

**Testimony of Chelsea Davis, Chief Strategy Officer, Office of the First Deputy Mayor
City Council Committee on Public Safety
February 16th, 2021**

Good morning Chair Adams and members of the Public Safety Committee. My name is Chelsea Davis, and I am the Chief Strategy Officer in the Office of the First Deputy Mayor. I am joined by 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, Oleg Chernyavsky, Assistant Deputy Commissioner for Legal Matters, 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.

Creating a shared vision of public safety and rebuilding mutual trust between the police and the people they serve requires substantive outreach and engagement. While a preliminary plan, as required by Executive Order 203, will be released in the coming days, we know that a plan alone will not address long-standing policing concerns raised by communities that have historically borne the brunt of over-policing. We must and we will continue to seek public input and work to ensure that policing reflects the needs of communities long past the April 1st deadline to submit this reform plan. We understand that police must earn their legitimacy in the eyes of those they serve.

Solidifying and strengthening new forms of engagement was central to how we created this plan, and it is a central aspect of the plan moving forward. The Mayor has already announced some reforms including, for the first time ever, giving communities a voice in choosing their precinct commanders. We will empower panels of residents to interview the Department's proposed candidates for commander in their local precinct. These panels will advise on the best person to serve them, and produce annual performance reviews of the precinct commander, holding commanders accountable to the community.

Advocates, communities, and NYPD members themselves spoke about their strong desire for officers to do a better job understanding the cultures of the neighborhoods they serve. In response, we announced that this spring we will expand the People's Police Academy, a community-led training program for local precinct personnel. In addition, whenever an officer starts working in a new precinct, they will undergo an intensive course, including field training and meeting with community leaders, service providers, small businesses, and youth organizers. Embedding community engagement into training will help ensure that residents will have a voice in determining what public safety means and looks like in their neighborhood.

It's vital that we create a community-wide response to one of our most serious public-safety challenges: gun violence. We will launch the NYC Joint Force to End Gun Violence, which will be comprised of NYPD members, Cure Violence groups, District Attorneys, the Mayor's Office of Criminal Justice, other City agencies, and community-based organizations. This group will focus on the small number of people who drive most of the gun violence in our city by concentrating on the 100 blocks that have the highest numbers of shootings, as well as a disproportionate number of 311 and 911 calls.

Community stakeholders and advocates have emphasized the pressing need for greater police accountability. The Dinkins plan is a core component of our efforts, and it will significantly increase accountability by expanding the oversight and investigative authority of the Civilian Complaint Review Board (CCRB). The Dinkins Plan expands the information the CCRB can access and the range of issues it can investigate. The Dinkins Plan also establishes the Patrol Guide Review Committee, which will use lessons learned from individual cases to drive policy reforms. In the single largest structural change since the CCRB was formed, the Dinkins plan will also consolidate the Commission to Combat Police Corruption (CCPC) and the Office of the Inspector General of the NYPD (OIG) with the CCRB. This historic reform will allow the CCRB to initiate investigations and will guarantee timely access to body worn camera footage, as well as grant full access to officers' disciplinary and employment histories for substantiated cases. The plan will also give CCRB the authority to investigate individual instances of alleged 'bias-based policing' misconduct. With expanded access to information and combined authority, the newly strengthened CCRB can do more to effectively hold officers accountable and improve public trust.

We have also heard a lot about the need for further transparency and accountability in the disciplinary process, both from members of the community and members of service, and we understand the need for reform. The administration, with council's help, has made great strides in improving the disciplinary system, including the publication of the disciplinary matrix and subsequent Memorandum of Understanding (MOU) between the NYPD and the CCRB. The matrix has been finalized and is posted online at nyc.gov/disciplinematrix.

The matrix is the culmination of more than two years of work, which required collaboration between the Department, CCRB, and numerous advocacy organizations and community stakeholders. Just to give you a sense of scope, the NYPD received 560 comments on the preliminary draft of the matrix, from advocacy organizations, community-based organizations, clergy, oversight entities, and members of the public, on its preliminary draft. We took all of that in and worked to find the right balance. We believe that the Matrix is fair, transparent and applies appropriate penalties to a wide range of misconduct. It is also a living document that can be amended if necessary.

The MOU takes the matrix a step further. It's an agreement that applies the matrix to all CCRB discipline cases and confirms that the NYPD and CCRB will use the penalty guidelines to determine penalties for officer misconduct. The agreement also empowers the CCRB by ensuring access to NYPD employment history in any case where the CCRB investigator recommends that an allegation of misconduct be substantiated. The agreement also outlines that there will be an annual review, starting in August 2021, of whether the agreement is accomplishing the mutual goal of consistent and fair discipline. I also want to note that the matrix is not set in stone. We are committed to continuing to review the matrix with community partners and update it as necessary.

To conclude, I want to talk about the three bills before us today. Introduction 1671 requires the Police Department to submit quarterly reports on all traffic encounters, including demographic information for those pulled over or stopped at checkpoints. The administration supports this the goals of this legislation and thinks further transparency into who is stopped and where the stop

occurs is important. Collecting some data may require coordination with the State. We look forward to continued conversations with the Council.

Intro 2220 would create a new local civil right, providing protections against unreasonable search and seizure and create a private right of civil action for violations. It specifies that qualified immunity cannot be used as a defense, and any violator would be personally liable for the lesser of \$25,000 or 5% of the final judgement. If that sum cannot be collected from the violator, the City would be required to pay. This bill seeks to address two perceived issues, that plaintiffs can't receive compensation when they suffer real harms and that officers are protected from paying out of pocket. However, existing law already affords plaintiffs just compensation. In addition, officers who violate law and policy must pay out of pocket for their defense, settlements and judgements based on current New York State Law.

This bill creates a strict liability offense even for officers acting in good faith. An officer who follows the patrol guide could be found personally liable for up to \$25,000 if the patrol guide is later found to be incorrect. This creates uncertainty for members of service and makes it difficult for them to effectively do their jobs. The administration opposes this legislation.

Intro 2209 would require the advice and consent of the Council for any new Police Commissioner. The administration opposes this piece of legislation. The Council already has oversight over the Department, and we do not think that creating an additional political process for installing a new Commissioner will enhance that oversight. The Police Commissioner should report to the Mayor, as the chief executive of the City.

I want to thank the Chair and the members of the Committee for inviting me to testify. We want to continue the conversation with the Council on these proposals as we move along in the reform process. I look forward to any questions you may have.



INTRO 2220: A Local Law to amend the administrative code of the City of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions

**COBA PRESIDENT BENNY BOSCIO JR's TESTIMONY BEFORE THE
NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY**

**Adrienne Adams
Chairwoman**

February 16, 2021

NEW YORK CITY COUNCIL

Good morning Chairwoman Adams and the distinguished members of your committee. My name is Benny Boscio Jr. and I am the President of the Correction Officers' Benevolent Association, the second-largest law enforcement union in the City of New York. Our members, as you know, provide care, custody, and control of over 5,400 inmates daily in the nation's second-largest municipal jail system.

I submit this testimony in objection and opposition to Introduction 2220, a Local Law to amend the administrative code of the City of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certification information regarding such civil actions. Specifically, Int. 2220 creates a local statutory right of security mirroring the protections of the 4th Amendment and authorizes private rights of action against employees of the Police Department and peace officers, such as Correction Officers, who violate that right. The proposal creates personal liability for a defendant and prohibits qualified immunity as a defense. Personal liability for an individual law enforcement officer and peace officer under the proposal could reach \$25,000, in addition to the costs of defending against claims.

While the purported rationale of this legislation, as suggested by its prime sponsor, is to "hold officers accountable if those officers violate their civil rights," the proposal demonstrates a disturbing ignorance of the duties and responsibilities of Correction Officers and a shocking misunderstanding of the doctrine of qualified immunity.

Qualified immunity is a judicially created doctrine that provides protections from personal liability for government officials—not just law enforcement officers—who are acting lawfully and have not violated clearly established rights. The Supreme Court has long recognized that qualified immunity is necessary to ensure

that government officials are not subjected to frivolous lawsuits in their personal capacities for carrying out the duties of their public offices, which not only could be financially burdensome but also discourages them from acting. Qualified immunity does not provide absolute immunity to law enforcement officers who intentionally violate the constitutional rights of individuals. It allows officers to perform their duties, to the best of their abilities, without the constant fear of being sued.

Our members understand that we will be subjected to life-threatening risks when joining the New York City Department of Correction. Upon taking our oath to serve and protect the public, we are responsible for running towards danger to break up inmate on inmate fights that often involve contraband and self-made weapons. However, very few would be willing to continue taking those same risks, if it might render them bankrupt or leave their families destitute—even when acting in good faith and acting pursuant to their duties and responsibilities as a Correction Officer.

Ultimately, the Council's bill is misguided. Qualified immunity does not prevent prosecution for violations of criminal law; it does not bar recovery in civil suits when an officer violates clearly established rights; and it does not prevent disciplinary action. Int. 2220 will only serve to embolden the inmates in our custody by providing them with the ability to use the threat of frivolous lawsuits against Correction Officers to discourage them from carrying out their duties.

Inmate lawsuits against the City of New York are very commonplace because the inmates know full well that the city is always quick to settle these suits, often resulting in multi-million-dollar settlements for the inmates. Our members cannot be expected to put their lives on the line and carry out their responsibilities that include searching and seizing inmate contraband, only to subject themselves to

civil liabilities simply for doing their jobs. I strongly urge you to consider the negative consequences inherent in this proposed legislation and to carve Correction Officers out of this bill entirely.



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Testimony of Detective Paul DiGiacomo

President, Detectives' Endowment Association, Inc.

Committee on Public Safety

New York City Council

February 16, 2021

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Dear Chairwoman Adams and Members of the Committee on Public Safety,

I am Detective Paul DiGiacomo, and I am the President of the New York City Detectives' Endowment Association. I have the privilege of representing more than 19,000 active and retired New York City Detectives.

I submit this testimony in strenuous objection and opposition to Introduction 2220, a Local Law to amend the Administrative Code of the City of New York, ostensibly in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certification information regarding such civil actions. Specifically, Int. 2220 creates a local statutory "right of security" identical to the already existing protections of the 4th Amendment of the United States Constitution, and authorizes private rights of action against employees of the Police Department and Peace Officers who allegedly violate those rights. The proposal expressly creates personal liability for a defendant and prohibits asserting qualified immunity as an affirmative defense to such actions. Personal liability for an individual law enforcement Officer under the proposal could reach \$25,000, in addition to the costs of defending against claims.

While the purported rationale of this legislation, as suggested by its prime sponsor, is to "hold Officers accountable if those

THE POLICE UNION REPRESENTING THE GREATEST DETECTIVES IN THE WORLD
AFFILIATIONS – NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS (NAPO)
NEW YORK STATE ASSOCIATION OF PBAs

Officers violate their civil rights,”¹ the proposal demonstrates outright contempt for law enforcement officials and a shocking misunderstanding of the doctrine of qualified immunity. In the aftermath of the tragic killing of George Floyd, proposals to eliminate qualified immunity for Police Officers began to resonate. The United States Congress and several state and local legislatures introduced legislation that sought to eliminate qualified immunity for Police Officers, similarly claiming the proposals were necessary for police accountability. However, qualified immunity played absolutely no role in the killing of George Floyd. Further, the doctrine did not prevent the criminal prosecution of the Officers involved in Mr. Floyd’s death. In fact, qualified immunity is not available as a defense in any criminal proceedings. Nor would qualified immunity be available as a defense in the civil lawsuit stemming from Mr. Floyd’s death as it does not protect intentional deprivations of an individual’s civil or statutory rights.

Instead, qualified immunity is a judicially created doctrine that provides protections from personal liability for government officials — not just law enforcement Officers — who are acting lawfully and have not violated clearly established rights. The Supreme Court has long recognized that qualified immunity is necessary to ensure that government officials are not subjected to frivolous lawsuits in their personal capacities for carrying out the duties of their public offices, which not only could be financially burdensome, but also discourages them from acting. Qualified immunity is just that: *qualified*; it does not provide absolute immunity to law enforcement Officers to intentionally, or even recklessly, violate the Constitutional rights of individuals. It allows Officers to perform their duties to the best of their abilities, without the constant fear of being sued. It also recognizes that the actions of law en-

¹ New York City Council Press Release 4-2021, “City Council Unveils Legislative Plans to Redefine Public Safety and Strengthen Police Accountability.”

forcement Officers should be judged from the perspective of a reasonable Officer in the same circumstances and not based on the results of his or her actions in hindsight.

Although the sponsor of Int. 2220 has claimed that “[t]he legislation is not intended to be vindictive — the personal liability is limited,” the standards for liability in the bill evidence otherwise. In addition to expressly providing that “[i]mmunity is not a defense to liability ... including any form of ... qualified immunity,”² the bill also expressly provides that the good faith of an Officer, or the reasonable belief that conduct was lawful, are also not defenses. Essentially, the bill would establish a strict liability standard.

Our members understand we will be subjected to risks to life and limb when joining our ranks. Despite this knowledge, we commit by swearing and fulfilling the oath to “serve and protect.” Upon taking that oath, we commit ourselves to be among those who run toward danger to allow others to run to safety. However, very few would be willing to continue taking those same risks if it might render them bankrupt or leave their families destitute — even when acting in good faith and acting with a reasonable belief that what they are doing is lawful.

The proposal also ignores the role that the Office of the Corporation Counsel plays in representing our members in these lawsuits. Where an Officer was acting within the scope of his or her employment, and in compliance with Police Department rules and regulations, he or she is entitled to representation by the Corporation Counsel in such lawsuit, and likewise entitled to be indemnified in the event of any judgment in the case. The reality in many of these cases is that the Corporation Counsel, for reasons of their own and not based on a finding of any wrongdoing, chooses to settle these cases before trial. Under your proposal, however, the Of-

² Introduction 2220 § 8-804

ficer would be required personally to pay towards a settlement in which he or she played no role in brokering. Even if an Officer doesn't want to settle – because the Officer firmly believes he or she did nothing wrong in the incident in question – this proposal requires the Officer's contribution towards such settlement. By including settlements in this proposal, the City Council will be creating a statute-based conflict of interest between the City's lawyers and their clients, New York City Police Officers, who will need separate legal representation at a cost to New York City tax payers greater than any settlement contribution contemplated by this legislation.

Ultimately, the Council's targeting of qualified immunity for elimination is grossly misguided. Qualified immunity does not prevent prosecution for violations of criminal law; it does not bar recovery in civil suits when an Officer violates clearly established rights; and it does not prevent disciplinary action. Int. 2220 will only serve to embolden the criminal element by providing the ability to use the threat of frivolous lawsuits against law enforcement Officers to discourage them from carrying out their duties.

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MEMORANDUM IN OPPOSITION TO INT. NO. 2212-2021

The Police Benevolent Association of the City of New York, Inc. (“NYCPBA”) and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting every resident, visitor and business operating within the five boroughs, oppose the New York City Council’s (“Council”) proposed bill in relation to requiring the New York City Commission Human Rights (“NYCCHR”) to investigate past professional conduct by employees of the New York City Police Department (“NYPD”).¹

As an initial matter, there are ample safeguards in place that prohibit biased acts and provide consequences for those members of the NYPD found to have committed such acts. These include, but are not limited to following:

- Biased-based profiling is prohibited, per Section 14-151 of the N.Y.C. Administrative Code;
- NYPD’s policy prohibits racial profiling and biased-based policing, per Patrol Guide Procedure No. 203-25;
- NYPD’s policy prohibits discourteous and similar remarks based on another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability and knowingly associating with prohibited persons or organization, per Patrol Guide Procedure No. 203-10;
- NYPD’s social media policy provides guidance on prohibited conduct as outlined in Patrol Guide Procedure No. 203-32.

In addition, the Civilian Complaint Review Board investigates allegations of offensive language, including the use of slurs and derogatory language related to someone’s actual or perceived protected status. Finally, the NYC Commission on Human Rights (“NYCCHR”) has had the legal authority to investigate complaints of biased policing since the 2013 amendment to Section 14-151 of the NYC Administrative Code, which states that “[a]n individual subject to bias-based profiling ... may file a complaint with the [NYCCHR].”

Despite the existence of a comprehensive scheme that prohibits and punishes such conduct, the Council has proposed this bill without citing any evidence that suggests a problem exists that is not being addressed. The lone example cited in the Council’s Committee Report on the proposed bill evidences that

¹ The specific bill referenced here is Int. No. 2212-2021.

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4770945&GUID=B5D55B19-D0FD-440C-999F-1708BF09F374&Options=&Search=> (the “Bill”).

the individual was held accountable promptly.² Absent evidence of the existence of a problem, and in light of the existence of a comprehensive scheme addressing the same subject matter, there is no reason for the legislature to further act in the area.

Second, the law itself is defective in a number of significant respects, as set forth in detail below, which should foreclose moving forward with this bill.

Broadly, the bill authorizes the NYCCHR and its Chairperson to initiate its own investigations into any current or former employee of the NYPD when such person is found by the NYCCHR or any referring entities³ “to have engaged in an act exhibiting prejudice, intolerance or bigotry, or of unlawful discrimination against any person or group of persons, regardless of whether such employee was on or off duty when engaging in such act.” None of those critical terms is defined, which is particularly troubling given First Amendment rights that will undoubtedly be implicated in the event the standards do not comport with existing law.

Instead, the bill vests in the Chairperson the power to “determine what constitutes an act exhibiting prejudice, intolerance or bigotry, or of unlawful discrimination, for purposes of initiating such investigation.” The bill amplifies the ambiguity by proposing that “[s]uch acts include but are not limited to any conduct motivated by or based on animus against any protected class of person under this title, such as participation in any capacity in an online forum where racist, biased or hateful speech or racist, biased or hateful ideology is supported or promoted; any use of hate symbols on one’s person, in the workplace or otherwise in public; or threatening or harassing another person verbally or in writing on the basis of such animus.” For example, what is “conduct motivated by”, as used here? How is “based on animus” defined?

In addition to the lack of any meaningful definition of the prohibited conduct that could form the basis of an investigation by the NYCCHR, the bill establishes no standard as to what level of proof is needed by the identified referring agencies in order to refer a matter and to trigger the NYCCHR’s investigatory authority under the bill.

Moreover, the bill affords no process to the police officer subject to a referral to contest the finding prior to any such finding being referred to the NYCCHR.

All this is critical because once referred to the NYCCHR, the bill authorizes a fishing expedition into any past conduct of the police officer from his or her date of hire, including any past arrest, detainment, response to 911 call or any other emergency, any investigation conducted by such member, any past testimony, regardless of whether such activity is related to the conduct that formed the basis of the referral. The bill ignores the harm inflicted on police officers in the event a single referral is made which then opens to scrutiny all past police conduct regardless of its connection to the underlying conduct at issue, as well as the harm inflicted on the NYPD as an agency, as a result of every action of every police officer being questioned in like circumstances. No analog exists for this type of inquisition in the public or private sector.

It is particularly insidious as it relates to law enforcement where many allegations made against NYPD officers are false, made in bad faith or unproven. In fact, for example, a large majority of CCRB complaints are not substantiated, but the mere fact that they were investigated even on unsubstantiated

² Moreover, a NYPD representative testified that they are in the process of engaging an outside vendor to investigate work performed by a division where this individual worked and committed to making this report available to the Council. *See* Testimony of NYPD Representative at February 8, 2021 Hearing (available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=837161&GUID=7DCEE1ED-88BC-49EA-B0CD-27B797A29DE5&Options=&Search=>).

³ The bill lists as potential referring agencies to include the NYPD, Civilian Complaint Review Board, the Commission to Combat Police Corruption, Department of Investigation, the Attorney General of the State, District Attorney for a county within the City, a court of competent jurisdiction, or any other officer or body designated by the commission.

claims causes reputational harm and may cause adverse career consequences. Here too, proceeding upon an allegation not subject to challenge by an officer and authorizing overreaching investigations into all past conduct of an officer based on a single referral is unprecedented, subjecting police officers and their families to harassment and unwarranted retaliation. This concern is exacerbated even further as the investigations conducted under the bill are to be included in a centralized database under Section 14-190 of the N.Y.C. Administrative Code.

Also troubling is NYCCHR's mandate under the bill to investigate past conduct in the course of performance of official duties by current and former employees, an invitation for a fishing expedition of almost limitless scope when there has been no allegation that the past actions were in any way infected by bias. In fact, the NYCCHR, the entity tasked with enforcing the mandate, has testified that it has "serious concerns" about taking on this responsibility. The NYCCHR testified that the mandate here is "quite burdensome." See Testimony of NYCCHR Representative at February 8, 2021 Hearing (available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=837161&GUID=7DCEE1ED-88BC-49EA-B0CD-27B797A29DE5&Options=&Search=>).

The inquisition regime imposed by this bill will serve to discourage police officers from engaging in enforcement activities. In the current environment, law enforcement activities are already subject to heightened review and second guessing at the time they are taken. To create a regime that would now allow second guessing well into the future, even into the retirement of the officer, raising concerns associated with stale or unavailable evidence and statutes of limitations and repose, will through design or default have the effect of chilling law enforcement activity. This bill will add to the "transaction costs", including civil liabilities,⁴ criminal and disciplinary consequences, physical assaults and reputational harm, of policing arising out of the onslaught of public demonization and laws and regulations imposed over the past decade. Those circumstances have already chilled law enforcement activities in this city; this bill, if enacted, will serve to further diminish the public safety of all New Yorkers.

⁴ The bill also proposes that the NYCCHR may file administrative complaint under Section 905(d)(2) of the Charter or refer matter to the Corporation Counsel to commence a civil action under Section 905(d)(3) of the Charter, actions that may run afoul of existing law.

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MEMORANDUM IN OPPOSITION TO INTRODUCTION NO. 2220

The Police Benevolent Association of the City of New York, Inc. (“NYCPBA”) and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting every resident, visitor and business operating within the five boroughs, opposes Introduction No. 2220 (“Intro 2220”), a local law to amend the Administrative Code of the City of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and removing longstanding safeguards protecting police officers acting in good faith and within the scope of their employment from unreasonable civil liability. Intro 2220 would not only unnecessarily expose police officers to an unprecedented financial burden for doing their jobs, but it would chill the operations of law enforcement to such an extent that it would contribute to and accelerate the already unacceptable level of violence in New York City.

At the outset, Intro 2220 is unenforceable as it is preempted by state law. General Municipal Law 50-k (3) (“GML 50-k”) provides in relevant part that

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

The analog provision to GML 50-k for state employees, at Public Officers Law § 17, provides the identical indemnification benefit. Notwithstanding the clear language and intent of the state legislature to provide all public employees with full indemnification for “any judgment” or “in the amount of any settlement of a claim,” Intro 2220 attempts to effectively amend GML 50-k and subvert the will of the legislature by making certain categories of City employees, namely police officers and related titles, personally liable for any judgment or settlement in an amount equal to the lesser of \$25,000 or 5% of the amount of such judgment or settlement. Intro 2220’s removal of full indemnification rights for police officers encroaches on the authority of the state legislature, which has evinced a clear intent to occupy the field of law relating to the indemnification of public employees. *See Albany Area Bldrs. Assn. v Guilderland*, 74 N.Y.2d 372, 377 (1989). Intro 2220 would be preempted by state law, and effectively invalid.

Even if Intro 2220 were enforceable, it should nonetheless be rejected on policy grounds. The bill is punitive in nature and serves no legitimate purpose. Proposed section 8-803 of the New York City Administrative Code purports to create a right of action for unreasonable search and seizure. However, those rights are already provided in the 4th Amendment of the Constitution of the United States (which proposed § 8-802 simply repeats) and Article 1, Section 12 of the New York State Constitution, which are enforceable via actions brought pursuant to 43 USC § 1983, or a state Constitutional tort claim, respectively. Intro 2220 thus creates no new substantive rights for the citizens of New York City.

The only meaningful provisions of Intro 2220 operate to gratuitously punish police officers and prevent them from performing their crucial mission of maintaining the peace in New York City and protecting its citizens. First, proposed § 8-804 effectively eliminates qualified immunity as a defense to liability to any claim brought pursuant to proposed § 8-803. The qualified immunity doctrine, a right created and long applied by the U.S. Supreme Court, protects police officers from liability under certain circumstances, namely where “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Eliminating this important safeguard would unfairly hold police officers liable for damages where they had no way of knowing that their conduct was a constitutional or statutory violation, or if they were acting in good faith in the discharge of their duties.

Second, proposed § 8-805 authorizes courts that find in favor of plaintiffs bringing claims under proposed § 8-803 to award punitive damages and injunctive relief. Punitive damages awards are generally not available against municipalities, since as the Court of Appeals has recognized, “the twin justifications for punitive damages -- punishment and deterrence -- are hardly advanced when applied to a governmental unit.... [I]t would be anomalous to have ‘the persons who bear the burden of punishment, i.e., the taxpayers and citizens’, constitute ‘the self-same group who are expected to benefit from the public example which the granting of such damages supposedly makes of the wrongdoer’” *Sharapata v Islip*, 56 N.Y.2d 332 (1982) (*Quoting Sharapata v Islip*, [82 A.D.2d 350](#) (1981)). To the extent that the intent of the drafters is to make police officers liable for punitive damages, that obligation is unreasonably burdensome for already underpaid public employees, and as discussed below, would have an unprecedented chilling effect on law enforcement in New York City.

Finally, proposed § 8-806 provides that notwithstanding anything to the contrary in GML 50-k or any other law, a police officer shall be personally liable for a portion of the judgment or settlement of a claim brought pursuant to proposed § 8-803 in an amount that is equal to the lesser of \$25,000 or 5% of the amount. This section is wholly unnecessary and unreasonably punitive. GML 50-k already provides that a police officer will only be indemnified provided that the officer “was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained.” Intro 2220 would annul these necessary protections for police officers and require them to contribute substantial amounts to any judgment or settlement resulting from a § 8-803 claim even where the officer was acting within the scope of his duties and in accord with NYPD procedure, as determined by the City, or in circumstances where cases are settled for reasons other than the validity of the underlying claims, which are often without merit.

Apart from the obvious harm that Intro 2220 would cause police officers, it should also be rejected for the inevitable and dangerous consequences that it would bring about for the City and its citizens. The NYPD suffered a record number of retirements and resignations from the service in 2020,¹ as the City continues to place enormous burdens on its officers for very little compensation. More police officers will undoubtedly follow if the additional employment and financial burdens of Intro 2220 are imposed upon them. The NYPD workforce is already stretched thin and will not be able to provide adequate police services if it loses more police officers to other jurisdictions with better pay and working conditions. This is

¹ More than 3,300 uniformed members retired or resigned from the NYPD in 2020.

especially true given the recent increase in gun violence and other violent crime in New York City, which are painfully obvious to anyone living and working in the City during these difficult times. Homicides in New York City were up over 40% percent in 2020, and already in 2021, shootings, murders and other violent crimes have reached troubling levels. According to the NYPD, more than 400 firearms were recovered from suspects in the month of January alone. For the City Council to now impose personal liability on police officers who make good faith search and seizures in the hope of removing firearms and other weapons from the streets would be incredibly misguided. Intro 2220 would undoubtedly deter law enforcement activities by police officers afraid of being financially ruined by lawsuits. The inevitable result will be fewer guns recovered, more shootings and more deaths in our communities that would be prevented by police officers, but for this legislation by the City Council.

For the reasons set forth above, we ask that Introduction 2220 be rejected.

*Police
Benevolent
Association*

Of The City Of New York, Inc.



MEMORANDUM IN OPPOSITION TO RESOLUTION T2021-7100

The Police Benevolent Association of the City of New York, Inc. (“NYCPBA”) and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting every resident, visitor and business operating within the five boroughs, opposes T2021-7100, a resolution to remove the New York City Police Department’s (NYPD”) Police Commissioner’s (“Police Commissioner”) exclusive authority over police discipline (“Reso 7100”). Reso 7100 calls for an unprecedented and ill-considered intrusion into the Police Commissioner’s cognizance and control of the Police Department. Moreover, to the extent that Reso 7100 contemplates authorizing the Civilian Complaint Review Board to make final disciplinary determinations, that agency lacks the impartiality, law enforcement background and experience and infrastructure necessary to take on that great responsibility.

