligation to meet and confer as may be required by rule or applicable law), the Receiving Party may move the Court for an Order compelling production of any of the documents or

information covered by the Clawback Demand. The Receiving Party's motion and/or argument to the Court (i) shall not disclose or otherwise refer to the content of the Clawback Material beyond the information set forth in a privilege log; and (ii) shall not disclose that the material was subject to a Clawback Demand. The Receiving Party also shall not assert that its return or destruction of the Protected Material has caused it to suffer prejudice. The Receiving Party is not subject to the directives set forth in paragraph 7 until the Court resolves the Receiving Party's motion, at which time the Court's decision shall govern the treatment of the disputed documents and/or information. The Receiving Party is enjoined from using in any manner the disputed Protected Material, including any work product, analysis, memoranda, or notes reflecting the content of such produced Protected Material that were generated by the Receiving Party (and/or Receiving Party's consultants, experts, and/or agents) based upon such Protected Material (aside from the motion as limited in this paragraph), until the motion is resolved.

Rights, Limitations and Objections Related to this Stipulation and Order

9. Nothing in this Stipulation and Order is intended to or shall prevent, limit, or restrict the Parties' right to conduct a full review of and apply redactions to, if applicable, documents and related information (including metadata) for responsiveness, privilege, personally identifiable information, and/or protected information prior to production and/or disclosure.

10. Nothing in this Stipulation and Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the disclosing party that such materials have been produced.

11. Nothing in this Stipulation and Order shall operate as an admission by the Parties that any particular document or information is or is not responsive, privileged, reflective of personally identifiable information, and/or admissible in this Action.

12. Nothing in this Stipulation and Order will prevent, limit, or restrict the Parties in any way from objecting to or asserting an immunity or privilege in any prior or subsequent litigation with respect to any material produced in this Action.

13. This Stipulation and Order may be changed only by further agreement of the Parties in writing or by Order of the Court and is without prejudice to the right of any Party, in good faith, to seek modification of this Stipulation and Order by application to the Court on notice to the other Party.

[Signature page to follow]

STIPULATED AND AGREED TO:

TOWAKI KOMATSU

Plaintiff pro se

802 Fairmount Pl.

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Bronx, New York 10460

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aspears@law.nyc.gov

By:

By:

Towaki Komatsu

Andrew B. Spears /s

Andrew B. Spears

SO ORDERED:

Dated: _____
New York, New York

Hon. Gabriel W. Gorenstein, U.S.M.J



JAMES E. JOHNSON
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THE CITY OF NEW YORK
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January 7, 2021

VIA ECF

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Towaki Komatsu v. City of New York, et al.
18 Civ. 3698 (LGS) (GWG)

Your Honor:

I am the attorney assigned to represent defendants in the above-referenced action. Defendants write pursuant to the Court's Order dated December 30, 2020 (ECF No. 457), and in response to plaintiff's letter dated December 22, 2020 (ECF No. 453), to oppose the relief sought by plaintiff therein.

A. Procedural Background

By way of background, on August 6, 2020, plaintiff served defendants with a "New Request for Production of Documents." These requests included, *inter alia*, six discrete requests for extensive and overbroad discovery of communications on a variety of subjects involving any and all employees of the City of New York as well as the production of all documents contained in a 374-page FOIL release previously obtained by plaintiff (the "FOIL Release"). (See Document Requests Nos. 8 (the "FOIL Release Request"), 9(a), 9(f), 9(g), 9(h), and 9(l) (the "E-mail Requests"), set forth in Defendants' Responses and Objections to Plaintiff's 8.6.20 Request for Documents, which quote verbatim the discovery demands within plaintiff's New Request for Production of Documents, attached hereto as Exhibit A). On September 8, 2020, defendants responded to plaintiff's "New Request for Production of Documents" and, in response to the FOIL Release Request and Email Requests, agreed to produce "[c]opies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017." (See Ex. A). On December 19, 2020, plaintiff requested a meet and confer with the undersigned, to discuss: (1) the production of unredacted copies of certain e-mails contained in the FOIL Release; (2) the metadata for such e-mails, and (3) the "personnel and disciplinary records" for the NYPD

defendants in this case—which defendants previously agreed to produce on November 20, 2019, subject to the execution and endorsement of aforementioned stipulation of confidentiality and protective order.¹ On December 21, 2020, the parties agreed to conduct the proposed meet and confer on December 22, 2020.

On December 22, 2020, following an extended e-discovery process in which relevant e-mails were collected and reviewed, defendants supplemented their responses and objections to Plaintiff’s “New Request for Production of Documents,” indicating that the e-mail communications compiled in response to the FOIL Release Request and E-mail Requests were prepared for production, subject to the execution and endorsement of an appropriate stipulation of confidentiality and protective order.² Defendants annexed to their supplemental responses a proposed stipulation of confidentiality and protective order, which was initially served on plaintiff on December 17, 2019.³ (See Proposed Stipulation of Confidentiality and Protective Order, attached hereto as Exhibit B). Later on December 22, 2020, the parties convened to meet and confer via telephone, during which the parties discussed the production of documents contained in the FOIL Release, and the need for a protective order governing any e-mail production. (See Plaintiff’s December 22, 2020 Letter (ECF No. 453), at pp. 4-5). At that time, defendants communicated to plaintiff that a substantial number of the emails he sought from the FOIL Release were indeed contained within the pending email production.

Following the parties’ meet and confer, plaintiff filed a letter dated December 22, 2020, purporting to be a motion to compel. (ECF No. 453). Plaintiff’s letter seeks both: (1) a ruling as to whether the email discovery that defendants have agreed to produce in this litigation should be produced to plaintiff without a protective order; as well as (2) “an order that will compel the City of New York to provide [plaintiff] discovery material that [plaintiff has] long sought in this case.” (ECF No. 453). More specifically, plaintiff’s letter appears to seek a Court order compelling defendants to produce certain e-mail discovery beyond the scope of what defendants have previously agreed to produce. (*Id.*) On December 30, 2020, the Court ordered defendants to file a response to plaintiff’s submission by January 7, 2021. (ECF No. 457).

B. Plaintiff’s Request for Additional Email Discovery

Plaintiff’s purported motion to compel requests that the Court order defendants to produce additional e-mail discovery beyond the scope of what defendants previously agreed to produce. More specifically, plaintiff appears to seek an order compelling defendants to produce “copies of all email communications that were sent by or otherwise to people who were employees of the City of New York in 2017 that pertained to my efforts to attend all types of

¹ Defendants note that the designation of these records as confidential is routine. See Fowler-Washington v. City of New York, No. 19 Civ. 6590 (KAM) (RER), 2020 U.S. Dist. LEXIS 231544, at *9 (E.D.N.Y. Dec. 9, 2020) (acknowledging that federal courts have long recognized a need to keep police records confidential, even if the records are discoverable).

² These documents, bearing Bates numbers D000158 through D000315, have not yet been produced to plaintiff, as he has not agreed to the execution and entry of this stipulation of confidentiality and protective order, as discussed *infra* in Point C.

³ Defendants also annexed a proposed clawback agreement, pursuant to Fed. R. Evid. 502(d), which plaintiff does not appear to be challenging but has not executed.

public forums that were conducted partly by Bill de Blasio (“the Mayor”) in 2017 that isn’t limited to just a) town hall events, b) non-privileged email communications, and c) email communications ‘by or between the defendants.’” (See ECF No. 457).

Defendants respectfully submit that the Court should deny plaintiff’s purported motion to compel, for several reasons. As an initial matter, plaintiff has never served a demand for the documents that he now seeks the Court to compel production of. Indeed, plaintiff’s “New Request for Production of Documents” does not include a document request seeking “copies of all email communications that were sent by or otherwise to people who were employees of the City of New York in 2017 that pertained to my efforts to attend all types of public forums that were conducted partly by Bill de Blasio (“the Mayor”) in 2017[.]” For that reason alone, the Court should deny plaintiff’s purported motion to compel.

Additionally, plaintiff never sought to meet and confer with the undersigned regarding this purported discovery dispute, and has therefore failed to comply with Item 2(A) of Your Honor’s Individual Practices. Indeed, plaintiff requested only to meet and confer regarding the production of unredacted copies of certain e-mails contained in the FOIL Release, the metadata for such e-mails, and the “personnel and disciplinary records” for the NYPD defendants in this case. (See Plaintiff’s December 22, 2020 Letter (ECF No. 453), at pp. 4-5). Because plaintiff failed to comply with the Court’s Individual Rules of Practice, this motion should be denied.

