

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.
----- X

No. 08 Civ. 1034 (AT)

----- X
KELTON DAVIS, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.
----- X

No. 10 Civ. 699 (AT)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
EMERGENCY RELIEF**

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Plaintiffs respectfully submit this memorandum of law in support of their emergency motion for an Order to Show Cause directing the Defendant City of New York (the “City”) and its agency, New York City Police Department (the “NYPD”) to show why an order should not be entered (1) declaring the City in violation of the Court’s Liability Ruling (Dkt # 373), Remedial Order (Dkt # 372), and August 24, 2015 Order (Dkt # 517) in *Floyd v. City of New York*; (2) compelling the City to produce discovery Plaintiffs have requested concerning the NYPD enforcement of social distancing directives; (3) mandating expedited investigation of police practices relating to investigative encounters, stops, frisks, searches, summons and arrests during the COVID-19 pandemic; and (4) temporarily enjoining the NYPD from enforcing the City’s and the State’s social distancing directives.

PRELIMINARY STATEMENT

In recent weeks, New York City has become a global epicenter for COVID-19, with dramatically disproportionate and devastating health and economic consequences for Black and Latinx New Yorkers. At the same time, viral social media videos have emerged showing police misconduct in the enforcement of social distancing directives against Black and Latinx people. Publicly available information also shows differing treatment along racial lines with respect to NYPD’s COVID-19 policing. This includes statistical evidence of stark racial disparities in the NYPD’s COVID-19-related policing, including 81% of social distancing summonses being issued to Black and Latinx people— a rate nearly identical to the racial disparity in stops that led to this Court’s 2013 finding that the NYPD engaged in widespread and systemic Equal Protection violations in *Floyd* – and for which there does not appear to be any plausible race neutral explanation. Publicly available pictorial and video evidence also show NYPD officers encouraging white residents navigating COVID-19 restrictions in the City but, in contrast,

treating Black and Latinx individuals with threats, force, and violence. Preliminary evidence also indicates that social distancing encounters of Black and Latinx people are pretexts for more invasive law enforcement conduct.

The NYPD's social distancing enforcement practices are subject to the requirements of the Court's orders in *Floyd* because COVID-19 policing falls within the *De Bour* framework for police investigative encounters of pedestrians, *see People v. De Bour*, 40 NY2d 210 (1976). As such, merely observing people gathering or individuals lacking masks is inadequate to establish probable cause, given significant exceptions embedded in the COVID-19 directives. Thus, NYPD investigative street encounters in its COVID-19 policing are paradigmatic *Terry* stops, *see Terry v. Ohio*, 361 U.S. 1 (1968), squarely within the Court's jurisdiction.

This information raises serious and concrete concerns that, in direct violation of this Court's Liability and Remedial Orders entered in *Floyd*, the NYPD's Court-approved racial profiling policy, and the Fourth and Fourteenth Amendments, the NYPD continues to impermissibly discriminate in investigative street encounters. NYPD's discriminatory practices expose Plaintiff Classes to daily, escalating harm. The NYPD's refusal to share information about its policies or practices, or to respond to Plaintiffs' requests, creates an urgent need for clarity and transparency for class members in advance of the summer season and a likely "second wave" of COVID-19 infection.

STATEMENT OF FACTS

Since the beginning of this pandemic, Black and Latinx New Yorkers have experienced disproportionate NYPD social distancing enforcement,¹ often involving the use of force and/or

¹ As used throughout, the term, "COVID-19 Policing" or "NYPD enforcement of social distancing" are intended to include all policing activity related to the COVID-19 pandemic, including but not limited to social distancing directives, mask requirements, shelter in place and stay at home restrictions, as well as police encounters,

significant restraints to their liberty Between March 16 and May 5, 2020, 81 percent of NYPD summonses for social distancing violations were issued to Black and Latinx persons. One of them was 51-year old Steven Merete, a Latinx man from the Bronx. On April 28, 2020, Mr. Merete was outside his building with two other people when the police arrived and yelled at everyone to leave pursuant to social distancing directives and then immediately started detaining, handcuffing, and using force against people. Ex. 3, Merete Decl. ¶ 3. Merete was picked up, thrown to the ground, punched in the chest, handcuffed, and detained for 24 hours before being released with a summons for disorderly conduct and resisting arrest. *Id.*

In addition, data recently released by the Brooklyn District Attorney's Office revealed that more than 97% of all social distancing-related arrests made by the NYPD in Brooklyn between March 17 and May 4, 2020, were of Black and Latinx individuals. Day Decl. ¶ 15. According to media coverage, one of these people was a Black man in Brownsville. A video of his arrest went viral, showing him walking slowly up the street when the police ran up on him, grabbed him by the throat, tackled him to the ground, and handcuffed him. Day Decl. ¶ 22. Another was a 37 year-old Black woman, arrested during the last weekend of March. She and her boyfriend were in the Bedford-Stuyvesant neighborhood of Brooklyn when she was approached by a large group of officers and ordered to leave the area. Before they could leave, the officers escalated the encounter, pepper-spraying two nearby people as a crowd of onlookers gathered. Even though they were not part of the group who the officers appeared to be dispersing, they were both arrested. Day Decl. ¶ 16. Public reports reveal that, on May 13, 2020, Kaleemah Rozier was in the Atlantic Avenue subway station with her five-year-old son. Day Decl. ¶ 31. Their masks were pulled down to their chins as they climbed the stairs. *Id.* When stopped, she

stops, searches, and frisks arising from or implicating any restrictions to liberty or other rights because of the COVID-19 pandemic.

expressed annoyance at the interruption and tried to walk away, but she was followed, tackled, handcuffed, and arrested in the presence of her son. *Id.*

It is also clear that these social distancing enforcement actions often commence as and/or otherwise involve *Terry* stops, frisks, and searches. On April 4, Crystal Pope saw NYPD officers dispersing a group of adolescent Black boys pursuant to social distancing directives in Hamilton Heights and thereafter saw them walking into an apartment building. Ex. 2, Pope Decl. ¶ 3. After vacating the area, two boys entered the same building. *Id.* A uniformed officer turned and lifted the boy by the neck, choking him, and as she entered the same apartment building, an officer immediately maced her. *Id.* ¶ 5. Others were stopped by police while using the public transit system and asked to prove their status as “essential workers.” Ex. 1 CPR Decl. ¶16. On May 2, 2020, Malik Harris was standing in the courtyard of his public housing complex with a mask in his hand when police approached him, referenced a social distancing violation, and arrested him. Ex. 4, Harris Decl. ¶¶ 2, 6. At central booking, he was housed with over twenty men, without masks, soap, or hand sanitizer, in the 24 hours preceding arraignment and he spent 3 weeks on Rikers in parole revocation proceedings, housed in a crowded dorm with over fifty men and only one mask. Ex. 4, Harris Decl. ¶¶ 6-9. In all cases, some or all NYPD officers involved failed to wear masks, gloves, or other personal protective equipment to protect the public from infection. Ex. 4, Harris Decl. ¶¶ 3.

The stark racial disparities in NYPD social distancing enforcement cannot be explained by plausible race-neutral factors. The Legal Aid Society issued a Report analyzing data on citizen complaints to the City’s 311 System between March 28 and May 12, 2020, concerning social distancing violations, the NYPD’s COVID-19 related summonses between March 16 and May 5, and internally-tracked COVID-19 related arrests. It found, among other things

- NYPD responses to 311 complaints for social distancing violations in majority Black or Latinx precincts are at least 2 times more likely to result in a summons or arrest than NYPD responses to those complaints in non-Black or Latino majority precincts, most of which are majority white.
- While slightly less than half (46.2%) of the 32,293 social distancing-related 311 complaints concerned violations in majority Black and Latino precincts, more than 78% of all known NYPD social distancing-related arrests and summonses for which the Legal Aid Society was able to identify a precinct were made in majority Black and Latino precincts.
- Conversely, while more than 53% of all social distancing-related 311 complaints came from precincts that are not majority Black or Latinx, less than 22% of all social distancing arrests and summonses for which the Legal Aid Society was able to identify a precinct took place in those precincts.
- While four of the five precincts receiving the most social distancing complaints through 311 were in precincts that are not majority Black or Latinx, four of the five precincts with the most COVID-19 related arrests and summonses—and 18 of the 20 precincts with the highest rates of such arrests and summons per 10,000 people—were in majority Black and Latinx precincts.²

The New York City Comptroller's office released similar findings, including that:

the NYPD is reported to have taken action, including issuing summonses, making arrests, on a larger share of 311 complaints in lower-income communities of color while being more likely to conclude that no action was needed in whiter, more affluent neighborhoods of the city.³

In stark but predictable contrast, in white neighborhoods, irrespective of affluence, the NYPD generally chooses not to enforce social distancing, let alone issue summons, despite large gatherings and persistently crowded parks, bars, and religious schools or ceremonies. Day Decl.

² See the Legal Aid Society, *Racial Disparities in NYPD's COVID-19 Policing: Unequal Enforcement of 311 Social Distancing Calls*, (May 2020).

³ Letter from Scott M. Stringer, New York City Comptroller, to Mayor Bill de Blasio, Re: Request for Information on Enforcement of Social Distancing (May 22, 2020).

¶¶ 32-39. *Cf. Floyd Liab. Op.*, (Dkt. #373 at 183) (“Racial profiling constitutes intentional discrimination in violation of the Equal Protection Clause if it involves . . . the application of facially neutral criminal laws or law enforcement policies in an intentionally discriminatory manner.”) (citations omitted).

The NYPD’s discriminatory policing practices add insult to the catastrophic public health injury disproportionately impacting Black and Latinx communities. As predicted by experts on the social determinants of health, and as a result of structural and intersectional racism, Black and Latinx communities in New York City have experienced far greater rates of infection, greater severity of illnesses, and significantly increased fatalities. Day Decl. ¶¶ 3, 5. As “essential workers,” these communities have also consistently been asked to bear the greatest risk and sacrifice in the pandemic. Day Decl. ¶ 4. Nevertheless, in heavily impacted communities, NYPD has not employed reasonable safeguards in their enforcement of social distancing to protect the health and safety of Black and Latinx New Yorkers. Day Decl. ¶¶ 10, 13. Police officers conducting NYPD enforcement of social distancing often fail to wear masks, gloves, or other protective equipment to ensure they do not infect citizens. Day Decl. at ¶ 11.