The Police Commissioner’s authority over the discipline of NYPD officers has long been enshrined in the law. Section 434 (a) of the New York City Charter provides that “[t]he commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department.” The companion provision to § 434, at Section 14-115 of the New York City Administrative Code provides further that “[t]he commissioner shall have power, in his or her discretion... to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force... .” These laws have existed in substantially the same form since the 19th Century.

That the legislature granted the authority to discipline to the Police Commissioner is unsurprising. The Police Commissioner is ultimately responsible for the Police Department’s successful execution of its mission to “preserve the public peace, prevent crime, detect and arrest offenders,” among the countless other responsibilities necessary to protect the City that ultimately fall upon the shoulders of police officers. *See* New York City Charter § 434. The Police Commissioner would be hamstrung in his ability to meet those obligations if the discipline of his officers were subject to the whims of a separate agency. The New York Court of Appeals, the highest court in the state, has long recognized the need for the Police Commissioner to have disciplinary authority in order to preserve the good order and effectiveness of the NYPD. The Court wrote in 1888 that “the government of a police force assimilates to that required in the control of a military body, and the interference of an extraneous power in its practical control and direction, must always be mischievous and destructive of the discipline and habits of obedience, which should govern its subordinate members.” *People ex rel. Masterson v. Police Commrs.*, 110 NY 494 (1888). While much has changed in policing since 1888, basic tenets of organizational effectiveness remain the same. Outsourcing final disciplinary decisions with respect to agency personnel would be no less destructive to the effectiveness of the NYPD today.

The sponsors of Reso 7100 have identified no policy justification for upsetting this longstanding disciplinary authority of the Police Commissioner. The Police Commissioner is already prohibited by law from exercising discretion over the discipline of police officers in a discriminatory or arbitrary manner, and contrary to the suggestions of the sponsors, the Police Commissioner has not been lenient when disciplining police officers. In fact, the PBA has long asserted that the Police Commissioner disciplines police officers too harshly. A disciplinary penalty of 30 leave days (a penalty commonly imposed on police officers in addition to a 30-day unpaid suspension) can cost a police officer the equivalent of more than \$20,000, a substantial sum for any public employee, and particularly for NYPD officers who are among the lowest paid in the policing profession, both locally and nationally. Lesser, but still significant and more frequent, penalties of ten days may amount to most of the yearly vacation compliment for young police officers.

That the Police Commissioner sometimes reaches determination to decline the recommendations of CCRB in no way supports removal of his final disciplinary authority, and certainly provides no justification for the transfer of such authority to CCRB. CCRB investigators are not trained police officers, and receive little to no education on how police officers are required to respond to and handle incidents, particularly where those incidents call for the exercise of on-the-spot judgment and use of force. CCRB investigators, and other institutional actors, are simply ill-suited to act in final judgment of police officers., The Police Commissioner and the majority of staff who advise him on disciplinary matters have themselves served on the street as police officers, have received much of the same training, and are familiar with the policies and rules governing police officers' conduct. This type of knowledge simply cannot be learned in an office-level training course. The Police Commissioner and his deputies are far better suited to adjudge the actions of police officers than CCRB investigators, and other institutional actors, most of whom have no meaningful experience or knowledge of police work or issues impacting the effectiveness of the agency.

Finally, the CCRB is an agency charged by law with investigating, and administratively prosecuting, allegations of misconduct that fall under its jurisdiction. CCRB's funding, indeed the very existence of the agency, relies in large part on the successful investigation and prosecution of police officers. For CCRB to act as final arbiter on cases that they themselves have investigated and prosecuted would constitute a clear conflict of interest and violate fundamental principles of fairness and due process. CCRB is simply not a impartial party that can be expected to hear evidence and make unbiased final determinations regarding an officer's fate when the very evidence and charges against the officer have been prepared and pursued by CCRB itself.

For the reasons set forth above, we object to Resolution 7100.

*Police
Benevolent
Association*

Of The City Of New York, Inc.



**MEMORANDUM IN OPPOSITION TO INTRODUCTION T2021-7101 REQUIRING COUNCIL
CONFIRMATION OF POLICE COMMISSIONER**

The Police Benevolent Association of the City of New York, Inc. and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting and keeping safe every resident, visitor, and business operating within the five boroughs, oppose the proposed legislation that would “require the Police Commissioner to be confirmed by the Council.” The proposed bill runs directly counter to the Council’s stated goal of bringing “accountability to New Yorkers.”

As succinctly explained by Mayor de Blasio’s Office, bringing “accountability to New Yorkers” is in fact the *precise reason* for granting the Mayor—and not other entities such as the City Council—sole responsibility for appointing key City commissioners:

“Mayor Control really means Mayoral accountability”¹

Mayoral control over New York City schools is illustrative. “In 2002, newly elected Mayor Michael Bloomberg was granted mayoral control of the city’s schools after making it a central issue to his campaign. This gave Bloomberg the power to appoint the city’s schools chancellor.”² Mayor Bloomberg successfully argued that this appointment power was imperative because it would allow “voters to hold him accountable for the system’s successes or failures.”³ Since 2002, and according to the *New York Times*, “virtually all education specialists agree that mayoral control has proved to be a more effective way to run the schools in New York City.”⁴ As Mayor de Blasio has noted, this improvement is the direct result of “the system’s clear accountability.”⁵ That is so because “under the old structure, power was so dispersed . . . that it was hard to know whom to blame for the poor performance of many of the city’s schools. Now, it’s clear who is responsible for improving the schools: the mayor.”⁶

¹ Office of the Mayor, Mayoral Accountability, *available at* www1.nyc.gov/office-of-the-mayor/mayoral-accountability.page.

² Amanda Luz Henning Santiago, *Understanding Mayoral Control*, City & State, Dec. 16, 2020, *available at* <https://www.cityandstateny.com/articles/politics/excelsior-newsletter/understanding-mayoral-control.html>.

³ *Seven Years of Mayoral Control*, Gotham Gazette, *available at* www.gothamgazette.com/index.php/archives/377-seven-years-of-mayoral-control.

⁴ Kate Taylor, *Does It Matter Who Runs New York City’s Schools?*, N.Y. Times, June 23, 2017, *available at* www.nytimes.com/2017/06/23/nyregion/new-york-school-control.html.

⁵ *Id.*

⁶ *Id.*

The exact same is true with respect to the Police Commissioner. One person—elected by the entire City—must be responsible for the appointment of the Police Commissioner and all of the consequences of that decision, not the Mayor and 51 members of the City Council (or any subset thereof). Put simply, “when everyone is responsible, no one is responsible.”

In announcing this latest slate of policing bills, Speaker Johnson stated that they would bring “accountability to New Yorkers.” If “accountability” is truly the goal, the Council will reject this proposed legislation.

**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 Council’s Police Reform Proposals**

February 16, 2021

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding the police reform measures under consideration by the Committee on Public Safety. 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.



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Donna Lieberman
Executive Director

Olivier Sylvain
President

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 As we noted in our testimony before this committee in January, New York City has made appallingly little progress in complying with this executive order.² With six weeks remaining until that April 1st deadline, neither the public nor City lawmakers have seen any draft proposals or even outlines for proposals. The process thus far has been subject to far too much control by the New York Police Department (“NYPD”), an agency that 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

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>.

² NYCLU, *Testimony Before the New York City Council Committee on Public Safety Regarding the City’s Policing Reform Process*, Jan. 11, 2021, https://www.nyclu.org/sites/default/files/field_documents/20210111-testimony-nypdreformprocess_0.pdf.



the City Council to assert real leadership and to center the demands of communities most impacted by police violence.

To that end, the NYCLU is encouraged to see the Council acting independently of the administration and the NYPD's process by putting forward its own legislative agenda. We offer comments on three of these measures, in particular, as well as suggestions for additional items for the Council to consider. We note, however, that no legislative package, no matter how ambitious, will suffice to fully address the fundamental flaws with our current approach to public safety: namely, our continued overinvestment in policing and underinvestment in the types of services that are actually capable of meeting people's basic needs and enabling communities to thrive. Much can be accomplished through legislation, but until the Council commits to dramatically reduce the NYPD's budget and invest in Black and Brown communities, we will only be addressing the symptoms of our current approach, rather than treating the underlying problems inherent therein.

Res. 1538

The NYPD is fundamentally incapable of policing itself. Yet current law establishes this approach as the paradigm for holding officers accountable for misconduct. The City Charter and Administrative Code vest the police commissioner with full authority over all disciplinary matters, including complete discretion to accept, modify, or outright reject recommendations from the Civilian Complaint Review Board ("CCRB").³ In practice, this has allowed NYPD commissioners to downgrade or completely ignore CCRB recommendations in the overwhelming majority of serious misconduct cases, with one recent analysis finding that the NYPD rejected CCRB recommendations in around 71 percent of serious misconduct cases over the past two decades.⁴

Civilian oversight of policing is an empty exercise if the police commissioner has the authority to reject unilaterally the findings and recommendations of the very agency specifically entrusted to engage in that oversight. For these reasons, the NYCLU has long called for the removal of the commissioner's exclusive authority to decide disciplinary outcomes and for the transfer of that power to an

³ N.Y.C. Charter §§ 434(a), 440; N.Y.C. Admin. Code §§ 14-115, 14-123.

⁴ Ashely Southall, et al., *A Watchdog Accused Officers of Serious Misconduct. Few Were Punished*, N.Y. Times, Nov. 15, 2020, <https://www.nytimes.com/2020/11/15/nyregion/ccrb-nyc-police-misconduct.html>.



independent, civilian oversight agency.⁵ As a statewide organization, we also note that these issues are not unique to New York City. Communities across the state, from Long Island to Syracuse to Buffalo are currently grappling with these very issues as they consider how best to investigate and hold officers accountable for misconduct. In 2019, our office in Rochester supported the creation of a new Police Accountability Board that would be empowered to take disciplinary authority away from the Rochester Police Department and exercise independent control over disciplinary outcomes. Unfortunately, that board is currently blocked from exercising its full authority owing to police union litigation, which challenged Rochester's ability to enact such reforms through local legislation.⁶ This case makes the need for state-level action all the more important.

The NYCLU supports Res. 1538 and welcomes the City Council's advocacy with the State Legislature to clarify the authority of local legislatures to create and implement truly independent mechanisms for police accountability. We urge the Council to ensure that its advocacy takes stock of the statewide nature of this problem and does not leave other municipalities facing these same challenges behind.

Moreover, while the independent administration of police discipline is a critically important issue, we must emphasize that the best way to protect New Yorkers from police abuse is to reduce the number of contacts between police and the public that lead to such abuse in the first place. Disciplinary authority and meaningful accountability matter, but the point at which they matter is after the harm has already been caused. To drive down the number of abusive encounters at the front end, the Council must commit to reducing the size, scope, and power of the NYPD and investing in non-law-enforcement alternatives where licensed, trained professionals can better provide needed interventions. Creating independent systems for the administration of police discipline does not itself reduce the instances of police harm and violence, and it cannot serve as a substitute for shifting resources away from the police and into non-punitive models of community safety.

⁵ NYCLU, *Testimony Before the New York City Council Committee on Public Safety and the Committee on Civil Rights regarding the Civilian Complaint Review Board and Civilian Oversight of Policing*, March 9, 2007, <https://www.nyclu.org/en/publications/civilian-complaint-review-board-and-civilian-oversight-policing>.

⁶ David Andreatta & Jeremy Moule, *Court Ruling Temporarily Hobbles Police Accountability Board*, Rochester City News, Jan. 28, 2020, <https://www.rochestercitynewspaper.com/rochester/court-ruling-temporarily-hobbles-police-accountability-board/Content?oid=11348030>.

Intro. 1671

Data on police enforcement activity can be a powerful tool for unearthing and challenging abusive and discriminatory practices. However, New York City does not collect or comprehensively report on the NYPD's handling of vehicle stops and traffic enforcement, making it challenging for the public and lawmakers alike to assess the full impact of these practices on communities throughout the city.

Studies have found that many of the same disparities we have witnessed in pedestrian stops are present in vehicle stops.⁷ The potential for quick escalation and violence in vehicle stops has even led to calls from the New York State Attorney General Letitia James to remove police from routine traffic enforcement altogether.⁸



While reporting along will not solve the underlying issues with police involvement in vehicle stops, it is crucial for filling gaps in existing data and allowing for increased scrutiny of these practices. The lack of transparency and potential for escalation in these encounters has long been of concern to the NYCLU. Indeed, a key reason we withdrew support for the Right to Know Act's police identification bill in 2017 was a last-minute deal to strike traffic stops from the list of activities in which NYPD officers would be required to identify themselves and provide information on the reasons for the encounter.⁹ Intro. 1671 is an important first step toward increasing transparency in these encounters.

The NYCLU encourages the Council to strengthen the bill's reporting requirements by providing a more detailed accounting of the types of vehicles stopped, including ensuring that bicycles and e-bikes are covered. In recent years, we saw repeated, aggressive crackdowns on enforcement of vehicle and traffic infractions against immigrant delivery workers on e-bikes, all while lacking regular, comprehensive reporting on the full extent of these stops.¹⁰ We also recommend that

⁷ Emma Pierson, et al., *A Large-Scale Analysis of Racial Disparities in Police Stops across the United States*, NAT. HUM. BEHAV. 4, 736 (2020), <https://doi.org/10.1038/s41562-020-0858-1>.

⁸ Michael Sisak, *NYPD Should Stop Making Traffic Stops, Attorney General Says*, Associated Press, Sept. 25, 2020, <https://apnews.com/article/bronx-arrests-traffic-archive-new-york-c93fa5fc03f25c2b625d36e4c75d1691>.

⁹ NYCLU, *NYCLU Statement on Current Status of the Right to Know Act*, Dec. 14, 2017, <https://www.nyclu.org/en/press-releases/nyclu-statement-current-status-right-know-act>.

¹⁰ Christopher Robbins, *De Blasio Says E-Bike Crackdown is Based on Something "Better than Data. It is Common Sense,"* Gothamist, Jan. 7, 2020,

the bill be amended to require reporting on all summonses and arrests “in connection with” vehicle stops, roadblocks, and checkpoints. The bill’s language is currently limited to summonses and arrests for “traffic infractions,” which leaves out any reporting on non-traffic criminal enforcement that takes place in connection with these encounters. This amendment is necessary to capture reporting on the number of vehicle stops that result in summonses or arrests for, among other things, marijuana possession or other drug charges. Any reporting bill on vehicle and traffic stops must require a full accounting of all of the ways in which NYPD enforcement manifests.

Intro. 2220



Federal law provides people with the right to sue government officials, including police officers, for violating their constitutional rights. Qualified immunity, a judicially created defense in such lawsuits, lets countless officials off the hook for these violations, and it has stymied the development of the law in police accountability cases.

In short, a police officer is entitled to qualified immunity – and thus, not liable for money damages – if the constitutional right they violated was not “clearly established” at the time. Courts have essentially required that a near identical fact pattern in a previous case holding that a constitutional right was violated be required to demonstrate that the right was clearly established. But courts often refrain from ruling on whether there was a constitutional violation in the first place, instead dismissing cases on qualified immunity grounds because no prior case was directly on point, setting up a catch-22 in which it is exceedingly difficult to establish any new precedent. In the policing context, qualified immunity has essentially transformed “into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment.”¹¹

Ultimately, either Congress or the Supreme Court must act to fully resolve and remove the harms caused by this doctrine, but state and local laws like Intro. 2220 can provide separate pathways to accountability that do not allow for the doctrine’s application, but the scope of such measures should not be narrower than the scope of police

<https://gothamist.com/news/de-blasio-e-bike-crackdown-common-sense>; Christopher Robbins, *NYPD Ignored the Mayor and Its Own Policy Memo so it Could Fine E-Bike Delivery Workers*, Gothamist, Mar. 27, 2019, <https://gothamist.com/news/nypd-ignored-the-mayor-and-its-own-policy-memo-so-it-could-fine-e-bike-delivery-workers>.

¹¹ *Kisela v. Hughes*, 138 S. Ct. 1148, 1162, 200 L. Ed. 2d 449 (2018) (Sotomayor, J., dissenting).



violations of New Yorkers' constitutional rights. We note that Intro. 2220 directly incorporates the Fourth Amendment into the New York City Administrative Code, but the rights violated by NYPD officials are not limited to those encompassed in the Fourth Amendment. For example, racial profiling by NYPD officers implicate the 14th Amendment's guarantee of equal protection; and the aggressive policing of protest, retaliation against journalists, and interference with the recording of police activities implicate the First Amendment. A broader approach, encompassing all of the rights and protections of the state and federal constitution and laws, will ensure that this new private right of action provides a fuller measure of accountability. We also note that the standards for awarding attorney's fees to a prevailing plaintiff under this proposed bill are narrower than similar provisions in the Administrative Code's private right of action for bias-based profiling.¹² We recommend the Council conform the language in this bill to the language contained in Section 8-502(g).

Intro. 2220 also includes a structure for personal liability and only partial indemnification for the award of money damages or settlements. While we would hope that this structure might deter individual officers from engaging in misconduct, it raises a number of questions that merit further consideration. In place like Colorado, where a similar measure passed last summer, police unions have begun to acquire liability insurance policies on behalf of their members and to ensure that most officers will not face much in the way of direct financial costs.¹³ While there have a number of arguments advanced in support of requiring officers to carry liability insurance, the Council should consider what this type of system might mean in practice here, including whether the costs for such insurance policies will still be passed on to taxpayers via police union contracts with the city. And even if there are some direct costs for officers, we note that New York City pays out and taxpayers will remain on the hook for hundreds of millions of dollars each year in police misconduct cases and settlements.¹⁴ These monies will be paid out of the city's general fund and will not directly be tied to the Police Department itself. The NYCLU urges the Council to do more to ensure that these costs are

¹² N.Y.C. Admin. Code § 8-502(g).

¹³ Elise Schmelzer, *Insurance? Union Plans? Colorado's Cops Weigh Liability Coverage under New Police Accountability Law*, Denver Post, Sept. 4, 2020, <https://www.denverpost.com/2020/09/04/colorado-police-union-liability-insurance-sb217/>.

¹⁴ Graham Rayman & Clayton Guse, *NYC Spent \$230m on NYPD Settlements Last Year: Report*, N.Y. Daily News, <https://www.nydailynews.com/new-york/ny-stringer-report-nypd-payout-settlement-lawsuits-20190415-2zzm2zkhpna63dtlcr2zks6eoq-story.html>.

more directly borne by the NYPD, including by reducing the agency's budget to account for the full costs of police misconduct. The Council's goal must extend beyond holding individual officers accountable; it must also extend to holding the Department as a whole accountable for the culture it promotes and condones among its officers.

Recommendations for Further Legislation

The NYCLU suggests that the Council add the following measures to its overall police reform package, both of which have widespread support from communities most directly impacted by NYPD practices:



- **Intro. 1551:** This bill has already been heard at an April 2019 Public Safety Committee hearing and is ripe for Council action. It would codify expanded reporting on all consent searches and requests for consent searches. While the NYPD has thus far agreed to report on all such data, reporting on declined requests for consent to search was not included in the final legislation passed by Council in the 2017 Right to Know Act. Before passage, the NYCLU urges the Council to first amend this bill to ensure that the NYPD is required to document any instances in which officers collect DNA information on the basis of someone's purported "consent." At the 2019 hearing, NYPD officials confirmed that such searches were not included in the Department's reporting on consent searches, notwithstanding disturbing reports that officers were conducting dragnet DNA searches that included knocking on people's doors and asking people to consent to saliva swabs.¹⁵ The Council must ensure that such searches adhere to the Right to Know Act's requirements for consent searches, including its reporting requirements, and we call on the Council to add specific language concerning these searches to Intro. 1551 and to pass this long-pending bill without further delay.
- **Reporting on Level 1 and Level 2 Investigative Encounters:** The NYCLU recommends that the Council introduce and quickly pass legislation to require that the NYPD report on all police investigative encounters, including those that fall below the level of a formal reasonable suspicion stop. So-called level 1 and level 2 investigative encounters are not recorded in the same manner as stop and frisk activity, despite the fact that many people's experience of these

¹⁵ Allison Lewis, *The NYPD's New DNA Dragnet: The Department is Collecting and Storing Genetic Information, with Virtually No Rules to Curb their Use* <https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>.

encounters are not meaningfully different in reality. While the total number of stops has undoubtedly fallen sharply since the height of stop and frisk in 2011, the NYPD has been consistently undercounting the total number of stops that its officers carry out.¹⁶ This raises serious questions about the extent to which stop activity – and its attendant racial disparities – is persisting under another name. The only way we will get a full and accurate accounting of police interference with the daily lives of New Yorkers is by requiring that all investigative encounters, including Level 1 and Level 1 interactions, be recorded and reported. The NYCLU calls on the Council to introduce and pass legislation to that effect.

Conclusion

The City Council has an opportunity to fill the leadership vacuum left by this administration when it comes to promoting police accountability and reimagining community safety. The above measures have an important role to play in that process, but they must be viewed as only one step in that process, not the sum total of the Council's advocacy. The NYCLU urges the Council to meet the urgency of this moment with a vision for reducing the size, scope, and power of the NYPD that goes beyond these needed reforms and that fundamentally restructures how our city invests in the well-being of Black and Brown communities.



¹⁶ Al Baker, *City Police Officers are Not Reporting All Street Stops, Monitor Says*, N.Y. Times, Dec. 13, 2017, <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html>.

Committee on Public Safety Testimony
Andrew Yang
2/16/21

Thank you, Chair Adams, Speaker Johnson and to the entire Committee for the opportunity to share my support for the proposals before you today. Your efforts provide a meaningful framework towards ensuring the City experiences a recovery deeply rooted not only in fairness, but safety and integrity. We need to rebuild our City not as it was, but how it should be.

Ultimately, further transparency and accountability will lead to greater trust between neighborhoods and the NYPD. This will help make New Yorkers safer at a time of increasing violent crimes and shootings, particularly in communities of color. If this spike in crime was happening on, say, the Upper East Side, we'd be pouring far more resources into getting control of the situation.

In fact, the murder clearance rate in 2020 dropped by about 16% from 2019. As Mara Gay of the New York Times recently noted, "Several studies have found that the effectiveness of the police at solving crimes plays a major role in determining whether individuals or communities trust them and report crimes."¹

Likewise, the recent rise in hate crimes are also deeply concerning. According to the NYPD's own Hate Crimes Dashboard,² there were 265 Confirmed Hate Crime Incidents in 2020 and 97 Hate Crime Arrests:

- 43% were against Jewish people;
- 15% were against Black people; and
- 11% were against the LGBTQ community, with some truly horrific reports of anti-trans violence.

Moreover, there has been a 900% increase anti-Asian hate crimes in New York City in the past year. 900%.³

We should be looking for ways to redirect NYPD resources towards reducing these violent and hate crimes in every precinct. We need more officers and detectives focused on protecting neighborhoods – and subways – from the most detrimental crimes. This is what the NYPD can do well and where our City should focus its law enforcement budget. I am also encouraged that the Council is advocating to bolster mental health responders and violence interrupter programs to better direct the NYPD to problems they are best equipped to solve.

¹ <https://www.nytimes.com/2021/01/29/opinion/nypd-crime-murder.html>

² <https://app.powerbigov.us/view?r=eyJrljoiYjg1NWl3YjgtYzkyOS00Nzc0LTkwMDAtNTgzM2I2M2JmYWE1IiwidCI6IjJiOWY1N2VlTc4ZDEtNDZmYi1iZTgzLWEyYWZkZDdjNjA0MyJ9>

³ <https://www.thecity.nyc/2021/2/11/22279407/anti-asian-hate-crime-surge-fuels-demands-for-systemic-and-sensitive-responses>

But with such great responsibility, we must also heighten the standards of the NYPD. Past decisions our City has made have created a shaky foundation on which to rebuild. By taking bold steps to reimagine public safety and policing in our City, we can live up to the City's highest ideals. Indeed, when City taxpayers must pay hundreds of millions for police misconduct settlements annually, you know something is wrong.

First and foremost, I was happy to see that T2020-6808 was added to today's hearing. We should absolutely expect our officers to live in the City. If we want police to engage in neighborhood policing, they should live in our neighborhoods. If we want them to build trust with our communities, they should be a part of them. Policing, and more importantly, public safety, only work when we see each other's humanity. Right now, a majority of officers live outside the City. Not even civilian NYPD employees are granted that privilege. I hope our partners in Albany pass S2984/A1951. Officers should know the communities they are serving as well as possible.

Second, I support Int. 1671-2019, which would require law enforcement to issue a quarterly report on traffic encounters. Our goal should be to regulate bad drivers, not discriminate against Black and Brown drivers. Similarly, I support Int. 2224-2020, which would move crash investigations to the Department of Transportation. Transportation experts design our streets and they should play a leading role in analyzing crashes, particularly after our City moved in the wrong direction in terms of traffic fatalities last year.⁴

Third, we need to strengthen and streamline the CCRB for the NYPD to be held accountable. I would recommend that those who sit on the Civilian Complaint Review Board should be full-time employees. Unfortunately, the CCRB's caseloads are high, and it is impossible for part-time workers to appropriately scrutinize dense, complex cases on nights and weekends. While I support the current appointments system, not only should these members be wholly committed to a legal process that is among the most fraught and consequential in the City, but our government must be willing and eager to invest in paying people to ensure better results.

Indeed, even where and how to file a complaint can be confusing. As THE CITY pointed out during the George Floyd protests, there are multiple agencies – four are referenced in the article with one being the State Attorney General's Office – to potentially raise concerns about the police. This is not an example of a responsive and rational bureaucracy.⁵ And we should not require individuals to have to physically go to the CCRB offices in Lower Manhattan for in-person interviews. We should instead have CCRB employees meet individuals in locations throughout the five boroughs that are more convenient. As it is, only about one-half of civilian complaints are fully investigated.⁶

⁴ <https://www.nytimes.com/2021/01/01/nyregion/nyc-traffic-deaths.html>

⁵ <https://www.thecity.nyc/2020/5/31/21276494/how-to-report-police-misconduct-and-what-to-expect-if-you-do>

⁶ <https://www.wsfs.org/en/articles/2020/08/24/nypd-a24.html>

Clearly, we have our work cut out for us. But for our City to have a real recovery, we must be able to protect New Yorkers - both from crime and from police misconduct.

THE LEGAL AID SOCIETY

Justice in Every Borough.

TESTIMONY

New York City Council
Committee on Public Safety

February 16, 2021

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INTRODUCTION

The Legal Aid Society submits this testimony to the New York City Council’s Committee on Public Safety concerning Ints. 1671-2019, 2209-2021, 2220-2021, and Res. 1538-2021. We thank Adrienne Adams, Chair of the Committee on Public Safety, for holding this hearing and allowing us to testify on behalf of the communities we serve.

This past summer, our nation witnessed an unprecedented uprising sparked by the violent deaths of George Floyd and Breonna Taylor at the hands of law enforcement. For New Yorkers, this brought back painful memories of the NYPD killings of Kawaski Trawick (2019), Allan Feliz (2019), Saheed Vassell (2018), Dwayne Jeune (2017), Delrawn Small (2016), Deborah Danner (2016), Mario Ocasio (2015), Eric Garner (2014), Akai Gurley (2014), Kimani Gray (2013), Mohamed Bah (2012), Shantel Davis (2012), Kenny Lazo (2008), Sean Bell (2006), Amadou Diallo (1999), and Anthony Baez (1994), among many others.¹ Across the country, tens of millions of Americans took to the streets protesting and demanding an end to the abusive policing practices that Black, indigenous, and other people of color (BIPOC), low-income people, disabled people, people with a history of mental illness, and other marginalized communities have experienced at disproportionate rates for decades.

In our city, the sheer breadth and diversity during this summer’s uprising has made it clear that New Yorkers demand sweeping changes to our city’s approach to policing and public safety. The need for such change was underscored by the NYPD’s brutal response to policing the protests, which included indiscriminate use of force and large scale summonses and arrests that were later dismissed en masse by prosecutors.²

¹ See JC Team, *Fams of NYers Killed by Police Lead Action to Defund NYPD, End Police Secrecy, Demand Accountability*, Justice Committee (June 10, 2020) <https://www.justicecommittee.org/post/fams-of-nyers-killed-by-police-lead-action-to-defund-nypd-end-police-secrecy-demand-accountability>; Community Access, CCIT-NYC: In Remembrance, <https://www.communityaccess.org/ccit-nyc-in-remembrance> (last accessed Feb. 12, 2021).