Nonetheless, defendants submit that plaintiff’s request for additional “e-mail communications” made herein, as well as the demands interposed in his “New Request for Documents,” are overly broad, unduly burdensome, and necessarily seek materials grossly disproportionate to the needs of this case. Defendants further submit that the e-mail discovery defendants have agreed to produce is appropriate in scope. Rule 26(b)(1) of the Federal Rules of Civil Procedure states that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Your Honor has similarly ruled in this litigation that “discovery must be relevant to the claims that have survived the motion to dismiss and only to those claims,” and that “discovery requests must be not only relevant to the surviving claims but also proportional to the needs of the case.” (See ECF No. 294).

Here, defendants have agreed to produce to plaintiff “[c]opies of non-privileged email communications by or between the defendants pertaining to plaintiff’s attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017.” This litigation concerns plaintiff’s attempt to attend a Town Hall event hosted by New York City Mayor Bill de Blasio on April 27, 2017, which he alleges was prevented by the unlawful actions of the defendants. As such, the only communications which would likely be relevant to plaintiff’s claims are those to or from those defendants. Any communications by or between non-parties, of which the defendants were not aware, are not relevant to this litigation. Plaintiff has proffered no justification for seeking broader discovery of communications by or between non-parties, or pertaining to a broader range of subjects. Accordingly, defendants respectfully submit that the e-mail discovery that they have agreed to produce is appropriately tailored to the

scope and needs of this litigation.

Moreover, the additional discovery that plaintiff seeks, which appears to include all e-mail communications to and from all City employees relating to plaintiff's attempts to attend "public forums" held by Mayor Bill de Blasio in 2017, is plainly overbroad and disproportionate to the needs of this case. "Even relevant discovery should be limited if it is disproportionate to the needs of the case. Winfield v. City of New York, 15 Civ. 05236 (LTS) (KHP), 2018 U.S. Dist. LEXIS 56160, at **13-14 (S.D.N.Y. Mar. 29, 2018) (further noting that "discovery cannot continue *ad infinitum*" and "there comes a point in time when better is the enemy of the good").

Upon information and belief, it is simply not technically possible for the City to simultaneously search the e-mail accounts of each of the approximately 294,000 individuals that were employed full-time by the City of New York in 2017 for responsive communications. Email searches must be targeted to specific email custodians, and those searches must be carried out by the entity which hosts the particular email account. Any emails collected in such searches must then be manually reviewed by counsel to determine their responsiveness. Accordingly, the defendants have already searched the email accounts of the individual defendants by keyword for the relevant time period, collected and reviewed their emails, and assembled a production of relevant and responsive emails. If a search of the email accounts of every municipal employee were conducted, it would have to be conducted manually and coordinated among a variety of City agencies. This would undoubtedly result in a tremendous waste of City resources, which would dramatically outweigh any potential benefit to the plaintiff, as the vast majority of City employees would surely yield negative search results. Accordingly, as the additional discovery sought by plaintiff is overbroad and disproportionate to the needs of this case, plaintiff's purported motion to compel should be denied.

C. The Pending Email Production Should be Deemed Confidential

Plaintiff also seeks a ruling as to whether the e-mail discovery that defendants have agreed to produce in this litigation should be provided to plaintiff without a protective order.⁴ Plaintiff appears to believe that he is entitled to defendants' e-mail discovery production without the protection of the proposed stipulation of confidentiality and protective order. His arguments on this score are founded largely in notions of a right of public access to judicial records, which are unavailing. To be clear, the defendants are seeking only to protect certain documents produced in this litigation in order to ensure that they are utilized only for the purposes of this litigation, and to avoid the likelihood that plaintiff will utilize discovery obtained in this action to annoy or harass the defendants and non-parties. As there is good cause to believe such an order is necessary, defendants respectfully submit that such an Order should be entered.

As an initial matter, "experience and logic show that there is no right of access to discovery materials." United States v. Smith, 985 F. Supp. 2d 506, 519 (S.D.N.Y. 2013). Indeed, pre-trial discovery, "unlike the trial itself, is usually conducted in private." Id. (citing Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943, 945 (7th Cir. 1999); see also United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986) ("Discovery, whether

⁴ If necessary, defendants can provide this email correspondence for *in camera* review.

civil or criminal, is essentially a private process because the litigants and the courts assume that the sole purpose of discovery is to assist trial preparation. That is why parties regularly agree, and courts often order, that discovery information will remain private.”) Thus, plaintiff’s suggestion that these documents should not be deemed confidential in order to preserve public access to them is unsupported by law. For these reasons alone, defendants submit that their designation of certain e-mail communications as confidential is proper and that a protective order is necessary in this litigation.

Further, defendants believe that good cause exists for the entry of a protective order given the history of this litigation. “A court may, upon a showing of good cause, issue a protective order to shield a party or person from ‘annoyance, embarrassment, oppression, or undue burden or expense.’” Harris v. Livingston Cty., 14-CV-6260 (DGL) (JWF), 2018 U.S. Dist. LEXIS 210509, at *3 (W.D.N.Y. Dec. 13, 2018); Fed. R. Civ. P. 26(c)(1). As a trial court is in the best position to weigh the competing interests of the parties, the Court has broad discretion to determine when a protective order is necessary. See Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984). In determining whether to grant a protective order, a court should weigh the privacy rights of the parties against the general public’s interest in the information at issue. See Dorsett v. County of Nassau, 762 F. Supp. 2d 500, 514-15 (E.D.N.Y. 2011).

A protective order is necessary to ensure that the materials provided to plaintiff are utilized only for the purposes of this litigation and to avoid efforts to harass or annoy parties and non-parties to this litigation. Upon information and belief, plaintiff frequently disseminates litigation materials and communications on social media, in an apparent effort to harass and annoy the parties to this litigation, as well as non-party City officials. By way of example, in the last month alone, the undersigned has received at least five vague threats from plaintiff via e-mail, which often reference judicial decisions and/or news articles that plaintiff apparently believes are dispositive of various disputes in this litigation. Further, as the Court may recall, plaintiff previously refused to meet and confer with defendants unless defendants agreed to hold the conference in public, at Washington Square Park, in the presence of news media. (See ECF No. 284). Plaintiff has also on several occasions published portions of his communications with counsel and litigation documents to his Twitter account, @navy30vet.

The disclosure of internal government communications, including those sent to and by non-party City officials, without a protective order would provide plaintiff with unnecessary fodder for his continued harassment of City officials on social media, via e-mail, and in person. Moreover, defendants submit that there is very little interest to the general public in City officials’ communications about plaintiff’s attendance at public Mayoral town hall events in 2017. See Dorsett, 762 F. Supp. 2d at 514-15. Consequently, good cause exists for the entry of a protective order in this litigation.

Further, it does not appear that the plaintiff is motivated in seeking this discovery by a desire to litigate this action. He has refused to sign defendants’ proposed stipulation of confidentiality and protective order, even though it includes mechanisms for plaintiff to seek the de-designation of particular e-mails as confidential. Indeed, the proposed protective order provides that “[i]f plaintiff objects to the designation of particular documents as ‘Confidential Materials,’ they shall state such objection in writing to the Defendants, and the parties shall endeavor in good faith to resolve such objection. If such objection cannot be resolved, then,

within fourteen (14) days of receiving Defendants' response to Plaintiff's objection, Plaintiff shall seek judicial intervention." That plaintiff has not first signed the stipulation in order to obtain this e-mail discovery suggests that he does not seek this information in order to prosecute this litigation and vindicate his constitutional rights. Rather, plaintiff is perhaps motivated by some other improper purpose, such as the harassment of City officials or his unrelated grievance against the New York City Human Resources Administration. Indeed, plaintiff has expressly communicated to this Office that he required certain documents in order to continue with unrelated administrative proceedings. In order to ensure the efficient prosecution of this litigation and that the discovery process here is not exploited for other purposes, defendants respectfully submit that a protective order is necessary and the email production should be deemed confidential.

For the foregoing reasons, defendants respectfully request that the Court deny plaintiff's purported motions to compel additional discovery, as well as the production of discovery materials without the entry of an appropriate protective order.

Defendants thank the Court for its time and attention to this matter.

Respectfully submitted,

Andrew B. Spears /s
Andrew B. Spears
Assistant Corporation Counsel
Special Federal Litigation Division

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

TOWAKI KOMATSU,

Plaintiff,

-against-

THE CITY OF NEW YORK ET AL.,

Defendants.

----- X

**DEFENDANTS' RESPONSES AND
OBJECTIONS TO PLAINTIFF'S NEW
REQUEST FOR PRODUCTION OF
DOCUMENTS**

18 Civ. 3698 (LGS)(GWG)

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, defendants the City of New York, Redmond, Gerola, Nieves, Beato, and Liu respond and object to Plaintiff's New Request for Production of Documents, dated August 6, 2020 as follows:

GENERAL STATEMENT

1. By responding to any request, defendants do not concede the materiality of the subject to which it refers. Defendants' responses are made expressly subject to, and without waiving or intending to waive, any questions, or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose, of any of the documents or information produced, or of the subject matter thereof, in any proceeding including the trial of this action or any subsequent proceeding.