PROCEDURAL HISTORY

A. The Court’s Prior Orders

On three prior occasions in this case, the Court has issued orders explaining how the NYPD’s targeting and treatment of Black and Latinx pedestrians during investigative street encounters violated the Equal Protection Clause of the Fourteenth Amendment and specifying the changes that the NYPD has to make to bring its stop-and-frisk practices into constitutional compliance. First, in its August 2013 Liability Opinion (*Floyd* Dkt # 373), the Court found, *inter alia*: (1) the NYPD carried out more investigative street encounters where there are more Black

and Latinx residents, even when other relevant variables were held constant; (2) NYPD officers were more likely to stop Black and Latinx pedestrians, even in predominantly white neighborhoods and even after controlling for other relevant variables; (3) NYPD officers were more likely to use force against Black and Latinx pedestrians, even after controlling for other relevant variables; (4) NYPD officers stopped Black and Latinx individuals with less justification; (5) Black pedestrians were about 30% more likely than White pedestrians to be arrested (as opposed to receiving a summons) after a stop for the same suspected crime, were subject to more law enforcement action, even after controlling for other relevant variables; and (6) the *de facto* policy of targeting “the right people” involved disproportionately stopping members of racial groups heavily represented in the NYPD’s crime suspect data and led to stops of Black and Latinx pedestrians who would not have been stopped if they were White. (Dkt # 373 at 58-60, 81-88, 183-84).

The Court recognized that the Fourteenth Amendment prohibits law enforcement action that is motivated, in part, by race, even if race was not “the sole, predominant, or determinative factor.” *Id.* at 183-84. The Court also emphasized that the NYPD’s racially disparate stops violated Equal Protection even if supported by reasonable suspicion because “the Constitution prohibits *selective* enforcement of the law based on considerations such as race” and “the targeting of certain races *within* the universe of suspicious individuals is especially insidious, because it will increase the likelihood of further enforcement actions against members of those races as compared to other races.” *Id.* at 183-84, 191-92 (emphasis included). Finally, the Court found that “senior officials in the City and at the NYPD ha[d] been deliberately indifferent to the discriminatory application of stop and frisk at the managerial and officer level,” as evidenced by those senior officials, including then-NYPD Commissioner Raymond Kelly and Mayor Michael

Bloomberg, “adopt[ing] an attitude of willful blindness toward statistical evidence of racial disparities in stops and stop outcomes” and defending such disparities by invoking racial disparities in crime suspect data. *Id.* at 190 n.776.

Second, in its August 2013 Remedial Order (Dkt # 372), the Court held that eradicating selective enforcement, i.e., “eliminating the threat that Blacks and Hispanics will be targeted for stops. . . even when there is reasonable suspicion,” was “an important interest” justifying permanent injunctive relief as to the NYPD’s stop-and-frisk policies and practices. (Dkt # 372 at 4). The Court ordered the City, in consultation with the court-appointed Monitor and *Floyd* Plaintiffs, to develop, submit, and upon Court approval, *implement* a new policy on racial profiling that prohibits use of a civilian’s race as a motivation or justification for a stop except when the person fits a specific and reliable description of a criminal suspect. *Id.* at 14, 17.

Third, on August 24, 2015, the Court approved the NYPD’s Revised Patrol Guide Section 203-25, the Department’s new Policy Prohibiting Racial Profiling, which provides that:

Race, color, ethnicity, or national origin may not be used as a motivating factor for initiating police action. When an officer’s decision to initiate enforcement action against a person is motivated even in part by a person’s actual or perceived race, color, ethnicity or national origin, that enforcement action violates Department policy unless the officer’s decision is based on a specific and reliable suspect description that includes not just race, age, and gender, but other identifying characteristics or information.

Floyd (Dkt # 517 at 5, 21). As the Monitor has acknowledged, the NYPD is required to adhere to this policy in practice. *See Floyd* (Dkt # 372 at 14); (Dkt # 536) (Monitor’s 4th Status Rpt) at 8; (Dkt # 576) (Monitor’s 7th Status Rpt) at 8-9; (Dkt # 680-1) (Monitor’s 9th Status Rpt) at 8-9; (Dkt # 754) (Monitor’s 10th Status Rpt) at 15-16.

Moreover, pursuant to the Court-ordered settlement in *Davis v. City of New York*, the NYPD Patrol Guide 212-60—which governs interior patrols of New York City Housing Authority (“NYCHA”) residences—makes clear that NYPD officers must “perform[] interior

patrols . . . in a manner that respects the rights of Housing Authority residents and guests.” Stipulation of Settlement and Order, endorsed by Court on Feb. 4, 2015, Ex. C, *Davis*, (Dkt. #329-1 at 2); *see also* Monitor’s Recommendation, approved by this Court on June 2, 2016, at 20, Attach. 3, *Davis*, #359. The related training of NYPD Housing Bureau officers, also approved by this Court, further emphasized that because officers “are in people’s homes,” they must “[t]reat [residents] with courtesy and respect. Treat people the way you would want you and your guests to be treated in your home.” Monitor’s Recommendation Regarding Training Materials for Housing Bureau Members, dated May 28, 2016, *Davis*, 464-1 at 16; Court Approval of Monitor’s Recommendation Regarding Training Materials for Housing Bureau Members, dated May 29, 2016, *Davis*, (Dkt. #465). Thus, unduly stopping, searching, frisking, issuing summons, arresting and/or using excessive force on NYCHA residents or guests, who are overwhelmingly Black or Latinx,⁴ would be anathema to this Court’s orders. Indeed, the NYPD’s discriminatory and illegal conduct regarding the enforcement of social distancing is even more egregious when it takes place in the homes of Black and Latinx public housing residents, where they are required to shelter in place.

B. NYPD Has Refused Plaintiffs’ Requests for Information Regarding NYPD Enforcement of Social Distancing

On April 22, 2020, Plaintiffs sent an email to NYPD Deputy Commissioner of Risk Management Jeffrey Schlanger, Counsel for the City, and the Monitor, requesting several categories of materials and information related to the NYPD’s social distancing enforcement efforts, including:

- a. Any training or written guidance provided to NYPD personnel concerning enforcement of social distancing restrictions;

⁴ As of January 1, 2016, NYCHA residents are 45.6% Black and 44.5% Latinx. NYCHA Resident Data Summary, Special Tabulation of Resident Characteristics, <https://www1.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Summaries.pdf>.

- b. Information on how street encounters related to social distancing enforcement are documented and associated stop report, summonses, memo book entries and other NYPD documentation of such encounters;
- c. A sampling of NYPD body camera videos of such social distancing enforcement-related encounters;
- d. Information on supervisory instruction and review of NYPD officers' social distancing enforcement activity; and
- e. Data on the number of summonses that have been issued stemming from street encounters involving any reference to social distancing enforcement.

See Day Decl. ¶¶ 52-53, Ex. 6. After receiving no response for over two weeks, Plaintiffs followed up by email to the same recipients on May 8, 2020. *See id.* ¶ 56, Ex. 7. This information was also verbally requested in two videoconferences hosted by the Monitor on April 29, 2020 and May 7, 2020. *Id.* ¶¶ 54-55. To date, Defendants have not produced any of the materials or information requested by Plaintiffs, nor has the Monitor responded to Plaintiffs' discovery requests.

ARGUMENT

I. LEGAL STANDARDS GOVERNING THE POST-JUDGMENT REMEDIAL PHASE

A. The Court Has Broad Equitable Authority to Issue Further Relief to Enforce and Ensure Compliance With its Prior Orders.

Federal courts, by necessity, have broad equitable power and discretion to ensure compliance with their orders. *Hutto v. Finney*, 437 U.S. 678, 687 (1979) (“[F]ederal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced.”); *Swann v. Charlotte-Mecklenburg Bd of Educ*, 403 U.S. 1, 15 (1974) (“[T]he scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”); *Benjamin v. Jacobson*, 172 F.3d 144, 157 (2d Cir. 1999) (“It is well established that a federal court ordinarily has the power to enforce its own orders and judgments.”). “Ensuring compliance with a prior order is an equitable

goal which a court is empowered to pursue even absent a finding of contempt.”⁵ *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985).

Accordingly, a court has the authority to issue additional orders imposing additional remedial measures to enforce a prior injunction, as “equitable authority is broad, particularly where the enjoined party has not fully complied with the court’s earlier orders.” *Damus v. Wolf*, No. 18-578, 2020 WL 601629, *2 (D.D.C. Feb. 7, 2020) (internal quotations omitted); *Baez v. N.Y.C.H.A.*, 13 CV 8916, 2015 WL 9809872, at *2 (S.D.N.Y. Dec. 15, 2015) (issuing further orders to guarantee compliance with injunction); *see also Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin.*, 765 F. Supp. 1, 13 (D.D.C. 1991) (same). As with an initial injunction, the further relief must be “narrowly tailored to remedy the specific harm.” *Aviation Consumer Action Project v. Washburn*, 535 F.2d 101, 108 (D.C. Cir. 1976) *see also United States v. Visa USA, Inc.*, 98 Civ. 7076, 2007 WL 1741885, *14 (S.D.N.Y. June 15, 2007) (additional relief imposed as remedy for defendant’s violation of original judgment was “narrowly tailored to the purpose of giving present and prospective effect to [that judgment]”).

The court’s actions to enforce its prior orders in *Handschu v. Police Department of the City of New York*, 219 F. Supp. 2d 388 (S.D.N.Y. 2016), is illustrative of this Court’s obligation to investigate and enforce its prior orders in this case. In *Handschu*, a 1971 filing where class members challenged surveillance practices of the NYPD as First Amendment violations, resulted in a court-ordered consent decree in 1985 and agreed constitutional procedures set forth in the Handschu Guidelines. Forty years after the suit began, and over 25 years after the injunction was

⁵ The Court’s power to enforce its orders includes the inherent power to find a party in contempt for violations of prior orders. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987) (“It is long settled that courts possess inherent authority to initiate contempt proceedings for disobedience to their orders”). While Plaintiffs believe a contempt finding against the City may be warranted here, they have chosen, in light of the emergent public health crisis and in the interests of judicial economy, to forego a contempt motion and instead ask the Court to impose other measures that are well within its power in order to cure the City’s non-compliance with its prior orders.

ordered, class members learned from news reports in 2011 that the NYPD appeared to be engaged in a program of suspicionless surveillance of Muslim persons in violation of the 40-year old injunction. *Id.* at 391. Class members sought discovery and enforcement of the injunction's terms from the same district court. *Id.* at 391-93. That enforcement action resulted in a substantial modification of the injunction's terms to ensure protection of religious association. *Handschu v. Police Dep't of the City of New York*, 241 F. Supp. 3d 433 (S.D.N.Y. 2017).

Similarly, in *Hutto v. Finney*, the district court found that its prior order failed to prevent continued Eighth Amendment violations in Arkansas' use of punitive isolation in prisons, and issued a subsequent order categorically barring punitive isolation for more than 30 days. The Supreme Court upheld this order as a narrowly-tailored exercise of the district court's enforcement powers, ruling that the district court "had ample authority to go beyond earlier orders and to address each element contributing to the violation" of which individuals' lengthy stays in isolation was one. 437 U.S. at 686-87.