² See Margaret Garnett, *Investigation into NYPD Response to the George Floyd Protests*, NYC Dept. of Investigation (Dec. 2020), <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf> (“NYPD’s use of force on protesters—encirclement (commonly called “kettling”), mass arrests, baton and pepper spray use, and other tactics—reflected a failure to calibrate an appropriate balance between valid public safety or officer safety interests and the rights of protesters to assemble and express their views. The inconsistent application of the curfew similarly generated legitimate public concerns about selective enforcement.”); Human Rights Watch, *Kettling: Protesters in the Bronx: Systemic Police Brutality and Its Costs in the United States*, (Sept. 30, 2020),

Mayor Bill de Blasio has been unwilling to acknowledge the need for meaningful change or put forth a plan that meets the current moment. During the uprising, he largely defended the actions of the NYPD, including a deeply disturbing moment where his own police officers drove an SUV into a crowd of protestors.³ He has also failed to be transparent and work with required community stakeholders in good faith throughout the New York State Police Reform and Reinvention Collaborative, established by Governor Cuomo’s Executive Order 203.⁴ At this late stage of the EO 203 Reform and Reinvention process, opportunities for genuine collaboration with required stakeholder groups—including public defenders and those most impacted by policing—are rapidly diminishing.

While we support some of the bills brought forth today, we must emphasize that these proposals also fall far short of what is necessary to bring about the fundamental changes to policing and public safety that New Yorkers have demanded. While some of the proposals being discussed today would certainly be positive changes, this moment requires more than tinkering around the edges of a fundamentally flawed system. We call upon the City Council, and especially members of the Public Safety Committee, to take bold and decisive leadership in rethinking and reshaping how we deliver public safety to our communities.

The most significant power that the NYC Council has to reduce police violence and hold the NYPD to account is through the budget process. This past June, the Council failed to utilize this power to reduce the size, scope, and footprint of the NYPD, missing an opportunity to truly reform policing in our city. New York City now lags behind other major cities that have started

<https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states> (“Police conduct during the Mott Haven protest on June 4 amounts to serious violations of international human rights law which the federal, state, and local governments are obligated to observe. These include law enforcement’s excessive use of force, violations of the rights to free expression and peaceful assembly, arbitrary arrests and detentions, and cruel and degrading treatment of detainees.”).

³ Henry Austin, Suzanne Ciechalski & Tom Winter, *New York Mayor Bill de Blasio defends police after video shows NYPD SUV driving into protestors*, NBC News (May 31, 2020), <https://www.nbcnews.com/news/us-news/new-york-mayor-bill-de-blasio-defends-police-after-video-n1220246>.

⁴ Michael Gartland, *‘The mayor’s office did nothing’: advocates blast de Blasio on state-mandated police reform efforts*, N.Y.D.N. (Jan. 11, 2021), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-nypd-reform-de-blasio-20210111-3v4fs7ymlvb3lk4xhkyouepca-story.html>.

to transfer certain duties away from police to civilian-led professionals with notable success⁵ and divert funds from policing to invest in programs that better serve residents.⁶ Until the NYC Council heeds the calls from those most directly impacted by policing, the Council—like the Mayor—will fail to meet the moment and deliver the fundamental changes that are being demanded.

LEGISLATION UNDER CONSIDERATION

I. Int. 1671-2019 (Adams): Traffic Stop Reporting

Legal Aid expresses qualified support for amending the City’s Administrative Code to require the Police Commissioner to publicly report data and information relating to traffic stops conducted by the NYPD including, among other data points, the race, ethnicity, gender, and age of the driver and the number of summonses issued and arrests made, provided that amendments proposed by Communities United for Police Reform are made.

A. Background

Ample research shows that police stop Black drivers at significantly disproportionate rates when compared to white drivers.⁷ This is consistent with our experience as plaintiffs’ counsel in civil rights cases challenging racially discriminatory policing practices, including *Davis v. City of New York*, which, along with *Floyd v. City of New York*, and *Ligon v. City of New York*, which together are under a court-ordered monitorship. Reports from the monitor indicate that the NYPD

⁵ Grace Hauck, *Denver successfully sent mental health professionals, not police, to hundreds of calls*, USA TODAY (Feb. 6, 2021), <https://www.usatoday.com/story/news/nation/2021/02/06/denver-sent-mental-health-help-not-police-hundreds-calls/4421364001/>; Jake Kinvanç, *North American Cities Are Replacing Cops With Civilians and It’s Working*, VICE (Feb. 10, 2021), <https://www.vice.com/en/article/pkd8dm/toronto-police-mental-health-civilians-911-calls>.

⁶ Jemima McEvoy, *Austin To Use Money Cut From Police Budget To Run Hotel For Homeless Population*, FORBES (Jan. 28, 2021), <https://www.forbes.com/sites/jemimamcevoy/2021/01/28/austin-to-use-money-cut-from-police-budget-to-buy-hotel-for-homeless-population/>; Manjeet Kaur, *Seattle Cut Its Police Budget. Now the Public Will Decide How To Spend the Money*, THE APPEAL (Jan. 28, 2021), <https://theappeal.org/politicalreport/seattle-participatory-budgeting-defund-police/>.

⁷ The Stanford Open Policing Project, *Findings* (2021), <https://openpolicing.stanford.edu/findings/> (last accessed Feb. 13, 2021).

continues to disproportionately stop people of color on foot,⁸ and anecdotal evidence suggests the same is true of vehicle stops. Requiring the NYPD to regularly publish data on traffic stops is crucial step towards promoting accountability through transparency.

B. Suggested Amendments

We suggest that the NYC Council amend the language of this bill to require reporting on the number of summonses and arrests made *in connection with* traffic, roadblock and checkpoint stops, rather than just summonses or arrests issued for traffic violations. This is important for researchers, advocates, and policymakers to better understand the full scope of enforcement initiated through traffic stops. For example, traffic stops are sometimes pretextual reasons for police encounters that are aimed at drug enforcement, and any resulting enforcement activities are not currently required to be reported. Additionally, to further increase transparency, we suggest that the Council amend the bill to require public reporting on the reasons for all stops.

Finally, we suggest that the Council expand reporting on the type of vehicle that was stopped to include: a motor vehicle; or a motorcycle; or a bicycle as defined in section 19-176 of the administrative code; or a motorized scooter as defined in section 19-176.2 of the administrative code; or a private passenger vehicle or a coach, for-hire vehicle, taxi, taxicab, cab, commuter van, affiliated vehicle, black car, luxury limousine, or HAIL vehicle, as defined in section 19-502 of the administrative code.

We believe that these amendments will provide additional information for better understanding racial disparities in vehicle stops and their impacts on the diverse communities affected by policing in our city.

C. Next Steps

In addition to our suggested amendments, we encourage the NYC Council to consider whether the NYPD is the right agency to conduct traffic stops at all.⁹ Traffic stops allow police

⁸ Peter Zimroth, *Fifth Report of the Independent Monitor, Analysis of NYPD Stops 2013-2015*, NYPD Monitor (May 30, 2017), <http://nypdmonitor.org/wp-content/uploads/2017/06/2017-05-30-MonitorsFifthReport-AnalysisofNYPDStopsReported2013-2015-Asfiled.pdf>.

⁹ While The Legal Aid Society has not taken a position on the following plans and proposals, it is worth noting that a growing number of policymakers and advocates are calling for the removal of the NYPD from conducting traffic stops. See Letitia James, NYS Attorney General, *Report on the Investigation into The Death of Allan Feliz*, Special Investigations and Prosecution Unit (Sep. 25, 2020), https://ag.ny.gov/sites/default/files/sipu_allan_feliz_report_final.links_.pdf (“[W]e recommend that the City remove NYPD from engaging in routine traffic enforcement.”); Alessandra Biaggi, *To Lessen Police*

wide discretion to conduct stops for even minor traffic violations, such as failing to signal. This discretion comes with the risk of racial profiling and escalations of low-level encounters to tragic violence, such as the police killing of Allan Feliz during a routine traffic stop in 2019.¹⁰ Other cities are moving in the direction of tasking unarmed, non-police municipal workers with traffic stops,¹¹ and we encourage the NYC Council to explore this as a means of reducing opportunities for police escalation, violence, and bias-based policing.

II. Int. 2209-2021 (Adams): Advice and Consent for the NYPD Commissioner

Legal Aid expresses qualified support for amending the City Charter to require advice and consent of the NYC Council in the Mayor's appointment of the Police Commissioner and reduce the term limit of the Police Commissioner from five years to four years. However, these minor changes will ultimately do little to hold the Police Commissioner or the Mayor accountable for the actions of the NYPD leadership.

A. Background

We believe that the sole discretion of the Mayor, without the involvement of significant community input, in appointing the Police Commissioner presents a significant obstacle to reforming the NYPD. First, the Mayor, as executive, spends significantly more time with the heads of various City agencies, including the Police Commissioner, than with New Yorkers who interact with those agencies. This may shape the Mayor's thinking and biases, leading the Mayor to side with the Police Commissioner on important issues rather than listening to the voices of those impacted by police misconduct.¹² Second, the Mayor may have political incentives to double

Violence, Remove Cops From Traffic Stops, StreetsBlog NYC (Oct. 14, 2020), <https://nyc.streetsblog.org/2020/10/14/opinion-to-lesser-police-violence-remove-cops-from-traffic-stops/>; Brad Lander, *Transforming Traffic Safety: Safer Streets, With Less Policing*, (Nov. 15, 2020), <https://static1.squarespace.com/static/5b2052b12487fd3fa17f00a6/t/5fb045da0e8bbf646f54846c/1605387739400/Traffic+Safety+Platform+with+Cover.pdf>; Tiffany Cabán, *A New Vision of Public Safety for New York City: Non-Police Traffic Safety*, <https://www.cabanforqueens.com/public-safety/#traffic> (last accessed Feb. 13, 2021).

¹⁰ See Letitia James, *supra* note 9.

¹¹ See Meg O'Connor, *What Traffic Enforcement Without Police Could Look Like*, The Appeal (Jan. 13, 2021), <https://theappeal.org/traffic-enforcement-without-police/>.

¹² E.g. Austin, Ciechalski & Winter, *supra* note 3; Jake Offenhartz, *Despite Documented Human Rights Abuses, De Blasio Refuses to Denounce NYPD's Mott Haven Beatdown*, Gothamist (Oct. 2, 2020), <https://gothamist.com/news/despite-documented-human-rights-abuses-de-blasio-refuses-denounce-nypds-mott-haven-beatdown>.

down on his pick and not be critical or remove the Police Commissioner for cause when a change in leadership is clearly needed.¹³ Finally, the Council, as a body that is more representative of New York than a single executive, should be involved in the selection of the Police Commissioner, as this would pave the way for more community feedback and involvement in the selection of the Commissioner.

B. Next Steps

We encourage the NYC Council to consider additional methods of increasing the democratic accountability of the Police Commissioner. Should the NYC Council pass Int. 2209-2021, we call upon individual Council Members to take initiative to engage with their constituents, especially those most impacted by policing, to ascertain feedback and suggestions regarding the Police Commissioner confirmation process.

At the same time, we caution against framing this bill and any additional steps to incorporate community voices in the selection of the Police Commissioner as the kind of transformational change that is needed and being demanded in this moment. We further caution that New Yorkers most affected by our City's policing practices are often the most shutout from policymaking and are seldom reflected in even well-intentioned community engagement processes.

III. Int. 2220-2021 (Levin): Civil Actions for Unreasonable Search and Seizure

The doctrine of “qualified immunity” is a defense created by judges and read into the federal statute authorizing suits for unconstitutional police actions that denies justice to thousands of BIPOC New Yorkers who are victims of police violence and abuse. Legislation to create a local cause of action that expressly prohibits a qualified immunity defense could be an important tool for victims of police misconduct. To that end, Legal Aid expresses qualified support for Int. 2220-2021, which would create such a cause of action in New York City for unreasonable searches and seizures by police officers uninhibited by the defense of qualified immunity. As drafted, the bill is drawn too narrowly and creates some unnecessary conflicts with

¹³ See Emma Fitzsimmons, *These Remarks Might Get a Police Chief Fired. Not in New York*, N.Y. Times (Aug. 3, 2020), <https://www.nytimes.com/2020/08/03/nyregion/police-shea-de-blasio-nyc.html>.

existing law, but with targeted amendments the bill would be a positive contribution to enhancing police accountability.

A. Background

1. *Qualified Immunity and a Failure of Accountability*

Federal courts are quick to shield officers from liability under the doctrine of qualified immunity, even when those courts agree that the officer has violated the law.¹⁴ The doctrine insulates government officials from civil damages – the only form of relief available against individual officers in such situations – unless their actions violated rights that had been clearly established by federal appellate courts in factually identical cases. Courts can (and often do) award qualified immunity without determining whether the victim’s constitutional rights have been violated,¹⁵ and often do so even after determining that the victim’s rights *were* violated.¹⁶

¹⁴ See, e.g., *United States v. Weaver*, 975 F.3d 94, 109 (2d Cir. 2020) (Calabresi, J., concurring) (“There may well be hundreds of situations in which [illegal] searches like the one before us today turned up nothing. But surely no more than a handful will get to court. And even these will almost always get decided against the innocent ‘searchee’ on qualified immunity.”).

¹⁵ See, e.g., *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (granting lower courts the discretion, when deciding qualified immunity motions, to skip the constitutional question and simply answer whether the right at issue was “clearly established” at the time of the challenged conduct.); *Black v. Pettinato*, 761 Fed. App’x 18 (2d Cir. 2019) (granting qualified immunity because the challenged conduct had not yet been ruled unlawful, despite the Second Circuit having passed on at least four previous opportunities to rule on the lawfulness of the challenged conduct.); *Zadeh v. Robinson*, 928 F.3d 457, 479-80 (5th Cir. 2019) (Willet, CJ, dissenting) (“[M]any courts grant immunity without first determining whether the challenged behavior violates the Constitution. They avoid scrutinizing the alleged offense by skipping to the simpler second prong: no factually analogous precedent. Forgoing a knotty constitutional inquiry makes for easier sledding, no doubt. But the inexorable result is ‘constitutional stagnation’—fewer courts establishing law at all, much less clearly doing so. Section 1983 meets Catch-22. Plaintiffs must produce precedent even as fewer courts are producing precedent. Important constitutional questions go unanswered precisely because no one’s answered them before. Courts then rely on that judicial silence to conclude there’s no equivalent case on the books. No precedent = no clearly established law = no liability. An Escherian Stairwell. Heads government wins, tails plaintiff loses. . . .”); Stephen R. Reinhardt, *The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Court’s Ever Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particularly Unfortunate Consequences*, 113 Mich. L. Rev. 1219, 1249 (May 2015) (“[I]f a court reviewing a constitutional claim to which qualified immunity applies [does] not address the merits of the claim, the same right may be violated time and again, with courts declining each time to provide a remedy or state the law for future cases.”).

¹⁶ See, e.g., *Francis v. Fiocco*, 942 F.3d 126, 140-49 (2d Cir. 2019) (concluding that state prison officials violated the plaintiff’s due process rights by running sentences consecutively when state law required that they run concurrently, but granting qualified immunity because there was no factually identical precedent); *Price v. City of New York*, No. 15-CV-5871 (KPF), 2018 WL 3117507, at *11-18 (S.D.N.Y. June 25, 2018) (finding that NYPD officials violated plaintiff’s First Amendment rights when they blocked her from viewing or commenting on certain NYPD Twitter accounts, but granting qualified immunity because there was no factually identical precedent).

Indeed, the doctrine has resulted in a lack of accountability for officers who have committed, or who were alleged to have committed, a range of heinous acts. For example, courts have applied the doctrine where individuals in the grips of obvious but often nonthreatening mental health emergencies are injured killed by police officers who use weapons and mechanical restraints instead of compassion, patience, and de-escalation tactics.¹⁷

2. *Examples of the Qualified Immunity Doctrine in Practice*

The doctrine allows for immunity even where officers exact revenge in reaction to perceived slights or disrespect, sometimes called “contempt of cop.” Courts have applied the doctrine:

- Where police officers, after a brief chase, rear-cuffed a winded, obese man on the ground and repeatedly ignored his pleas that he could not breathe in the prone position, causing his death.¹⁸
- Where officers ignored a tightly cuffed arrestee’s “non-verbal aural and physical manifestations of” pain, because prior caselaw held that officers need only respond to clear, verbal complaints of pain.¹⁹
- Where an officer tackled a college student to the ground and kicked him in the head for asking why the officer ordered him to drop a water balloon, even where the jury had awarded \$100,000 in damages and concluded that the officer acted with “malice” in using excessive force.²⁰

Police officers have also benefitted from qualified immunity in cases where they suppressed peaceful dissent and media coverage of it. Courts have applied the doctrine:

- Where NYPD officers arrested scores of Occupy Wall Street protestors, even where the court *itself* recognized that there was no legal basis to arrest or detain them.²¹

¹⁷ See, e.g., *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015) (granting qualified immunity to officers who approached a woman they knew to be in severe mental-health distress and instead of waiting for back-up that they could hear had almost arrived, confronted the woman and shot her five times); *Roell v. Hamilton Cnty., Ohio/Hamilton Cnty. Bd. of Cnty. Commr’s*, 870 F.3d 471 (6th Cir. 2017) (granting qualified immunity to officers who used deadly force on an unarmed naked man with a garden hose in his hand in a mental-health crisis, finding no previous case with identical facts).

¹⁸ *Day v. Wooten*, 947 F.3d 453 (7th Cir. 2020).

¹⁹ *Cugini v. City of New York*, 941 F.3d 604 (2d Cir. 2019).

²⁰ *Shafer v. Padilla*, 868 F.3d 1110 (9th Cir 2017).

²¹ *Berg v. Kelly*, 897 F.3d 99 (2d Cir. 2018).

- Where police pepper-sprayed a demonstrator at close range, despite a prior appellate ruling that “[t]he assessment of a jury [was] needed” to evaluate whether the officers used excessive force against her.²²
- Where high-ranking officials singled out and arrested a well-known photographer for allegedly stepping into the street to take pictures of questionable arrests, while choosing not to arrest or admonish others standing in the street. That conduct essentially blessed the NYPD’s abuse of the jaywalking ordinance to squash demonstrations and media coverage of them.²³

In the context of jails and prisons, courts have awarded qualified immunity for truly sadistic conduct:

- Where a guard, for no legitimate purpose related to his job, fondled a detainee’s penis during a search to make sure that he did not have an erection, an act that the appeals court ruled was “repugnant to the conscience of mankind” but nevertheless shielded by qualified immunity.²⁴
- Where a corrections officer, without any provocation, deployed a burst of pepper spray into a person’s face at close range.²⁵

²² See *Brown v. City of New York*, 798 F.3d 94 (2d Cir. 2015) (reversing grant of summary judgment, remanding for trial on issue of excessive force), *on remand*, 2016 WL 1611502 (S.D.N.Y. Apr. 20, 2016) (declining to conduct trial, instead granting qualified immunity), *aff’d*, 862 F.3d 182 (2d Cir. 2017).

²³ *Nigro v. City of New York*, No. 19-CV-2369, 2020 WL 5503539 (S.D.N.Y. Sept. 11, 2020).

²⁴ See *Crawford v. Cuomo*, 796 F.3d 252 (2d Cir. 2015) (“*Crawford I*”) (recognizing that the conduct violated the Eighth Amendment but remanding to the district court to determine whether a reasonable officer would have known it was illegal to grope a person in custody without a penological purpose to do so), *appeal after remand*, 721 Fed. App’x 57 (2d Cir. 2018) (“*Crawford II*”) (affirming district court’s grant of qualified immunity for same conduct); see also *Shannon v. Venettozzi*, 749 F. App’x 10, 12 (2d Cir. 2018) (in response to allegations that officer repeatedly groped incarcerated individual without a penological justification and the for the sole purpose of humiliating the detainee or gratifying the officer, concluding that “[a]lthough the conduct alleged in the amended complaint is reprehensible both then and now, when it occurred in 2011, our precedent did not establish that such conduct was clearly unconstitutional.”).

²⁵ *McCoy v. Alamu*, 950 F.3d 226, 228 (5th Cir. 2020) (granting qualified immunity to corrections officer who sprayed person in face with a burst of pepper spray, unprovoked, because the appeals court had not yet adjudicated a case involving a correction’s officers unprovoked use of pepper spray).

- Where correctional officials punished a person with 89 days in solitary confinement for writing a nonthreatening letter to a third party outside of prison expressing that he was attracted to a correctional officer inside the facility.²⁶
- Where guards for four days purposefully locked a person in a cell with “massive amounts” of feces on the cell floor, ceiling, window, walls, and inside the water faucet, causing the person to refuse water from the faucet for four days, and later moving him to a “frigidly cold” cell without a toilet for almost two days.²⁷

As these examples illustrate, qualified immunity is an indefensible barrier to justice and shields police and corrections officers from liability for unconscionable conduct, perpetuating a culture of impunity that enables patterns of violence, harassment and abuse. Int. 2220-2021 acts where federal courts have failed. Creating a remedy for police misconduct, similar to the federal private right of action created by the Reconstruction-era Congress in enacting 42 U.S.C. § 1983, would give New Yorkers an important new tool for vindicating their right to be free from police harassment and abuse and guarantee that where there is a violation of a person’s rights, there will be a remedy under New York law. Nonetheless, some amendments are required to ensure this promise is fulfilled by the statute.

B. Suggested Amendments

1. Int. 2220-2021 Should Not Be Limited to Violations of the Fourth Amendment

The NYPD’s pattern of racist and abusive policing is not limited to Fourth Amendment violations, and neither should this legislation be so limited. While the incorporation of the text of the Fourth Amendment into the bill ensures that the legislation covers unconstitutional searches and seizures as well as unconstitutional uses of force, many instances of police misconduct also involve violations of other constitutional provisions – including the Fourteenth Amendment’s

²⁶ *Bacon v. Phelps*, 961 F.3d 533 (2d Cir. 2020) (holding that prison officials unlawfully retaliated against person in custody who wrote a non-threatening letter to a friend outside of prison that he was attracted to one of the corrections officers, but granting qualified immunity because no previous case had specifically held that there was a constitutional right to write a nonthreatening “letter to a third party expressing his desire for a woman later identified as a female correctional officer”).

²⁷ *Taylor v. Stevens*, 946 F.3d 211 (5th Cir. 2019) (granting qualified immunity to corrections officers who, for four days, confined a person in a cell with “massive amounts” of feces on cell floor, ceiling, window, walls, and inside water faucet, causing person to refuse water from the faucet, and later confined the persons in a “frigidly cold” cell without a toilet for almost two days), *rev’d sub. nom. Taylor v. Riojas*, No. 19-1261, 2020 WL 6385693 (U.S. Nov. 2, 2020).

prohibition on discrimination, the Eight and Fourteenth Amendment’s prohibitions on cruel and unusual punishment and conduct that shocks the conscience, and the First Amendment’s protection of free speech and assembly. Moreover, in some instances the New York State Constitution may provide additional protections against police misconduct that also should be available without the hinderance of qualified immunity.

Legal Aid recommends that Int. 2220-2021 be amended in §8-802 to create a general cause of action for any violation of federal or state constitutional rights, and not be limited to rights secured by the text of the Fourth Amendment to the U.S. Constitution.

2. *Int. 2220-2021 Must Include Corrections Officers*

As detailed above, some of the most egregious examples qualified immunity’s destructive impact arise out of constitutional violations by corrections officers. Int. 2220-2021 should be expanded beyond employees of police departments by amending § 8-801(1) to read “An employee of the police department or department of correction;” and § 8-801(2) to read “A peace officer, as defined in section 2.10 of the criminal procedure law, who is employed by the city, or appointed by the police commissioner as a special patrolman pursuant to subdivision c or e of section 14-106, or a correction officers of any state correctional facility or of any penal correctional institution.”

3. *Int. 2220-2021 Should Provide for Municipal Liability*

Creating a local cause of action establishes a new foundation for accountability for patterns of police and correction officer misconduct. Those patterns are rarely the result of individual “bad apples” and very often the result of the policies, practices, and actions of the municipal agency that employs the offending officer. While New York law provides some other legal mechanisms for holding those agencies accountable for their role in constitutional violations, Int. 2220-2021 should also make clear that liability for the new local cause of action created by this bill is equally extended to such agencies.

4. *Int. 2220-2021 Should Ensure the Availability of Attorney’s Fees*

Int. 2220-2021 rightly provides for attorneys’ fees for a prevailing plaintiff, thereby incentivizing the private bar to litigate cases brought under this bill, including so-called “small damages” cases that private attorneys would be unlikely to take on contingency alone.

However, Int. 2220-2021’s definition of “prevailing plaintiff” is more restrictive than the definition found in other New York City laws, including the Community Safety Act,²⁸ which defines “prevailing plaintiff” as one “whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff’s favor.” To ensure consistency of local laws and the full availability of attorney’s fees, Int. 2220-2021 should be amended to mirror this definition. In addition, §8-805 of the bill contains unnecessarily duplicative language adding a layer of discretion to the award of fees that could undermine the availability of such remedies for prevailing plaintiffs. To that end, the phrase “as such court determines to be appropriate” (page 3, line 16) should be deleted.

5. The Indemnification Scheme in Int. 2220-2021 Requires Further Consideration

Section 8-806 of the bill limits municipal indemnification of individual officers and requires that such officers be personally liable for a portion of any judgment against them. While we understand the intent of this provision is to address the degree to which municipal indemnification erodes the deterrent effect of court judgments, Legal Aid is concerned that this provision may have little practical impact. In our experience, the Law Department of the City of New York seeks a general release and stipulation of settlement that requires the plaintiff to drop all claims in exchange for an agreement that the City alone will pay the settlement amount. Because such claims also often involve claims against municipal entities, it is not clear how this provision would prevent the City from demanding a settlement against the City and the voluntary dismissal of claims against individual officers.

IV. Res. 1538-2021 (Cumbo): Resolution on Authority over Police Discipline

Legal Aid expresses qualified support for the Council’s Resolution calling upon the New York State Legislature to remove the Police Commissioner’s exclusive authority over police discipline. Specifically, Legal Aid supports the passage of Senate Bill S268, Senator Zellnor

²⁸ 2013 N.Y.C. Local Law No. 71, N.Y.C. Admin. Code § 8-502 (g).

Myrie’s bill to repeal chapter 834 of the laws of 1940, which currently limits the degree to which localities can provide for independent oversight and discipline of police officers.²⁹

A. Background

While we agree that the systemic down-grading of the CCRB’s recommendations for police discipline is deeply troubling, this is just one of many serious problems with the NYPD’s disciplinary system. Merely giving the CCRB the ability to impose discipline will not adequately address the bigger problem of the NYPD’s disciplinary system being primarily housed in, and staffed by, employees of the NYPD.

First, the CCRB is only one part of NYPD disciplinary investigations and adjudications.³⁰ Its jurisdiction is limited to misconduct that can be categorized as Force, Abuse of Authority, Discourtesy, and Offensive Language (FADO).³¹ The CCRB currently only investigates complaints brought by civilians, and as such, they do not investigate or prosecute internally reported misconduct.³² The NYPD’s Internal Affairs Bureau (IAB), on the other hand, can investigate internally reported misconduct as well as civilian complaints related to *any* area of police misconduct.³³ Allegations originating with and investigated by both the CCRB and the Internal Affairs Bureau (IAB) are adjudicated within the NYPD by the Office of the Deputy Commissioner of Trials (DCT).³⁴ The CCRB’s Administrative Prosecution Unit (APU) typically prosecutes disciplinary charges that originated as a CCRB complaint, but the NYPD’s Department Advocate’s Office (DAO) is responsible for prosecuting all other disciplinary charges.³⁵ This means that, for many police misconduct cases, the NYPD is the investigator, prosecutor, and final arbiter on issues of police discipline.³⁶

B. Next Steps

Reforming the NYPD’s broken disciplinary system will require more than giving the CCRB authority to impose discipline in the cases they prosecute. Ultimately, the NYC Council

²⁹ S.268, 2021 – 2022 N.Y. Leg. Sess. (repeals chapter 834 of the laws of 1940).