2. Inadvertent production of any document or information which is privileged, was prepared in anticipation of litigation, or is otherwise immune from discovery, shall not constitute a waiver of any privilege or of another ground for objecting to discovery with respect to that document or any other document, or its subject matter, or the information contained therein, or of defendants' right to object to the use of any such document or the information contained therein during any proceeding in this litigation or otherwise.

3. With respect to the request for the production of documents, defendants will provide, under separate cover, a privilege index, if appropriate.

REQUESTS FOR DOCUMENTS

DOCUMENT REQUEST NO. 8:

All of the following within 24 hours:

- a. A non-redacted and unedited copy of the 374-page PDF file that I discussed with U.S. Magistrate Judge Gabriel Gorenstein on 10/31/19 during the conference that he conducted in this case and that I thereafter provided to the attorneys for Defendant City of New York in this case.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST NO. 8:

Defendants object to Document Request No. 8 on the grounds that it is vague and ambiguous as to what documents are sought, as the document referenced was produced by the plaintiff; and compound and overbroad to the extent the document referenced seemingly contains numerous documents related to a wide range of topics. Defendants further object to this request on the grounds, without limitation, that it necessarily seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1), *e.g.*, more than 300 pages of the document seem to concern plaintiff's interactions with the NYC Human Rights Administration. Defendants further object to this request on the grounds that it is not proportional to the needs of this case, in that the burden of locating and producing each discrete document set forth in the referenced document would far outweigh any potential benefit to plaintiff. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in

2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

DOCUMENT REQUEST NO. 9:

All of the following within 3 calendar days:

- a. A non-redacted and unedited copy of all communications that personnel of the City of New York engaged in since 3/1/17 about how public town hall meetings, public resource fair meetings, public hearings, and press events that were conducted by New York City Mayor Bill de Blasio, members of the New York City Council, and/or personnel who work for the New York City Human Resources Administration and New York City Department of Homeless Services would be, were being, and otherwise had been conducted by personnel of the City of New York.
- b. A non-redacted, unedited, and searchable copy of all communications that personnel of the City of New York engaged in since 3/1/17 about plans they made and acts that that they undertook since 3/1/17 to grant and deny members of the public access to public town hall meetings, public resource fair meetings, public hearings, and press events that were conducted by New York City Mayor Bill de Blasio, members of the New York City Council, and/or personnel who work for the New York City Human Resources Administration and New York City Department of Homeless Services within the room in which they were conducted and otherwise within 1 foot from where they were conducted in other public areas as they were conducted, shortly before they began, and shortly after they ended.
- c. A non-redacted, unedited, and searchable copy of all communications that personnel of the City of New York engaged in since 3/1/17 about plans they made and acts that that they undertook since 3/1/17 to have security personnel present and perform security duties at public town hall meetings, public resource fair meetings, public hearings, and press events that were conducted by New York City Mayor Bill de Blasio, members of the New York City Council, and/or personnel who work for the New York City Human Resources Administration and New York City Department of Homeless Services within the room in which they were conducted and otherwise within 1 foot from where they were conducted in other public areas as they were conducted, shortly before they began, and shortly after they ended.
- d. A non-redacted, unedited, and searchable copy of all records that have been in the possession of the City of New York that identify the personnel of the City of New York and its agents that include contractors and consultants who performed security duties since 3/1/17 at public town hall meetings, public resource fair meetings, public hearings, and press events that were conducted by New York City Mayor Bill de Blasio, members of the New York City Council, and/or personnel who work for the New York City Human Resources Administration and New York City Department of Homeless Services within the room in which they were conducted and otherwise within 1 foot from where

they were conducted in other public areas as they were conducted, shortly before they began, and shortly after they ended.

- e. A non-redacted, unedited, and searchable copy of all records that have been in the possession of the City of New York that describe the specific nature of security duties that were performed and when they were performed by personnel of the City of New York and its agents that include contractors and consultants since 3/1/17 at public town hall meetings, public resource fair meetings, public hearings, and press events that were conducted by New York City Mayor Bill de Blasio, members of the New York City Council, and/or personnel who work for the New York City Human Resources Administration and New York City Department of Homeless Services within the room in which they were conducted and otherwise within 1 foot from where they were conducted in other public areas as they were conducted, shortly before they began, and shortly after they ended.
- f. All communications in unedited and non-redacted form that the NYPD, New York City Mayor Bill de Blasio, members of the Mayor's office, members of the New York City Council, members of the New York City Human Resources Administration, New York City Department of Social Services, New York City Department of Homeless Services, Eric Phillips, Jane Meyer, Austin Finan, Marco Carrion, Ricky Da Costa, Jessica Ramos, Shauna Stribula, Howard Redmond, Ralph Nieves, Raymond Gerola, Andrew Berkowitz, Jaclyn Rothenberg, Kayla Arslanian, Jennifer Yeaw, Raquel Lucas, Emma Wolfe, Rachel Atcheson, Pinny Ringel, Harold Miller, Karl Pfeffer, Paul Briscoe, Jerry Iovenio, Nicholas Mason, Jeff Lynch, Oleg Cheryavsky, Lawrence Byrne, Jr., Letitia James, Anthony Shorris, Gale Brewer, Ritchie Torres, Jumaane Williams, and James O'Neill have had about interference with my ability to attend public events where the Mayor was present or would be present. This includes communications that some of them likely engaged in with the court officer defendants in this case.
- g. All communications in unedited and non-redacted form that members of the NYPD, New York City Mayor Bill de Blasio, members of the Mayor's office, members of the New York City Council, and members of HRA have had about me with people who work in journalism and have worked in journalism since February of 2016.
- h. All communications that have been in the possession of personnel who worked for the City of New York in unedited, non-redacted, and searchable form that concern illegal acts and omissions that were committed against me in relation to efforts that I undertook to attend public forums that include public town hall meetings, public resource fair meetings, and public hearings that members of the public and/or the press conducted in a collaborative manner with New York City Mayor Bill de Blasio and other government officials following 3/15/17.
- i. All communications that have been in the possession of personnel who worked for the City of New York in unedited, non-redacted, and searchable form that concern illegal acts and omissions that were committed to prevent me from obtaining video recording evidence from the New York City Department of Education, New York State Office of

Court Administration, and NYPD in relation to illegal acts and omissions that were committed against me in response to efforts that I undertook to attend public forums after 3/15/17 that members of the public and/or the press conducted in a collaborative manner with New York City Mayor Bill de Blasio and other government officials.

- j. All records in unedited, non-redacted, and searchable form that correspond to all complaints that I reported to the New York City Civilian Complaint Review Board (“CCRB”), New York City Department of Investigations (“DOI”), Internal Affairs Bureau (“IAB”) of the NYPD, New York State Attorney General’s office, Manhattan District Attorney’s office, Brooklyn District Attorney’s office, Bronx District Attorney’s office, and Queens District Attorney’s office, and members of the New York City Council (“City Council”), U.S. Attorney’s Offices for the Southern and Eastern Districts of New York, New York City Mayor’s office, FBI, Letitia James, Gale Brewer, Anthony Shorris, and former NYPD Commissioner James O’Neill, and the Mayor that correspond to complaints that I reported to them and investigations that they undertook and otherwise referred to others to undertake in response to illegal acts and omissions that were committed against me in relation to efforts that I undertook to attend public forums that include public town hall meetings, public resource fair meetings, and public hearings that members of the public and/or the press conducted in a collaborative manner with New York City Mayor Bill de Blasio and other government officials following 3/15/17.
- k. All audio recordings, video recordings, and photographs that personnel who worked for the City of New York recorded and otherwise took and otherwise arranged to be recorded or taken on and after 3/15/17 while attending public forums that include public town hall meetings, public resource fair meetings, and public hearings that members of the public and/or the press conducted in a collaborative manner with New York City Mayor Bill de Blasio and other government officials:
 - i. Within the rooms in which they were conducted shortly before they began, as they were conducted, and shortly after they ended.
 - ii. Within overflow rooms that were used for those public forums shortly before they began, as they were conducted, and shortly after they ended.
 - iii. Within hallways in the buildings in which those public forums were conducted shortly before they began, as they were conducted, and shortly after they ended.
 - iv. In the areas outside of the buildings where members of the public waited in line to enter the buildings in which those public forums were conducted shortly before they began and as they were conducted.
- l. All communications in unedited, non-redacted, and searchable form that personnel of the City of New York have had about me since 2/1/16.