B. The Courts' Powers to Enforce Their Prior Orders Necessarily Include the Authority to Order Discovery Needed to Assess Defendants' Compliance

A federal court's broad inherent power to enforce its prior judgments also includes the power to order discovery requested by a prevailing plaintiff "to aid the court in determining whether [the defendant] had complied with a judgment in [plaintiff's] favor." *Cal. Dep't of Social Serv's v. Leavitt*, 523 F.3d 1025, 1033 (9th Cir. 2008); *see also Palmer v. Rice*, 231 F.R.D. 21, 25 (D.D.C. 2005) (permitting "post-judgment discovery" where the "plaintiffs will not be able to determine whether the government has complied with the court's injunctions"); *Campaign for S. Equal. v. Bryant*, 197 F. Supp. 3d 905, 914 (S.D. Miss. 2016) ("plaintiffs are entitled to reasonable discovery to enforce an injunction against the parties bound by that injunction"). "Appropriate discovery should be granted where 'significant questions regarding

noncompliance [with a court order] have been raised.’’ *Abdi v. McAleenan*, No. 1:17-CV-00721 EAW, 2019 WL 1915306, at *2 (W.D.N.Y. April 30, 2019) (authorizing discovery requests, including depositions regarding possible violations of the preliminary injunction) (internal citations omitted)(internal citation and quotations omitted); *Leavitt*, 523 F.3d at 1033-34 (applying “significant questions” standard in ordering discovery to plaintiff necessary to determine if defendant had violated permanent injunction)

II. NYPD SOCIAL DISTANCING ENFORCEMENT ACTIVITIES ARE SUBJECT TO THE COURT’S PRIOR ORDERS IN FLOYD

The NYPD’s social distancing enforcement practices are subject to the requirements of the Court’s orders in *Floyd* because COVID-19 policing falls within the *De Bour* framework for police investigative encounters of pedestrians. In most cases, police officers should investigate possible non-compliance with social distancing restrictions as Level 1, 2, or 3 investigative encounters, under *De Bour*.

Officers who merely observe what appear to be violations of the social distancing restrictions, e.g., a group of men standing within six feet of each other or unmasked on a sidewalk, do not automatically have probable cause to arrest or issue a summons. In part, this is because City and State social distancing restrictions embed important, but perhaps imperceptible, exceptions such as the exception to the mask requirement for individuals who cannot “medically tolerate a face-covering” and the exception to social distancing requirements for medical and other essential workers. *See e.g.*, NYS Department of Health, *New York State on PAUSE*, (March 22, 2020), N.Y. Executive Order No. 202.17: *Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency* (Apr. 15, 2020). Thus, at most, police officers may approach, temporarily detain, and question an individual to confirm or defeat their suspicion of a violation of the executive orders, a misdemeanor under

City law. *See* N.Y.C. Admin. Code § 3-108 (classifying violations of the Mayor’s emergency executive orders as Class B misdemeanors). This kind of street encounter is a paradigmatic example of a pedestrian *Terry* stop, or Level 3 *De Bour* encounter, i.e., a forcible detention by a police officer of a civilian on the street, based on the officer’s suspicion that the civilian committed a crime, the purpose of which is to confirm or defeat the officer’s suspicion.

III. EVIDENCE SHOWS COVID-19 POLICING MIRRORS STOP-AND-FRISK PRACTICES FOUND TO BE UNCONSTITUTIONAL BY THE *FLOYD* COURT

The Court has ordered the NYPD to eradicate policies and practices that tolerate, license, and facilitate racial discrimination. NYPD’s enforcement of social distancing has involved racial profiling, selective enforcement, and pretextual stops similar to those found to have violated the Fourth and Fourteenth Amendments in the Court’s Liability Opinion, Remedial Order, and August 2015 Racial Profiling Policy Order. Having been found liable for racial discrimination in the conduct of stops, frisks, searches, and trespass investigations in communities and in public and private housing, *see Floyd Liab. Op.* (Dkt # 373) at 181-88, the NYPD must show that any racial disparities are unrelated to the Court findings of discriminatory practices and policies in order to be fully compliant with this Court’s orders.

A. Racial Profiling in COVID-19 Policing Violates the Court’s Order in *Floyd*

1. The Lack of Reasonable Suspicion or Justification in Many COVID-19 Stops of Black and Latinx Individuals Shows Racial Profiling Persists

In *Floyd*, the Court recognized Fourteenth Amendment violations in NYPD’s greater number of stops in Black and Latinx communities, greater likelihood of stopping and/or use of force against Black and Latinx people, and practice of stopping of Black and Latinx people with less justification than for stops of whites. *Floyd Liab. Op.*, (Dkt. #373 at 183). Today, reports of use of force in enforcement of social distancing have predominated among Black and Latinx

persons only. *See* Ex. 2, Pope Decl. ¶ 4 (after NYPD dispersed a group of Black kids, Ms. Pope observed a uniformed officer choking one child and was immediately pepper sprayed when she went to enter the building); Ex. 3, Merete Decl. ¶ 3 (police approach and immediately slammed him to the ground, punched, handcuffed, and arrested him).

In several cases, people were stopped with little or no apparent justification. Day Decl. ¶¶ 22, 23, 24-25. These situations frequently started with social distancing and then escalated to stops and the use of force against bystanders. Day Decl. at ¶¶ 23, 25. At times, police seemed to target people who are intentionally video recording police stops of Black and Latinx persons and the use of force in COVID-19 policing, like Hawk Newsome, the head of Black Lives Matter Greater New York. Day Decl. ¶ 24.

Even the posture of the police toward the community is discernibly different in majority Black and Latinx communities. For example, the NYPD patrol car broadcasting COVID-19 public service announcements in Soho and Nolita offers a friendly “reminder” to maintain a safe distance in public places, and “Please help us keep you safe, thank you for your cooperation.” Day Decl. ¶ 57. In Queensbridge, however, the PSA used by the NYPD against people in the courtyard of their own homes threatens arrest: “This gathering is unlawful and you are ordered to disperse. If you fail to disperse immediately, you are subject to arrest.”” Day Decl. ¶ 27. *Cf.* *Floyd Rem. Ord.*, (Dkt. #372 at 29) (“If the reforms to stop and frisk are not perceived as legitimate by those most affected, the reforms are unlikely to be successful”). *Compare* Court Approval of Monitor’s Recommendation Regarding Training Materials for Housing Bureau Members, dated May 29, 2016, *Davis*, (Dkt. #465) (NYPD Housing Bureau training, approved by the Court, which emphasizes that officers must “[t]reat [residents] with courtesy and respect,”

and instructs officers to “Treat people the way you would want you and your guests to be treated in your home.”).

2. The Court Has Already Ruled That the Use of Crime Suspect Data Cannot Justify Racial Disparities in Stops

In the *Floyd* remedial process, the NYPD claimed to have curbed its practices of focusing on “the right people,” a racial dog whistle for the over-policing of Black and Latinx communities and principal rationale for racial profiling advanced by NYPD at trial, and ruled unconstitutional by the *Floyd* court. Yet, recently, and despite this Court’s ruling, NYPD leadership publicly invoked the race of those suspected of committing crime in the area, i.e., crime suspect data, to justify, defend, and attempt to deny racial profiling. Yet, as the court held at trial, the NYPD’s attempt to “refute the allegation of racial profiling in fact provides evidence of racial profiling.” *Floyd Liab. Op.*, (Dkt. # 373 at 58).

During the COVID-19 crisis, public demand for data on racial disparities in NYPD enforcement of social distancing grew once viral videos of police misconduct began circulating on social media. NYPD initially delayed releasing statistics of its enforcement of social distancing, but then began promoting a statistic that 90% of those arrested for actual crime during the COVID-19 pandemic were Black or Latinx. Day Decl. at ¶ 46. *Cf. Floyd Liab. Op.*, (Dkt. #373 at 181) (Fourteenth Amendment violated by “NYPD’s policy of conducting stops based in part on criminal suspect data, of which race is a primary factor;”), *id.* at 13 (“[T]he City adopted a policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data.”). NYPD leadership’s implication that the race of crime suspects justifies racially discriminatory policing and racial disparities in stops in Black and Latinx communities offers the Court direct evidence of ongoing violations of the Court’s prior orders in

Floyd. As at trial, the City’s “defense *against* the charge of racial profiling... is [instead] a defense *of* racial profiling.” *Floyd* Liability Order, (Dkt. #373 at 56) (emphasis in original).

B. Selective Enforcement of the Law in COVID-19 Policing Directly Violates the Court Order

The *Floyd* court found selective enforcement of the law in the pervasive targeting of Black and Latinx people for stops, frisks, and searches. Today, despite widely reported persistent crowds of white New Yorkers in parks and elsewhere, Day Decl. at ¶¶ 13, the overwhelming majority of NYPD’s social distancing stops have been conducted against Black and Latinx persons. Day Decl. at ¶ 9. This is true even though the majority of citizen complaints to the police for social distancing violations have been in precincts that are not majority-Black and Latinx. *See* the Legal Aid Society, *Racial Disparities in NYPD’s COVID-19 Policing: Unequal Enforcement of 311 Social Distancing Calls*, (May 2020). Selective enforcement of the law involves (1) differential treatment from ‘similarly situated’ others; (2) based on “impermissible considerations such as race....” *See Emmerling v. Town of Richmond*, 434 F. App’x 10, 12 (2d Cir. 2011). This standard requires that a reasonable person would find the comparators roughly equivalent, or similarly situated to the plaintiffs in all material respects. *See Louis v. Metro. Transit Auth.*, 145 F. Supp. 3d 215, 227 (E.D.N.Y. 2015); *United States v. Lopez*, 415 F. Supp. 3d 422, 427 (S.D.N.Y. Nov. 13, 2019) (“where a [party] who is a member of a protected group can show that that group has been singled out ... to a statistically significant extent in comparison with other groups, this is sufficient to warrant further inquiry and discovery.”).

Critically, the possibility that officers have reasonable suspicion or probable cause to stop, issue summonses and/or arrest any of the Black and Latinx individuals targeted by their social distancing enforcement does not obviate concerns about violation of their Fourteenth Amendment rights. The *Floyd* court specifically emphasized that the City and the NYPD’s belief

that reasonable suspicion somehow neutralizes concerns about racial profiling was simply wrong. “The Equal Protection Clause’s prohibition on selective enforcement means that suspicious blacks and Hispanics may not be treated differently by the police than equally suspicious whites.” *Floyd Liab Op.* (Dkt # 373 at 191-92); *see also Floyd Liab. Op.*, (Dkt. #373 at 190) (this position is “fundamentally inconsistent with the law of equal protection and represents a particularly disconcerting manifestation of indifference”).