³⁰ See Mary Jo White, Robert L. Capers, and Barbara S. Jones, The Report of the Independent Panel on the Disciplinary System of the New York City Police Department 8-9 (Jan. 25, 2019), <https://www.independentpanelreportnypd.net/assets/report.pdf>.

³¹ *Id.* at 9.

³² *Id.*

³³ *Id.* at 8-9.

³⁴ *Id.* at 13.

³⁵ *Id.* at 11-13.

³⁶ See *id.*

will need to remove police disciplinary adjudications and final disciplinary determinations entirely from the NYPD to an impartial arbiter. We encourage the Committee on Public Safety to explore various options for a different agency where NYPD disciplinary matters should ultimately be adjudicated, whether the Office of Administrative Trials and Hearings (OATH) or some other agency. Regardless of whether and where the NYC Council decides to fully remove police disciplinary matters from the NYPD, Albany *must* repeal chapter 834 of the laws of 1940 in order for NYC policymakers to make this important choice in the future. As such, we support the resolution but encourage the Council to consider alternative next steps to increase the independence and accountability of the NYPD's disciplinary system.

CONCLUSION

We welcome the City Council's effort to pass a police accountability package. Many of the bills being considered are good policies, however, there are other bills that are notably absent from the Council's package, including Council Member Diana Ayala's DNA Consent Search bill, Int. 2015-2020, which would prohibit the NYPD from collecting DNA samples from minors without the consent the minor's parent, legal guardian, or attorney. Ultimately, we urge the Council to heed the calls of the millions who mobilized over the summer, along with the tireless community organizers, activists, and advocates who have been calling on our leaders to meaningfully change the NYPD for decades. To echo Communities United for Police Reform's spokesperson Anthonine Pierre, "[i]n the grand scheme of things, no policing package will reduce police violence or increase police accountability unless it's accompanied by a serious reduction in the bloated budget, outsized power, size and scope of the NYPD."³⁷ While we welcome some of the very small steps forward presented by the NYC Council, we caution that they fall far short of the type of bold, visionary leadership that New Yorkers, especially our Legal Aid clients who bear the brunt of overpolicing by the NYPD, deserve in this moment.

³⁷ Press Release, Communities United for Police Reform Responds to City Council Package of Policing Bills (Feb. 11, 2021), <https://www.changethenypd.org/releases/communities-united-police-reform-responds-city-council-package-policing-bills>.

ABOUT THE LEGAL AID SOCIETY

Since 1876, The Legal Aid Society has provided free legal services to low-income New Yorkers. Over the years, our organization has expanded to become the nation's largest legal services provider for low-income individuals and families. We specialize in three distinct practice areas – Criminal Defense, Civil, and Juvenile Rights – where we passionately advocate for our clients in their individual cases, for their communities in our policy work, and for institutional change in our law reform litigation. Each year our staff handles over 300,000 cases throughout New York City, bringing a depth and breadth of experience that is unmatched in the legal profession. The Society's law reform and social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society provides comprehensive representation to many of the most marginalized communities in New York. We are a valuable piece of the New York City tapestry, and our work is deeply interwoven within the fabric of many low-income New Yorkers' lives.

Our Criminal Defense Practice is the city-wide public defender, practicing in each of the five boroughs and annually representing over 200,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, post-conviction matters, and representing incarcerated people in city jails and state prisons seeking to reform systems of incarceration. 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. The Cop Accountability Project within the Special Litigation Unit at The Legal Aid Society works specifically to combat the police misconduct too many of our individual clients experience. In this capacity, and through our role as counsel in several civil rights cases, the Legal Aid Society is in a unique position to testify about the bills and resolutions under consideration by the City Council today.

Justice in Every Borough.



Andrew Case
Senior Counsel
LatinoJustice PRLDEF

Testimony of LatinoJustice PRLDEF
Before the Public Safety Committee of the New York City Council
February 16, 2021

Thank you for inviting LatinoJustice PRLDEF to testify about the bills under discussion this morning. LatinoJustice has long supported holding the NYPD accountable for misconduct. We were co-counsel in *Ligon v. City of New York*, one of the related cases challenging the NYPD's racially biased stop-and-frisk practices that resulted in the imposition of a federal monitor.

Over-policing harms communities, and particularly harms communities of color. Procedural reforms to how New Yorkers are policed—while beneficial—will not solve the policing crisis in this city. Last summer, as momentum built to reduce the size and power of the NYPD and re-invest the savings into services that support and strengthen communities, the Council failed to make significant reductions in the NYPD budget. LatinoJustice urges you to do so now.

We also urge you to add to the police reform package two bills that Communities United for Police Reform has worked on with members of the council: one reporting on level 1 and level 2 pedestrian encounters, and a second reporting on DNA consent searches. Considering, and passing, these bills will strengthen the overall reform package.

That said, LatinoJustice supports the stated goals of the measures under consideration today. We set forth more specific thoughts on these measures below.

Int. No. 1671 – Requiring the Police Department to Report on Traffic Encounters

The NYPD has a history of racial profiling, as proven in court in the *Floyd*, *Davis*, and *Ligon* cases challenging the department's stop-and-frisk policy. But the NYPD does not collect data specifically on vehicle stops, so policymakers, advocates, and the department are not able to take steps to address racial profiling on the road.



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LatinoJustice supports requiring the NYPD to report data on vehicle stops. But the current bill has significant shortcomings. We support the amendments proposed by Communities United for Police Reform to require the NYPD to report all arrests and summons stemming from these stops—not just traffic infractions—and to include all vehicles in the reporting.

Res. 1538-2021 – Resolution Regarding Police Commissioner’s Authority

Since the CCRB was created in its current form, six police commissioners under three mayors have systemically downgraded CCRB’s recommended punishments for officers who broke the law. In 2007, for example, the NYPD failed to discipline over a third of the officers in substantiated CCRB cases and imposed nothing more than a verbal warning in half the cases where it did act. Things are not much better today—an analysis by ProPublica of data released after the repeal of 50-a showed that in nearly half of the 600 cases in which the CCRB recommended charges from 2014 to 2018, the NYPD either imposed less serious punishment or none at all.

This departure is particularly apparent when the CCRB finds that officers lied under oath in their interviews with agency investigators. Even though Section 203-08 of the NYPD Patrol Guide states that “Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances,” the NYPD ignores the vast majority of cases in which the CCRB finds an officer lied.

The new NYPD “disciplinary matrix” does little to change matters. The penalties suggested by the matrix are uniformly low—if an officer is found to have stopped and searched someone illegally, for example, the standard matrix punishment is to forfeit 3 vacation days. And in any event the NYPD has granted itself the power to depart from the matrix if it so chooses.

LatinoJustice therefore strongly supports removing disciplinary authority from the NYPD.

But the proposed resolution, even if passed, will not alone solve the problem. The Commissioner’s disciplinary authority is codified in the Administrative Code (in Section 14-115),

and in the City Charter (in Section 434). We know that some argue that the authority is also codified in state law (specifically, Paragraph 3-a of Section 75 of the State Civil Service Law) and are aware of the ongoing litigation before the Fourth Department as to whether Rochester properly vested disciplinary authority in its newly created Police Accountability Board. But even if the State Legislature changes state law, the Council must revise the Administrative Code and likely must amend the Charter for disciplinary authority to change hands.

Therefore, LatinoJustice calls upon the Council—just as the Council calls upon the State Legislature—to amend Section 14-115 of the Administrative Code and Section 434 of the Charter to require the NYPD to impose the discipline recommended by the CCRB in cases it substantiates, in addition to passing this resolution.

Int 2209-2012 – Advice and Consent of the Council for the Police Commissioner.

Currently, the head of the Department of Investigation and the Corporation Counsel for the City of New York, along with the members of several commissions and boards, are subject to the approval of the City Council. This local law will amend the City Charter to require the City Council's approval of the Police Commissioner. LatinoJustice supports this measure and urges the council to use approval power to vet future commissioners thoroughly and aggressively.

Int 2220-2021 – Right of Security Against Unreasonable Search and Seizure

Qualified Immunity is a judicially-created doctrine that—whatever its original purpose—now serves to prevent victims of police abuse from obtaining justice. Qualified Immunity has protected officers who engage in gross acts of misconduct: for example, in 2015, the Supreme Court relied on the doctrine to dismiss a suit against an officer who fired six times at a fleeing car, killing its driver, in a case that led Justice Sotomayor to write in dissent that the Court was “sanctioning a ‘shoot first, think later’ approach to policing.”

LatinoJustice unequivocally supports the repeal of qualified immunity. And while we favor passage of the proposed legislation, we wish to make clear that it will not eliminate qualified immunity: it provides only limited relief against some officers for some claims. Moreover, it does not require the NYPD to incorporate lessons from litigation to address future misconduct.

The bill provides only limited relief against some officers for some claims. The right established by the bill tracks the language of the Fourth Amendment and applies that right against police officers and peace officers. But it does not provide any right of action aligned with the Eighth Amendment, which protects against cruel or unusual punishment, and does not apply against corrections officers. Misconduct by corrections officers should also not be protected by qualified immunity. For example, just last year, the Second Circuit reversed a trial court and held that qualified immunity protected a corrections officer who supervised three officers who repeatedly sexually assaulted a person in their custody over a period of four months.

The bill would not require the NYPD to incorporate lessons from litigation to address future misconduct. The bill would require individual officers to pay a portion of the payment for any successful claim. But it would not require the NYPD or the City to use data from litigation to address policy and practice issues that would limit future misconduct. As Professor Joanna Schwartz, a leading expert on qualified immunity, wrote in 2014, “governments do not appear to be collecting enough information about lawsuits to make educated decisions about whether or how to reduce the police activities that prompt these suits.” Even without the protections of qualified immunity, the NYPD paid over \$220 million in tort claims in fiscal year 2019, according to the Comptroller’s most recent Annual Claims Report. And while the Office of Inspector General has repeatedly requested that the NYPD use data from lawsuits to revise its policies and practices, the NYPD has been slow to adapt—its most recent response to OIG’s request was to emphasize a short-term decline in cases

filed. And the NYPD remains opaque on how its “RAILS” system, which purportedly tracks litigation among other factors in evaluating individual officers, actually functions.

But even if RAILS—which tracks individual officers—worked as promised, the NYPD has shown that it will not revise its policies and practices in response to litigation. The militarized response to the demonstrations of summer 2020 shows this point. In 2004, the NYPD surrounded and arrested a group of demonstrators who were protesting the Republican National Convention. The department, and the officer in charge of the action, were sued, and the city eventually paid millions of dollars for the illegal action. But the NYPD apparently did not take any steps to update its response to peaceful demonstrations in response to that litigation. The same officer who supervised those arrests has been promoted to Chief of Department and oversaw one of the most notorious acts of police abuse of the summer—surrounding and arresting peaceful demonstrators, most of whom were Black or Latinx, in Mott Haven on June 4, 2020. That incident was the subject of a Human Rights Watch report and is a key claim of the litigations filed by Legal Aid, the New York Attorney General, and private litigants. As the Department of Investigations found, the NYPD continues to train officers on kettling (while calling the practice “encirclement”) and to deploy the tactic years after being successfully sued over it. The council should encourage or mandate that the NYPD reform its core practices and policies after litigation, not merely track individual officers.

LatinoJustice therefore supports the measures on the agenda today, with the reservations and recommended amendments proposed above, and thanks you for your time and attention.

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Testimony of Jimmy Meagher, Policy Director
Safe Horizon

Committee on Public Safety
Hon. Adrienne E. Adams, Chair

Safe Horizon's Testimony on the City Council's Police Reform Bills

2.16.2021

Good afternoon, and thank you for the opportunity to provide testimony before the Committee on Public Safety. My name is Jimmy Meagher, my pronouns are he/him/his, and I am Policy Director at Safe Horizon, the nation's largest non-profit victim services organization. Safe Horizon offers a client-centered, trauma-informed response to 250,000 New Yorkers each year who have experienced violence or abuse. And we are increasingly using a lens of racial equity to guide our work with clients, with each other, and in developing the positions we hold.

For more than 40 years, Safe Horizon has existed to support victims of violence and abuse. We have always been an organization that recognizes and helps survivors to heal from many types of violence - intimate partner violence, family violence, sexual violence, and other interconnected forms of violence and harm. We have staff and programs in every borough, in every community across New York City, including (during normal times) at every police precinct, every Family Justice Center, and every Child Advocacy Center. **Throughout our history, we have found value in partnering with law enforcement.** Through those partnerships, we have worked with police officers and prosecutors to keep victims safe and hold those who cause harm accountable. We have advocated for policy and practice changes to make these systems more responsive to our clients. And we have prided ourselves on bringing greater respect, compassion, and self-determination to survivors involved in the criminal justice process through our client-centered approach to advocacy. Because of our partnership with the NYPD, Safe Horizon was able to engage and support more than 50,000 victims of crime last year alone.

Yet the reality is that our law enforcement partners have also caused harm, and we have not done all we could to stop that harm, or even name it for what it is - racism. Systemic and sometimes individual racism. Black and brown people, especially men and transgender women, are far more likely to be killed by the police and to experience violence at the hands of police officers. And they face bias and inequity in every aspect of the criminal justice system. We didn't just learn this because of the murders of George Floyd, Breonna Taylor, and so many, too many, other Black men and women. Our clients have been telling us about these realities for years.

Too many of the victims and survivors we serve, and too many of our colleagues and loved ones have had encounters with police officers that were dehumanizing. We know that these experiences are a profound barrier to safety and healing. We hear, for example, from Black women experiencing domestic violence who agonize over whether to call the police because their experience tells them the response may include excessive force, or they themselves will be arrested. We hear from survivors of domestic violence and financial abuse that when they try to report fraud or identity theft, they are refused a police report. We hear from Black and brown men and boys who will not turn to the police when they are in danger because in their experience this has not been a safe or viable option. We hear from our homeless youth who are stopped on their way to the homeless shelter, treated as criminals, and not seen as homeless youth in need of support.

Our staff, many of whom are Black, Latinx, Asian, and people of color, are also deeply impacted by police violence. Staff have experienced harm caused by the police both outside of work in the community and while working. These painful experiences affect both their ability to do their work with survivors and their personal wellbeing and health.

Safe Horizon's mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families, and communities. We believe that confronting and ultimately dismantling systemic racism is necessary to fulfilling our mission because systemic racism denies justice, and is rooted in violence.

Our advocates witness every day how critical it is for victims and their families to have trust in local law enforcement when something bad happens. Because that trust is so essential, we supported the repeal of 50-a and we continue to support other legislative efforts to more meaningfully ensure true accountability and transparency of our criminal justice systems. We are grateful that the City Council has introduced this package of police reform bills. These bills are a promising start, and we agree with the spirit of this package of legislation. But the way we as a city operate must adapt and change to meet this moment. Our systems, the ones we rely on to respond to harm and violence, must fundamentally change and approach this work with nonviolence, compassion, and understanding rather than escalation and additional violence.

Safe Horizon supports **Reso 1538-2021**, as one person, the NYPD Commissioner, should not have ultimate say over disciplinary decisions. The CCRB should have more say, of course, but more voices should be included, including the voices of survivors, community members, and those who have experienced the harm in question. Our systems, including our government systems and institutions, can learn a great deal from restorative justice programs.

We support **Int 2209-2020**, as we would like to see additional voices in the decision of choosing a Commissioner. But we would like to see additional community input in City decisions as important as this one.

We support **Int 1671-2019**, as we need transparency and honesty in order to move forward.

And we support **Int 2220-2021**, which would end qualified immunity for police officers in New York City and allow for much greater accountability.

We also support bills in the larger reform package, including bills that would reform the ways our city responds to mental health crises and school safety.

We know that the NYPD's budget continued to grow even as crime rates dropped dramatically in New York over the last three decades, and that officers were asked to respond to an ever-increasing number of societal issues that are better addressed by mental health clinicians, social workers, and outreach workers. Safe Horizon supports calls for an alternative response to New Yorkers experiencing homelessness and mental health crises. Transferring these responsibilities would allow the police department to focus on incidents of violence where their presence is needed, while reducing the likelihood of harm to vulnerable New Yorkers.

We also support increased investments into proven programs that more effectively address the underlying issues that lead to violence on the streets, and alternative to incarceration programs that foster true accountability for those who commit harm, healing for those impacted by violence, and reduced recidivism.

We need crisis-response systems that honor and prioritize power-sharing, de-escalation, and community. We need systems that emphasize peer response and that include folks with lived experience in their design and implementation. And we need systems and responses that are trauma-informed.

"Safe Horizon envisions a society **free of violence and abuse**. We will lead the way by empowering victims and survivors to find safety, support, connection, and hope." This is Safe Horizon's vision statement; it is what we aspire towards and what guides our work. We *must* believe that we can create that society free of violence and abuse. It will be challenging but it is possible. And we will build that future alongside survivors and the countless dedicated advocates doing the work everyday to end violence in all its forms.

This is only the beginning. These are only initial steps in building a better, safer, more just future for all of us. We should take advantage of this moment and take every course of action that we can, both short-term and long-term, to reduce harm in our communities - harm caused by intimate partners and caregivers, harm caused by neighbors and strangers, and harm caused by law enforcement. We can build a society free of violence and abuse.

Thank you for the opportunity to testify today.



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**STATEMENT OF
ALBERT FOX CAHN & CAROLINE MAGEE
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)**

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

**FOR A HEARING CONCERNING
THE POLICE COMMISSIONER’S
EXCLUSIVE AUTHORITY OVER POLICE DISCIPLINE**

**PRESENTED
February 16, 2021**

Good morning, my name is Albert Fox Cahn, and I am the Founder and Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”), a New York-based privacy and civil rights group. We want to thank Chair Adams for the opportunity to testify today about the police commissioner’s exclusive control of police discipline in New York City.

For as long as the New York City Police Department (“NYPD”) has existed, it’s offers have been given tacit permission to beat and brutalize New Yorkers of color, particularly Black New Yorkers. This permission has taken many forms, but few are as dangerous of the systemic failure to discipline police officers who are caught in the act of attacking New Yorkers. The so-called “success stories” where officers face far too few consequences, far too late. These are pyrrhic victories, taking years of public pressure and exhaustive evidence to punish even the most heinous violations; it took five years for Eric Garner’s killer, Daniel Pantaleo. It may take more than 5 years for Wayne Isaacs to face any discipline for his brutal killing of Delrawn Small.

If it takes 5 years to see any accountability for brazenly taking a human life, what consequences can New Yorkers expect for officers who abuse their powers in less deadly ways. For the countless New Yorkers whose rights are violated and bodies beaten, they know there will never truly be any accountability. Even though the lack of officer discipline has plagued New York Policing for decades, aspects of it can be fixed quite quickly. Perhaps no change is as urgent as removing the police commissioner’s exclusive authority over police discipline. Commissioner Shea has shown that like prior officers, he is committed to protecting and serving abusive officers, not the public.

While this council make lack the power to act on it’s own, we join you in calling on Albany to provide New Yorkers with policing discipline they can begin to believe in. But calls for action are not enough, and the Council itself must act immediately where it can to end biased and abusive policing.

I. History of NYPD Oversight

The NYPD will oppose these changes, just as they have opposed every effort to promote oversight and equity in policing for decades. When the Civilian Complaint Review Board’s (CCRB’s) predecessor was founded in 1953, the NYPD fought it.¹ When reformers sought to add a civilian member in 1966 NYPD supporters spent lavishly to oppose the ballot measure.² In 1987, this Council and Mayor Koch finally added civilians to the anemic body, removing it completely from NYPD’s purview just a year later, after the Tompkins Square Riots.³

¹ JULY-DEC. N.Y. CITY CIVILIAN COMPLAINT REV. BD. STATUS REP. 7 (1993); *see generally*: Patterson, Raymond W., "Resolving Civilian-Police Complaints in New York City: Reflections on Mediation in the Real World" (2006), *Scholarly Works*, Paper 493, <http://scholars.law.unlv.edu/facpub/493>.

² *Id.*

³ Book Note, *The Eyes of the Law*, 103 HARV. L. REV. 1390, 1393, n.13 (1990) (reviewing H. RICHARD UVILLER, *TEMPERED ZEAL* (1988)); *see generally*: Patterson, Raymond W., "Resolving Civilian-Police Complaints in New York

But the CCRB's independence has often been equaled by toothlessness, limited to the power to submit non-binding recommendation to the NYPD. The rules read "The findings and recommendations of the Board, and the basis therefor, regarding Case investigations and administrative Prosecutions will be submitted to the Police Commissioner."⁴ Time and again, we've made expansive promises, only to then leave the NYPD with the power and discretion to police themselves.

The very brief history above paints a picture of when NYPD accountability improves: only when police misconduct has gotten so outrageous that the voices of the people being policed – and abused by the police – get so loud that they can be heard over the political power of the NYPD. And we are finally at that point.

Last summer, we saw misconduct from the NYPD so terrible that Human Rights Watch released a 99-page report on the tactic called "kettling" used in Mott Haven on June 4, 2020.⁵ Additionally, there was a data dump from the New York Civil Liberties Union, of more than 300,000 accusations of misconduct against more than 81,000 officers illustrated the breadth of the problem.⁶ State Attorney General Letitia James is literally suing the city, to get a federal court-appointed monitor to oversee protest policing.⁷

In addition to supporting the removal of the Police Commissioner's powers over officer discipline, we also support Int. No. 2209, ensuring Council confirmation of the Commissioner herself. This will be an important check on the almost unilateral control that the Mayor has failed to exercise of the NYPD's leadership. While confirmation is an important step, it is far from a cure-all. Even the best of all possible commissioners would be incapable of systematically dismantling the abuse and racism embedded within the NYPD. And expanding the Council's powers over the NYPD does nothing to address the Council's failure to exercise those powers it already holds.

When thousands of New Yorkers took to the streets, demanding that the Council defund the NYPD by a billion dollars, you had the power to act, but you didn't. When New Yorkers cried out for sanctuary city protections to stop the ICE from using NYPD data to deport our neighbors, the

City: Reflections on Mediation in the Real World" (2006), *Scholarly Works*, Paper 493, <http://scholars.law.unlv.edu/facpub/493>.

⁴ Section 1-02: Jurisdiction, Title 38-A: Civilian Complaint Review Board, The Rules of the City of New York, https://www1.nyc.gov/assets/ccrb/downloads/pdf/Title38-A_20181307.pdf (last accessed: February 18, 2021).

⁵ "Kettling" Protesters in the Bronx: Systemic Police Brutality and Its Costs in the United States, HUMAN RIGHTS WATCH (Sept. 30, 2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>.

⁶ *NYPD Misconduct Database*, ACLU OF NEW YORK, <https://www.nyclu.org/en/campaigns/nypd-misconduct-database>.

⁷ Jake Offenhartz, Jen Chung, and Yasmeen Khan, *NY Attorney General Sues NYPD, De Blasio Over Use of Excessive Force During Protests*, GOTHAMIST (Jan. 14, 2021, 1:40 PM), <https://gothamist.com/news/ny-ag-letitia-james-sue-nypd-install-federal-monitor>.

City Council had the power to act, but you didn't. Now, we do see long overdue reforms that address a small segment of what New Yorkers are demanding, and I want to remind you that you once again have power to do more, much more.

As we sit here, a test of the Council's resolve on policing is unfolding all across this City. Last year, the Council took the historic step of passing the POST Act, requiring the NYPD to publish policies for each surveillance tool that it has. This was an inflection point in the years-long struggle to pull back the curtain on NYPD spying and see how we and our communities are being tracked. But instead of complying with the law, the NYPD tried to sidestep the statute, publishing reports that hide more than they reveal. Now, thousands of New Yorkers are responding, submitting comments to the NYPD that denounce this blatant stonewalling. If the NYPD continues down this path, the question for this Council will be whether there are real consequences. Can the PD simply ignore the law with impunity, or will this be the final straw, the breaking point for a department that has proven time and again why it cannot be trusted to police itself, particularly on surveillance.

One NYPD POST Act policy is so particularly offensive that it deserves an immediate response. The NYPD's policy on facial recognition not only withheld the most basic information about how this dangerous and invasive technology is being deployed, it lied to New Yorkers. The NYPD tried to deny the clear history of using facial recognition to track political demonstrations. It tried to rewrite history. It even tried to deny the most fundamental questions of how this technology works, claiming it doesn't even use artificial intelligence. In light of this blatant attempt to stonewall the public, and in light of the NYPD's history of abusing facial recognition we once again call on this Council to immediately introduce and pass a complete and categorical ban on facial recognition technology.



Riders 4 Rights
February 19, 2021

Written testimony regarding the bill to end qualified immunity for police officers, heard in the Committee on Public Safety on February 16 at 10:00am.

Ending Qualified Immunity
<https://council.nyc.gov/testify/>
Bill: [Int 2220-2021](#)

Deadline February 19, 2021 at 10am EST

Riders 4 Rights is a New York-based grassroots collective dedicated to building and amplifying power for the Movement for Black Lives. We strongly support Bill [Int 2220-2021](#) sponsored by Council Member Stephen Levin, **ending qualified immunity for police officers in New York City**.

Statements from our Collective

United States District Court Judge Carleton Reeves of Mississippi had to grant qualified immunity in an August 4, 2020 decision ([Jamison v. Mclendon](#)). However, he used the legal decision to describe why qualified immunity does not make sense, despite the fact that he had to grant it. Judge Reeves writes:

“Tragically, thousands have died at the hands of law enforcement over the years, and the death toll continues to rise. Countless more have suffered from other forms of abuse and misconduct by police. Qualified immunity has served as a shield for these officers, protecting them from accountability”

Judge Reeves continues:

“The situation is not getting better. The number of people killed by police each year has stayed relatively constant, and Black people remain at disproportionate risk of dying in an encounter with police...”

Judge Reeves’ opinion is applicable nationwide. The doctrine of qualified immunity continues to shield and implicitly condone abuse and unconstitutional search and seizures – predominantly against Black citizens across the US. New York City has a chance to change this. As a life-long New Yorker, I want my City Council to work to make our City one in which my neighbors of color are able to live without fear of being targets of harassment and brutality from the New

York City Police Department. I want to ensure police officers know they are accountable, personally, for any and all violence.

As a person who grew up in New York City, I witnessed time and time again the stereotyped, racialized interactions between NYPD officers and my friends, neighbors, and fellow New York citizens. During the summer of 2020, I witnessed cops brutalize, verbally & physically assault, & unjustly arrest and imprison our fellow citizens with impunity. This must stop. We must ensure that all officers are held personally liable for their individual actions. For years New Yorkers have been subject to unreasonable search and seizure, and this is just one piece in a larger puzzle of addressing poor accountability. This bill (S1991), in conjunction with the bill on the floor of the New York State Senate (Senate Bill S8668B), would terminate Qualified Immunity, and bring our City closer to a world without fear – closer to a world that does not perpetuate state violence, or abuse of power.

When individuals with power have no consequence for their actions, it naturally forms them to be indecent, cruel human beings. And in 2020 NYC's case, these indecent & cruel human beings also had the power of the legal system at their backs through Qualified Immunity. It allows for police officers to swing a baton over the heads of needful people that have entirely different understandings of "rules of life". This disparity is illustrated thru the countless reports of police brutality that have gone ignored – without consequence. The lack of accountability has shown itself when the New York Attorney General files a lawsuit against the NYPD to get a spotlight on accountability after peaceful protesters have been beaten for protesting systemic racism. It shows itself when days after that announcement, a non-violent protest was met with absurd force from the NYPD on MLK day. It shows itself when we sit in a central bookings courtroom in Brooklyn awaiting arraignment for our friends who were wrongfully, aggressively, and horrifyingly arrested. And as we wait for their arraignment, watching life, after life be ruined by cash bail being requested from minor charges, the officer announcing cases unabashedly boasts about how the offenders "can't even speak American." When officers are told they can do no wrong: they believe it. Qualified immunity has allowed officers to abuse and harm citizens. They kill with hair-trigger rationale, and qualified immunity protects, if not defends, their lack of accountability which has resulted in the loss of civilian life. Subsequently makes it impossible for other officers to even attempt to hold another one accountable, fostering a culture based in silence and oppression. Qualified Immunity is a flawed, broken, and backward double standard that needs to be dismantled here, and followed through to the state level.