- m. Copies of the registration lists in unedited, non-redacted, and searchable form that have been in the possession of the City of New York for the members of the public who registered to attend and/or testify in public forums that include public town hall meetings, public resource fair meetings, and public hearings that members of the public conducted on and after 3/15/17 in a collaborative manner with the Mayor and/or other personnel who work for the City of New York that I attempted to attend and otherwise attempted to obtain public records about prior to them that were related to the agenda for what would be discussed during some of those public forums.
- n. Copies of all communications in unedited, non-redacted, and searchable form that were issued to personnel of the City of New York and its agents on and after 3/15/17 that identified its personnel and agents who were involved in:
 - i. Granting and denying members of the public access to public town hall meetings, public resource fair meetings, and public hearings that the Mayor and other City of New York personnel conducted on and after 3/15/17.
 - ii. Deciding which of the City of New York's personnel and agents would grant and deny members of the public access to public town hall meetings, public resource fair meetings, and public hearings that the Mayor and other City of New York personnel conducted on and after 3/15/17.
 - iii. Supervising and training the personnel of the City of New York and its agents who granted and denied members of the public access to public town hall meetings, public resource fair meetings, and public hearings that the Mayor and other City of New York personnel conducted on and after 3/15/17.
 - iv. Supervising and training the personnel of the City of New York and its agents who decided which of the City of New York's personnel and its agents would grant and deny members of the public access to public town hall meetings, public resource fair meetings, and public hearings that the Mayor and other City of New York personnel conducted on and after 3/15/17.
 - v. Performing security duties at public town hall meetings, public resource fair meetings, and public hearings that the Mayor and other City of New York personnel conducted on and after 3/15/17.
- o. Copies of all communications in unedited, non-redacted, and searchable form that were issued to political rivals of the Mayor and members of the City Council that invited them to attend public town hall meetings and public resource fair meetings that the Mayor, members of the City Council, and other government officials conducted with the Mayor in 2017.

- p. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify and describe the costs that were paid by the City of New York to conduct public town hall meetings, public resource fair meetings, and public hearings that I undertook efforts to attend and otherwise obtain information about that pertained to the agenda of what would be discussed during them that were conducted on and after 3/15/17 in a collaborative manner by members of the public with the Mayor, members of the City Council, and/or other government officials.
- q. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that concern applications that were submitted by personnel of the City of New York to conduct public town hall meetings and public resource fair meetings in buildings controlled by the New York City Department of Education on and after 3/15/17.
- r. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that concern applications that were submitted by personnel of the City of New York to conduct press conferences and other press events inside of MTA subway stations and subways in New York City on and after 7/25/17.
- s. Copies of all audio, video, and photographs that have been in the possession of the City of New York's personnel that were recorded and otherwise taken that show members of the public talking with the Mayor while the Mayor and such members of the public stood on public sidewalks within 30 feet from one another and otherwise within that distance while standing in other public forums while Bill de Blasio has been the Mayor of New York.
- t. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that consist of the contact information for the members of the public who registered to attend and/or testify in public town hall meetings, public resource fair meetings, and public hearings that were conducted on and after 3/15/17 by the Mayor, members of the City Council, and/or other personnel of the City of New York that I attempted to attend and otherwise obtain information pertaining to the agenda for what would be discussed during them.
- u. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify a) those who performed work in response to Freedom of Information Law ("FOIL") demands that I submitted to the NYPD, New York City Human Resources Administration ("HRA"), DOI, New York State Office of Court Administration, CCRB, New York City Public Advocate's office, New York City Department of Education, Bronx Borough President's office, New York City Council, b) the precise nature of the work that they performed in response to those FOIL demands, c) when they performed that work, and d) with whom and under whose supervision and direction they performed that work.
- v. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify a) those who were involved in work that

prevented video recordings from being made available on the Internet for the public within 3 days after I testified in public hearings that were conducted by the City Council following 3/15/17 in violation of applicable law, b) describe the precise nature of the work that was performed in that regard, c) when they performed that work, and d) with whom and under whose supervision and direction they performed that work.

- w. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that a) identify all members of the City Council who have taken measures to ignore e-mail messages that I have sent to them about testimony that I sought to present while testifying in public hearings that have been conducted by them, b) describe in detail the precise nature of the measures that they have taken for that purpose, c) identify when those measures were taken and whether they have been reversed, and d) identify under whose influence such actions were taken.
- x. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify those who violated my constitutional due process rights by having prevented me from being able to testify in public hearings that were conducted by members of the City Council a) in the order in which I signed-up to testify in them and b) in the immediate presence of the entirety of the members of the City Council who were members of the committees that conducted the public hearings in which I testified.
- y. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify and describe the specific rule or rules that New York City Councilman Ritchie Torres claimed I was violating as I testified to him on 11/13/19 during a public hearing that he and other members of the City Council conducted for the City Council's Committee on Oversight and Investigations.
- z. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify all members of the NYPD by name, rank, NYPD badge number, and photographs who were inside of the Blue Room located inside of New York City Hall on 3/18/19 while I was in it and illegally coerced to leave it as I was in the middle of trying to lawfully testify to the Mayor as he illegally interfered with my ability to do so.
- aa. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify all members of the NYPD by name, rank, NYPD badge number, and photographs who were involved in forcing me to leave the building on 8/30/17 in which the Mayor conducted a public town hall meeting in Brooklyn.
- bb. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York that identify all members of the NYPD by name, rank, NYPD badge number, and photographs who were involved in preventing me from attending the public town hall meeting that the Mayor conducted on 10/26/17 in Brooklyn.

- cc. Copies of all records that include entire deposition transcripts, video recordings, affidavits, declarations, photographs, audio recordings, and court decisions in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that correspond to all court decisions that have been issued against people that I have named as defendants in my proposed third amended complaint that I submitted in this case.
- dd. Copies of all legal settlements in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that correspond to all legal settlements that have been reached that involved people that I have named as defendants in my proposed third amended complaint that I submitted in in this case.
- ee. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that correspond to a) all complaints that were reported by others against people that I have named as defendants in my proposed third amended complaint that I submitted in in this case, b) all investigations that were conducted in response to those complaints, and c) all disciplinary and corrective action that was taken against the subjects of those complaints.
- ff. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that:
 - i. Correspond to all measures that personnel of the City of New York that include, but aren't limited to Ritchie Torres, Donovan Richards, and Chaim Deutsch have taken to block Twitter accounts that they have believed I have used from being able to access information that has been posted on the Internet by Twitter accounts that they have used for purposes that have been related to their jobs as personnel of the City of New York.
 - ii. Identify the personnel of the City of New York who took such actions, the date they took such actions, the Twitter accounts that they used to take such actions, and the specific Twitter accounts that they took such actions against, and whether and when they reversed such actions.
- gg. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that:
 - i. Identity those who are responsible for why the video recording that was recorded of the public resource fair that the Mayor conducted on 7/18/17 in Queens as a result of arrangements that the New York City Mayor's office made that it thereafter made available on the Internet for me to access in response to a FOIL demand that I submitted to it is no longer available for me to access on the Internet.

- ii. Identify the date when that video recording was removed from the Internet or my access to it on the Internet was otherwise similarly revoked.
 - iii. Identify the person or people who decided for that video recording to be removed from the Internet or to otherwise similarly revoke my access to it on the Internet and when those decisions were made.
- hh. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that identify the members of the press who attended the public town hall meetings, public resource fair meetings, and public hearings that the Mayor conducted on and after 3/15/17 that I tried to attend from within the rooms in which they were conducted as they were conducted, shortly before they began, and shortly after they ended as well as the names of the news organizations that they then worked for.
- ii. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that identify the members of the press and the news organizations for which they then worked as they attended press conferences and press events that the Mayor conducted on 7/25/17, 1/4/19, and 3/22/19 inside of subway stations and a subway train inside of New York City while I was present in that immediate vicinity.
- jj. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York as well as its personnel that consists of GPS and geofencing data for electronic devices that were in the possession of its personnel at the sites of public town hall, public resource fair, and public hearings that members of the public conducted on and after 3/15/17 in a collaborative manner with the Mayor and other government personnel as I was prevented from attending those public forums within the rooms in which they were conducted as they were conducted, shortly before they began, and shortly after they ended and during the two-hour period prior to and after the start and finish times of those public forums.
- kk. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York and its personnel that identify all of the aliases that have been used by people who I named as defendants in my proposed third amended complaint.
- ll. Copies of all records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York and its personnel that identify all of its personnel by name, rank, and NYPD badge number as well as all others who ordered for literature and signs to be seized from members of the public on 6/21/17 at the site of the public town hall meeting that the Mayor conducted in Chinatown in Manhattan as members of the public tried to keep them with them as they attempted to enter the building that hosted that town hall.