Thus, *even if* all Black and Latinx persons stopped were failing to properly socially distance, *Floyd* nevertheless clearly prohibits selectively choosing Black and Latinx people for law enforcement activity. *Id.* (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race . . . plaintiffs’ racial discrimination claim does not depend on proof that stops of blacks and Hispanics are suspicionless.”). Selective enforcement is a significant concern in COVID-19 policing. For example, and consistent with public information showing racial disparities in COVID-19 policing, on May 3, 2020, one woman biking in Red Hook observed NYPD officers enter a park where multiple families were congregated, but dispersed the only Black family in the park. Ex. 5, Reese Decl. ¶ 3-5

Finally, the contrast between the absence of NYPD enforcement of social distancing in crowded parks, synagogues, and bars frequented by white persons, with few exceptions, adds urgency and credence to current concerns of racial profiling. A key concern of the *Floyd* Court was that “[i]f the reforms to stop and frisk are not perceived as legitimate by those most affected, the reforms are unlikely to be successful.” *Floyd Remedial Order*, (Dkt. #372 at 29).⁶

⁶ Indeed, prosecutors have declined to prosecute these social distancing cases, Day Decl. at ¶ 42, which is a welcome development, but raises questions about the efficacy of the NYPD’s practices that leaves police misconduct unsupervised and unregulated as NYPD has declined to provide data, reporting, and information relating to its enforcement of social distancing. In addition, selective enforcement of the law is often apparent to Black and Latinx people during a police encounter or stop, including during the COVID-19 pandemic. Day Decl. ¶ 25; Ex. 2, Pope Decl. ¶ 6.

C. The NYPD is Exhibiting Similar Deliberate Indifference to Racial Discrimination in its COVID-19 Policing as in *Floyd*

The NYPD has defended the obvious racial disparities in its COVID-19 policing by denying the *even the possibility* of discrimination, including by referencing the racial diversity on the force. *See* Day Decl. at ¶ 48 (NYPD commissioner states, “I will push back strongly on any notion... that this is “racist police.” I think this could not be anything further from the truth. Let's remember, we are a minority-majority police department – fact.”); *But see* Office of the Inspector General, *Complaints of Biased Policing*, 29-30 (July 2019) (finding racial profiling complaints improperly closed based on NYPD’s erroneous belief that a police officer cannot racially profile a person of the same race).

This diversity proposition – which was similarly true during the timing of the *Floyd* trial – is still wholly irrelevant to evaluating the possibility of racial discrimination and only suggests continued deliberate indifference by the NYPD. *Cf. Floyd Liab. Op.*, (Dkt. #373 at 189-90) (NYPD’s disregard of ample notice of racial discrimination reflects “an attitude of willful blindness toward statistical evidence of racial disparities in stops and stop outcomes”). In addition, Commissioner Shea suggested videos of police misconduct were taken out of context and that video evidence of racially biased policing was a myth created by the media. *See* Day Decl. at ¶ 43 (“I would urge caution to everyone now... before it’s turned into an agenda for a press conference.”). This, too, exhibits willful blindness. *See Floyd Liab. Op.*, (Dkt. #373 at 190-91) (finding willful blindness by senior NYPD officials toward racial disparities and that “*this indifference was further demonstrated by many officials’ apparent belief that racial profiling is a myth created by the media.*”) (emphasis added); *see also* Day Decl. ¶ 47 (after reviewing viral video, NYPD commissioner defends officer conduct, claims punching is not excessive force).

D. COVID-19 Policing Reprises Fourth Amendment Violations Identified in Floyd

As in *Floyd*, the intentional and unjustified targeting of Black and Latinx individuals in COVID-19 policing also leads to violations of the Fourth Amendment, as well as dehumanization and violence. Indeed, in some cases, dispersal of groups has led to individuals being choked, slammed to the ground and punched by officers, and pepper sprayed. *See e.g.*, Ex. 2, Pope Decl. ¶¶ 4-6; Ex. 3, Merete Decl. ¶¶ 3-4; Ex. 1, CPR Decl. ¶¶ 16, 19. In other cases, people were stopped by the police and asked to prove their status as essential workers, which is not required by law but nevertheless indicates to the person they are not free to leave. Ex. 1 CPR Decl. ¶ 16. In one viral video, Kaleemah Rozier tried to leave police seeking to enforce a mask violation, and was subject to a violent takedown and arrest, in front of her five-year old son. Day Decl. ¶ 31. In many cases, NYPD officers, engaged in a stop of one person or group, ultimately redirect the enforcement of social distancing toward a person recording the stop. Day Decl. ¶¶ 25. In other cases, people experienced excessive restraints on their liberty during police stops that did not originate with individualized reasonable suspicion. Ex. 3, Merete Decl. ¶ 2; Ex. 1, CPR Decl. ¶ 15.

Several people reported COVID-19 policing experiences that were similar to those labeled unconstitutional by the trial court. Ms. Pope's experience of an illegal stop, escalation to force, including pepper spray, Ex. 2, Pope Decl. ¶¶ 4-5, mirrors that of Plaintiff Almonor at the Floyd trial, who was stopped by plainclothes officers and immediately frisked and handcuffed in what the court deemed was a violation of Almonor's rights under the Fourth Amendment. *See Floyd Liab. Op.*, Dkt. #373 at 127-28 ("The circumstances did not justify any restraint of Almonor's liberty, much less immediate physical restraint and the use of handcuffs").

Similarly, on April 28, 2020, Steven Merete was sitting in front of his apartment building when officers ordered people to disperse and then immediately began detaining people and using force. “They forcefully picked me up and slammed me in the ground. I was punched in the chest.” Ex. 3, Merete Decl. ¶ 3. This fact pattern is similar to one in the *Floyd* trial, held to violate the Fourth Amendment. *See Floyd Liab. Op.*, (Dkt. #373 at 122-23) (officers who exited unmarked police car, pushed Plaintiff Downs to the ground lacked adequate grounds for the stop and frisk)

In addition, as in *Floyd*, the use of social distancing enforcement as a pretext for racialized independent law enforcement action is illegal. *See Floyd Liab Op* at 181-82. As set forth in the declarations accompanying this motion, individual declarants experienced street encounters with NYPD officers that began under the auspices of social distancing enforcement but proceeded to temporary forcible detentions, *see* Ex. 2, Pope Decl. ¶¶ 3-5 (describing escalation of social distancing encounter into violent *Terry* stop unrelated to social distancing), Ex. 4, Harris Decl. ¶ 6, for criminal law enforcement purposes unrelated to social distancing enforcement. These encounters closely resemble those experienced by the named Plaintiffs and testifying Plaintiff class members at the *Floyd* trial.

IV. PLAINTIFFS ARE ENTITLED TO THE DISCOVERY THEY HAVE REQUESTED CONCERNING NYPD SOCIAL DISTANCING ENFORCEMENT

At minimum, Plaintiffs have raised significant questions about whether the NYPD’s social distancing enforcement efforts run afoul of the Court’s prior rulings and injunctive directives regarding the use of race in law enforcement decision making, and the documents, data, and other materials Plaintiffs requested will provide information needed to resolve those questions. Specifically, NYPD officers’ written reports, body-worn camera video recordings, and data on summonses and arrests issued as a result of social distancing enforcement-related

street encounters will provide: (a) important information on officers' reasons for initiating these encounters, (b) the racial breakdown of who is being subjected to the encounters, and (c) other relevant details about the encounters (e.g., time, date, and location, whether a frisk, search or use of force occurred, and the final outcomes of the encounter) relevant to assessing whether and how NYPD officers' social distancing enforcement activities run afoul of the Court's orders. Similarly, the requested NYPD written guidance, training materials, and supervisory review information will help Plaintiffs and the Court determine what steps, if any, the Department has taken to ensure that its officers conduct social distancing enforcement in a manner consistent with the requirements of the Court's prior orders and the Constitution.

The Court-appointed Monitor's ongoing role in overseeing and assessing the City's efforts to comply with the Court's Liability Opinion and Remedial Order in no way diminishes Plaintiffs' rights to the requested discovery. As representatives of the prevailing Plaintiff class, Plaintiffs and their counsel have an independent right and duty to monitor the City's compliance efforts to ensure that the injunctive relief awarded to the Class and court-ordered settlement benefiting is fully implemented. Recognizing this principle, federal courts have repeatedly afforded plaintiffs broad access to remedial-phase discovery notwithstanding the presence of a court-appointed monitor overseeing reforms to unconstitutional policies and practices of police departments and other municipal government agencies. *See, e.g., United States v. City of New Orleans*, 12-CV-1924, Dkt# 159-1 ¶ 473 (E.D. La. Jan 11, 2013); *Vulcan Society, Inc. et al. v. City of New York*, No. 07-CV-2067, 2013 WL 4042283, *11 (E.D.N.Y. June 6, 2013); *Melendres v. Arpaio*, 07-CV-2513, 2013 WL 5498218, *36 (D. Ariz. Oct. 2, 2013), *aff'd and vacated in part on other grounds*, 784 F.3d 1254 (9th Cir. 2015); *United States v. City of Newark*, 16-CV-

1731, Dkt # 4-1, ¶ 202 (D.N.J. April 29, 2016); *United States v. Baltimore Police Dep't*, 17-cv-0099, Dkt # 2-2, ¶ 485 (D. Md. Jan. 12, 2017).

Accordingly, Plaintiffs are entitled to the discovery they have requested.

V. THERE SHOULD BE A MORATORIUM ON NYPD SOCIAL DISTANCING ENFORCEMENT PENDING THIS COURT'S REVIEW OF THE MONITOR'S INVESTIGATION AND RESPONSES FROM ALL PARTIES

This Court can, and should, intervene immediately to protect the plaintiff classes in this case and to ensure compliance with its prior orders by (1) directing the monitor to conduct an expedited investigation and evaluation of the NYPD's social distancing enforcement practices with consultation with all parties, including Plaintiffs (2) impose a temporary moratorium on NYPD social distancing enforcement pending the completion of that investigation and a determination by the Court about whether and under what circumstances the NYPD can conduct that enforcement constitutionally going forward. The likelihood of serious, ongoing violations of class members' Fourth and Fourteenth Amendment rights counsels the Court to temporarily suspend the NYPD's social distancing enforcement (in favor of that role being undertaken by ready-and-able community and non-NYPD City agencies) until an investigation and the protection of class members' rights can be assured. Because of the NYPD's persistent denialism and deflection class members have no avenue to protect their rights other than the Court's intervention. The risks associated with these constitutional violations are heightened, given the devastating, disproportionate impacts this public health crisis is having on Black and Latinx communities.

A. The Context of NYPD Denialism with Respect to Ongoing Racial Discrimination Shows That Only Court Intervention Can Protect Rights, Health, and Safety of the Plaintiff Classes

Plaintiffs' application is falls within the scope of the monitorship, but the urgency and the necessity of this Court's intervention is bolstered by a climate of denial and disregard of ongoing racial discrimination. The systemic failure to take racial discrimination seriously is evident in NYPD's denialism and self-exonerating excuses for racial profiling,⁷ rapid escalation to use of force with Black and Latinx individuals, Day Decl. ¶ 24-25; Ex. 3, Merete Decl. ¶ 3, Ex. 2, Pope Decl. ¶ 5, and the ongoing public denials by NYPD leadership in the face of video evidence. These positions reflect not only the longstanding approach to racial discrimination at NYPD, but the barriers within NYPD to dismantling systemic discrimination. *Compare Floyd Liab. Op.*, (Dkt. #373, at 178) ("Further evidence of deliberate indifference is found in the City's current positions as expressed at trial. The City continues to argue that *no* plaintiff or class member was subjected to an unconstitutional stop or frisk"). Absent judicial investigation and intervention Plaintiffs are held captive to NYPD's willful blindness.