Ending Qualified Immunity is a way to address multiple pressing legal issues at once: 1) creating accountability measures for State agents and Law Enforcement Officers and 2) establishing strong precedent for owed Duty of Care by the State. Qualified Immunity as it stands right now is a legal immunity claim that removes all civil liability from public officials in lawsuits that allege a victim's rights were violated. In these cases, the only permissible suits are those in which

officials violated a “clear and established” right. The problems with this doctrine are more than apparent; public officials across the country with substantiated claims of mass misconduct face zero accountability. From inhumane treatment in ICE detention facilities to abuses of power exhibited by the NYPD, striking this doctrine would have an immediate positive impact on this city, and would address glaring holes in our legal structure.

The doctrine balances “the need to hold public officials accountable” with “the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”¹ To be more clear, it establishes the need to allow officials to perform their duties as more vital than to be held responsible for their actions while carrying out these duties. This has enabled and shielded widespread, substantiated claims of misconduct and precluded victim’s from Justice. This has disproportionately affected Black communities, and BIPOC communities at large, across the nation. Provided this, do not be disillusioned to think New York City has been immune to this development. Just within the last year, we have seen rampant abuses of human rights committed by the NYPD - in which several human rights groups have written to the mayor himself to address the lack of accountability.²

All this being said, ending the doctrine of qualified immunity is a bigger question about our values in our legal system, how we protect our citizens from the abuses of the State and policing at large. The basis of Tort (civil) law is - if a party breaches an owed Duty of Care, the victim of that breach is entitled to compensation and justice. A question that has recently become increasingly more relevant is: Do government agencies - including police departments - owe a duty of care to protect the public?

This is the heart of the issue, and according to a growing body of case law, the answer is no. The Supreme Court has affirmed multiple times, such as in the cases *DeShaney vs. Winnebago*³ and *Town of Castle Rock vs. Gonzales*⁴, that police agencies are not obligated to provide protection of citizens. The bill on the table lets us as New York City decide where we fall into this conversation. There are two options here: either (a) the State, and agents thereof, owe a duty of care to the public and therefore must be held accountable for civil litigation or (b) confirming the case law and admitting to the people of New York, that the NYPD and other State agencies are not here to protect them.

If we decide, as the City of New York, that despite the direction of the Courts the State does owe a duty of care to its people we must be able to hold agents of the State accountable when breaches occur. We live in a time of massive overreach and abuse of power by State agencies, and this is not just a symptom of the Trump administration. To fully commit to this, the individual actors of the State, in most cases Law Enforcement officials, must be able to face civil

¹ *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

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https://www.hrw.org/sites/default/files/media_2020/12/Letter%20to%20Mayor%20Mott%20Haven%2012-2-20_0.pdf

³ *DeShaney v. Winnebago Cty.* DSS, 489 U.S. 189 (1989)

⁴ *Castle Rock v. Gonzales*, 545 U.S. 748 (2005)

liability. Without this, the need for Police Officers to “perform their duties”⁵ will continue to override established constitutional rights guaranteed to the people of this country.

However, if we decide, as the City of New York, to recognize these court rulings as redefinitions of the social contract between the People and agents of the State, we must reexamine policing in this country as a whole. The Courts, particularly the Supreme Court, have held that police officers are not there to protect the public and have discretionary powers in that protection. This is established law, rulings made at the highest level, and it exposes the truth about Law Enforcement and State overreach in the United States. Policing in this country is not about protecting the public, it is about protecting the vested interests of the State. This is where the institutional racism that lurks throughout our legal system is actively being protected. To dismantle this, we must be able to first hold agents of the State accountable for their actions, we can do this by passing this bill. However, civil liability is not the same as accountability. Ending qualified immunity is one step along a longer road that will finally address the decades long abuses by Law Enforcement officers and other State agents, abolishing the policing system and ending carceral criminal justice in this city.

As the designated agents of the State empowered to apply monopolized violence at their own discretion, police officers must be held to the highest standard of accountability. Under the doctrine of Qualified Immunity, “officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Police officers have a high degree of discretionary power to make on-the-spot decisions that impact lives in irreversible ways. The charges from an unlawful arrest can be dropped by a prosecutor, but the physical trauma of a violent arrest and the psychological trauma caused by a lengthy detention can stick with a victim of police misconduct forever. Moreover, police are granted this authority with little formal training. The requirement of only 60 college credits and a six-month academy program to **grant authority to carry a gun** in the NYPD is a sharp contrast to the years of required legal education held by similar key agents of the criminal justice system.

Civil liberties can only be as strong as decision-making of officers empowered with declaring a behavior unlawful. Under current doctrine, NYPD officers may use force without duly considering whether it is legal to do so, and face no accountability if they are wrong. Councilmember Levin’s Int. No. 2220-2021 bill will “establish a local right of security against unreasonable search and seizure” that overrides the defense of Qualified Immunity. This puts the rights of the people established by the Constitution first and foremost by providing oversight on the officers “given extraordinary powers” (DOI 2020, 1) to violate such rights.

The Law Department’s investigation of police misconduct during the George Floyd protests concluded that officers will naturally default to “reflexive responses to take control” that are inappropriate for addressing lawful demonstrations (CC 2020, 39). New Yorkers cannot

⁵ *Supra* note 1.

safely express their First Amendment rights when the reflexive behavior of frontline officers includes using force without considering the legal repercussions. The combination of Qualified Immunity and the NYPD's guiding philosophy enables them to behave in such a way.

As long as Qualified Immunity is in place, the victims of these abuses will have no path to receiving justice. By making police exempt from legal consequences in all but the most extreme cases, the only practical judgement of their actions comes from within the department. No current civilian oversight agency has binding power over the NYPD. Their effectiveness has historically been hampered by a lack of "buy-in from the Department at the highest levels" (DOI 2020, 102). Their recommendations will continue to be ignored until every police officer from the command to the rank-and-file can be held accountable through the justice system.

- I want cops to be held to the same standard that other people, especially public city employees, are held. It is a low moral threshold that I am asking for public employees to not enact acts of violence, nor to abuse their power. And if they do, I ask that these public officers are personally responsible for their actions.
- No public official should be able to beat an arrestee while uttering slurs in their ear & feel safe to do so.
- I want to hold those who commit acts of wrongdoing in the name of law enforcement responsible and erase the god complex from all job descriptions that live to serve the people.

We reiterate our support for ending qualified immunity as this is just the first of many legislative components needed to advance New York City towards policies that focus on our long-term community wellbeing, instead of policies that perpetuate community militarization and criminalization.

Bill: Int 2220-2021 Ending Qualified Immunity

Sponsored by: Council Member Levin

Ending Qualified Immunity is a way to address multiple pressing legal issues at once: 1) creating accountability measures for State agents and Law Enforcement Officers and 2) establishing strong precedent for owed Duty of Care by the State. Qualified Immunity as it stands right now is a legal immunity claim that removes all civil liability from public officials in lawsuits that allege a victim's rights were violated. In these cases, the only permissible suits are those in which officials violated a "clear and established" right. The problems with this doctrine are more than apparent, public officials across the country with substantiated claims of mass misconduct face zero accountability. From inhumane treatment in ICE detention facilities to abuses of power exhibited by the NYPD, striking this doctrine would have an immediate positive impact on this city, and would address glaring holes in our legal structure.

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All this being said, ending the doctrine of qualified immunity is a bigger question about our values in our legal system, how we protect our citizens from the abuses of the State and policing at large. The basis of Tort (civil) law is - if a party breaches an owed Duty of Care, the victim of that breach is entitled to compensation and justice. A question that has recently become increasingly more relevant is: Do government agencies - including police departments - owe a duty of care to protect the public?

This is the heart of the issue, and according to a growing body of case law, the answer is

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https://www.hrw.org/sites/default/files/media_2020/12/Letter%20to%20Mayor%20Mott%20Haven%2012-2-20_o.pdf

no. The Supreme Court has affirmed multiple times, such as in the cases *DeShaney vs. Winnebago*³ and *Town of Castle Rock vs. Gonzales*⁴, that police agencies are not obligated to provide protection of citizens. The bill on the table lets us as New York City decide where we fall into this conversation. There are two options here: either (a) the State, and agents thereof, owe a duty of care to the public and therefore must be held accountable for civil litigation or (b) confirming the case law and admitting to the people of New York, that the NYPD and other State agencies are not here to protect them.

If we decide, as the City of New York, that despite the direction of the Courts the State does owe a duty of care to its people we must be able to hold agents of the State accountable when breaches occur. We live in a time of massive overreach and abuse of power by State agencies, and this is not just a symptom of the Trump administration. To fully commit to this, the individual actors of the State, in most cases Law Enforcement officials, must be able to face civil liability. Without this, the need for Police Officers to “perform their duties”⁵ will continue to override established constitutional rights guaranteed to the people of this country.

However, if we decide, as the City of New York, to recognize these court rulings as redefinitions of the social contract between the People and agents of the State, we must reexamine policing in this country as a whole. The Courts, particularly the Supreme Court, have held that police officers are not there to protect the public and have discretionary powers in that protection. This is established law, rulings made at the highest level, and it exposes the truth about Law Enforcement and State overreach in the United States. Policing in this country is not about protecting the public, it is about protecting the vested interests of the State. This is where the institutional racism that lurks throughout our legal system is actively being protected. To dismantle this, we must be able to first hold agents of the State accountable for their actions, we can do this is by passing this bill. However, civil liability is not the same as accountability. Ending qualified immunity is one step along a longer road that will finally address the decades long abuses by Law Enforcement officers and other State agents, abolishing the policing system and ending carceral criminal justice in this city.

Ash Maidman

All views are my own and do not express the views of any affiliated groups or organizations

³ *DeShaney v. Winnebago Cty.* DSS, 489 U.S. 189 (1989)

⁴ *Castle Rock v. Gonzales*, 545 U.S. 748 (2005)

⁵ *Supra* note 1.

February 16, 2021

Memorandum

To: New York City Council

From: John Teufel, Esq. on behalf of the Campaign for an Elected Civilian Review Board, Legislation Working Group

Re: City Council Authority to Remove Police Commissioner Discretion for NYPD Discipline

I. Executive Summary

I have reviewed existing case law and statutes to study one issue: whether the City Council can, on its own volition, pass legislation to remove discretionary authority currently possessed by the Police Commissioner as it pertains to discipline recommendations issued by the Civilian Complaint Review Board; or whether the State Legislature and Governor must first grant New York City the authority to make this legislative change.

After exhaustive review, I have concluded that while no court in New York State has yet addressed this direct question, existing authorities and precedent indicate that there is a strong legal argument that New York City has already been granted the authority to modify the Police Commissioner's discretion and make recommendations of the Civilian Complaint Review Board or an alternate Civilian Review Board binding on the Police Commissioner.

II. Background

The Civilian Complaint Review Board ("CCRB") is an independent agency

“empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers.”¹ Under the New York City Charter (“City Charter” or “Charter”), the City Council, the Police Commissioner (“Commissioner”), the Public Advocate, and the Mayor each designate individuals to serve on the CCRB. N.Y. City Charter § 440(b)(1). The City Charter provides the Commissioner with ultimate disciplinary authority. *Id.* at § 434. Although the CCRB may recommend disciplinary action against New York Police Department (“NYPD”) officers, these recommendations are nonbinding. As a result, the Commissioner often ignores the CCRB’s recommendations. A recent analysis found that the NYPD implemented the CCRB’s recommendations “less than 20 percent of the time.”² The Commissioner’s final authority over discipline is a significant obstacle to effective civilian oversight.

The City Council is presently considering a resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation removing the New York City Police Commissioner’s exclusive authority over police discipline. No bill has been introduced that would directly modify the Police Commissioner’s exclusive authority.

III. The Council’s Authority over Police Discipline

While the State maintains a broad legislative framework putting in place processes and procedures concerning employee discipline, the New York Police Department has been exempted from this statutory scheme, indicating an already-

¹ Civilian Complaint Review Board, *About CCRB: Mission*, <https://www1.nyc.gov/site/ccrb/about/about.page> (last visited Jan. 27, 2021).

² Ashley Southall, Ali Watkins and Blacki Migliozi, *A Watchdog Accused Officers of Serious Misconduct. Few Were Punished*, New York Times (Nov. 15, 2020), <https://www.nytimes.com/2020/11/15/nyregion/ccrb-nyc-police-misconduct.html>.

existing grant of home rule.

A. The New York State Legislature has Largely Exempted New York City from State Laws Regarding Police Discipline

In the State of New York, police discipline is generally governed by Civil Service Laws (“CSL”) §§ 75–76, UCL § 891, and CSL art. 14, known as the “Taylor Law.” New York City, however, is largely exempt from these provisions.

CSL §§ 75–76 generally govern public employee disciplinary procedures in New York, including the procedures for disciplining police officers. *See Patrolmen’s Benevolent Ass’n of City of New York, Inc. v. New York State Pub. Employment Relations Bd.*, 6 N.Y.3d 563, 573–74 [2006]. However, CSL § 76(4) states that nothing “contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division.” *See also Montella v. Bratton*, 93 N.Y.2d 424, 431 [1999]. The State initially committed discipline to the Commissioner when it enacted the New York City Charter and Administrative Code in the late 19th century. *See Patrolmen’s Benevolent Ass’n*, 6 N.Y.3d at 574 (noting that the City Charter and Administrative Code provisions covering police discipline “were originally enacted as state statutes; the Charter provision was adopted by the State Legislature in 1897, and the Code provision in 1873.”) (internal citations omitted). As the New York City Charter and New York City Administrative Code pre-date the enactment of CSL §§ 75–76, police discipline in New York City is exempt from the procedures defined in the Civil Service Laws. *See Montella v. Bratton*, 93 N.Y.2d at 431. Although CSL § 75(3–a) specifically grants New York City authority over suspensions pending a determination of charges,

the Court of Appeals has stated that this section only serves as “confirmation of what other legislative provisions also made clear: that Police Department discipline [is] not subject to Civil Service Commission review.” *Von Essen v. New York City Civil Serv. Comm’n*, 4 N.Y.3d 220, 224 [2005] (citing *Montella*, 93 N.Y.2d 424).

In *Montella*, an NYPD officer challenged his dismissal and appealed to the Civil Service Commission as provided under CSL § 76. *See* 93 N.Y.2d at 427. The Civil Service Commission heard the appeal, denied the Commissioner’s jurisdictional argument, and reversed the officer’s dismissal. *See id.* The Court of Appeals reversed and held that the Civil Service Commission had no authority to review the Commissioner’s decision, as the “power to discipline members of the force is governed by the Administrative Code, ‘not by section 75 of the Civil Service Law.’” *Id.* at 430 (citing *Matter of Scornavacca v. Leary*, 38 N.Y.2d 583, 585 [1976]).

Importantly, officer discipline had been granted to New York City officials prior to the enactment of CSL §§ 75–76, thus New York City disciplinary procedures were exempt under CSL § 76(4). *Id.* at 431. Instead, the Administrative Code and City Charter applied. *Id.* at 430. As the City was exempt from CSL § 76, the court held that the Civil Service Commission had been divested of jurisdiction to hear challenges to the Commissioner’s disciplinary determinations. *Id.* at 431.

Indeed, CSL § 75(3-a) specifically holds as follow: “If such officer is found guilty of the charges [of incompetence or misconduct], the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.”

In *Lynch v. Giuliani*, 301 A.D.2d 351 [1st Dept. 2003], the Mayor and Commissioner agreed to a Memorandum of Understanding (“MOU”), which provided

the CCRB with the ability to hear and prosecute all substantiated civilian complaints. *Id.* at 354. The heads of various unions representing NYPD officers brought suit, arguing that the MOU violated City and State law. *Id.* at 355. The court found “no reason to preclude the Police Commissioner from delegating the responsibility for prosecuting substantiated civilian complaints to the CCRB,” as New York City law and not State law, specifically the City Charter and Administrative Code, vested the Commissioner with “‘cognizance and control’ over the discipline of uniformed officers” and granted broad discretion over officer discipline.” *Id.* at 356, 357.

IV. The Recent Rochester Trial Court Decision is Inapplicable to New York City

In May 2019, the Rochester City Council passed Local Law No. 2, which limited the Chief of Police’s discretion over discipline and created a Police Accountability Board (“PAB”) that would have “the final decision of discipline.” *Rochester Police Locust Club, Inc. v. City of Rochester*, No. E2019008543, 2020 WL 8028606, at *7 [Sup Ct, Monroe County 2020]. The Monroe Supreme Court found that Local Law 2 was invalid as, *inter alia*, it conflicted with State law, including CSL § 75, UCL § 891, and the Taylor Law. *Id.* at 13. Although the State Legislature had initially granted the City of Rochester this authority in its 1907 charter, the Rochester City Council repealed the provision of the charter governing police discipline in 1985, because the “subject matter is covered in the Civil Service Law.” *Id.* at *11. The court found that this act resulted in Rochester deliberately abdicating its “grandfathered” status, which it could not regain. *Id.* at *12. Thus, the Rochester City Council was required to comply with State laws regarding police discipline, including the Taylor Law. *Id.* As Local Law No. 2 did not comply with State law, it was declared invalid. *Id.* at *7. There is no indication that New York City

has so abdicated its own authority, and indeed, New York City's authority remains enshrined in State law. See CSL §§ 75(3-a); 76(4).

V. Conclusion

The New York State Legislature has exempted New York City from State laws regarding police discipline. The State Legislature granted this authority to the Commissioner when it first delegated disciplinary authority in the late 19th century. *See Patrolmen's Benevolent Ass'n*, 6 N.Y.3d at 574. The Legislature reaffirmed the grant of local control when it enacted the Civil Service Law, by carving out localities with pre-existing control over police discipline. *Id.*; *see also Montella* 93 N.Y.2d 424.

A broad reading of relevant case law indicates that the State did not intend to limit its grant of disciplinary authority to any specific city official, but intended to delegate power generally to local authorities. The State adopted the City Charter in 1897, granting the Commissioner control over police discipline. *See Patrolmen's Benevolent Ass'n*, 6 N.Y.3d at 574. In 1923, the State Constitution was amended to let municipalities change local laws relating to the "removal, terms of office and compensation of all officers and employees of the city." *Browne v. City of New York*, 241 N.Y. 96, 106 (1925). The State Legislature then passed the Municipal Home Rule Law in 1924, with language tracking the Home Rule amendment. *Id.* at 114–115. In 1958, the Legislature enacted the disciplinary provisions of the Civil Service Law, including CSL § 76(4), which exempted localities with pre-existing laws. *Rochester*, 2020 WL 8028606 at *11. When this exemption was passed, the State had already granted New York City both control over police discipline in the Charter, and the power to amend Charter provisions related to the "removal" and "terms of office" for its officers. This suggests that the Legislature intended to allow New York City officials to

amend Charter provisions related to police discipline.

The case law can also be read to endorse a policy of local control of police discipline by democratically accountable officials. For example, in *Patrolmen's Benevolent Ass'n*, in determining that police discipline should not be delegated to collective bargaining, the Court of Appeals stated that “the public interest in preserving official authority over the police remains powerful.” 6 N.Y.3d at 576. In *Lynch*, the court found that the Commissioner should be provided control over discipline because “it is he or she ‘and not the courts, [who] is accountable to the public for the integrity of the Department.’” 301 A.D.2d at 359 (citing *Matter of Berenhaus v. Ward*, 70 N.Y.2d 436, 445 [1987]); see also, *Matter of Silverman v. McGuire*, 51 N.Y.2d 228, 231–32 (1980) (holding valid the Commissioner’s decision to reject a negotiated plea deal due to “the sensitive nature of the work of the police department and the importance of maintaining both discipline and morale within the city’s ‘chosen mode of organization for its police force’”); *In re Buffalo Police Benevolent Ass'n*, 4 N.Y.3d 660, 664 [2005] (holding that the statutory right of a police commissioner to select “an officer to fill a position important to the safety of the community” could not be delegated in collective bargaining). This policy suggests that the Legislature intended to leave discipline to local officials accountable to the public.

A reasonable interpretation of relevant case law would assign control of police discipline generally to local officials, which would permit the City Council to assert control over police discipline.

Further questions regarding this memorandum can be directed to the NYC Campaign for an Elected Civilian Review Board, Legislation Working Group, legislation@stoppoliceviolencenyc.org.

Michael Henry
930 Saint Nicholas Ave, Apt 26
New York, NY 10032

New York City Council

Re: Hearing of Committee of Public Safety, Tues Feb 16, 2021 10:00 AM

Dear Council Members,

I wanted to add comments after listening into the Hearing of the Committee of Public Safety in relations to:

- Oversight to NYPD discipline by CCRB and the "Dinkins Plan" and matrix:
On this item I strongly feel it is most appropriate for the CCRB to have actual authority and oversight on all discipline matters of the NYPD. The Commissioner should not have the authority to override the recommendations or the "matrix." The trust of the public is not there with the NYPD, there are so many things seen on a daily basis that continue to erode that trust and having an outside organization with oversight can start to change this path. When officers can get away with violation of duty by losing vacation pay, or desk duty, that does not send a positive message to the community. It enforces the message that the NYPD is above the law. We need to change this.
- Approval by the City Council of the appointment of the Police Commissioner:
Council members Deutsh and Yeger both made assertions questioning why only the appointment of the Commissioner of the NYPD should get oversight by the City Council and that this commissioner was being singled out. I believe Council Member Yeger clearly stated why this is appropriate, and I paraphrase, he stated that there are only three type people in the city who can take away your freedom: a psychiatrist, a judge and an NYPD Officer. That statement clearly shows the power the NYPD has over the people within this city and why oversight is so critical. When the NYPD Commissioner is seen to be above reproach that erodes the trust in the NYPD by the community. Having oversight from the City Council gives an additional level of accountability which is so greatly needed within this city and the NYPD.

Overall I believe that massive changes are needed to the NYPD and I am not sure reform is possible. The protests that started last spring will continue until real change happens. The NYPD has been allowed to act as a military force being aggressive at protests, I have been marching since May and have seen this all firsthand. Their behavior is unacceptable and does nothing give New Yorkers trust in the people that are supposed to protect them, it does the opposite. Since last spring I have grown less and less trustworthy of the NYPD based on their actions against peaceful, law abiding, citizens exercising their Constitutional Rights. Without massive systematic change and substantial oversight this sentiment of distrust will only grow. It is time we as New Yorkers take a stand against the NYPD and no longer allow them to be above the law.



**Statement by Gregory Floyd,
President, Teamsters Local 237
New York City Council Public Safety Committee
February 16, 2021**

I offer testimony today on behalf of 7,000 peace officers employed by New York City agencies who are represented by my union. I strenuously oppose Councilman Levin's proposal to strip these officers of qualified immunity as a defense to allegations of illegal searches and seizures. Worse yet, in such cases his bill prohibits these officers' indemnification by their agencies.

I assume the Council member's principal concern in offering this legislation, after this summer's national incidents, is misconduct by NYPD officers. But the bill's sweeping coverage also subjects thousands of low-wage, largely minority officers -- School Safety Agents, and non-NYPD Special Officers in city homeless shelters, hospitals and other departments -- to damages that could *amount to 80% of their starting annual salary of \$32,000*. Again, these officers are largely Black, Hispanic and female, and their work is far removed from the police controversies of last summer that I assume motivate the bill. But the bill will expose these employees, without prospect of indemnification by their departments, to defending a flood of nuisance lawsuits that would be no "nuisance" to them, but possibly ruinous to their finances and families.

As I have said to Council members, a desire to address real concerns about policing raised by George Floyd's and similar cases has led in some instances to ill-considered legislation that imperils the very communities that need protection. Here, Councilman Levin's legislation would subject members of largely Black, Hispanic and female peace-officer titles to draconian punishments, even though no serious claim is made that officers in these titles engage in a pattern of abuse of civilians that needs addressing.

This legislation is ill-considered and should be rejected. At a minimum, Local 237 contends simple justice requires removal of the job titles I've indicated -- non-NYPD peace officers, and NYPD School Safety -- from its coverage.



TESTIMONY OF:

Alexandra Fisher, Senior Trial Attorney

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council

Committee on Public Safety Hearing on

Int Int 2209-2021 and Res 1538-2021

February 16, 2021

My name is Alexandra Fisher and I am a Senior Trial Attorney with the Criminal Defense Practice at Brooklyn Defender Services. BDS provides multi-disciplinary and people-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy to nearly 30,000 people and their families in Brooklyn every year. Many of the people that we serve live in policed and surveilled communities and are regularly subjected to abusive behavior on the part of the New York Police Department (NYPD). I want to thank the Committee on Public Safety, particularly Chair Adrienne Adams, for holding this hearing today on police reform and oversight.

I represent people who are charged with crimes, ranging from misdemeanors to serious felonies. The people I serve are mostly Black and brown New Yorkers who have had varying levels of contact with the NYPD. Many people are victimized by racist and classist police practices such as constant police presence in their neighborhoods, surveillance, pretextual car stops, and routine stop-and-frisks.

Int 2209-2021 (Adams) and Res 1538-2021 (Cumbo)

BDS supports Int 2209-2021 which would require the Police Commissioner to be confirmed by the New York City Council and Res 1538-2021 calling on the New York State legislature to pass a bill removing the Police Commissioner's exclusive authority over police discipline.

When police are not held accountable, victims of police misconduct—primarily Black and brown New Yorkers—suffer twice over. First from the police practices inflicted on them, and then again through the City's failure to deliver any semblance of accountability to their abusers. As defenders, we see officers with long histories of civil rights abuses continue to police the same streets, harm community members, and bring new cases for prosecution. We also see these harms compounded by retaliatory actions taken by officers against people who lodge complaints against them or their colleagues, discouraging future victims from coming forward at all. This cycle of abuse has been repeated on the streets of New York for too long, the people we represent carry long-term psychological and emotional effects from being treated as subhuman by omnipresent police forces in their neighborhoods. In order to meaningfully change the NYPD, the City Council must use its authority to prioritize the safety and needs of New Yorkers over the self-serving preferences of the NYPD

This behavior is enabled in part due to the complicity of the police commissioner, who can—and regularly does—reject and downgrade CCRB and internal recommendations for disciplining officers. One analysis of released CCRB data found 260 instances, between 2014 and 2018 alone, where the Commissioner overruled, downgraded, or dismissed cases where serious misconduct by police was substantiated by the CCRB and charges were recommended.¹ In 2019, the rate of agreement between the CCRB and the NYPD commissioner was 51% for most cases. In more serious cases of alleged misconduct, it was less 32%. A New York Times investigation found that as of November 2020, Police Commissioner Shae had imposed the CCRB's recommended penalty in 2 out of 28 cases in which charges were brought². **There are currently no meaningful mechanisms for holding the NYPD accountable when the Police Commissioner retains veto power over any internal findings and recommendations for discipline.**

Individual officers engage in and perpetuate racism, bias, physical abuse, and the use of hate speech with the knowledge that the Department will not hold them accountable and with confidence that the legal system is designed to prioritize them above their victims. Police misconduct persists on both an institutional and individual level from the very top of NYPD's

¹ ProPublica, "What it Looks Like When the Police Commissioner has Unchecked Power"
<https://projects.propublica.org/nypd-unchecked-power/> (More)

² See, New York Times, "A Watchdog Accused Officers of Serious Misconduct. Few Were Punished"
<https://www.nytimes.com/2020/11/15/nyregion/ccrb-nyc-police-misconduct.html>

hierarchy to the bottom. The police will always refuse to police themselves, and there are currently few meaningful legal protections for victims of their abuse. It is also important to remember that the modern NYPD has been “reformed” many times—to negligible results.

Jurisdictions throughout New York State should look to New York City as a cautionary tale of the inefficacies and pitfalls of police reform. The New York City Police Department (NYPD) is one of the best trained, best funded, and most progressive departments in the country. It is the size of the seventh-largest standing army in the world with a total budget of around \$11 billion.³ The NYPD headcount and funding will not have suffered for COVID-19--related budget cuts elsewhere,⁴ with 900 new officers added to the force in January. The costly implicit bias training received by NYPD officers is the most cutting-edge available, but it has failed to deliver any measurable results.⁵ The NYPD Patrol Guide is thousands of pages long and has been written, re-written, and amended to reflect every imaginable demand for police reform.⁶ The City’s Administrative Code and official NYPD guidelines prohibit biased policing,⁷ which persists at

³ The Vera Institute of Justice, Report: A look inside the New York City Police Department Budget, available at: <https://www.vera.org/downloads/publications/a-look-inside-the-new-york-city-police-department-budget.pdf> (last accessed February 1, 2021).