- mm. Copies of all of the types of public records in unedited, non-redacted, and searchable form that have been in the possession of the City of New York and its personnel that were made available to the public inside of the buildings in which the Mayor conducted public town hall and resource fair meetings on and after 4/27/17 as I was prevented from attending those public forums from within the rooms in which they were conducted shortly before they began, as they were conducted, and shortly after they ended.
- nn. The names of the government agencies for which those who made public records available to the public inside of the buildings in which the Mayor conducted public town hall and resource fair meetings on and after 4/27/17 as I was prevented from attending those public forums from within the rooms in which they were conducted shortly before they began, as they were conducted, and shortly after they ended.
- oo. Copies of all video recordings in unedited and non-redacted form that were recorded of me on 7/25/17 inside of the subway station located below Broadway by Murray Street near New York City Hall between 5 pm and 6:15 pm by video security cameras installed in that subway station.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST NO. 9:

- a. Defendants object to Document Request No. 9(a) on the grounds that it is vague and ambiguous to the extent it seeks “all communications that personnel of the City of New York engaged in” in relation to “how public town hall meetings, public resource fair meetings, public hearings, and press events” were conducted; overbroad to the extent it seeks documents relating to a variety of topics; and not limited in time or scope, as it purports to seek documents over more than a three-year period. Defendants further object to this request on the grounds that it is not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing “all communications” of the sort described outweighs any likely benefit to plaintiff. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as they allege that the sought after “communications” described in these requests exist. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information

privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

- b. Defendants object to Document Request Nos. 9(b), 9(c), 9(d), and 9(e) on the grounds that they are vague and ambiguous to the extent they request copies of "all communications" or "all records" that personnel of the City of New York "engaged in" in relation to, or otherwise "identify" (1) acts allegedly undertaken to grant and/or deny members of the public access to public Mayoral events since March 1, 2017; (2) "security personnel" and "security duties" at public Mayoral Events since March 1, 2017; (3) the "contractors and consultants who performed security duties" at public Mayoral Events since March 1, 2017; and (4) the "specific nature of security duties" allegedly "performed" by City personnel at public Mayoral events since March 1, 2017; are overbroad to the extent they seek documents relating to a variety of topics; and are not limited in time or scope, as they purport to seek documents over more than a three-year period. Defendants further object to these requests on the grounds that they are unintelligible, insofar as they purport to seek communications made "within the room in which they were conducted and otherwise within 1 foot from where they were conducted in other public areas as they were conducted, shortly before they began, and shortly after they ended"; and otherwise impossible to comply with, as there are no means by which to identify communications subject to the preceding limitation.

Defendants further object to these requests on the grounds that they are not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing “all communications” of the sort described outweighs any likely benefit to plaintiff. Defendants further object to these requests on the grounds that they assume facts not established or true insofar as they allege that the sought after “communications” described in these requests exist. Defendants further object to Document Request No. 9(b) specifically on the grounds that it assumes facts not established or true insofar as it alleges that New York City personnel made plans to grant or deny members of the public access to allegedly public events. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- c. Defendants object to Document Request No. 9(f) on the grounds that it is vague and ambiguous, as to what is meant by “interference with [plaintiff’s] ability to attend public events where the Mayor was present or would be present”; overbroad to the extent it requests “all communications” that the named entities and individuals have allegedly engaged in”; and not limited in time or scope. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “communications” among and between the named entities and individuals of the sort described ever occurred, and that records thereof exist. Defendants further object to Document Request No. 9(f) on the grounds that it is not proportional to the

needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “communications” sought outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff’s attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

- d. Defendants object to Document Request No. 9(g) on the grounds that it is vague and ambiguous as to what is meant by “people who work in journalism and have worked in journalism since February of 2016”; and overbroad to the extent it requests “all communications” that the named entities and individuals have allegedly engaged in about plaintiff. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “communications” among and between the named entities and individuals of the sort described ever occurred, and that records thereof exist. Defendants further object to Document Request No. 9(g) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “communications” sought outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent

it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

- e. Defendants object to Document Request No. 9(h) on the grounds that it is vague and ambiguous to the extent it requests "all communications that have been in the possession" of City "personnel" regarding unspecified alleged "illegal acts and omissions" committed against plaintiff in retaliation for his efforts to attend alleged "public forums." Defendants further object to Document Request No. 9(h) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the "communications" sought outweighs any likely benefit to the plaintiff. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that City "personnel" retaliated against plaintiff for his efforts to attend the alleged "public forums" described in this demands. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

f. Defendants object to Document Request No. 9(i) on the grounds that it is vague, ambiguous to the extent it requests “communications that have been in the possession” of City “personnel” regarding unspecified alleged “illegal acts and omissions” that prevented plaintiff from obtaining certain video evidence; overbroad to the extent it seeks “all” such communications; and not limited in time—as it purports to seek information over a more than three-year period—or scope—in that it purports to seek information relating to undefined “efforts” by the plaintiff to attend an unspecified number of events. Defendants further object to Document Request No. 9(i) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the “communications” sought outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which is not in the possession, custody, or control of the defendants, or any entity represented by this Office, such as information which would be in the possession, custody, or control of a third-party—e.g., the New York State Office of Court Administration. Defendants further object to this request on the grounds, without limitation, that it necessarily seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not

established or true insofar as it alleges that City “personnel” prevented plaintiff from obtaining the video evidence sought through this demand, or that any such video evidence existed. Defendants will not interpose any further response to this request.

- g. Defendants object to Document Request No. 9(j) on the grounds that it is vague and ambiguous to the extent it requests documents that “correspond to all complaints that [plaintiff] reported” to a litany of city, state, and federal agencies; overbroad to the extent it seeks “all” such documents; and not limited in time—as it purports to seek information over a more than three-year period—or scope—in that it purports to seek information relating to unspecified “complaints” by the plaintiff to various entities. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that plaintiff reported the alleged complaints described in this request. Defendants further object to this request on the grounds that it seeks documents not within defendants’ possession, custody, or control, such as information which would be in the custody of a third party—e.g., district attorney’s offices, agencies of the State of New York, or the Federal Bureau of Investigation. Defendants further object to this request on the grounds, without limitation, that it necessarily seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Subject to and without

waiving or in any way limiting these objections, and limiting its response to the logs and closing reports (or their equivalents) for any complaints made by the plaintiff to the CCRB or IAB in connection with his attempts to attend public Mayoral town hall events in 2017, defendants will produce responsive documents, if any, within 30 days, subject to the execution and Court endorsement of an appropriate Stipulation of Confidentiality and Protective Order.¹

- h. Defendants object to Document Request No. 9(k) and all subparts on the grounds that it is vague and ambiguous to the extent it requests materials that City “personnel” “recorded and otherwise took and otherwise arranged to be recorded or taken” within specific “rooms,” “hallways” and “areas”; overbroad to the extent it seeks “all” recordings, audio, visual, and photographic; compound in that it seeks multiple types of documents in a single request; and not limited in time—as it purports to seek information over a more than three-year period—or scope—as it seeks all recordings without regard to subject matter. Defendants further object to this request on the grounds that it is not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing “all audio recordings, video recordings, and photographs” taken and compiled by City “personnel” while attending all “public forums” on and after March 15, 2017 far outweighs any likely benefit to plaintiff. Defendants further object to this request on the grounds, without limitation, that it necessarily seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is

¹ Enclosed please find a copy of the proposed Stipulation of Confidentiality and Protective Order, which was previously served on plaintiff by e-mail on December 17, 2019.

not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that New York City “personnel” took and/or compiled the recordings and photographs sought by plaintiff through this demand. Defendants further object to this request to the extent it seeks information which is publicly available—*e.g.*, videos of mayoral Town Hall events are published on the YouTube channel maintained by the Mayor’s Office. Defendants further object to this request to the extent it seeks information which is already in the possession of the plaintiff. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants will not interpose any further response to this request.

- i. Defendants object to Document Request No. 9(l) on the grounds that it is vague and ambiguous as to what is meant by “personnel”; overbroad to the extent it seeks “all communications in unedited, non-redacted, and searchable form” that City “personnel” have had about plaintiff since February 1, 2016; and not limited in scope to the extent it seeks communications regardless of subject-matter. Defendants further object to this request on the grounds that it is not proportional to needs of this case insofar as the burden and/or expense of obtaining and producing any such records far outweighs any likely benefit to plaintiff. Defendants further object to this request on the grounds,

without limitation, that it seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Subject to and without waiving or in any way limiting these objections, and limiting their response to copies of non-privileged email communications by or between the defendants pertaining to plaintiff's attendance at public Mayoral town hall events in 2017, sent between January 1 and December 31, 2017, defendants will produce responsive documents, if any, within 30 days.