Notably, this cavalier attitude toward ongoing racial discrimination is also consistent with persistent racial disparities and racial profiling in NYPD's low-level stops, summonses, and arrests. Recent data and reporting, indicating that 90% of arrests for jaywalking, fare evasion, and possession of small amounts of marijuana were of Black and Latinx people, demonstrates how selective enforcement of the law continues to drive discretionary stops and arrests. Day Decl. at ¶ 12. 91% of discretionary criminal summons were also issued to Black and Latinx people. *Id.* Acting consistently with misconduct already deemed unlawful at trial, and

⁷ See Office of the Inspector General, *Complaints of Biased Policing* (July 2019) (noting investigative inadequacies and that NYPD has not sustained a single instance of racial profiling since the *Floyd* trial, despite thousands of complaints filed)

evidencing nearly the exact same racial disparities, the NYPD and the City offer powerful evidence that the NYPD continues its selective enforcement and racial profiling since trial.

B. Given the Heightened Risk of Infection from NYPD Interactions, Violations of the Court's Prior Orders Poses a Significant Threat to the Plaintiff Classes.

Allowing the NYPD's discriminatory and abusive social distancing enforcement to continue poses grave risks to the Plaintiff Classes' health and safety. NYPD itself has experienced high COVID-19 rates among its personnel and is a source entity for transmission of infection. *See* Centers for Disease Control, *COVID-19 in Correctional and Detention Facilities — United States, February–April 2020* (May 6, 2020) (“Because staff members move between correctional facilities and their communities daily, they might be an important source of virus introduction into facilities.”). Considerable evidence indicates that NYPD enforcement of social distancing has already led to widespread unprotected contact with officers lacking masks or gloves, Ex. 4, Harris Decl. ¶¶ 3 (some officers not wearing masks or gloves), transfers to the precinct and/or hospital, Ex. 3, Merete Decl. ¶¶ 5-6; Ex. 4, Harris Decl. ¶¶ 8-9 (transfer to COVID-19 epicenter, Rikers Island, for parole revocation proceedings), Day Decl. ¶ 24 (Hawk Newsome, head of BLMNY transferred to precinct and released with summons), or potential contact with ACS or child welfare authorities, Day Decl. ¶¶ 31. Those arrested for violations can then be sent to crowded jails which are festering hotbeds of COVID-19 outbreak and suffering. Thus, the attendant risk to these increased contacts can be fatal.

C. Public Health Officials, Elected Officials, and NYPD Rank-and-File Indicate NYPD Should Not Enforce Social Distancing Requirements, Suggesting No Reason to Risk Ongoing Violations of the Court's Orders in Floyd

Increasingly, because of mounting evidence of racial discrimination, a broad base of support exists to remove NYPD from enforcement of social distancing. Public health experts, public officials and the police rank-and-file acknowledge the harm in continued NYPD

enforcement of social distancing. Community stakeholders and public officials⁸ have called for any enforcement of social distancing to come from public health officials and community-based organizations, rather than police. Ex. 1, CPR Decl. ¶¶ 22-23. Notably, police officers themselves have decried the vague guidelines, mixed messages, and officer uncertainty that is pervasive in COVID-19 policing,⁹ implicitly acknowledging the impact of the deliberate indifference of the City and NYPD leadership to the rights of the Plaintiff Classes and the Court's prior orders.

In April 2020, 200 medical professionals noted the significant COVID-19 infection rate among NYPD personnel and asked the police to reduce unnecessary interactions with the public in order to mitigate the risk of infection.¹⁰ The medical professionals stated, “we are alarmed at the high rate of infection among NYPD officers and fear that unnecessary interactions between the NYPD and the public will further exacerbate the public health crisis unfolding in New York City and rapidly spreading across the country.” *Id.* Similarly, a Harvard epidemiologist noted the importance of attention to local susceptibility to infection and at-risk populations specifically in

⁸ Several public officials stated NYPD enforcement of social distancing is associated with increased risk, racial profiling, and escalation to violence and arrest. *See* Jarrett Murphy, *Eric Adams Says Cops Should Not Enforce Social Distancing*, CityLimits (May 7, 2020) (“When you talk about police officers enforcing social distancing, the police department that has historical tension in certain communities, you’re now encouraging the largest interaction with these groups in the history of the police department. It is alarming.”); *AG James Calls on the NYPD to Ensure Equal Social Distancing Enforcement in NYC Communities*, N.Y. STATE OFFICE OF THE ATT’Y GEN. (May 13, 2020) (announcing investigation and indicating it is “[t]he apparent unequal enforcement of social distancing policies is deeply troubling, and deepens the divide between law enforcement and the people they are tasked to protect.”); *See* Hakeem Jeffries, @RepJeffries Twitter (May 5, 2020) (“Why are sunbathers who violate social distancing guidelines treated one way and young men in certain communities another? This MUST end.”); *see also* Brad Lander, @bradlander, Twitter (May 8, 2020) (“A better way: as part of a new NYC Public Health Corps (that also does contact-tracing, quarantine support, economic recovery), hire a set of people as diverse as New York City, to do public health outreach & social distancing compliance.”).

⁹ *See* Josiah Bates, ‘We Cannot Police Our Way Out of a Pandemic’ Experts, Police Union Say NYPD Should Not Be Enforcing Social Distance Rules Amid COVID-19, Time (NYPD union president decries vague guidelines, mixed messages, and officer uncertainty).

¹⁰ *See* John Annese, *Medical professionals, reform advocates ask NYPD to cool it with arrests because officers may spread coronavirus*, The Daily News (Apr. 23, 2020).

New York in evolving policy responsive to COVID-19, noting that governments should “put resources into protecting the vulnerable people who end up in the hospital at higher rates.”¹¹

Thus, from a public health perspective, racial disparities in infection and the disproportionate number of Black and Latinx people serving as essential workers indicate these communities deserve the lightest touch and the greatest protection. Because this is a public health crisis, not a law enforcement crisis, the City should instead leverage the credibility and legitimacy of public health workers and community-based organizations to enforce social distancing as necessary. Ex. 1, CPR Decl. ¶ 20. Shifting enforcement toward community-based entities also addresses the *Floyd* court’s own stated concerns that impacted communities best understand how to mitigate risk and protect their own safety. *See Floyd* Remedial Ord., (Dkt. #372 at 29) (“The communities most affected by the NYPD’s use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms. No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety.”).

D. NYPD’s Promises to Pull Back on Social Distancing Enforcement Does Not Eliminate the Need for Court Intervention.

After two months of NYPD enforcement of social distancing, it remains unclear how the police add value to the COVID-19 pandemic response. After the viral video depicting the tackle and arrest of Kaleemah Rozier and her young child in the Atlantic Avenue subway station (her face mask was pulled down to her chin, exposing her nose and mouth), *see* Day Decl. at ¶ 31, NYPD indicated it would delegate enforcing face mask compliance to NYPD civilian employees after City Council threatened budget cuts. However, given the NYPD’s denialism and deflection

¹¹ *See* Jonathan Shaw, *COVID-19 May Be Much More Contagious Than We Thought*, Harvard Magazine (May 13, 2020) (citing forthcoming research that each COVID-19 patient may infect 5-6 others in cities like New York).

regarding even the possibility of racial profiling, these vague representations provide little comfort to Black and Latinx New Yorkers.

It remains unclear what policy governs NYPD pandemic conduct. Plaintiffs' request for information and discovery in this regard were ignored, then dismissed, then refused. Day Decl. at ¶¶ 51-57. NYPD delayed the public release of relevant data and then promoted manipulations of the data that mirrored tactics found racially discriminatory at trial. *See e.g., infra* at III.A.2. And Despite the Mayor's assurance that a "reset" of NYPD enforcement of social distancing measures would address criticisms, he continues to maintain that police enforcement is an "essential part of the equation," and has offered no insight as to the City's directives to NYPD or NYPD leadership's directives to the rank-and-file. Mayor de Blasio Holds Media Availability, Press Conference (May 15, 2020) available at <https://www1.nyc.gov/office-of-the-mayor/news/348-20/transcript-mayor-de-blasio-holds-media-availability>. Thus, it appears that New Yorkers can expect that policing will remain a critical component of the enforcement of social distancing rules and may continue violating the Court's prior orders in *Floyd*.

The concerns this raises for the Plaintiff classes are neither minimal nor remote. Most acknowledge that New York City may face a second wave of COVID-19 infection. Already, "quarantine fatigue" has parks, beaches, and streets crowded with people. Day Decl. at ¶¶ 13, 29. As summer arrives, weather and crowded living conditions will push people outside, as happens each year. In particularly congested areas, including New York City public housing, being outside might be safer than being inside, from a public health perspective. Declining media attention could license further impunity in the violation of this Court's prior orders in this case, including the ongoing racial profiling and selective enforcement set forth herein.

This suggests that protecting the Classes, supporting the monitoring of the remedy awarded to the Plaintiffs, and enforcing the Court's prior orders entails granting Plaintiffs the relief requested. Community stakeholders' concerns that racial profiling and selective enforcement in COVID-19 policing was a particularly significant risk in the stress of a pandemic has borne fruit. Ex. 1, CPR Decl. ¶ 22. The Court cannot trust the NYPD to carry out its obligations under the *Floyd* orders on its own.

E. The Relief Requested is Narrowly Tailored to Address the City's Violations of the Court's Prior Orders.

The relief requested by Plaintiffs is no broader than what is necessary to protect the rights, health, and safety of the Black and Latinx class members. To begin, as with the injunctive remedies originally imposed by the Court, *see Floyd*, (Dkt # 372), the moratorium requested by Plaintiffs would not interfere with ordinary policing (e.g., arrests, summonses) constitutionally, nor would it stop the City from enforcing its and the State's social distancing orders via non-law enforcement City agencies without a history of racially discriminatory practices. In addition, supplemental relief is warranted because no aspect of the *Floyd* Court-ordered remedies developed and implemented thus far have deterred or remediated racial discrimination in NYPD enforcement of social distancing. Neither the NYPD's Court-approved policy prohibiting racial profiling, *see Floyd*, (Dkt # 517), nor the new written procedures for supervision of street encounters on the scene and after-the-fact, (Dkt # 527), have ensured legally proper, unbiased social distancing policing on the streets. Day Decl. at ¶ 40. Much-touted training programs on investigative encounters and fair and impartial policing have not impacted actual police conduct adequately to prevent racial discriminatory social distancing enforcement in practice.