⁴ Communities United for Police Reform, NYC Budget Justice <https://www.changethenypd.org/nycbudgetjustice> (last accessed January 20, 2021).

⁵ A years-long study of the NYPD’s extensive training program showed no difference in enforcement behavior, serving only to improve officers’ articulable understanding of bias. See Martin Kaste, “NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior,” N.P.R. (September 10, 2020) <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior>

⁶ The NYPD Patrol Guide is a publicly-available document containing rules adopted by the Department and reflecting changes demanded and implemented after instances of violence and brutality. However, these rules are often flagrantly violated. For example, the Patrol Guide governs acceptable instances for use of force (Sections 221-01 and 221-02), requires NYPD personnel to intervene during instances of excessive force by other officers (221-02), and has strict reporting requirements (221-03). It also articulates limited circumstances for the use of pepper spray (221-07) and CEMs (aka TASERS) (221-08). The Guide governs appropriate contact with the public outside of arrests (203-09 and 203-10) and requires officers to provide their names and badge numbers in accordance with the Right to Know Act (203-09). The Guide governs police interactions with members of the press (212-49), and requires that NYPD personnel “cooperate with media representatives by not interfering or allowing others to interfere with media personnel acting in their news gathering capacity.” Patrol Guide Procedure No. 212-123 requires body-worn camera activation in almost every instance of a uniformed police officer’s interactions with the public. This regulation, created as a purported police reform during the 2014 Black Lives Matter Protests, specifically includes interactions during demonstrations and instances of civil disobedience. During a protest (213-05), the guide instructs NYPD personnel not to “‘punish,’ rather, be ‘professional’ at all times,” to “[b]e tolerant of verbal abuse uttered by civilians in crowd” and to “ensure that only minimum force is used to achieve objectives.” There are special rules for interacting with legal observers (213-11). Legal observers who are clearly identified are to be given “free access through police lines at the scene of any demonstration” and “all members of the service shall extend every courtesy and cooperation to observers,” and “observers shall be permitted to remain in any area or observe any police activity” unless their presence poses a safety threat. See NYPD Patrol Guide, available at <https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page>

⁷ In 2014, the NYPD amended its Patrol Guide to expressly prohibit speech or conduct targeting a person’s actual or perceived protected status and implemented a process for investigating complaints of biased behavior by members of the Department. The NYPD had not previously tracked these complaints or had a specific process for investigating them, and this move was widely considered as a necessary reform. Over the next five years, about 2,500 of these complaints had been made by the public. Then, in 2019, a watchdog report by the Department of Investigation called out the NYPD for failing to substantiate any of these claims and for deficiencies in the

staggering levels.⁸ New York City sees the persistent, unabated abuse and even murder of New Yorkers and the ongoing protection of abusive police, including by those—such as the Mayor and the Commissioner—who have full authority to fire them⁹ without the constraints that exist elsewhere in the State.¹⁰

During last summer’s protests, the NYPD rammed cars into crowds of demonstrators. They used batons, teargas, and TASERS on unarmed and fleeing people. They knelt on people’s necks and backs while they were handcuffed on the ground, kettled large and small groups, targeted Black organizers for arrest, blocked escape routes before curfew in order to initiate brutal enforcement, and disappeared people for days at a time “for processing,” leaving both their loved ones and attorneys unable to locate them.

Police reforms are being proposed across the country, including a set of federal standards sought by Governor Cuomo that would largely bring other departments into alignment with current NYPD guidelines (e.g., banning chokeholds and requiring body-worn cameras). It is important to note that these regulations have not solved the issue of violence perpetrated by officers in New York City, in times of mass protest and during ordinary times, or elsewhere when similar changes have been implemented. This violence occurs routinely when the news cameras are watching and when they are not. A series of investigations, task forces, and incremental reforms that have often followed protests against incidents of police violence left the oppressive systems

investigatory process. In a striking demonstration of the inefficacy of such police “reforms,” as of January 2021 only one allegation of bias has been substantiated— against a school safety officer. *See* DOI Report on Deficiencies in NYPD’s Handling of Biased Policing Complaints

https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf; *see also* Yasmeen Khan, “The NYPD Substantiated its First Case of Biased Policing -- But Not Against an Actual Officer,” WNYC (December 11, 2020) <https://gothamist.com/news/the-nypd-substantiated-its-first-complaint-of-biased-policingbut-not-against-an-actual-officer>

⁸ We know based on years of data that police enforcement, as well as stop-and-frisk encounters, disproportionately target Black and Latinx people. Data from the Legal Aid Society from 2019 showed that nearly all people who were stopped and frisked by the NYPD—a practice that persists despite extensive litigation—were people of color, accounting for 90%. While other states were legalizing cannabis, Black people in New York were 15 times more likely to be charged with marijuana-related offenses in Manhattan than whites, despite accounting for about 17% of residents. In Brooklyn, a 2019 report showed that 86% of all people charged with crimes in the borough over a six month period were people of color. *See* Noah Goldberg, “86% of Brooklynites in court are people of color: report,” *The Brooklyn Eagle*, (April 15, 2019)

<https://brooklyneagle.com/articles/2019/09/17/86-percent-of-brooklynites-in-court-are-people-of-color-report/>

⁹ *See* Mollie Simon, Lena V. Groeger, Eric Umansky and Adrianna Gallardo, “What it Looks Like When the Police Commissioner has Unchecked Power,” *ProPublica* (December 11, 2020)

<https://projects.propublica.org/nypd-unchecked-power/>

¹⁰ *See* Brian Sharpe, “RPD reform proposal will seek to scrap union contract and start over, reduce size of force,” *Rochester Democrat & Chronicle* (February 4, 2021)

<https://www.democratandchronicle.com/story/news/2021/02/04/city-put-onus-state-draft-proposal-reforming-rpd/4386604001/>

of law enforcement intact¹¹, and the violence continues—and continues to be documented on camera.

Removing the Police Commissioner's final authority over NYPD discipline is one step toward accountability. However, CCRB complaints and Commissioner involvement is only a fraction of the big picture of NYPD abuse, misconduct, and impunity, and only one part of the NYPD's disciplinary process—when there even is one. We must not allow this issue to be framed as one simply of the need to discipline a few NYPD members in isolated individual cases. The culture of abusive policing, antipathy towards policed communities, and unaccountability are pervasive within the NYPD.

We commend the City Council for taking important steps to remove disciplinary authority from the NYPD, which continues to make a mockery of the accountability process. These reforms, however, must not be seen as a substitute for working to shrink the scope of policing, reduce the NYPD budget, and invest in proven, community solutions.

Conclusion

Reforms such as those implemented in the past will not meaningfully change the Department, and continuing to task the NYPD with its own reform and enforcement is destined to preserve the status quo. In order to meaningfully change the Department, the City Council must use its authority to prioritize the safety and needs of New Yorkers over the self-serving preferences of the NYPD by creating structural change and divesting from the police.

I thank the Committee for this time and for accepting my testimony on this critical issue. Should you have any additional questions, please feel free to contact Maryanne Kaishian, Senior Policy Counsel at mkaishian@bds.org or (347) 525-4054.

¹¹ The NYPD has been here before. Following 2004 protests at the Republican National Convention, the Department was sued on behalf of protestors who were kettled, assaulted, and abused by police. In a period of litigation-initiated “reflection,” the NYPD conducted “after-action assessments” of the Department’s protest response and claimed to implement court-mandated changes. # The New York City Law Department, which usually defends police from misconduct claims but was tasked with investigating their protest response this past year by Mayor Bill de Blasio, suggested in a problematic report that this approach be taken again. This Task Force disagrees. The recommended approach was precipitated by the exact same police behavior—such as kettling—that was “reviewed” and “reformed” to widespread acclaim 16 years ago, with additional echoes in years and decades past.

Testimony on behalf of Tonie Wells

To whom this may concern,

My name is Angelina Rosado, founder and executive director of Returning Hope a domestic violence organization in New York City, I am also a domestic violence activist as well as a domestic violence survivor myself. I became familiar with the Tonie Wells case about 6 months after she was murdered by her husband. Being a domestic violence educator I used Tonie's story as a way to reach and educate the youth in my community on domestic violence. As I learned more and more about this case I came sad and hurt but mostly angry by the actions of the police. So often victims are asked why they don't leave with no empathy that for so many victims staying with their abuser is the only reason they are alive. Tonie had decided that she was done and planned on leaving and it was on that day her life was taken. As a survivor myself Tonie's story hits home because at any moment I could have been Tonie. Learning that not only did Tonie herself call police for help because she sensed that her husband was up to something but there was a second call made by neighbors to police where they explained that they could hear Tonie screaming for her life "He's going to kill me" as Tonie was being tortured in front of her 1 year old daughter feeling helpless she tried her best to get help but was failed not only by police but by the whole system. Later that night after hours of being held hostage in her own home hoping police would knock on the door and save her, her abuser finished her off by strangling her and leaving her lifeless body at the bottom of her building to be found by her neighbors while her 1 year old child was found screaming over her mother's dead body. We all later find out that police not only responded to the call but they came to Tonie's apartment but only to sit in their car. They never even got out the car because it was "too cold". December 22nd, 2017 officers Wael Jaber and Wing Hong made the executive decision to not do their job. That decision resulted in the murder of Tonie Wells. For these officers to be allowed to keep their jobs is not only a smack in the face to a child who watched her mother be murdered but it's a smack in the face to domestic violence victims throughout New York City. We demand the termination of both officers effective immediately.

Thank you,

Angelina Rosado

Returning Hope

Founder and Executive Director

E: Angelina@returninghopeinc.org

Miguel A. Rayos-Velázquez

Resident, District 26

4004 34th Avenue, Apt 313

Queens, NY 11101

(915)831-0164

mrayosve@gmail.com

16 February 2021

New York City Council

Attention: Public Safety Committee

City Hall Park, New York, NY 10007

Subject: Testimony for Committee on Public Safety Hearing of 16 February 2021

To Whom It May Concern,

I am writing this letter and testified during the Committee hearing in support of the package of proposed legislations aiming at reforming the New York Police Department (NYPD).

I support the following agenda items discussed and presented during this meeting: Int 1671-2019, Int 2209-2021, Int 2220-2021, Res 1538-2021, and T2020-6808.

These are the right kinds of reforms we need, and I strongly urge the Committee and Council to propose broader reforms.

This package of reforms is a good place to start, but the truth is that we have, slowly, over time and little by little, created a self-reinforcing system of abusive law enforcement. Moreover, I cannot stress enough that many attempts at small, targeted and tactical changes have, instead of improving policing conditions over the year, actually strengthened the system's ability to defend itself by creating a byzantine and bureaucratic shield against bad actors.

I am very glad to see this package of reforms, support it and urge you to pass these into law. But most importantly, I want to be clear that for me, and the vast majority of New Yorkers, this is the **bare minimum expectation of our elected representatives**—protect us from abuses of power. More is needed, and I will continue to advocate to improve New Yorkers' quality of life and safety.

Sincerely,



Miguel A. Rayos-Velazquez

City Council Committee on Public Safety

Feb 16th, 2021

Zoom name: Sarah Sitzler she/her

Subject: calling for removal of the NYPD Commissioner's exclusive authority over police discipline

My name is Sarah Sitzler, and I am a resident of District 40. I am testifying in support of all proposed legislation, although I will focus on Resolution 1538.

The NYPD Commissioner can ultimately quash any disciplinary suggestions that the Civilian Complaint Review Board offers in order to protect officers from facing any repercussions for their misconduct. In 2019 the Commissioner only heeded the board's disciplinary suggestions 51% of the time. And in cases in which the board suggested the highest level of discipline, those were shut down 71% of the time. So, as it stands, the CCRB appears to be more of a tool for political posturing than an agency with any tangible authority. We need the Board to have real input and influence over cases of misconduct within the NYPD, because when there are little to no repercussions for misconduct, that perpetuates a culture of lawlessness within the very agency responsible for upholding the law. And, when the sole disciplinary authority of said agency is also the head of its governing body, then there is a greater potential for collusion than there is for accountability or justice.

I must acknowledge the work of activists and organizers in the Black Lives Matter Movement, because the actions and demonstrations of the past year especially, have directly influenced this legislation. Although I am asking you to pass this legislation, I urge you to do even more, because simply providing public access to the misconduct of the NYPD (such as the disciplinary matrix) does nothing to remedy that misconduct and corruption itself. This will be the case every single time, as long as discipline is not enacted by an outside agency, and as long as NYPD are not held accountable for their misconduct.

Further action must be taken to stop the behavior of the NYPD. In my verbal testimony, I referred to the NYPD as a lawless militarized mob. As a peaceful protestor I have experienced on several occasions the tactic of kettling: of being blocked in with nowhere to go, with the implementation of the LRAD recording and NYPD (especially SRG) officers charging at whoever they could grab. I've seen peaceful protestors pepper sprayed, pushed, assaulted, and tackled numerous times. My friend, a female measuring just over 5 feet tall was brutally tackled by an officer so badly that the front wheel of her bicycle was bent and separated from the bike frame. Another friend was strategically pulled from our group, tackled to the ground, and an officer attempted to punch him in the face. At a protest last May when the NYPD charged the crowd, I fell and fractured my arm. Even more horrifying are the cases of harassment, assault, and worse which I have heard from BIPOC friends, coworkers, and neighbors, along with the all too frequent acts of NYPD violence that consistently show up on social media. This should not, and cannot be the norm. Both transparency and accountability are requirements for the potential for justice, trust and healing in our communities.

Greetings,

2/15/2021

I am Sheila Smalls, I am the tenant leader of O'dwyer Gardens, located in Coney Island Brooklyn. I am writing to testify that NYCHA is **NOT safe**, we used to have resident watch to help in the past where we could collaborate with the PSA officers and have them walk the staircases and remove undesirables however, since the Pandemic there has been No resident watch, unlocked doors, or little Police presence, making it easy for predators to invade our buildings.

I have made many reports a homeless man who keeps coming back into this building making a mess in the staircase and even defecating in them as well. After many complaints from tenants I called police who would escort him out of the building, however he would come right back or go across the street to the next building 3309 surf ave, Another HOT building where I was told by a tenant that heroin is being sold on the higher floors, asked how did they know and was informed that they flow of customers are familiar to them and he knows what drug of choice they use.

We have had seniors mugged and recently, gunshots ran out in front of these normally quiet buildings 11;23am in the morning enraged everyone and we came out with the Anti violence Coalition and Operation HOOD to denounce the gun violence, We called out the cowards to let them know that we the people will turn them in to the police or to the brothers, it's their choice for we are family and don't put everyone in jeopardy for nonsense.

Management is aware of the problem, However, not doing enough, they know what is going on but point their fingers over to the police and back and forth.

Solution:

NYCHA needs to check their records and find out who is in these apartments, I say that for there are many people who live here but are **NOT on the lease**, so they don't care about what trouble they bring to unsuspecting residents.

NYCHA needs doors that don't break as soon as they are locked, reason again people living here with **NO KEY**

NYCHA Needs a **KEY person to monitor** these awfully expensive cameras placed in our buildings to identify vandals in their tracks as people who leave trash (mattress, couches, dressers) Infront of the building every day. And let's not forget the dog walker who does not clean up after their dog (big dogs that Should not be in NYCHA at all) They sneak out with these big items after 9pm, they don't care about the camera for the is no accountability on NYCHA's end so this is why people do what ever they want here. It is not fair to tenants like me who pay high rent and deserve better.

NYCHA needs to get rid of entire families of murdering siblings who killed their mother in cold blood (family should have gotten a immediate transfer.

Sheila Smalls O'dwyer Gardens Tenant Leader (odwyergardensra@gmail.com)

Good evening,

I am very disappointed and disturbed that Commissioner Shea made the decision to keep the two officers employed that failed in their duties as law enforcement officers.

I have serious concerns for domestic violence and sexual assault victims in your community. How can they trust that a call for help will be answered? How can they trust the those that are sworn to serve and protect will uphold their duties?

If two law enforcement officers do not care to get out of their cruiser to check on a call for help from a woman screaming "he is going to kill me" we need to question how the officers in question live their lives behind closed doors.

Law enforcement has a credibility issue as well as a lack of transparency issue. It is time for law enforcement agencies across the country and the world to begin to take violence against women seriously. It is a global pandemic.

In addition to increased domestic violence training, we must also address the issue of sexism and misogyny in law enforcement which often plays heavily in attitudes about women that are perpetrated against.

I urge you to terminate the two officers in question and communicate to the world that NYPD has a zero-tolerance policy against corruption and violence against women.

Thank you.

Nanette Chezum
Professional Speaker, Domestic Abuse Activist & Officer Involved Domestic Violence Educator
Founder, The Courage Corner - Domestic Abuse Awareness



Website



Justice for Tonie Lopez

Members of the city council,

I am writing to advocate on behalf of Tonie Lopez, being that I lost my best friend that I had since the sixth grade to domestic violence. The pain will never go away, My heart breaks for the family. I'm really at a loss for words. I don't understand how the police officers are allowed to keep their jobs, any other job where you do not do your job description, you are automatically fired. This is what the city needed to do to the police officers involved. Justice needed to be done on that day. I stand with Tonie's family and all victims and survivors of domestic violence. No one deserves to be abused! please help the family get Justice!

Sincerely,

Olga Miranda

Written Testimony - T2021-7102

Please accept the attached as written testimony for T2021-7102. The attached illustrates the danger of protesting & supports ending qualified immunity.

- Ruvan Wijesooriya

--

- Tai Allen

Martin Luther King Day Police Riot
City Hall Park (Chambers and Center)
NYC January 18, 2021



7:45 -7:50pm MLK Day March waking down Brooklyn Bridge to City Hall



7:50-7:55 City Hall Park, between subway entrance and street.



7:50-7:55pm off of Brooklyn Bridge, facing City Hall Park.



8:03 MAGA Counter-protester escorted away from MLK protest.



8:04pm - opposite side of Center Street



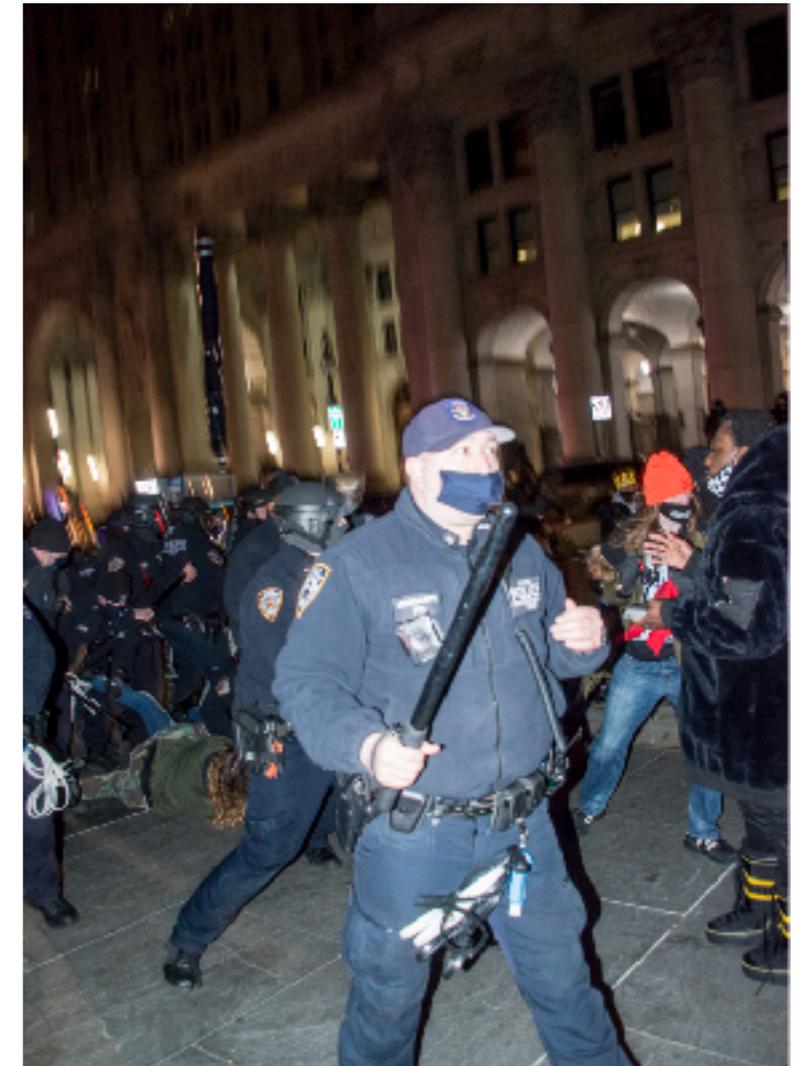
8:15-8:18pm: Riot police advance onto Centre Street.



8:20pm Riot police advancing onto sidewalk.
Man in black mask on right starts moving toward a female target.



8:21pm Jan 18, 2021.



Protester trapped beneath a metal barrier.





8:22pm - Inward from corner of Chambers





Man grabs two women from sidewalk, topples them over while pulling them off sidewalk and into street.





8:50pm: 50 more riot police arrive.



Nuestro Corazón para su Hogar

Our Heart for you home

Boulevard Monroig Avenue, EE-126

Levittown Toa Baja, Puerto Rico

352-989-0396

Nuestrocorazonpr@gmail.com

President: Carmen Laurie Lopez - Roche

February 16th, 2021

RE: Justice for Tonie Lopez

Dear Sir Dermot Shea,

Email: testimony@council.nyc.gov

On December 27th, 2018 a victim called Tonie Lopez was murdered by the hands of her husband. I just learned that the New York City Police Department has granted the two police officers back in the force.

Since the day of the incident these two officers were called to go and give a wellness check on a civilian. As police officers the oath affirms their standards of integrity, bravery and honor to the community and law. If this young lady called the police and feared for her life the question here is why it took (3) phone calls and the outcome of her death. Is it that the law does not apply for that section of the neighborhood or was it that accordingly to the weather that day it was too cold. What type of integrity, empathy and bravery was this?

This family deserves peace to pick up the pieces for the sake of the victims daughter which to say will be destroyed knowing what has occurred. What explanation can the family give her but the bitter truth to settle everyone's broken heart.

The loss of any family member is difficult but a death in the hands of an abuser is very hard to comprehend. What the family desires is justice! this deal is grossly unjust to the community, and I urge you to please reject the police officers to be assigned back to the force. I am expressing my strong dissatisfaction with this deal in allowing them to continue working as if Toni Lopez did not matter. I want the truth to be told because I don't want what happened to Toni Lopez to happen to any other woman because she lived in an area of town that the police officers care less about.

In the interests of justice and the safety of our community, I'm asking that you please reject the reassignment of the Police officers back in serving the community.

Thank you for your attention.

Your faithfully

Mrs. Carmen Laurie Lopez Roche - President

Nuestro Corazón Para Su Hogar

Nuestrocorazonpr@gmail.com



Domestic Violence is real and wish systems understood that. Tonie should still be here with us ,with her family, her daughter . I left the person who abused me a year after tonie life was taken by her abuser .I remember seeing pieces of her story on news headline saying in my head i don't want to be another headline .As a write this testimony i am three years free from the person that abused me for 17 years. he attempted to kill me a number of times i never called the cops because one time when the neighbors called them they came and laughed with the person who abused me that right there told me alot .The so call people that were supposed to protect me wasn't going to .I never felt safe with the police around .I met tonie's family a year after i left the person who abused me at a event that they were doing in tonies name .I never seen strength like theres from her mom ,aunt,cousin,daughter,sister its strength that is unmatched .Tonie deserve justice her family as well and charlie so many people are accountable for her being killed the NYPD need to be accountable for their actions , the officers that sat in the car while tonie layed dead with her daughter hoovering that memory will stay with her forever .She deserves to know that her mother life mattered .I now work as a domestic violence advocate, community organizer ,parent advocate i work alongside an domestic violence organization to amplify survivors voices at all tables we work on implementing laws and policies i started working beside them because of tonie story thats are suppose to protect us don't identify or take domestic violence serious at all the person that abused me started harassing me two years ago after i left telling me he was gonna kill me literally 100 messeges i sent them to the precinct it took them 13 months to find him i could have been tonie i am tonie ..

Shamara kelly

**HEARING OF THE NEW YORK CITY COUNCIL'S
COMMITTEE ON PUBLIC SAFETY**

STATEMENT OF JEFF STRABONE

Tuesday, February 16, 2021

Good afternoon, Chair Adams and members of the Committee on Public Safety. My name is Jeff Strabone. I am a lifelong resident New Yorker and former vice-chair of Community Board Six in Brooklyn. I live in the 39th District. I thank the Committee for its time and for listening.

First, I support all twelve bills announced last month to redefine public safety and strengthen police accountability. Because of time limits, I will focus on one bill: Resolution 1538-2021, calling on the New York State Legislature to remove the New York City Police Commissioner's power to waive police discipline.

To put it simply, I don't want Donald Trump to be our police commissioner. Trump abused the presidential pardon power. The last thing the City needs is a Commissioner Trump to pardon Officer Roger Stone and his buddies.

I'm using colorful language, but I stand by the fundamental point: no Commissioner should have pardon power. The power to pardon is a license to commit abuse and corruption.

It's already hard enough for the CCRB to investigate police misconduct and decide on actual discipline. For the Commissioner to then overrule the Board in half the cases decided in 2019—only a 51 percent concurrence rate according to the resolution—adds citywide insult to individual injury. I note that the concurrence rate is substantially lower for the most serious cases.

Let adjudicated discipline stand. Let discipline be discipline. Please pass this resolution. Take the pardon power away from the office of the Commissioner.

Thank you.

To the New York City Council:

I am writing in support of the bills up for discussion during the hearing on public safety: Bill Int 1671-2019: Police traffic encounters, Bill T2021-7101: City Council approval of Police Commissioner, Bill T2021-7102: End qualified immunity for certain cases and Bill T2021-7100: End Commissioner's sole authority over police discipline.

Bill Int 1671-2019: Police traffic encounters

I believe it is important for the NYPD to issue a quarterly report on all traffic stops and vehicles stopped at roadblocks or checkpoints. Frankly I am surprised that this is not already required. My fear is that the need to fulfill certain quotas or funds sourced from traffic tickets results in unnecessary traffic stops. My father was once given a traffic ticket and told he was innocent but that the officer needed to fulfill a quota - he was then told to come to traffic court and that if he showed up he would have the fee reduced. This should not be legal, and my hope is that quarterly reports would deter such behavior from police officers and departments.

Bill T2021-7101: City Council approval of Police Commissioner

I am in support of reducing the term limit for commissioner from five years to four years. Five years is a long period of time, during which the needs of a community could change. It is also very important for the City Council to approve the Police Commissioner. A position which holds this much power should absolutely have the support of the community. If the Council disapproves of a nominee, it is the Mayor's obligation to submit a new nomination that will have community backing.

Bill T2021-7102: End qualified immunity for certain cases

I support ending qualified immunity as well as establishing a right of security against unreasonable search and seizure. We cannot assume that police officers are always performing their duties responsibly. I have personally witnessed cameras being violently seized from Black Lives Matter protestors over the summer who were doing nothing wrong, while also obeying

officers' orders to step back. I know of two cases where equipment was seized and damaged upon unreasonable and unnecessary arrest of the photographer. It is important that police officers be held accountable for their actions.

Bill T2021-7100: End Commissioner's sole authority over police discipline

I do not believe that the New York City Police Commissioner should have exclusive authority over police discipline. For one individual to have control over a matter of such importance is an authoritarian system. Removing the commissioner's exclusive authority would increase accountability and public trust in the NYPD. It is absolutely essential that any allegations of excessive force or abuse of authority be investigated by the Civilian Complaint Review Board and that their recommendations be taken seriously. In 2019, the rate at which the Police Commissioner followed the CCRB's recommendations was only 51 percent. This is not acceptable, and we must find a fairer system where the power isn't held in the hands of a single individual who likely has personal interest in the outcome.