- j. Defendants object to Document Request No. 9(m) on the grounds that it is overbroad to the extent it appears to request all of the "registration lists" described; and not limited in time, as it purports to seek documents over more than a three-year period, or scope—insofar as it seeks information pertaining to an unspecified number of events. Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that the "registration lists" sought exist, and that "unedited, non-redacted, and searchable" versions of thereof are available. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any

party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to Document Request No. 9(m) on the grounds that it is not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing the "registration lists" sought outweighs any likely benefit to plaintiff. Subject to and without waiving or in any way limiting these objections, and limiting their response to the names of the "members of the general public who registered in advance" to attend any public Mayoral town hall events included in Document Request 7(a) of Plaintiff's First Request for Production of Documents, defendants refer plaintiff to the following documents, previously produced on February 18, 2020.

- Mayor's Community Affairs Unit ("CAU") RSVP List for the Town Hall Event held on July 12, 2017, Bates Nos. D29 – D88;
- CAU RSVP List for the Town Hall Event held on September 14, 2017, Bates Nos. D89 – D151.

- k. Defendants object to Document Request No. 9(n) and all subparts on the grounds that it is vague and ambiguous to the extent it seeks "copies of all communications" issued to City "personnel"; overbroad to the extent it requests "all" information regarding the various duties enumerated in subparts (i) through (v) of this request; and not limited in time as it seeks information for a more than three-year period. Defendants further object to this request on the grounds, without limitation, that it seeks information which

is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it is not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing "all communications" of the sort sought through this demand and all of its subparts outweighs any likely benefit to plaintiff. Defendants will not interpose any further response to this request.

1. Defendants object to Document Request No. 9(o) on the grounds that it is vague, ambiguous, and unintelligible as to what is meant by "political rivals"; overbroad to the extent it requests "copies of all communications"; and not limited in time—as no time period is specified—or scope—as no subject-matter is specified. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it

assumes facts not established or true insofar as it alleges that “communications” of the sort described were ever “issued to political rivals of the Mayor and members of the City Council.” Defendants further object to Document Request No. 9(o) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the “communications” sought outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which is not in the possession, custody, or control of the defendants, or any entity represented by this Office, such as information which would be in the possession, custody, or control of a third-party. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants will not interpose any further response to this request.

- m. Defendants object to Document Request No. 9(p) on the grounds that it is vague and ambiguous as to what types of records are being sought; overbroad to the extent it requests “copies of all records”; and not limited in time—no time period is specified—or scope—in that it purports to seek information relating to an unspecified number of events. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the

New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “records” of the sort described. Defendants further object to Document Request No. 9(p) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the “records” sought outweighs any likely benefit to the plaintiff. Defendants will not interpose any further response to this request.

- n. Defendants object to Document Request Nos. 9(q) and 9(r) on the grounds that they are vague and ambiguous as to what types of documents are sought; overbroad to the extent they request “copies of all records”; and not limited in time—as they purport to seek documents over more than a three-year period. Defendants further object to these requests on the grounds that they assume facts not established or true insofar as they allege that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to these requests on the grounds, without limitation, that they seek information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, these requests are not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to Document Request Nos. 9(q) and 9(r) on the grounds that they are not proportional to the needs of the case insofar as the burden

and/or expense of obtaining and producing the “records” sought outweighs any likely benefit to the plaintiff. Defendants further objects to these requests to the extent they seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to these requests.

- o. Defendants object to Document Request No. 9(s) on the grounds that it is vague and ambiguous to the extent it seeks materials that “show members of the public talking with” New York City Mayor Bill de Blasio on public sidewalks; overbroad to the extent it seeks “all audio, video, and photographs” in the City of New York’s possession that allegedly show members of the public talking with New York City Mayor Bill de Blasio on public sidewalks, “while Bill de Blasio has been the Mayor of New York”; and not limited in times—as no time period is specified—or scope—as no subject-matter is specified. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “audio, video, and photographs” of the sort described exist and/or are

currently in the possession of the City of New York. Defendants further object to Document Request No. 9(s) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged audio, video, and photographs sought—which would require conducting a City-wide search for, and review of, audio, video, and photographs for every event that the Mayor has attended from 2014 to the present—outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants will not interpose any further response to this request.

- p. Defendants object to Document Request No. 9(t) on the grounds that it is vague and ambiguous; overbroad to the extent that it requests “all records”; and not limited in time—as it purports to seek information over a more than three-year period—or scope—in that it purports to seek information relating to an unspecified number of events. Defendants further object to this request on the grounds that it is not proportional to the needs of this case insofar as the burden and/or expense of obtaining and producing the records sought through this request outweighs any likely benefit to plaintiff. Defendants further object to this request on the grounds, without limitation, that it necessarily seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,”

namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants will not interpose any further response to this request.

- q. Defendants object to Document Request Nos. 9(u) and 9(v) on the grounds that they are vague and ambiguous to the extent they seek records identifying individuals who "performed work" or "were involved in" the FOIL demands and alleged preventions of video recordings described in these requests; and overbroad to the extent they request "copies of all records" in the possession of the City of New York that identify the precise details—including the names of specific non-party individuals—regarding the responses to plaintiff's numerous FOIL requests, and the alleged prevention of certain video recordings being "made available on the Internet for the public." Defendants further object to these requests on the grounds, without limitation, that they seek information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, these requests are not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object

to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party. Defendants further object to these requests on the grounds that they assume facts not established or true insofar as they allege that “records” of the sort described exist and/or are currently in the possession of the City of New York, as well as that the video recordings described in Document Request No. 9(v) were prevented from public dissemination. Defendants further object to Document Request Nos. 9(u) and 9(v) on the grounds that they are not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the “records” sought outweighs any likely benefit to the plaintiff. Defendants further object to these requests to the extent the information sought is already within the possession, custody, or control of the plaintiff, by virtue of prior disclosures from third-parties, Defendants will not interpose any further response to this request.

- r. Defendants object to Document Request No. 9(w) on the grounds that it is vague and ambiguous as to what is meant by “taken measures to ignore”; overbroad to the extent it requests “copies of all records”; compound, in that it seeks multiple categories of information in a single request; and not limited in time—as it purports to seek information over an unspecified period of time—or scope—in that it purports to seek information relating to plaintiff’s own communications with unspecified persons. Defendants further object to this request to the extent it seeks information plainly in the plaintiff’s possession—*i.e.*, the plaintiff knows the names and identities of any individuals to whom he alleges he sent emails. Defendants further object to this

request on the grounds, without limitation, that it seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that "records" of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to this request on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged "records" described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

s. Defendants object to Document Request No. 9(x) on the grounds that it is vague and ambiguous as to what information is sought; overbroad to the extent it requests “all” records; and not limited in time—as it purports to seek information over a more than three-year period—or scope—in that it purports to seek information relating to an unspecified number of events. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that plaintiff’s constitutional due process rights were violated, or that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to this request on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party. Defendants further object to this

request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- t. Defendants object to Document Request No. 9(y) on the grounds that it is vague and ambiguous as to what information is sought; and overbroad to the extent it requests “all” records. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that New York City Councilman Ritchie Torres claimed plaintiff was violating certain rules during a public hearing that plaintiff allegedly attended and testified at on November 13, 2019. Defendants further object to this request on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession,

custody, or control of a third-party. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- u. Defendants object to Document Request Nos. 9(z), 9(aa), and 9(bb) on the grounds that they are vague and ambiguous as to what is meant by “involved in,” and overbroad to the extent they request “copies of all records” in the City of New York’s possession that “identify all members of the NYPD by name, rank, NYPD badge number, and photographs” who allegedly (1) “illegally coerced” plaintiff to leave City Hall on March 18, 2019; (2) “forced” plaintiff to leave a public town hall meeting allegedly conducted by New York City Mayor Bill de Blasio in Brooklyn on August 30, 2017; and (3) “prevented” plaintiff from attending a public town hall meeting allegedly conducted by New York City Mayor Bill de Blasio in Brooklyn on October 26, 2017. Defendants further object to these requests on the grounds, without limitation, that they seek information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, these requests are not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to these requests on the grounds that they assume facts not established or true insofar as

they allege that members of the NYPD forced/coerced plaintiff to leave, or otherwise prevented him from attending, the alleged public events described, or that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request Nos. 9(z), 9(aa), and 9(bb) on the grounds that they are not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to these requests to the extent they implicate the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants do not interpose any further response to these requests.

- v. Defendants object to Document Request Nos. 9(cc) and 9(dd) on the grounds that they are vague and ambiguous to the extent they request copies of all “records” and “legal settlements” in the City of New York’s possession that “correspond to all court decisions that have been issued” and “legal settlements that have been reached” involving “people that [plaintiff] named as defendants in [plaintiff’s] proposed third amended complaint;” overbroad to the extent they seek documents relating to a variety of topics; and not limited in time or scope, as they purport to seek documents over more than a three-year period. Defendants further object to these requests on the grounds, without limitation, that they seek information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1).