When presented with evidence that injunctive relief failed to prevent ongoing constitutional or statutory violations, federal courts have not hesitated to impose more

prescriptive relief on those defendants to cure those violations, even absent a contempt finding. *See, e.g., Baez*, 2015 WL 9809872, *2-3; *Damus*, 2020 WL 601629, at *2-5; *Visa USA, Inc.*, 2007 WL 1741885, at *12-14; *National Law Ctr. On Homelessness and Poverty*, 765 F. Supp. at 6-13. Here, as in *Hutto*, 437 U.S. at 686-88, a categorical bar on further NYPD's social distancing enforcement efforts is appropriate, because the arbitrary way in which NYPD officers have been authorized to conduct this enforcement without any apparent guidance from Department leadership is contributing to an ongoing pattern of racially discriminatory enforcement of the law that violates the Court's orders and the Fourteenth Amendment. Moreover, the moratorium will provide the Monitor, NYPD, Plaintiffs and the Court the opportunity to determine what policies, procedures, and other measures should be put in place to prevent racially discriminatory social distancing enforcement action going forward.

In addition, the independent investigation and evaluation of the NYPD's social distancing enforcement efforts requested by the Plaintiffs is narrowly tailored to cure the violations of the Court's prior orders. The Remedial Order specifically authorizes and tasks the Court-appointed Monitor with assessing and reporting to the Court on the City's implementation of and compliance with the Court-ordered reforms, of which August 2015 Policy Prohibiting Racial Profiling is one. *See Floyd* (Dkt # 372) at 12-13. The Monitor is empowered and required to "work with the parties to address any barriers to compliance." *Id.* at 13. The requested investigation and evaluation of the NYPD social distancing enforcement practices will help determine why those practices are running afoul of the Court's Liability, Remedial and Racial Profiling Policy Orders and what measures need to be put in place to cure those violations.

CONCLUSION

For the foregoing reasons, *Floyd* and *Davis* Plaintiffs ask this Court to order the City to show cause why the Court should not grant the emergency relief requested.

Dated: May 26, 2020
New York, New York

/s/ Dominique Day

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK,

Defendant.
----- X

**DECLARATION OF
DOMINIQUE DAY IN
SUPPORT OF PLAINTIFFS’
MOTION FOR EMERGENCY
RELIEF**

No. 08 Civ. 1034 (AT)

DOMINIQUE DAY, an attorney duly authorized to practice in the courts of New York and in this Court declares as follows:

1. I am an attorney at Beldock Levine & Hoffman LLP, which represents the Plaintiffs and the class in this action. I am familiar with the facts of this case and I submit this declaration in support of Plaintiffs’ Order to Show Cause.

2. In March 2020, in response to the COVID-19 outbreak in New York state, Governor Cuomo announced, in New York, everyone other than essential workers would be required to work from home. NYS Department of Health, *New York State on PAUSE*, (March 22, 2020) *available at* <https://coronavirus.health.ny.gov/new-york-state-pause> (“effective at 8PM on Sunday, March 22, all non-essential businesses statewide will be closed”). In March, Mayor de Blasio also declared a social distancing plan, banning group gatherings, congregating in public, etc. for New Yorkers. New York City schools were closed. In mid-April, a directive to New York residents to wear masks in public took effect. *See* N.Y. Executive Order No. 202.17: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (Apr. 15, 2020) *available at* <https://www.governor.ny.gov/news/no-20233->

continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency. The mask-wearing requirement was limited to people “able to medically tolerate a face-covering” and situations where social distancing was impractical or impossible. *Id.* No civil or criminal penalty was set forth. *Id.* There was also no publication of guidelines or rules to structure enforcement of social distancing. Notably, no curfew was ever instituted in New York City. People were asked to remain home (#StayHome), but never prohibited from leaving their homes other than for medical services, groceries, or essential work, as they were in China and some European countries. No proof of purpose, or justification of any kind, was mandated for people in public spaces in New York City.

Foreseeably, Black and Latinx Communities Navigated the Most Significant Risk and Were Hardest Hit by covid-19 Infection, Serious Illness, and Fatalities

3. Despite our shared susceptibility to infection, Black and Latinx communities in New York City have been hardest hit by COVID-19. *See* NYC Health, *Age adjusted rate due to increased vulnerabilities given a range of fatal lab confirmed COVID-19 cases per 10,000 by race/ethnicity group* (April 6, 2020) available at <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-deaths-race-ethnicity-04162020-1.pdf> (showing 22.8 deaths per 10,000 Hispanic New Yorkers and 19.8 deaths per 10,000 Black New Yorkers in contrast to 10.2 deaths per 10,000 White New Yorkers). Disproportionately in Black and Latinx communities, people navigated the uncertainty of COVID-19 in the context of commuting to work daily, more severe infections and higher mortality, and strained public hospitals forced to ration treatment during the pandemic. *See* NYC Comptroller, *New York City's Frontline Workers* (March 26, 2020) available at <https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/> (“75 percent of all frontline workers are people of color, including 82 percent of cleaning services employees. More than 40 percent of transit employees are black

while over 60 percent of cleaning workers are Hispanic."); Michael Schwartz and Lindsey Rogers Cook, *These N.Y.C. Neighborhoods have the Highest Rates of Virus Deaths*, The New York Times (May 18, 2020) available at <https://www.nytimes.com/2020/05/18/nyregion/coronavirus-deaths-nyc.html> (Neighborhoods with high concentrations of Black and Latino people suffered the highest death rates in New York City); Harald Schmidt, *The Way We Ration Ventilators is Biased*, The New York Times (April 15, 2020) available at <https://www.nytimes.com/2020/04/15/opinion/covid-ventilator-rationing-blacks.html> (structural inequality leads to lower baseline health among particular racial and ethnic groups, resulting in a de-prioritization of those patients for ventilators); Yoav Gonen et al., *NYC Blacks and Hispanics dying of COVID-19 at twice the rate of Whites, Asians*, The City (April 8, 2020) available at <https://thecity.nyc/2020/04/nyc-blacks-and-hispanics-dying-of-covid-19-at-twice-the-rate.html>.

4. Social distancing requirements in New York City did not exempt “essential workers,” people whose work directly or indirectly decreased the pressure on the healthcare system at the peak of the epidemic in New York City, like home health aides, nursing home personnel, transit workers, and grocery and delivery personnel, from working outside the home. In New York City, Black and Latinx people disproportionately fill essential worker roles, working full time and commuting via public transportation. See Scott M. Stringer, *New York City’s Frontline Workers*, Office of the N.Y. City Comptroller (Mar. 26, 2020) available at <https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/>. They also disproportionately experienced food insecurity in April 2020. See Joseph Lobrera, *Food Security Impacts on People of Color Highlight Need for Aid*, Center on Budget and Policy Priorities (May

13, 2020) *available at* <https://www.cbpp.org/blog/food-security-impacts-on-people-of-color-highlight-need-for-aid> (63% of food insecure households in April 2020 were Black or Latinx).

5. The current crisis in the Black and Latinx communities, i.e., the likelihood that racial disparities would characterize infection, severity, and deaths in a pandemic, was foreseeable to the City. Epidemiologists studying the social determinants of health reported racial disparities related to policy, not susceptibility to contagion, in the H1N1 influenza virus, the last viral epidemic. *See* Sidney Fussell, *The H1N1 Crisis Predicted Covid-19's Toll on Black Americans*, *Wired* (May 6, 2020) *available at* <https://www.wired.com/story/h1n1-crisis-predicted-covid-19-toll-black-americans/> (citing Sandra Crouse Quinn, et al., *Racial Disparities in Exposure, Susceptibility, and Access to Health Care in the US H1N1 Influenza Pandemic*, 101 *Am J Public Health* 285 (Feb. 2011) *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3020202/> and Supriya Kumar, Sandra Crouse Quinn, et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic*, 102 *Am J Public Health* 134 (Jan. 2012) *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490553/> (lack of sick leave, greatest among Latinos, is central factor resulting in H1N1 exposure of five million people).

COVID-19 Risks Continue to Evolve in Unpredictable and Unforeseeable Ways

6. COVID-19, a novel coronavirus, remains an unknown with still evolving outcomes, consequences, and impact. Even a casual encounter with the police may be fatal. In the context of COVID-19, public understanding is evolving rapidly, but at exactly the same rate as scientific understanding. In January 2020, COVID-19 was compared to influenza and publicly dismissed as a significant concern for the United States. By February 2020, cases were filtering

into the United States, but the virus was seen as primarily a threat to older people and children were believed to be immune or not susceptible to severe infection. By March 2020, cases skyrocketed in New York City, but nearly half of American infections included people under 50 years of age.

7. By April 2020, racial disparities in COVID-19 infection, severity, and fatalities showed that Black and Latinx communities were particularly impacted by COVID-19. *See* NYC Health, *Age adjusted rate of fatal lab confirmed COVID-19 cases per 10,000 by race/ethnicity group* (April 6, 2020) available at <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-deaths-race-ethnicity-04162020-1.pdf> (showing 22.8 deaths per 10,000 Hispanic New Yorkers and 19.8 deaths per 10,000 Black New Yorkers in contrast to 10.2 deaths per 10,000 White New Yorkers). By early May 2020, a rare and previously unseen toxic reaction, pediatric multi-system inflammatory syndrome (“PMSIS”), began appearing in children, even as New York City cases decreased. *See* Pam Belluck, *A New Coronavirus Threat to Children*, New York Times (May 13, 2020) available at <https://www.nytimes.com/article/kawasaki-disease-coronavirus-children.html>. The 110 children already diagnosed in New York City were largely Black and Latinx and some incubated COVID-19 for up to six weeks before developing symptoms or PMSIS. *See* Anna Sanders, *NYC detects 110 cases of mysterious coronavirus-tied syndrome in children – most are black and Hispanic*, N.Y. Daily News (May 15, 2020) available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-syndrome-mystery-children-black-hispanic-new-york-city-20200515-3f7ovpdhha3ngagquftoaraxy-story.html>. Recently, studies show COVID-19 is far more contagious than initially reported. *See* Jonathan Shaw, *COVID-19 May Be Much More Contagious Than We Thought*, Harvard Magazine (May 13, 2020) available at <https://harvardmagazine.com/2020/05/r-nought> (new research suggests each infected person

may infect five to six others, i.e., R_0 comparable to smallpox); Jessica Flores, *Simply talking in confined spaces may be enough to spread the coronavirus, researchers say*, USA Today (May 13, 2020) available at <https://www.rrstar.com/zz/news/20200514/simply-talking-in-confined-spaces-may-be-enough-to-spread-coronavirus-researchers-say>. This trajectory confirms serious, unpredictable risk, and a need for the highest level of care with respect to communities particularly at risk.