Sincerely,

Johanna Robinson

Dear Council Members,

I write in support of Bill T2021-7100: End Commissioner's sole authority over police discipline. With the repeal of 50-a in the summer of 2020, NYC citizens for the first time were able to view the findings of the Civilian Complaints Review Board, CCRB, on NYPD misconduct. Their findings are largely toothless as their findings rely on the Police Commissioner to determine what discipline, if any, should be carried out. ProPublic wrote on December 11 in the article *What It Looks Like When the New York City Police Commissioner Has "Unchecked Power" Over Officer Discipline*, "Between 2014 and 2018, the CCRB substantiated allegations in about 2,400 cases out of the approximately 8,000 it was able to fully investigate, meaning the board concluded that misconduct occurred. In about 600 of those cases, the CCRB took the most serious level of disciplinary action available: recommending "charges." But in at least 260 of those 600 most serious cases, the police commissioner disagreed with the CCRB on the final discipline. This included downgrading or dismissing penalties, overturning plea agreements by officers and overruling NYPD judges who review cases." Officers with misconduct charges against them are accountable to the people of this city, and the police commissioner is no exception. This kind of power put into the hand of a single individual overseeing massive police cannot stand. Disciplinary measures should not be at the sole discretion of the commissioner or the commissioner in conversation with the mayor. These appointments are both political and are tightly controlled and monitored by the PBA, who have an established track record for placing their finger on the scale to benefit their union members for better or worse. Disciplinary decisions should be in the hands of an informed review board whose top priority is public safety and restoring public confidence in the NYPD.

Thank you,
Meghan Criswell
Sunnyside

Cc: Jimmy VanBramer

Hello, I am Thomas McKenna, a resident of District 40 and I support bills 1671-2019.
2209-2021, 2220-2021, 1538-2021, 6808-2020, T7085-2021.

Thank You,

Thomas McKenna

I am here to testify on the employment decision of Officer Wael Jabel and Wing Hong Lau who failed to respond to my cousin Tonie Nicole Lopez's domestic violence emergency call. Due to their negligence and ignoring their duty to respond to the call for Tonie, our family is enduring the pain that Tonie is no longer with us. It is their judgement that had time to fully execute their duty. It was not a judgement done in a split second, but rather it was a judgement call that they both did in the safety of their patrol car. As a result of their judgement, Tonie lost her life in front of her daughter. There is no accountability for their participation in Tonie's death, and something needs to be done.

Del Velazquez

February 15, 2021

RE: Tonie Lopez (Police re-assigned)

To Whom It May Concern:

Holding a position in public office is a great honor and should never be taken lightly. It bears a great responsibility to the general public which is served. The position should always, always put the public's interest first. It is quite evident that in the case of Tonie Lopez a major breach of protocol took place. This breach and judgment call on the part of these two officers not only cost a thriving young mom her life but wrecked havoc on the families involved. With the loss of Tonie comes the loss of a mother, a niece, a sister and the total collapse of the families that will be forever in mourning. It is three years later and the pain does not get any easier. Every day this family wakes up wondering what life would have been like if those officers simply did their job and stepped out of their vehicles and checked on Tonie. Would she still be alive? Would a little girl still have her mom?

The re-instatement of these two officers is not acceptable. Even more gut-wrenching is the painful truth that these two officers were re-appointed to duty. This is a total disgrace and massive failure approved by the commissioner. It wasn't enough that their negligence cost a precious life but that a higher up then decides to support their behavior and reappoint them to active duty. Under no circumstances should these two officers have been allowed to ever keep their jobs.

We ask that the commissioner and the two officers reinstated be immediately terminated.
Thank you for your consideration.

Radical Women and Freedom Socialist Party Testimony

To The Committee on Public Safety

New York City Council

On Resolution 1538-2021

Removing the NYC Police Commissioner's exclusive authority over police discipline

February 16, 2021

Good morning City Council members, and the public that is watching this live stream at home. My name is Betty Maloney. I am a retired 30-year veteran public school guidance counselor, member of American Federation of Teachers, and a former rape crisis counselor staff member. I'm here as a representative of Radical Women and the Freedom Socialist Party.

We are here in support of Resolution 1538-2021 on removing Police Commissioner's exclusive authority over police discipline and to highlight that it is insufficient in holding police more accountable and to curb the epidemic of police violence.

FSP and RW are multi-racial organizations engaged in grassroots activism aimed at eliminating sexism, racism, homophobia and labor exploitation. It was on this basis that our two organizations, based in Harlem, allied with the Campaign for an Elected Civilian Review Board. Over the past five years we have been listening and organizing in all the communities of those that have suffered the most from police brutality, and have been infusing their suggestions and their stories of how their lives have been affected by the rampant police misconduct and violence, into the Community POWER Act (Police Oversight With Elected Review) legislation that provides a more comprehensive solution.

Women, women of color, and gender or sex-role nonconforming women, are often seen as targets for sexual harassment by the police. We face extortion to perform sexual acts for cops in order to avoid arrest, or to protect our children from harassment or arrest. When we are victims of crime, our reports are ignored or not believed. Worst of all, too many of us have lost our children to police violence

Structural racism and sexism make it virtually impossible for women, **especially** women of color to report. Immigrant women rightly fear being deported if they make a complaint. Transwomen of color are acutely vulnerable to the torture of being misgendered and held in male facilities where they are subject to further abuse. This lack of trust in the reporting process and the consequence of facing an unjust court system shows that we **need** the Community POWER Act.

Women are Not Silent.

African American women have always been the fiercest fighters against the brutality of the NYPD. In the 80s Eleanor Bumpers' daughter and the mother of 17-year-old Edmund Perry, joined forces to combat police violence and state sanctioned murder. They pursued legislation to curb police violence. Today, Juanita Young, mother of Malcom Ferguson, who was murdered by police over 20 years ago, heads up Mother Cry for Justice and is a strong supporter of the Community POWER Act.

As Fannie Lou Hammer would say, “We can no longer be sick and tired of being sick and tired”.

The time is ripe for city council members that align with women, people of color, LGBTQ folks, immigrants, poor people and all those most affected by police violence, to push for an Empowered Elected Civilian Review Board that will put the power over the police in the hands of the community and give us an Elected Independent Prosecutor that answers to the people and **not** the Mayor or Police Commissioner. The Community POWER Act is such a bill, and we ask the Public Safety Committee to turn your political power towards supporting this comprehensive bill and away from a piecemeal approach. The time is now for elected officials to speak truth to power.

Submitted by Betty Maloney

The disciplinary action against NYPD officers Wing Hong Lau and Wael Jaber is a slap on the face to the people they have taken an oath to protect. A young woman, mother, daughter, sister, friend was murdered. A death that could have very well been prevented if the officers involved had tended to their duties. Instead they committed gross negligence in failing to respond to the call within a reasonable amount of time, choosing to stay in their vehicle. The lack of disciplinary action against these officers for their failure to do their job. These ongoing lax consequences, such as a mere 30 day suspension, only enable officers in the force to continue to negligently fail at their duty for they know there will never be just consequences for their actions. Victims of Domestic Violence rely on law enforcement to protect and keep them safe from the abusers. Where else are they to turn to for help? When the ones that are there to "serve and protect" do not care to step up to the call. This case should be reopened and examined by independent third party investigators. Not solely in the hands of the Commissioner who is biased to his decision making process.

Sincerely,
Rachel Vargas



Kelly Grace Price

• Creator, Close Rosie's

• 534 W 187th St #7 New York, NY 10033

• E-Mail: gorgeous212@gmail.com

Web: <http://www.CloseRosies.org>

February 16, 2021

To: NYC Council, Committee on Public Safety

Committee Chair Adams; the Public Advocate (Mr. Williams); Council Members Levin; Menchaca; Rivera; Deutsch; Holden; Powers; Rosenthal and; Council Speaker Johnson

cc: Committee Counsel; Chelsea Davis, Mayor's Office; Dana Kaplan, MOCJ.

Via email

RE: NYPD oversight/reform as per NY State mandate for municipalities to adopt a reform plan by April 1, 2021.

Int 2209-2021: Requiring the PC to be confirmed by the City Council

II. Int 2220-2021: Establishing an individual right of security vs. PO illegal search & seizure & eliminating absolute & qualified immunity defenses

III. Res 1538-2021: Removing Final Disciplinary Authority from the PC

IV. What are some of the most important issues facing women who encounter the Criminal Legal System and how can the City Council seize this moment, mandated by the Governor to mandate NYPD SVU Oversight & Reform to respond in the wake of the #MeToo movement?

1. City Council must develop a robust data reporting mechanism for sexual violence data
2. NYPD SVU must receive autonomy in Budget and Report directly to the Council & to the Mayor.

☒☒ [Int 2209-2021](#) Requiring the PC to be confirmed by the City Council:

I've listened carefully to the (lack of) argument(s) presented by Ms. Chelsea Davis of the Mayor's Office and the NYPD legal team against giving the City Council a voice in selecting the PC and I haven't heard anything of substance. I find it odd that a member of the Mayor's Office is tasked to speak for the Police Commissioner on these matters. We have seen nothing but obfuscation and lack of transparency from the PD and its time for the secret handshake agreements between the Mayor and the PC to end. The City Council needs a say and this measure is long overdue. Backroom deals cut between the Mayor and the PC have plagued reform efforts in the past and a third layer of oversight by this governing body would go a long way in curbing this practice.

II. [Int 2220-2021](#): Establishing an individual right of security vs. PO illegal search & seizure & eliminating absolute & qualified immunity defenses:

- A. I want to first say that the fastest way to curb qualified immunity is to set precedent in the Southern District. You heard it yourself today from the mouths of the NYPD attorneys: they watch carefully the "complicated case law" precedents set in the SDNY. *A more efficacious solution to this legislation (which will un-dubitably be tied up in litigation and appeals for years) is for the NYC Council to find ways to support litigants in their Section 1983 efforts in the Southern and Eastern District Federal Courts.*
- B. Its ludicrous for the Mayor's office and the NYPD to state that this legislation is problematic because what is reflected in the Patrol Guide may not be reflective of the language of this bill and that PO's may "get it wrong" because of what is "wrongly" reflected in the Patrol Guide. **I have been to MANY City Council hearings ref NYPD reform and heard NYPD Lawyers and white-shirts offer many excuses for why they don't support legislation efforts led by members of this legislative body but this is a first. If the NYPD is unable to synthesize City Council laws and authority into the guidebook of protocols and procedures that govern NYPD actions I believe this is an issue far greater than the capacities of this hearing may offer.**
- C. C. Because of my unique experience as a Pro Se litigant against the NYPD in an action where qualified and absolute immunities are squarely focused I need to set aside discussing the merits and language of this legislation and point out that as a Section 1983 litigant against the NYPD and the City that there is nary enough support for the courts and /or complainants to properly steward the flood of civil claims that would spring from this legislation:
- The Pro Se office in State Court is very limited in its ability to steward claims and most State Court judges don't know the Section 1983 Code.
 - Also, the court part that handles claims vs. the NYPD is rife with corruption and methodology inequity stacked against litigants.
 - Finally, while I have been successful in Federal Court in stewarding my Pro Se action I doubt many other people would have the tenacity to keep up with their cases for NINE YEARS after their wrongful arrest, malicious prosecutions and unlawful imprisonment. Most people who get their criminal actions dismissed against them have had their lives destroyed and struggle to maintain a roof over their heads and food to eat and do not have the

resources to engage in long-term study of federal procedures and statutes and apply them to their own circumstances.

- The Federal Bar in NYC does not consist of a deep enough pool of attorneys who will take on these cases pro bono. It is virtually impossible to attain pro bono counsel. I was able to get a blue-ribbon law firm to eventually pick up my case but in the end I discovered they only agreed to represent me because they also represent Palantir and needed to limit the scope of discovery I would attain that would implicate potential civil rights liability of their famous tech client in my actions (and thousands of those of others similarly-situated.)
- Pro Bono representation pipelines are rife with traps and back doors for defendants to gain control over unsuspecting plaintiffs' actions: this is a secret the legal community never discusses in plain sight.

There needs to be an office similar to the NYLAG Pro Se clinic in the basement of 40 Foley for Federal Pro Se litigants set up in the basement of 60 Centre St in State court for these claimants. I believe this office's primary funding is from Stephen Banks at HRA and I applaud him for this effort. This similar support for State Court litigants would require a substantial financial lift from the Council/HRA/Office of Court Administration.

III. Res 1538-2021 Removing Final Disciplinary Authority from the PC:

I have had the unfortunate opportunity to make dozens of CCRB complaints over the past decade and I believe only ONCE did an investigative disposition lead to an administrative trial. I was never informed of the trial's outcome but I was informed that the Police Commissioner had reversed the CCRB's recommendations and their disposition of the case. I was heartbroken and I still have to see the same snarky NYPD Sergeant from the 34th Precinct (Mateo) around my neighborhood. She is contemptuous and not helpful to say the least.

I've testified about this before to City Council here is verbatim what I have presented during a February 7, 2020 Justice Systems Committee hearing ref the PC having final say over CCRB investigative outcomes:

“Regarding Councilman Richard’s bill Int 1105-2018 Misconduct Report: A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to submit reports on complaints of police misconduct: ☐

A. The CCRB is now investigating complaints of sexual harassment and plans on investigating complaints of sexual abuse in the coming months. These categories should be added to the language of the § 14-177 Police misconduct report. ☐

B. It takes MONTHS sometime YEARS for a disposition on a case and determinations are made and adjusted at each stage of the disciplinary process. For instance as a result of various trespasses against my constitutional rights and discourtesies levied against me by NYPD SGT Mateo of the 34th precinct when we called the NYPD because my landlord had illegally changed the locks on our buildings Mateo's actions were determined to be FOUNDED by the CCRB: below an excerpt from a determination letter I received in January of 2018 about the incident:

Now just days ago I received a SECOND determination letter ref the SAME incident but it is completely different and reveals a change in determination of the same charge:

Abuse of Authority: An officer entered and/or searched location.	Substantiated (Charges)
--	-------------------------

Re: CCRB case number 201707029

Dear Ms. Price:

Following a thorough and impartial investigation by the Civilian Complaint Review Board's investigative staff, the Board reviewed the evidence regarding the above-referenced complaint. I am now writing to inform you of the Board's findings on the allegation(s) raised by this complaint.

Allegation(s) by letter :	Board finding(s) :
A) Abuse of Authority: Sergeant Carmen Mateo threatened to arrest Kelly Price.	Unsubstantiated
B) Abuse of Authority: An officer entered and/or searched location.	Exonerated
C) Discourtesy: Sergeant Carmen Mateo spoke discourteously to Kelly Price	Unfounded

For an explanation of the Board's finding(s), please refer to the enclosed form, which details what each finding means.

How is this discrepancy to be accounted for in the reporting? I have NO idea if Mateo was exonerated at trial or by the PC. This bill should have at least three levels of reporting: 1) Determination by CCRB 2) Administrative Trial Determination and; 3) Determination by Police Commissioner.

C. I have previously submitted testimony ref CCRB reporting to the Public Safety Committee on January 22 of this year regarding Intro 1106. Here are my suggestions regarding CCRB reporting:

Potential Reporting Provisions to Intro 1106:

- i. The council could consider adding a provision that **requires the CCRB to document the number of complaints converted/on-passed to the NYPD for investigation** that are initially investigated by the CCRB and deemed to fall outside of the agency's charter. Currently I have made several complaints that fall outside of the charter of the CCRB and have NEVER been informed that my complaint has been on-passed to IAB for investigation. Also, I have never been given a determination as to the outcome of many of my requests. Please see a recent correspondence from November of 2018 (between myself and the CCRB) regarding this issue (See Exhibit 1).
- ii. The council could consider adding a provision to Intro 1106 that requires the CCRB to **report on the duration between individual complaints and the when the complainant is informed of that investigatory outcome;**
- iii. The Council could consider adding a provision to Intro 1106 that requires the CCRB to **report on the number of complaints pending by duration;**
- iv. The Council could consider adding a provision that requires the NYPD/CCRB to report on **the number of investigative outcome notification letters returned to CCRB that never reach complainants.** Currently there is no data available about how long a complainant has to wait before being updated about the status of their complaint. This is particularly harmful to survivors of sexual assault and

harassment who often have to flee their homes and relocate into temporary living situations without forwarding addresses. I encourage the Council to mandate better reporting processes and guarantees before the CCRB is allowed to proceed with stage II of its sex harassment and assault investigations into complaints made by civilians of uniformed and ununiformed members of the NYPD. This is an HUGE issue that I have tried to flag to the Downstate Coalition vs. Sexual Violence and the Women's Issue Committee but it has not taken hold. ☒

- v. The Council could consider adding a provision to Intro 1106 that **requires the CCRB to provide a full and complete accounting of an individual's previous/pending CCRB complaints** upon request to that individual that includes: date of initial report; date of conclusion; date complainant was informed of income; method of reporting to complainant and outcome of the complaint(s). ☒
- vi. The Council could consider adding a provision to Intro 1106 that **requires the CCRB to provide a full and complete accounting of the time between receiving the initial complaint and responding to the complain tent.** ☒
- vii. There are many people who have been banned from the "Mediation" option with the NYPD instead of choosing a full CCRB investigation. I am one of these people and this practice is selective and exclusionary and denies me many constitutional rights. The NYC Council could consider adding a provision to Intro 1106 that requires the CCRB to provide a full and complete accounting of all people who have been denied the ability to enter into mediation with the NYPD as an option instead of a full CCRB investigation."

IV. I want to echo what Councilwoman Rosenthal tried to do earlier in this hearing: to center this reform effort around the needs of women/LGTBQI concerns regarding the NYPD SPECIAL VICTIMS UNIT: what are some of the most important issues facing women who have been engaged by the Criminal Legal System and how can we use this moment to respond to them?

1. NYPDSVU and Borough DAs have traditionally criminalized behavior that is symptomatic of trauma and re-victimize survivors, by filing cross-complaints against us and entangling us with the criminal legal system. Borough DA SCU's, MOCJ and the NYPD's SVU don't accurately track or report data on sexual violence resulting in an ebbing of trust in Law Enforcement Agencies and authority. We need a robust and transparent data accountability mechanism developed in the City Council as NYPD, Mayor's Office vs. Gender Based Violence and FBI reporting that is and grossly flawed and insufficient. If we cannot see the problem we cannot fix it. Here is a brief snapshot of these three data channels regarding sexual violence in NYC:

A. NYPD RAPE DATA: [NYPD Open Data Portal by Complaint Type](#)¹

- No data on founded/unfounded/substantiated: data is only for "valid felony" complaints.²
- Scant Data is available. What is available is inconsistent and obfuscated. No data provided by community board by NYPD.
- NYPD quarterly Data shows 52 complaints of RAPE 1 in Q1 for Manhattan only in 2019: no indication of breakdown DV, Family-related, or Stranger rape.

¹ [NYPD Top Crime Data by Complaint Type: Open Data Portal](https://data.cityofnewyork.us/Public-Safety/Rape-Data/u7ds-4335): <https://data.cityofnewyork.us/Public-Safety/Rape-Data/u7ds-4335>.

² "This dataset includes all valid felony, misdemeanor, and violation crimes reported to the New York City Police Department (NYPD) for all complete quarters so far this year..." [Kate Pastor](#) created Feb 7, 2017 updated May 17, 2019.

Q1 NYPD OPEN DATA PORTAL SUMMARY		2019
Borough	"*Valid" Rapes	
Bronx		72
Brooklyn		99
Manhattan		51
Queens		54
Staten Island		10
Total		286
Rikers/City Jails	TBD	

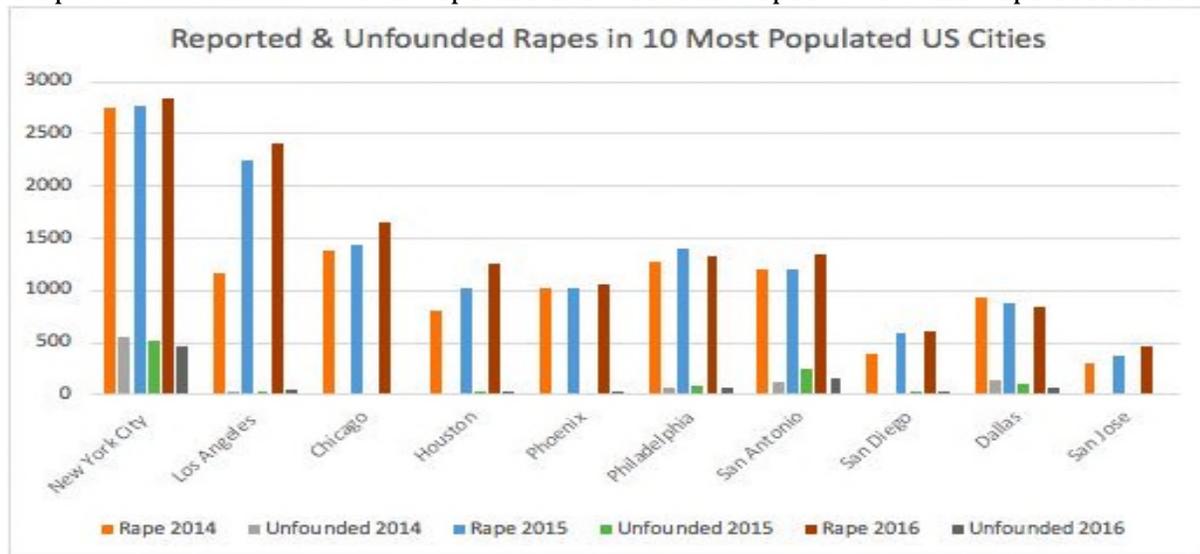
- This data seems to indicate a potential 100% increase in rapes in 2018 in Manhattan/citywide in view of MOEGBV data (see below "Table 6" that reveals only~99 complaints of Domestic Violence Rape *for the ENTIRE year of 2018 in Manhattan. This represents a potential 100 % increase in Rape complaints in Manhattan.*
- Citywide increase of rapes from 679 city-wide DV Rapes 2018 according to MOEGBV v NYPD Q1 total (including stranger rapes) in 2019 of 287.
- NYPD rape data only provides data on [NY Penal Code § 130.35: Rape in the First Degree-](#)
- Data is not tracked year-to-year for comparison
- [Historical NYPD Rape and Sex-based Crime Data](#): 2006-2016

B. FBI DATA:

- FBI DATA reveals NYPD determines that ~20% of all rape complaints are "Unfounded" or evidence proved that the rape did not happen as opposed to the next largest US Metropolitan area, Los Angeles, that reported a 1.3-3% rate of "unfounded" rape complaints.

3

Graph 1⁴ FBI Data 2014-2016 Reported & Unfounded Rapes In 10 Most Populated US Cities



³ "Staffing is far from the its only problem. In New York City, according to FBI data, nearly 19 percent of the 2,767 total reported rapes were considered unfounded, defined by the FBI as "false" or "baseless." Research shows only 2 to 10 percent of reported rapes are actually false. Some boroughs have an especially high percentage: 27 percent of rapes reported in Queens were deemed unfounded in 2015. ["Is The NYPD's Special Victims Division Prematurely Closing Sexual Assault Cases?"](#) Meg O'Connor: *The Appeal*; December 17, 2018.

⁴ Ibid.

FBI Data 2017 Reported & Unfounded Rapes NYPD

Rape		Robbery	
Actual	Unfounded	Actual	Unfounded
2375	286	13995	143
Assault*		Burglary	
Actual	Unfounded	Actual	Unfounded
29771	127	11104	148

FBI Data 2018 Reported

Case Closings for 2018 Rape Complaints	BRONX	BROOKLYN	MANHATTAN	QUEENS	STATEN ISLAND	Total
OPEN	40	46	16	16	6	124
ARREST	140	225	108	194	28	695
C-4 INVESTIGATIVE LEADS EXHAUSTED	63	79	130	68	6	346
COMPLAINANT NOT PARTICIPATING AT THIS TIME	99	150	127	79	28	483
OTHER	44	46	24	30	7	151
All	386	546	405	387	75	1799
B-6 UNFOUNDED	25	32	38	64	7	166

C. MAYOR'S OFFICE TO END GENDER-BASED VIOLENCE DATA:

§ **The Mayor's office to combat Gender Based Violence under-reported DV rapes by Manhattan Community Board in the Open Data Portal by ~24.999% for the year 2018 (still waiting on 2019 data).**

§ **Stranger-rapes are not accounted for** in any NYC Mayor's Office to Combat Gender-Based Violence Snapshots, Annual Reporting or on the 2017 MOEGBV NYC Open Data Portal.

§ The 2018 Intimate Partner Violence Related Snapshot published by the Mayor's Office to End Gender Based Violence reveals, "In 2018, there were 2 family-related rapes, comprising 20% of the neighborhood's domestic violence rapes." **This would represent a total of TEN domestic-violence rapes in Community Board four in 2018. However, the data posted on NYC's Open Data Portal lists only NINE domestic-violence rapes in Community Board four in 2018.** Following, ONE DV rape in CB4 has "disappeared." These inconsistencies are ubiquitous throughout the Mayor's Office to end Gender Based Violence DV Rape by Community Board reporting.

§ **The biggest discrepancy seems to be in Community Board Twelve / CB12** as the MOEGBV 2018 Community Board Snapshot reported: "In 2018 there were 9 family-related rapes comprising 39% of the neighborhood's domestic-violence related rapes." This would represent a total of 23 (n=23) Domestic-Violence related rapes in CB12 in calendar year 2018. However, the NYC Open Data Portal (below Table 1) details ONLY SEVEN domestic-violence related rapes in CB12 in 2018. So a total of 14 rapes have been wiped clean from the MOEGBV Snapshot reporting for 2018 for CB12/Manhattan.

We haven't accurate sexual violence data in NYC and no way to fairly disseminate it to advocates and policy makers.