Specifically, these requests are not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Specifically, defendants note that the Court has previously denied plaintiff’s motion seeking leave to file his “proposed third amended complaint.” Defendants further object to these requests on the grounds that they assume facts not established or true insofar as they allege that records or legal settlements of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to these requests to the extent they seek information which is publicly available—*i.e.*, court records. Defendants further object to these requests on the grounds that they are not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” and “legal settlements” described outweighs any likely benefit to the plaintiff—plaintiff’s “proposed third amended complaint” consisted of at least six documents, and identified a litany of potential new defendants. Defendants further object to these requests to the extent they implicate the security and privacy interests of persons not parties to this action,. (See ECF No. 405). Defendants further object to these requests to the extent they seek information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to these requests.

w. Defendants object to Document Request No. 9(ee) on the grounds that it is vague and ambiguous to the extent it requests “copies of all records” in the City of New York’s possession that allegedly “correspond” to complaints against “people that [plaintiff] named as defendants in [plaintiff’s] proposed third amended complaint,” as well as the investigations conducted and “disciplinary and corrective action” taken in response thereto; overbroad to the extent it seeks documents relating to a variety of topics; and not limited in time or scope, as it purports to seek documents over more than a three-year period. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that complaints, investigations, and/or disciplinary action were undertaken against the “people that [plaintiff] named as defendants in [plaintiff’s] proposed third amended complaint.” Defendants further object to these requests to the extent they seek information which is publicly available. Defendants further object to Document Request No. 9(ee) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to

these requests to the extent they implicate the security and privacy interests of persons not parties to this action, as the Court has previously denied plaintiff's motion seeking leave to file a third amended complaint. (See ECF No. 405). Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants do not interpose any further response to this request.

- x. Defendants object to Document Request No. 9(ff) and all subparts on the grounds that it is vague and ambiguous as to what is meant by "measures...taken to block Twitter accounts that they have believed I have used"; overbroad to the extent it requests "all" records; and not and not limited in time—no time period is specified—or scope—in that it purports to seek information relating to unspecified persons, events, and Twitter accounts. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that "personnel" from the City of New York undertook efforts to "block Twitter accounts that they have believed that I have used from able to access information . . . ,"

or that any records of those efforts exist. Defendants further object to Document Request No. 9(ff) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which is not in possession of the defendants, or any entity represented by this Office, such as information that would be in the possession, custody, or control of a third-party—*e.g.*, Twitter. Defendants further object to this request to the extent it seeks information which is already in plaintiff’s possession, custody, or control, by virtue of prior disclosures by third-parties, or his own involvement in the alleged underlying events. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- y. Defendants object to Document Request No. 9(gg) and all subparts on the grounds that it is vague and ambiguous as to what is meant by “responsible for”; and overbroad to the extent it requests “copies of all records” in the City of New York’s possession that allegedly contain the precise details—including the names of specific non-party individuals—regarding the alleged removal from the Internet of a video recording of a public resource fair conducted by New York City Mayor Bill de Blasio on July 18, 2017. Defendants further object to this request on the grounds, without limitation, that

it seeks information which is not relevant to any party's claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not "relevant to the claims that have survived the motion to dismiss," namely, plaintiff's claims that his "First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends." (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that "records" of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request No. 9(gg) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged "records" described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent that it seeks information which is already in plaintiff's possession, custody, or control, by virtue of prior disclosures from third-parties—*e.g.*, relevant correspondence regarding plaintiff's alleged FOIL request. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

z. Defendants object to Document Request Nos. 9(hh) and 9(ii) on the grounds that they are vague and ambiguous to the extent that they request records that identify which “members of the press” attended all alleged public forum events on and after March 15, 2017, as well as the “press conferences and press events that the Mayor conducted” on July 25, 2017, January 4, 2019, and March 22, 2019; overbroad to the extent they request “copies of all records”; and not limited in time—as they purport to seek information over a more than three-year period—or scope—as they seek information relating to undefined “efforts” by the plaintiff to attend an unspecified number of events. Defendants further object to these requests on the grounds that they assume facts not established or true insofar as they allege that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to these requests on the grounds, without limitation, that they seek information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, these requests are not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to Document Request Nos. 9(hh) and 9(ii) on the grounds that they are not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the “records” sought outweighs any likely benefit to the plaintiff. Defendants will not interpose any further response to these requests.

aa. Defendants object to Document Request No. 9(jj) on the grounds that it is vague and ambiguous to the extent it requests “copies of all records” in the City of New York’s possession that contain “GPS and geofencing data for electronic devices that were in the possession of its personnel” at the alleged public forum events described by plaintiff; overbroad to the extent it seeks documents relating to a variety of topics; and not limited in time or scope, as it purports to seek documents over more than a three-year period. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request No. 9(jj) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request on the grounds that it seeks documents not within defendants’ possession, custody, or control, such as information which would be in the custody of a third party. Defendants further object to this request to the extent it implicates the security and

privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- bb. Defendants object to Document Request No. 9(kk) on the grounds that it is vague and ambiguous as to what is mean by “aliases”; overbroad to the extent it requests “all” records; and not limited in time—as no time period is specified—or scope—as no subject-matter is specified. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants note that the Court has previously denied plaintiff’s motion seeking leave to file his “proposed third amended complaint.” Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that any individual has utilized any “alias” and that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request No. 9(kk) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged

“records” described outweighs any likely benefit to the plaintiff—plaintiff’s “proposed third amended” complaint consisted of at least six documents, and identified a litany of potential new defendants. Defendants further object to these requests to the extent they implicate the security and privacy interests of persons not parties to this action, as the Court has previously denied plaintiff’s motion seeking leave to file a third amended complaint. (See ECF No. 405). Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- cc. Defendants object to Document Request No. 9(11) on the grounds that it is vague and ambiguous as to what is meant by “literature and signs”; and overbroad to the extent it appears to request “copies of all records” in the City of New York’s possession that identify the “name, rank, and NYPD badge number, as well as all others” involved in an alleged seizure of “literature and signs” from members of the public at a public town hall meeting with New York City Mayor Bill de Blasio on June 21, 2017. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the

New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that “literature and signs” were seized from members of the public at the June 21, 2017 public town hall meeting, and that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request No. 9(l) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it implicates the security and privacy interests of persons not parties to this action. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- dd. Defendants object to Document Request No. 9(mm) on the grounds that it is vague and ambiguous to what is meant by “all of the types of public records”; and overbroad to the extent it requests “copies of all of the types of public records” in the City of New York’s possession that were allegedly made available to the public at and after the town hall event on April 27, 2017, as well as the “names of the government agencies” that allegedly made these records available. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on the grounds that it assume facts

not established or true insofar as it alleges that “records” of the sort described exist and/or are currently in the possession of the City of New York. Defendants further object to Document Request No. 9(mm) on the grounds that it is not proportional to the needs of the case insofar as the burden and/or expense of obtaining and producing the alleged “records” described outweighs any likely benefit to the plaintiff. Defendants further object to this request to the extent it seeks information which would be protected from disclosure by the law-enforcement privilege, official-information privilege, deliberative process privilege, attorney-client privilege, or any other applicable privileges. Defendants will not interpose any further response to this request.

- ee. Defendants object to Document Request No. 9(nn) on the grounds that it is vague and ambiguous as to what is meant by “made public records available to the public”; overbroad to the extent it appears to seek the names of all “government agencies” that allegedly “made public records available to the public” “on and after April 27, 2017”; and not limited in time or scope, as it purports to seek documents over more than a three-year period. Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on the grounds that it is unintelligible, insofar as it purports to seek “the names of the government agencies for which those who made public records available to the public inside of the buildings in which the Mayor conducted public town hall and resource fair meetings on and after 4/27/17 . . .” Defendants will not interpose any further response to this request.

ff. Defendants object to Document Request No. 9(oo) on the grounds that it is vague and ambiguous as to what is meant by “video security cameras”; and overbroad to the extent it appears to request “copies of all video recordings” that were allegedly recorded of plaintiff on July 25, 2017 inside the “subway station located below Broadway by Murray Street near New York City Hall between 5 pm and 6:15 pm.” Defendants further object to this request on the grounds, without limitation, that it seeks information which is not relevant to any party’s claims or defenses and thus is not discoverable under Fed. R. Civ. P. 26(b)(1). Specifically, this request is not “relevant to the claims that have survived the motion to dismiss,” namely, plaintiff’s claims that his “First Amendment and Equal Protection rights were violated outside a city-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.” (See ECF Nos. 286, 294). Defendants further object to this request on the grounds that it assumes facts not established or true insofar as it alleges that video recordings of plaintiff were taken at the date, time, and location described in this request. Defendants further object to this request on the grounds that it seeks “video recordings” not within defendants’ possession, custody, or control, such as materials which would be in the custody of a third-party. Defendants further object to this request to the extent it seeks information which may no longer exist by operation of law.