NYPD Enforcement of Social Distancing Has Proven Constitutionally Questionable and Ineffective in Several Respects

8. Citywide, throughout this period, community-based organizations have fielded reports of unlawful and abusive enforcement of social distancing by NYPD. Reporting of misconduct in NYPD enforcement of social distancing against Black and Latinx persons has persisted. This includes reports of harassment, unjustified stops, excessive force, abuses of authority, racial profiling, and racial pretext stops, including people being stopped and asked to show their “essential worker papers.” A declaration setting forth these reports, from Joo-Hyun Kang of Communities United for Police Reform, a citywide campaign to end discrimination and abuse policing, is attached hereto as Exhibit 1.

9. Recent analysis released by the Legal Aid Society confirms NYPD enforcement of social distancing involved stark racial disparities that cannot not be explained by citizen complaints about social distancing violations. *See* The Legal Aid Society, *Racial Disparities in NYPD’s COVID-19 Policing: Unequal Enforcement of 311 Social Distancing Calls*, (May 2020) available at <https://legalaidnyc.org/racial-disparities-in-nypds-covid-19-policing/>. The Legal Aid Society report found that NYPD responses to 311 complaints for social distancing violations are considerably more likely to result in a summons or arrest in majority Black or Latino precincts. *Id.* 18 of the 20 precincts with the highest rates of known social distancing arrests or summonses

per 10,000 people are in majority Black and Latino precincts but, of the 32,293 social distancing complaints made through 311 between March 28 to May 12, slightly less than half (46.2%) of the complaints concerned violations in majority Black and Latino precincts. *Id.* While four of the five precincts receiving the most social distancing complaints through 311 were in neighborhoods that are majority white, four of the five precincts with the most COVID-19 related arrests and summonses were in neighborhoods that are majority Black and Latinx. *Id.* In this vein, 78.9% of summonses and 74.1% of arrests for which the Legal Aid Society was able to identify a precinct occurred in majority Black and Latino precincts. *Id.*

10. In addition, there is little evidence that NYPD-specific enforcement of social distancing, or conducting low-level stops, is beneficial or effective to public health or safety. NYPD enforcement of social distancing has not proven effective to manage COVID-19 public health or public safety concerns. No evidence suggests these interventions kept the community safer, from viruses or violence. *Compare* Christopher M. Sullivan & Zachary P. O’Keeffe, *Evidence that curtailing proactive policing can reduce major crime*, 1 Nature Human Behavior 737 (2017) available at <https://www.nature.com/articles/s41562-017-0211-5> (sharp reductions in proactive policing by NYPD in 2014-2015, including 90%+ drop in summonses, correlated to decreases in major crime complaints citywide); Sarah Lustbader, *What’s Not To Love About The NYPD Slowdown?*, The Appeal (Sept. 3, 2019) available at <https://theappeal.org/whats-not-to-love-about-the-nypd-slowdown/> (NYPD work stoppage after Eric Pantaleo was fired showed decrease in summonses and decline in major crime).

11. In addition, in many NYPD interactions enforcing social distancing, NYPD personnel fail to use personal protective equipment or otherwise protect the health and safety of the citizens with whom they interact. On May 7, 2020, Time reported that in many videos

depicting NYPD social distancing enforcement arrest, officers were not wearing masks or were incorrectly wearing masks. *'We Cannot Police Our Way Out of a Pandemic.' Experts, Police Union Say NYPD Should Not Be Enforcing Social Distance Rules Amid COVID-19*, Josiah Bates, Time, (May 7, 2020), *available at*, <https://time.com/5832403/nypd-pandemic-police-social-distancing-arrests/>.

12. NYPD enforcement of social distancing appears to replicate the racial disparities and racial profiling of low-level encounters, Terry stops, and arrests for offenses like jaywalking or fare evasion. *Compare* Samar Kurshid, *NYPD Continues Move Away from Criminal Penalties for Low-Level Offenses, But Racial Disparities Remain*, The Gotham Gazette (Sept. 4, 2019) *available at* <https://www.gothamgazette.com/city/8768-nypd-fewer-criminal-penalties-for-low-level-offenses-racial-differences-remain> (“91% of criminal summonses were given to people of color....Officers continue to use an exception that allows them to give out a criminal summons instead of a civil fine, vaguely citing “law enforcement reason” as a criteria.”); Samoylov, M. and Kuntzman, G., *NYPD Targets Blacks and Latinos for ‘Jaywalking’ Tickets*, StreetsBlogNYC (Jan 8, 2020) *available at* <https://nyc.streetsblog.org/2020/01/08/nypd-targets-blacks-and-latinos-for-jaywalking-tickets/> (90% of people stopped for jaywalking by NYPD are Black and Latinx; one-third of jaywalking tickets given in the Bronx); Brand, D., *Nearly every single person arrested for weed in NYC this year was Black or Latinx*, Queens Daily Eagle (Aug. 21, 2019) *available at* <https://queenseagle.com/all/nearly-every-single-person-arrested-for-weed-in-nyc-this-year-was-black-or-latinx> (“Black and Latinx New Yorkers accounted for 94 percent of all low-level marijuana arrests” mirroring “persistent disparities in fare evasion arrests”); Mueller, B., et al., *Surest Way to Face Marijuana Charges in New York: Be Black or Hispanic*, The New York Times (May 13, 2018) *available at*

<https://www.nytimes.com/2018/05/13/nyregion/marijuana-arrests-nyc-race.html> (despite NYPD claim racial disparity driven by local complaints, “among neighborhoods where people called about marijuana at the same rate, the police almost always made arrests at a higher rate in the area with more black residents”).

13. Perhaps, the most visible, and intentional, failure of NYPD enforcement of social distancing are the jam-packed New York City public parks, where unmasked people in close proximity and in crowds have been evident daily throughout this period. *See e.g.*, Joseph Goldstein and Corey Kilgannon, *Balmy Weekend Presents a Challenge: New Yorkers Rushing to Parks*, N.Y. Times (May 2, 2020) available at <https://www.nytimes.com/2020/05/02/nyregion/weather-parks-nyc-nj-coronavirus.html>; *Coronavirus Cabin Fever: Crowds Flock To Central Park Even As Social Distancing Enforcement Remains In Effect*, CBS Local N.Y. (April 25, 2020) available at <https://newyork.cbslocal.com/2020/04/25/coronavirus-central-park-long-beach-crowds/>; Jen Carlson, *Photos Show NYC Parks Still Bustling During The Global Pandemic*, Gothamist (Mar. 28, 2020) available at <https://gothamist.com/arts-entertainment/photos-show-nyc-parks-still-bustling-during-global-pandemic>; Sarah Dorn, et al., *People flock to NYC-area bars, beaches as ‘quarantine fatigue’ intensifies*, N.Y. Post (May 16, 2020) available at <https://nypost.com/2020/05/16/people-flock-to-nyc-area-bars-beaches-as-quarantine-fatigue-intensifies/>.

14. In addition, NYPD has not acted to enforce obvious social distancing needs on public transportation inside subway cars and buses, closed systems with particularly attendant risks heavily relied upon by Black and Latinx essential workers to commute daily, even though the executive orders apply to businesses in New York City and affirm their obligations to

mitigate risk in serving customers. Subways and buses have become more crowded as service cuts limit the number of trains and buses running but NYPD enforcement has not acted to protect public health in this context. *See* Christina Goldbaum and Lindsay Rogers Cook, *They Can't Afford to Quarantine. So They Brave the Subway*, The New York Times (Mar. 30, 2020) available at <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-mta-subway-riders.html>.

NYPD has Disproportionately and Harshly Focused on Black and Latinx Persons and Communities Under the Guise of Social Distancing Enforcement

15. Overwhelmingly, NYPD enforcement of social distancing has been against Black and Latinx communities and persons. Josiah Bates, *Police Data Reveals Stark Racial Discrepancies in Social Distancing Enforcement Across New York City*, TIME (May 8, 2020) available at <https://time.com/5834414/nypd-social-distancing-arrest-data/> (68% of those arrested for social distancing violations in New York City between March 16 and May 5 were Black and 24% were Hispanic); Ashley Southall, *Scrutiny of Social-Distance Policing as 35 of 40 Arrested are Black*, The New York Times (May 7, 2020) available at, <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>. (35 of 40 people arrested for social distancing violations in Brooklyn between March 17 and May 4 were Black, four were Hispanic, and one was white); On May 8, 2020, the Bronx Daily reported on the recent social distancing enforcement statistics and embedded a figure depicting the racially disproportionate data. *See also* Jonas Bronck, *NYPD COVID-19 Summons Enforcement Data*, The Bronx Daily, (May 8, 2020), available at, <https://bronx.com/nypd-covid-19-summons-enforcement-data/>; Maya Rajamani, *Vast majority of social distancing summonses in NYC went to black and Hispanic residents*, 1010 WINS (May 8, 2020) available at

<https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

16. Citizen journalists, professional reporters, and concerned citizens have also come forward and spoken out about unjustified police encounters and stops and racial profiling toward Black and Latinx persons in NYPD enforcement of social distancing. On April 3, 2020, the Intercept reported on NYPD enforcement of social distancing, including an NYPD social distancing action in Bedford Stuyvesant, Brooklyn, where police pepper-sprayed a crowd of people in a parking lot. Alice Sperti, *NYPD's Aggressive Policing Risks Spreading the Coronavirus*, The Intercept, (April 3, 2020), *available at* <https://theintercept.com/2020/04/03/nypd-social-distancing-arrests-coronavirus/>.

17. On April 9, 2020, Cynthia Pope observed NYPD enforcement of social distancing restrictions escalate into a uniformed NYPD officer lifting an adolescent Black boy by his neck and another uniformed officer pepper spraying her. The declaration of Ms. Pope is attached hereto as Exhibit 2.

18. On April 10, 2020, a witness to NYPD enforcement of social distancing on a subway platform posted a video depicting NYPD Officers detaining and handcuffing a man who had indicated the subway platform was too crowded to socially distance as directed. Bystanders audible in the video implied the escalation to arrest was in retaliation for the use of coarse or vulgar language against the police. This video, which I personally reviewed, was posted on Twitter, a public social media platform. *See* Real Justice, @RealJusticePAC, Twitter, (April 10, 2020, 11:31 a.m.), <https://twitter.com/RealJusticePAC/status/1248634593638592514>.

19. On April 11, 12, and 13 2020, Rebecca Kavanaugh, an attorney admitted to practice in New York State, posted the relevant video involving the “social distancing detention”

of a young Black child on a Harlem subway platform, in three parts on Twitter, a public social media platform, which I personally reviewed. Rebecca Kavanagh @DrRJKavanagh, Twitter, (April 11, 2020, 10:00 p.m.) <https://twitter.com/DrRJKavanagh/status/1249155279293493249>, (April 12, 2020, 10:39 a.m.) <https://twitter.com/DrRJKavanagh/status/1249346403350044672>, and (April 13, 2020, 6:13 a.m.), <https://twitter.com/DrRJKavanagh/status/1249641953274331136>. The videos depicted the detention of a young Black child on a Harlem subway platform and the eventual arrest of the child's guardian.