Source: [Mayor's Office to End Gender-based Violence](#)—purportedly two presentations of the SAME 2018 data for DV and IPV rapes by Community Board Districts reveals discrepancies in numbers for reported DV rapes per Community Board District:

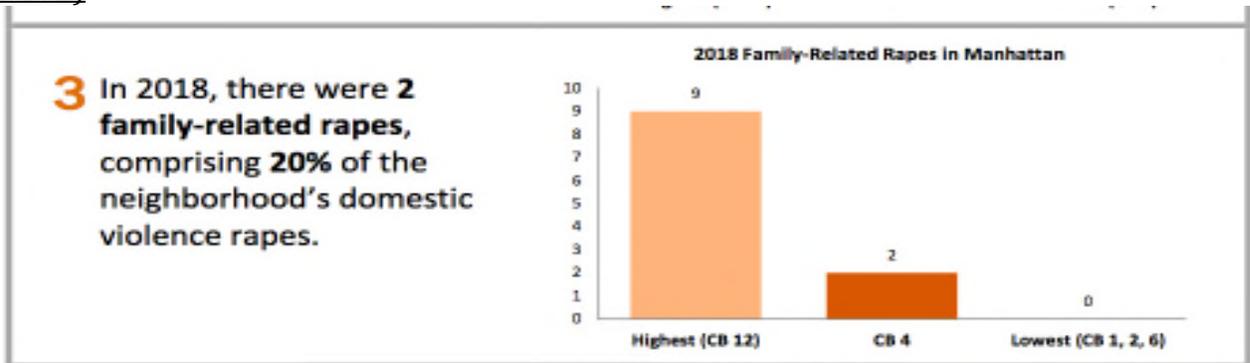
- i. [NYC Open Data Portal 2017 Intimate Partner Violence Related Snapshots: New York City Community Board Districts \(n.b. report is NAMED 2017 data but the 2018 data below\) lives at this link on the NYC Open Data Portal as well](#)):

(Table 1):

Com...	Com...	IPV_DIR	IPV_Fel_Assault	DV_Fel_Assault	IPV_Rape	DV_Rape	↓
Manhattan	11	3,214	157	244	9		18
Manhattan	4	1,193	56	71	6		9
Manhattan	7	1,333	47	66	6		8
Manhattan	3	1,837	63	118	6		8
Manhattan	9	1,474	57	93	3		8
Manhattan	12	1,994	80	146	7		7
Manhattan	10	2,897	128	197	2		5
Manhattan	6	727	28	37	3		4
Manhattan	8	889	29	43	3		3
Manhattan	5	822	37	41	2		2
Manhattan	2	470	12	16	2		2
Manhattan	1	496	5	8	1		1

- ii. [2018 Family-Related Violence Snapshots by NYC Community-Board Districts](#)

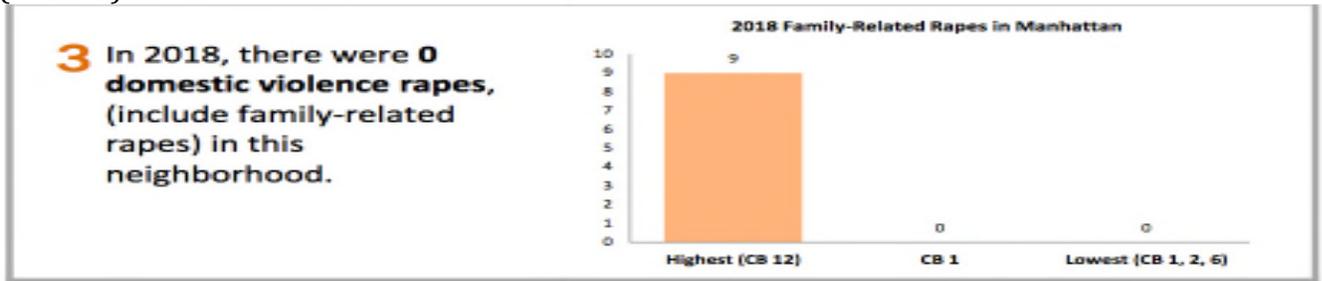
(Table 2)



- For example, the 2017 Intimate Partner Violence Related Snapshot (Table 2 excerpted above from page 40,) published by the Mayor's Office to End Gender Based Violence lists reveals "In 2018, there were 2 family-related rapes, comprising 20% of the neighborhood's domestic violence rapes." This would represent a total of TEN domestic-violence rapes in Community Board four in 2018. However, the data posted on NYC's Open Data Portal lists only NINE domestic-violence rapes in Community Board four in 2018. Following, ONE DV

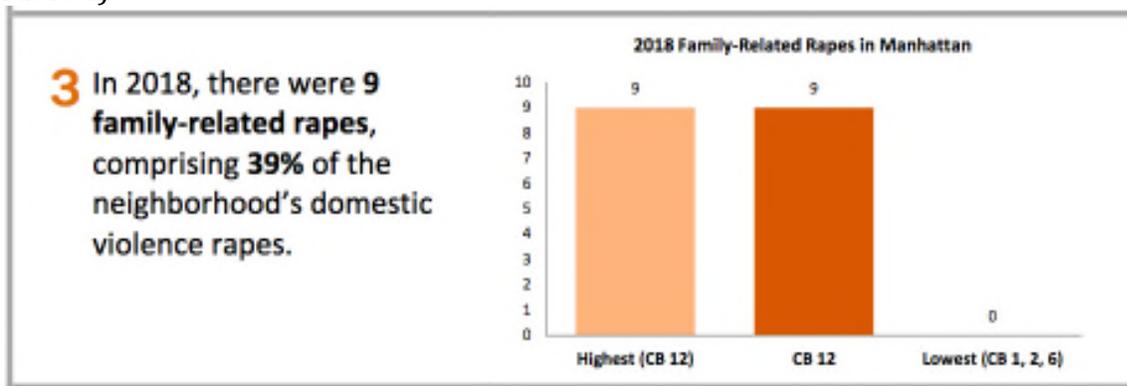
rape in CB4 has “disappeared.” These inconsistencies are ubiquitous throughout the Mayor’s Office to end Gender Based Violence DV Rape by Community Board reporting.

(Table 3)



- Community Board One / CB1: snapshot from MOPGBV Snapshot (Table 3 above excepted from page 37) reports ZERO Domestic-Violence related rapes in this neighborhood in 2018. The NYC Open Data portal reports ONE DV rape and ONE IPV rape.

(Table 4)



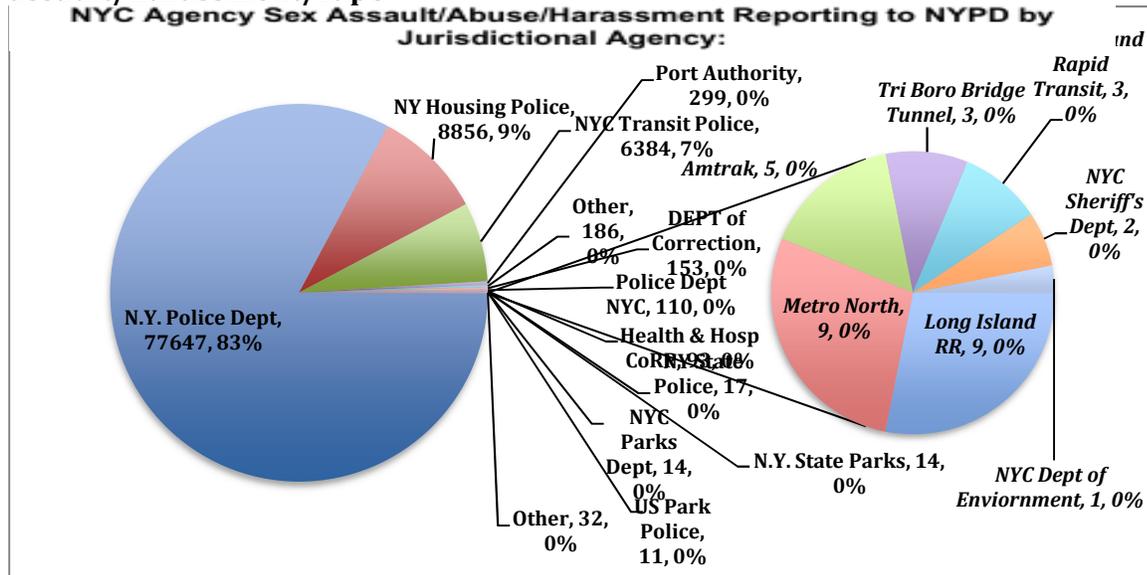
- (Table 4)** The biggest discrepancy seems to be in Community Board Twelve / CB12 (above Table 4 excerpted from page 48) as the MOEGBV 2018 Community Board Snapshot reported: “In 2018 there were 9 family-related rapes comprising 39% of the neighborhood’s domestic-violence related rapes.” This would represent a total of 23 (n=23) Domestic-Violence related rapes in CB12 in calendar year 2018. However, the NYC Open Data Portal (above Table 1) details ONLY SEVEN domestic-violence related rapes in CB12 in 2018.

(Table 6) Comparison Table of MOCGBV OPEN DATA Portal 2018 DV Rape Data vs. MOCGBV CB 2018 Snapshot Data:

Borough	Comm_District	IPV_DIR	IPV_Fel_Assault	DV_Fel_Assault	IPV_Rape	MOCGBV CB Open Data Portal DV_Rape	MOCGBV CB SNAPSHOT Portal CB DV Rapes
Manhattan	11	3,214	157	244	9	18	16
Manhattan	4	1,193	56	71	6	9	10
Manhattan	7	1,333	47	66	6	8	6.8
Manhattan	3	1,837	63	118	6	8	17.64
Manhattan	9	1,474	57	93	3	8	7.1
Manhattan	12	1,994	80	146	7	7	23
Manhattan	10	2,897	128	197	2	5	13
Manhattan	6	727	28	37	3	4	0
Manhattan	8	889	29	43	3	3	1
Manhattan	5	822	37	41	2	2	5
Manhattan	2	470	12	16	2	2	0
Manhattan	1	496	5	8	1	1	0
Manhattan	MNJIA	14	0	0	0	0	0
Totals						75	99.54

- The Mayor’s office to combat Gender Based Violence under-reported DV rapes by Manhattan Community Board in the Open Data Portal by ~24.999% for the year 2018.
- Stranger-rapes are not accounted for in any NYC Mayor’s Office to Combat Gender-Based Violence Snapshots, Annual Reporting or on the 2017 MOEGBV NYC Open Data Portal.

D. OTHER NYC AGENCY DATA Other NYC/state agencies failure to respond to sex assault/harassment/rape



NYC AGENCY	Total Reported to NYPD
N.Y. Police Dept.	77647
NY Housing Police	8856
NYC Transit Police	6384
Port Authority	299
Other	186
DEPT of Correction	153
Police Dept. NYC	110
Health & Hosp Corps	93
NY State Police	17
N.Y. State Parks	14
NYC Parks Dept.	14
US Park Police	11
Long Island RR	9
Metro North	9
Amtrak	5
Tri Boro Bridge Tunnel	3
Staten Island Rapid Transit	3
NYC Sheriff's Dept.	2
NYC Dept. of Environment	1

TOTAL	93816

There are a total of 71 NYC Agencies: of those only 20 reported complaints of criminal sex abuse/sexual harassment to the NYPD from 2006 to 2018. As per each Agency's independent Charter code each is responsible for investigating inter-agency crimes. The Charter⁵ requires all criminal conduct to be reported to the NYPD but there appears to be nary any oversight structure established in any capacity within NYC government to enforce this reporting.

The following agencies reported ZERO complaints of rape/sexual assault or sexual harassment between 2006 and 2018 to the NYPD⁶:

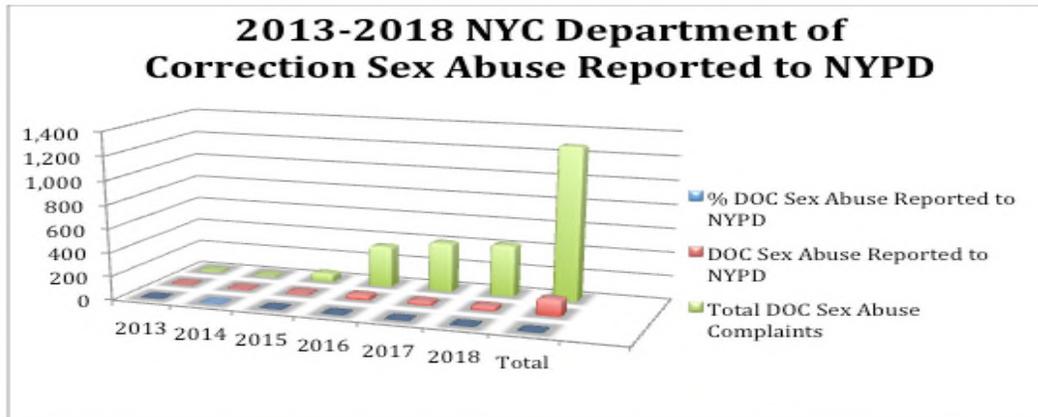
Child Welfare Board
City University of New York
New York City Board of Education
New York City Community Assistance Unit
New York City Economic Development Corporation
New York City School Construction Authority
New York City Soil and Water Conservation District
New York City Voter Assistance Commission
NYC Media
Office of Chief Medical Examiner of the City of New York
The Business Integrity Commission (BIC)
The Campaign Finance Board (CFB)
The Department for the Aging (DFTA)
The Department of Buildings (DOB)
The Department of City Planning (DCP)
The Department of Citywide Administrative Services (DCAS)
The Department of Consumer Affairs (DCA)
The Department of Cultural Affairs (DCLA)
The Department of Design & Construction (DDC)
The Department of Education (DOE)
The Department of Finance (DOF).
The Department of Health & Mental Hygiene (DOHMH)
The Department of Homeless Services (DHS) provides services to the homeless.
The Department of Housing Preservation & Development (HPD)
The Department of Information Technology & Telecommunications

⁵ NYC Charter linked June 6, 2019: <https://www.amlegal.com/codes/client/new-york-city-ny/>

⁶ **What this means is complaints are not making it to Bureau of Justice Statistics so literally our voices are being choked by the City Agencies that employ us-our rapes and sexual assaults aren't even being counted in the Nat'l yearly statistics which are mandated to be fed to the Bureau of Justice Statistics.** The Federal Laws mandating crime data that BJS documents fall under: A. The [Justice Systems Improvement Act of 1979](#); B. [Public Law 96-157](#) (the 1979 Amendment to the Omnibus Crime Control and Safe Streets Act of 1968), and; C. [Public Law 90-351](#). Following, NYC IS IN VIOLATION OF THESE Federal Mandates/ LAWS as multiple agencies have not been accurately providing data to the NYPD to report to BJS.

(DoITT)
The Department of Investigation (DOI)
The Department of Parks & Recreation (Parks)
The Department of Probation (DOP)
The Department of Records & Information Services (DoRIS)
The Department of Sanitation (DSNY)
The Department of Small Business Services (SBS)
The Department of Transportation (DOT)
The Department of Youth & Community Development (DYCD)
The Fire Department (FDNY)
The Human Resources Administration (Department of Social Services; HRA/DSS)
The Independent Budget Office (IBO)
The Latin Media & Entertainment Commission (LMEC)
The Law Department (Law) is responsible for most of the city's legal affairs.
The Mayor's Office of Film, Theatre & Broadcasting (MOFTB)
The Municipal Building.
The New York City Banking Commission administers banking programs.
The New York City Board of Correction (BOC)
The New York City Board of Standards and Appeals (BSA)
The New York City Civil Service Commission (CSC)
The New York City Civilian Complaint Review Board (CCRB)
The New York City Clerk is the city clerk and clerk of the City Council.
The New York City Commission on Human Rights (CCHR)
The New York City Conflicts of Interest Board (COIB)
The New York City Emergency Management (NYCEM)
The New York City Franchise and Concession Review Committee (FCRC)
The New York City In Rem Foreclosure Release Board
The New York City Landmarks Preservation Commission (LPC)
The New York City Loft Board
The New York City Marriage Bureau
The New York City Office of Collective Bargaining (OCB)
The New York City Office of the Actuary
The New York City Office of Workforce Development (WKDEV)
The New York City Procurement Policy Board (PPB)
The New York City Public Design Commission (Art Commission)
The New York City Rent Guidelines Board (RGB) regulates rents in the city.
The New York City Tax Appeals Tribunal
The New York City Tax Commission
The New York City Workforce Development Board (WDB)
The Office of Administrative Trials and Hearings (OATH) .
The Taxi & Limousine Commission (TLC)

This is especially worrisome when data reveals that agencies reporting data are under-cutting the sex abuse crimes that they are reporting! The NYC Department of Correction is a good example of this:



	% DOC Sex Abuse Reported to NYPD	DOC Sex Abuse Reported to NYPD	Total DOC Sex Abuse Complaints
2013	38%	5	13
2014	89%	8	9
2015	23%	16	70
2016	12%	41	347
2017	8%	32	415
2018	8%	36	434
Total	11%	138	1288

CONCLUSION:

Since the 2018 DOI report on the NYPD SVU we have seen THREE new SVU Chiefs and not an iota of enhanced data transparency; an ebbing of the flow of survivors clinging to service organizations for justice and; nary a boost confidence that lasting structural change to this NYPD division has gelled. During the pandemic sexual assault, domestic violence and trafficking have dramatically increased yet the OCME has radically slowed the number of Rape Kits being processed. The number one thing we can do to reform the NYPD SVU is give it a separate agency status—separate but parallel to the NYPD with its own budget and its own answerability to the Mayor and the City Council to investigate not only complaints of sexual assault, abuse and harassment by the public but also by members of the dozens of City Agencies and Departments where sexual predators have been protected for decades by the City’s Failure to establish a process(es) for these complaints to be properly investigated and reported.

Thank you for taking the time to read and consider my testimony and for allowing me to appear and present it today.

Kelly Price
<http://www.CloseRosies.org> Ft. George, Manhattan

534 w 187th st # 7
 New York, NY 10033
Gorgeous212@gmail.com
 /s/ Kelly Price
 *Signed as per the 2000 Electronic Signature Act

It is a disgrace that officer Wing Hong Lau and Wael Jaber get to keep their jobs when Tonie Wells was in a desperate need to save her life when she placed that phone call several years ago! A daughter loss her mother and a mother loss her daughter, others loss a sibling, cousin, niece, or a friend! This mother has endured the worse pain possible yet the system is failing her once again. This pain will last her a lifetime!! These two officers should not be allowed to collect a paycheck after the manner in which they took care of this incident. What happened to the oath taken at the beginning of the careers? They sat in their police car and then drove away, I would love to have heard their car conversation that day! I and countless others agree and demand these two officers lose their jobs and get immediately dismissed just the way they dismissed Tonie's cry for help! DO THE RIGHT THING

Ivonne V. Perez

IvonneVPerez@gmail.com

Mobile: 862-754-3568

JUSTICE FOR TONIE

To Whom It May Concern,

Hello my name is Jordana Moschogiannakis. I have been following Tonie's story since 2017 and it breaks my heart what is being taken place. Those officers should not have their jobs, they should not be able to keep their badges. A mother, a daughter, a sister, a niece, a cousin, a friend was taken way to soon and the people who are suppose to protect and serve us failed. They failed at their jobs and they failed Tonie. I myself was in an abusive relationship with my ex husband that i got out of a little over a year ago. We share three kids and there is a finalized restraining order against him. I reached out to the police the times I needed them and they were my only hope and I relied on them to come and save me. I can relate to Tonie because Ive been there. I have felt that fear and that's a fear I wouldn't wish on anyone. In situations like that the police are the only ones we can rely on, the only hope we have. She relied on those officers. She was waiting for them to come save her and they never did. The fear and the pain she endured waiting for help to arrive, hoping and praying to God which never came. I reached out to Tonie's mom a couple years ago and she helped me in my situation. She listened, she gave guidance, advice. Her and her family are there for all the women and men who suffer through domestic violence. Her and her family are the voice and help many people with what they are going through or have gone through. This family deserves so much more respect, and so much more justice for their Tonie. Being in a domestic violence relationship and not having anyone to turn to or have anyone who understands you is scary and it makes you feel so isolated and alone. Ellie and her family are the ones who are there. They have not stopped fighting for justice and they haven't stopped fighting for all the other victims out there and we will stand beside them and fight with them. If those officers went inside that day Tonie would still be here. Her daughter would still have her mom. Being a mother myself my heart breaks for her little girl. She watched her mother get murdered, she watched something a child should never have to witness. Her daughter deserves more as well as her family. What if there is another call like that ? Are those officers going to do the same thing because its to cold to get out of the car? The justice system is backwards and it makes no sense how you can allow those officers to continue wearing that uniform and carry that badge. They are responsible for Tonie's death just as much as Barry is. They should be ashamed of themselves, the whole justice system should be ashamed of themselves because they all failed Tonie. We look up to police officers to help us when were are in need, when we don't feel safe, when we are in trouble. Who's really going to keep us safe now? I have lost all respect and lost all hope for police officers and the justice system all together. As i close this letter answer this question, who are the real criminals here? I'll give you my answer ,it's the ones who are still carrying that gun and that badge.

JUSTICE FOR TONIE !

Sincerely,

Jordana Moschogiannakis

Good Morning,

I want to submit my testimony following the meeting held by the Committee on Public Safety on Tuesday, February 16.

On December 27, 2017, my cousin, Tonie Nicole Wells, made a call to the NYPD asking for help, saying her husband was acting weird and she feared for her life. A second call was made by a neighbor saying that Tonie was screaming, "He's going to kill me!"

Two NYPD officers were dispatched to do a wellness check. However, Officers Wing Hong Lau and Wael Jaber, refused to get out of their car because it was simply too cold.

An hour later, a 3rd call was made to go to the home as Tonie's body was discovered, unresponsive, with her one and a half year older daughter crying over her lifeless body.

As a family member who was so close to Tonie, I am sad. I am hurt. I am angry because my cousin called for help because she was scared! She waited to be rescued! She waited for help that NEVER came!

It's even more hurtful to know that the two officers who were sent to check on Tonie made a selfish decision to stay in their car, one that cost the life of a mother! And they were allowed to keep their jobs after being found guilty by the department for failure to take police action and failure to properly investigate while responding to a call.

As a result of their negligence, my cousin was murdered by her husband while her daughter watched! That selfish decision left a daughter traumatized, without a mother. A family broken. A woman's life lost. Forever.

As officers, you make an oath to protect and serve. However, my cousin was not protected. Those officers failed her and the department at large failed her! They have sent the message that Tonie's life did not matter. That Tonie's plea for help wasn't enough for action. That women and others suffering from domestic violence cannot rely on the ones who are supposed to protect us. The NYPD has made the message clear that the lives of their constituents are not worthy! And that is not okay! And we will not stop in justice is served!

Katherine Martinez

Good Evening Commissioner . I am writing concerning a article that I received from the public and the daily news reporters of my niece Tonie Rivera aka Tonie Wells.

As you may know under the prior commissioner this case rocked the City of New York due to the failures of officers to act upon the multiple 911 calls, however, remaining inside of their patrol car while the young mother was brutally murdered through domestic violence.

The issue is the mother and my family of Mrs. Wells who was murdered is just finding out that your disciplinary process cleared these officers of any wrongdoing back in July 2020? Our family as well as the child who witnessed this murder is now forced to deal with the lack of accountability on the part of those discharged with the responsibilities of protecting all of the residents here in NYC. Not only does this appear as if the lives of a young black mother only exist for arrest purposes? It sends the message that there is a selective priority on domestic violence. That the officers can arrive and at their discretion can choose to act? Or not?

These are issues that further divide the communities and the NYPD due to the lack of concern about the lives of those who rely on the NYPD for assistance. I would like to set up a meeting with you and my family so that these concerns can be explained by you to my family upon your availability.

I thank you and look forward to hearing from you on this matter.

Cordially
Katherine Rivera
(917-675-2201)

ROBERT MALEK

NYPD COMPLAINTS.ORG

ACS COMPLAINTS.COM

MY SITES WERE RECENTLY PLACED UP ON LINE AND IN DEVELOPMENT

MY SPEECH IS ABOUT 3.5 MIN LONG SO IF I AM CUT OFF, THIS SPEECH AND MY OTHER TESTIMONY ON PUBLIC SAFETY WILL BE ON NYPD COMPLAINTS.ORG

AS LONG AS THE OVERSIGHT AND CONDUCT OF NYPD IS IN QUESTION, NYPD SHOULD HAVE AS LITTLE TO DO WITH SCHOOL SAFETY AS POSSIBLE. WE CANT HAVE NYPD NOT ACCOUNTABLE FOR THEIR ACTIONS. THEY REPRESENT POOR ROLE MODELS FOR OUR CHILDREN.

I WILL GIVE YOU AN EXAMPLE.

I CALLED THE CHILD ABUSE HOTLINE FOR ABUSE OF MY CHILD BY HER MOTHER AND HER HALF BROTHER. KELLY CASEY BROOKLYN DA MANDATES INVESTIGATION OF THIS ONE ASSAULT OF MANY.

BROOKLYN CHILD ABUSE TIRADO AND SGT EILL GET THE CASE. THEY DECIDE NOT TO INVESTIGATE IT JUST BECAUSE THEY FELT IT COULDNT HAVE HAPPENED WITHOUT EVER SPEAKING TO ME FOR EVIDENCE SUPPORTING MY CALL.

MANHATTAN SPECIAL VICTIMS ALSO RECEIVED THIS MANDATE TO INVESTIGATE.

THE MATTER WAS GIVEN TO DET. GERARD SARDINA WHOM HAD 10 LAWSUITS AGAINST HIM IN THE PAST 5 YEARS. SARDINA DOES NOT INVESTIGATE AND HIS SUPERVISOR, LIEUTEANT MICHAEL KEENAN SIGNS OFF ON THE INVESTIGATION BECAUSE HE TRUSTS SARDINA NOT BECAUSE HE REVIEWED WHETHER OR NOT SARDINA PERFORMED THE REQUIRED INVESTIGATION.

I CALL INTERNAL AFFAIRS. INTERNAL AFFAIRS MERELY SENDS ME BACK TO ADDRESS THE MATTER AT MANHATTAN SPECIAL VICTIMS WITH THE SARGEANT WHOM IS SOMEHOW SUPPOSED TO EVALUATE HER LIEUTEANANTS WORK WHICH OF COURSE DIDNT HAPPEN SINCE SHE CLAIMED NOTHING WAS DONE IMPROPERLY. WHEN I CALL IAB BACK AGAIN, I AM REFERRED TO LIEUTENANT BERMUDEZ WHOM ALSO IS SOMEHOW SUPPOSED TO EVALUATE AND ADMIT HIS FELLOW LIEUTEANT DID NOT DO HIS JOB AND RAT OUT HIS FELLOW LIEUTEANT TO THE IAB ON THE MATTER WHICH ALSO OBVIOUSLY DIDNT HAPPEN. HE TOO TOLD ME NOTHING WAS DONE WRONG.

I CALL IAB AGAIN WHOM REFERS ME TO INSPECTOR CAROLINE ROE. SHE ADMITS THE INVESTIGATION WAS NOT DONE BUT DOES NOT TAKE ANY ACTION IN REGARDS TO FINALLY DOING WHAT WAS MANDATED.

CALLS WERE MADE IN 2018 TO IAB AND CCRB. CCRB SENDS ME TO IAB WHICH IS PROBABLY WHY THEIR COMPLAINTS ARE DOWN BECAUSE THEY ARENT TAKING REPORTS TO BEGIN WITH. IAB CHEIF DETECTIVE EDWARD ARMSTRONG DOES NOT CALL ME BACK UNTIL 2.5 YEARS LATER TO TELL ME NO ONE DID ANYTHING

WRONG.

THE BROOKLYN CHILD ABUSE INVESTIGATION I DID NOT FIND OUT ABOUT UNTIL DECEMBER OF 2020. I CALLED THE IAB REGARDING THAT AS WELL.

ABOUT A MONTH LATER IS WHEN I GOT THAT CALL FROM EDWARD ARMSTRONG TO TELL ME NOT JUST BROOKLYN SPECIAL VICTIMS DID NOTHING WRONG IN 2018 BUT NEITHER DID MANHATTAN SPECIAL VICTIMS AND EVERY CALL I MADE TO IAB WAS INVESTIGATED FOR EVERY INCIDENT AND THERE WAS NOT ONE THING ANY DETECTIVE DID IMPROPERLY.

I KNOW THIS IS NOT SO BECAUSE I DID FOIL ON THE POLICE INVESTIGATIONS, TIRADO FROM BROOKLYN SPECIAL VICTIMS ADMITTED HE DIDNT DO THE INVESTIGATION AND INSPECTOR CAROLINE ROE ADMITTED THERE ARE NO RECORDS OF SARDINA CONDUCTING THE REQUIRED INVESTIGATION IN MANHATTAN EITHER.

FURTHERMORE, TO NO SUPRISE, IAB INVESTIGATIONS CANNOT BE FOILED.

THIS IS JUST A SHORT STORY OF THE MANY THAT I HAVE THAT WILL BE PLACED ON NYPDCOMPLAINTS.ORG. OF HOW INEFFECTIVE NYPD IS WHILE MY DAUGHTERS ABUSE CONTINUES TO THIS DAY.

NYPD FROM THE TOP DOWN IS CORRUPT. WE DONT NEED CORRUPT COPS IN OUR SCHOOLS AS EXAMPLES FOR OUR CHILDREN. WE NEED TO MAKE SURE WE HAVE POLICE WHOM WE CAN TRUST AND REPRESENT PROPER ROLE MODELS FIRST. IT IS MORE THAN JUST SAFETY. IT IS ABOUT HAVING PROPER ROLE MODELS FOR OUR CHILDREN AND NYPD DOES NOT REPRESENT A GOOD ROLE MODEL FOR OUR CHILDREN IN NYC.

TO THINK THE DETECTIVES I HAVE MENTIONED ARE EARNING BETWEEN 100 AND 200 K PER YEAR FOR WORK THEY DONT DO. THEY ARE MORE THAN JUST BAD COPS THEY STEAL FROM THE CITY AND ARE THIEVES. THEY SHOULD BE NOWHERE NEAR OUR CHILDREN.

THANK YOU,



ROBERT MALEK

State of NY County of KINGS
The foregoing instrument was acknowledged before me
this 22 day of FEBRUARY, 2021.
by ROBERT MALEK
Jenniba Silla Notary Public

JENNIBA SILLA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01516297629
Qualified in Kings County
My Commission Expires 02/24/22