[CONTINUED ON NEXT PAGE]

Defendants further object to this request to the extent it seeks information which is already in plaintiff's possession, custody, or control, by virtue of prior disclosures by third-parties. Defendants will not interpose any further response to this request.

Dated: New York, New York
September 8, 2020

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TOWAKI KOMATSU,

Plaintiff,

- against -

CITY OF NEW YORK, et al.,

Defendants.

**STIPULATION OF
CONFIDENTIALITY
AND PROTECTIVE
ORDER**

-----X 18 Civ. 3698 (LGS) (GWG)

WHEREAS, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Defendants City of New York, Inspector Redmond, Lieutenant Nieves, Detective Gerola, Officer Beato, and Officer Liu must disclose certain documents and information to Plaintiff;

WHEREAS, Pursuant to Rules 33 and 34, Plaintiff seeks certain documents and information from Defendants pursuant to their discovery demands in this action;

WHEREAS Defendants deem and/or may deem some of this information and documents to be confidential, private and/or subject to a law enforcement and/or governmental privileges and/or other applicable privileges;

WHEREAS, Defendants object to the production of those documents unless appropriate protection for their confidentiality is assured; and

WHEREAS, good cause exists for the entry of an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and the attorneys for Defendants as follows:

1. This Action shall mean Towaki Komatsu v. City of New York, et al., 18 Civ. 3698 (LGS) (GWG).

2. As used herein, without waiving the right to later interpose any objections concerning these documents, “Confidential Materials” shall mean¹:

- (A) Employment/personnel related records for Defendants, including performance evaluations;
- (B) Any disciplinary histories or other records from Civilian Complaint Review Board, Internal Affairs Bureau, other New York City Police Department divisions, or any other governmental agency;
- (C) Full names and contact information of non-party individuals and/or witnesses;
- (D) NYPD training materials, including, but not limited to, the Patrol Guidelines, if not publicly available, Administrative Guide, Operation Orders, training manuals, and/or legal bulletins;
- (E) Other documents and information that may in good faith, during the pendency of this litigation, be designated “Confidential Materials” by the Defendants or the Court.

3. The documents and information as defined in Paragraph 2 shall not be deemed “Confidential Materials” to the extent, and only to the extent, that they are: (a) obtained by Plaintiff from sources other than Defendants, or (b) are otherwise publicly available.

4. Defendants shall designate in good faith particular documents “Confidential Materials” by labeling such documents “Confidential” and by designating such documents by

¹ The identification of any specific documents in Paragraph 2 does not waive the right to interpose any objection concerning same including to its production in this action.

bates number in a writing directed to Plaintiff. Defendants shall have a reasonable time to inspect and designate as “Confidential Materials” documents sought from third parties.

5. Any documents produced by a non-party pursuant to a subpoena in this Action and that are designated as Confidential Material by Defendants shall be governed by the terms of this Stipulation of Confidentiality and Protective Order.

6. Defendants reserve the right to designate any document confidential pursuant to this agreement if necessary after production of such documents to Plaintiff.

7. Inadvertent production of any document or information which is privileged, confidential, and/or was prepared in anticipation of litigation, is otherwise immune from discovery, shall not constitute a waiver of any privilege or confidentiality or of another ground for objecting to discovery with respect to that document, or its subject matter, or the information contained therein, or of Defendants’ right to object to the use of any such document or the information contained therein during any proceeding in this litigation or otherwise.

8. If Plaintiff objects to the designation of particular documents as “Confidential Materials,” they shall state such objection in writing to the Defendants, and the parties shall endeavor in good faith to resolve such objection. If such objection cannot be resolved, then, within fourteen (14) days of receiving Defendants’ response to Plaintiff’s objection, Plaintiff shall seek judicial intervention. Any such materials or information shall remain Confidential until the parties resolve the objection or there is a resolution of the designation by the Court.

9. Plaintiff and his counsel shall not use the Confidential Materials for any purpose other than for the preparation or presentation of his case in this Action.

10. Plaintiff shall not disclose the Confidential Materials to any person, except under the following conditions:

- a. Disclosure may be made only if necessary to the preparation or presentation of Plaintiff's case in this action, to those individuals described in the subparagraphs below.
- b. Disclosure before trial may be made only to Plaintiff, to an expert who has been retained or specially employed by his counsel in anticipation of litigation or preparation for this action, to a witness at deposition, or to the Court.
- c. Before any disclosure is made to a person listed in subparagraphs (a) and (b) above (other than to the Court), Plaintiff shall provide each such person with a copy of this Stipulation of Confidentiality and Protective Order for review, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution of this case and not to further disclose the Confidential Materials except in testimony taken in this case.

11. Deposition testimony concerning any Confidential Materials which reveals the contents of such materials shall be deemed confidential, and the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential Materials within the meaning of this Stipulation of Confidentiality and Protective Order.

12. Any party seeking to file papers with the Court that incorporate Confidential Materials or reveal the contents thereof shall first make an application to the Court for

permission to file under seal the specific portions of those papers disclosing Confidential Materials and shall indicate whether any other party objects to that request, or shall make an application to the Court to have the relevant materials de-designated as confidential, pursuant to Paragraph “8” of this Stipulation. No materials shall be filed under seal unless the Court has issued an order approving the filing, in which event the filing shall follow the rules of the District Court in which the Action is filed and/or the Individual Rules of the judge to whom the papers are directed.

13. Where the confidential information is not material to issues addressed in court submissions and the parties agree in writing that the redaction of personal, confidential and/or identifying information would be sufficient to protect the interests of parties or non-parties, Plaintiff and Defendants may file redacted documents without further order of the Court.

14. In addition, where reasonable advance notice is given by Plaintiff or and the parties agree in writing to the use of the confidential information in support of a motion for summary judgment or any other dispositive motion by Plaintiff, or at a trial on the merits in this matter, such information will not be subjected to the instant protective order. In the event that the Confidential Materials may be disclosed at a hearing or at trial, the Court may impose appropriate safeguards for the presentation of such Confidential Materials.

15. Within 30 days after the termination of this Action, including any appeals, the “Confidential Materials,” including all copies, notes, and other materials containing or referring to information derived therefrom (other than the Court’s copies of such materials), shall be returned to Defendants’ attorneys or, upon Defendants’ attorneys’ consent, destroyed (except as to privilege material which shall be destroyed), and all persons who possessed such materials shall verify their return or destruction by affidavit furnished to Defendants’ attorney.

Notwithstanding this provision, Plaintiff may retain a copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Materials, so long as appropriate safeguards are imposed to prevent the use of any copies for any purpose. Any such copies that contain or constitute Confidential Materials remain subject to this Stipulation of Confidentiality and Protective Order.

16. This Stipulation will survive the termination of the litigation and will continue to be binding upon all persons to whom Confidential Materials are produced or disclosed. All documents or information that has been deemed confidential pursuant to this order, including all copies and non-conforming copies thereof, shall remain confidential for all time. Once the Action has been resolved, including all appeals, the Confidential Materials, including all copies and non-conforming copies thereof, shall not be used by Plaintiff, or anyone receiving confidential documents pursuant to Paragraph “10” herein, for any purpose without prior Court approval.

17. This Stipulation shall be binding upon the parties immediately upon signature and shall be submitted to the Court for entry as an Order.

18. Plaintiff acknowledges that failure to comply with the terms of this Stipulation, following entry as an Order by the Court, may be grounds for dismissal of his claims with prejudice under Fed. R. Civ. P. 37(b).

19. The terms of this Stipulation and Protective Order shall be binding upon all current and future parties to this Action and their counsel.

20. Nothing in this Stipulation and Protective Order shall be construed to limit Defendants’ use of the Confidential Materials in any manner.

21. This Stipulation of Confidentiality and Protective Order may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation and Protective, which shall be binding upon and effective as to all Parties.

Towaki Komatsu
Plaintiff *pro se*
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Bronx, NY 10460

JAMES E. JOHNSON
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007

By: _____
TOWAKI KOMATSU

By: _____
HANNAH V. FADDIS

SO ORDERED:

HON. GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

Dated: _____, 2019

EXHIBIT A

1. The undersigned hereby acknowledges that s/he has read the Stipulation of Confidentiality and Protective Order dated _____ 2019, entered into the action entitled Towaki Komatsu v. City of New York, et al., 18 Civ. 3698 (LGS) (GWG), understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with the prosecution of this case, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date: _____

Signature: _____

Print Name: _____

Occupation: _____