20. On April 28, Steven Merete, a 51 year-old Latinx man, was arrested after NYPD officers were conducting social distancing enforcement at a nearby deli. Mr. Merete was socially distanced, standing outside his home, when officers pushed him, slammed him to the ground and arrested him. Mr. Merete spent almost 24 hours in custody and was ultimately charged with disorderly conduct and resisting arrest before being released. The declaration of Mr. Merete is attached hereto as Exhibit 3.

21. On May 2, 2020, Malik Harris, a 22 year-old Black man was approached by plain clothes NYPD officers in the courtyard of the Queensbridge public housing complex in Queens for an apparent social distancing enforcement. Though Mr. Harris had a mask and pulled it over his mouth and nose, an NYPD officer detained and arrested him, using force. Mr. Harris spent almost 24 hours in custody before arraignment. On the basis of this, Mr. Harris was sent to Rikers Island for parole revocation proceedings, the COVID-19 epicenter of the epicenter, and held there for an extended period, in a crowded dorm with over fifty men and only allowed one mask in the three weeks he was detained. Several of the officers involved in the arrest and to

whom Mr. Harris was exposed at the precinct were not wearing masks. The declaration of Mr. Harris is attached hereto as Exhibit 4.

22. On May 2, 2020, in a video posted on Twitter, a public social media platform, which I personally reviewed, there was a heavy police presence in Brownsville, Brooklyn, a Black neighborhood in New York City. The video depicted multiple NYPD Officers, many of whom were not wearing masks, detaining multiple Black men in Brownsville, Brooklyn. In the video, police enforcing social distancing restrictions, and in the middle of handcuffing one Black man, noticed another Black man walking very slowly toward them in the street, ran up on him, grabbed him by the throat, tackled him to the ground and proceeded to handcuff him. Why Accountability, @WA_tweets, Twitter, (May 3, 2020, 8:41 a.m.)
https://twitter.com/WA_Tweets/status/1256926903275061248.

23. On May 3, 2020, during NYPD enforcement of social distancing in the Lower East Side of Manhattan, in New York City, NYPD Officer Francisco Garcia approached a bystander, NYCHA employee Donni Wright, while firing his taser and instructing him to move back. Officer Garcia was not wearing a mask. He approached Mr. Wright, accused him of “flexing” and then immediately tackled Mr. Wright to the ground. He began punching Mr. Wright in the head and body, dragged him on the ground, and kneeled on his head while a fellow officer observed and then assisted in handcuffing Mr. Wright. A video of this incident, which I personally observed, went viral and is included in this herein referenced article. *See John Del Signore, Video: NYPD Officer Beats Bystander, Kneels On His Head During Social Distancing Enforcement*, Gothamist, (May 3, 2020), available at, <https://gothamist.com/news/video-nypd-officer-beating-social-distancing-enforcement>.

24. On May 3, 2020, Hawk Newsome, the chairperson of Black Lives Matter Greater New York, was pretextually stopped on the claim of social distancing enforcement as he video recorded police officers in the Melrose area of the Bronx, in New York City. Although he was walking with only one person and legally video recording the police who were interfering in a funeral service in the Bronx, the officers repeatedly instructed him to disperse. Mr. Newsome retained six feet of distance from his walking companion. The police officer instructing Mr. Newsome was not wearing a mask. On May 5, 2020, a video was posted on Instagram, a public social media platform, which I personally reviewed. The video was posted by congressional candidate and witness, Chivona Renée Newsome, [newyorkvonni](https://www.instagram.com/newyorkvonni/), Instagram, (May 3, 2020). https://www.instagram.com/tv/B_v4RAyHdUu/?utm_source=ig_embed. The video depicted the arrest of Hawk Newsome who was protesting the NYPD dispersing of a funeral in the Bronx and Ms. Newsome indicated they were recording because the police had pepper sprayed an entire family gathered for a funeral service immediately prior to the video. *See also* Royce Dunmore, *Graphic Videos Show NYPD Terrorizing Same Black Communities Being Killed By Coronavirus*, News One (May 5, 2020) *available at* <https://newsone.com/3936823/videos-show-nypd-terrorizing-same-black-communities-killed-by-coronavirus/>. On May 4, 2020, a video was posted on Twitter, a public social media platform, which I personally reviewed, shows multiple officers detaining, pushing, and approaching people without masks, gloves, or other protective equipment. Why Accountability, [@WA_tweets](https://twitter.com/WA_tweets), Twitter, (May 4, 2020, 9:42 p.m.) https://twitter.com/WA_Tweets/status/1257485915112517632.

25. On May 4, 2020, a video depicting uniformed officers violently arresting a young Black man showed three officers detaining and punching the young man. On the apparent guide of social distancing enforcement, the officers repeatedly instructed the bystanders video

recording the interaction to go inside. Eventually, the officer ran warrant checks of the bystanders and the video ends as the officer informs the videographer that he has an I-card and grabs his cell phone. The video was posted on Twitter, a public social media platform, which I personally reviewed. Anthony Beckford (City Council Candidate), @Vote4Beckford, Twitter, (May 4, 2020, 8:39 p.m.), <https://twitter.com/Vote4Beckford/status/1257469870524051457>.

26. On May 8, 2020, in a video I personally reviewed, NYPD Officers detained approximately eight young Black adolescent boys forced to kneel up against fence in apparent social distancing enforcement. The videographer narrated and captured the presence of uniformed officers, plainclothes officers, and a white-shirted supervisor. This video was posted on Twitter, a public social media platform, which I personally reviewed. *See* Tariq Nasheed @tariqnasheed, Twitter, (May 8, 2020, 6:21 p.m.), <https://twitter.com/tariqnasheed/status/1258884734551113729>.

27. I live in the Nolita neighborhood of Manhattan. Since the COVID-19 pandemic began, on a regular basis I have heard the NYPD broadcast a friendly reminder to observe social distancing restrictions in my neighborhood on a regular basis. The announcement says, in sum and substance, “This is the New York City Police Department. Due to the current health emergency, members of the public are reminded to keep a safe distance of 6 feet from others while in public places to reduce the spread of the coronavirus. Please help us keep you safe, thank you for your cooperation.” *See also* Olivia Bensimon, *NYPD patrol car plays coronavirus PSA over loudspeaker at NYC park*, N.Y. Post (Mar. 25, 2020) available at <https://nypost.com/2020/03/25/nypd-patrol-car-plays-coronavirus-psa-over-loudspeaker-at-nyc-park/>.

28. In Queensbridge, a Twitter user noted that “Cops all over Vernon Boulevard by Queensbridge Projects locking people up for being outside, broadcasting a PSA that they’ve been ordered to dispersed by @NYGovCuomo” and referenced an attached video showing dozens of police officers occupying the courtyard of Queensbridge Houses, and broadcasting a public service announcement threatening arrest. The public service announcement indicates: “Warning: These gatherings are prohibited. This is the New York City Police Department. Gatherings of any kind have been prohibited by the governor and by the mayor. This gathering is unlawful and you are ordered to disperse. If you fail to disperse immediately, you are subject to arrest.” This video, which I personally reviewed, was posted on Twitter, a public social media platform. *See* UpFromTheCracks, @ UpFromTheCracks, Twitter, (May 5, 2020, 10:27 p.m.), <https://twitter.com/UpFromTheCracks/status/1257859462288805889?s=20>.

29. Elsewhere in the City, this more threatening PSA is reserved for public protestors gathering in violations of the rules. Upon information and belief, very few of these persons have been subject to individual subsequent law enforcement action. *See* Peter Mastrosimone, *De Blasio declares protest to be illegal*, Queens Chronicle (May 21, 2020) available at https://www.qchron.com/editions/queenswide/de-blasio-declares-protest-to-be-illegal/article_8b72584b-9b07-5713-af7f-75692bf410b0.html (stating the full text of the PSA).

NYPD Enforcement of Social Distancing has Involved Frequent Retaliation, Use of Force, and Escalation in Retaliation for Coarse or Vulgar Language

30. In several cases, NYPD enforcement of social distancing escalated when officers retaliated against the legal use of vulgar or coarse language. For example, on May 5, 2020, NYPD enforcement of social distancing escalated quickly to handcuffing and arrest of a young [woman] situation was not wearing a face mask. Rebecca Kavanaugh, an attorney admitted to practice in New York State, posted the relevant video, which I personally reviewed, on Twitter, a

public social media platform. *See* Rebecca Kavanagh @DrRJKavanagh, Twitter, (May 5, 2020, 2:32 a.m.), <https://twitter.com/DrRJKavanagh/status/1257558718528577538>.

31. On May 13, 2020, Kaleemah Rozier was in the Barclays Center/Atlantic Avenue subway station with her five-year old child. They were wearing masks, but had exposed their noses and mouths as they walked on the stairs. Ms. Rozier later claimed that “when the police encountered her, she had lowered her mask to breathe more easily while she climbed the subway steps and talked on the phone.” *Woman arrested in subway over mask says police were “all in the wrong.”*, New York Times (May 19,2020) *available at* <https://www.nytimes.com/2020/05/19/nyregion/coronavirus-ny-nyc-live-news.html>. As she tried to walk away from officers claiming to enforce social distancing, the officers confronted her and eventually tackled her to the ground and forcibly arrested her. Dean Meminger, a news reported for NY1, posted on Twitter, a public social media platform, a video depicting the arrest of the young woman of color. Dean Meminger, @DeanMeminger, Twitter, (May 13, 2020, 6:22 p.m.), <https://twitter.com/deanmeminger/status/1260697038565638147>. The video depicts the woman walking up the steps of the and being arrested by multiple NYPD Officers.

NYPD has not Enforced Social Distancing Restrictions Against White Communities and People Similarly Situated to Black and Latinx Communities, Including Disproportionately Fewer Summonses, Arrests, Unjustified Stops, Excessive Force, or Abuses of Authority

32. Largely, NYPD enforcement of social distancing against white persons and communities has been gentle or nonexistent. *See, e.g.,* Poppy Noor, *A tale of two cities: how New York police enforce social distancing by the color of your skin*, The Guardian (May 4, 2020) *available at* <https://www.theguardian.com/world/2020/may/04/coronavirus-new-york-police-enforce-social-distancing> (“outrage has sparked over juxtaposed images that show officers

handing out masks to white sunbathers, while another video shows an officer punching a person of color and sitting on him following a dispute about social distancing.”)

33. In some predominantly white neighborhoods, like Park Slope, Brooklyn (which includes Prospect Park), large crowds consistently gathering at Prospect Park did not result in NYPD enforcement of social distancing. On May 12, 2020, Patch reported that the largely white neighborhood of Park Slope, Brooklyn had experienced no social distancing arrests. *Not One Social Distancing Ticket For All Of Park Slope: Data*, Matt Troutman, Patch Staff, Patch, (May 12, 2020), *available at*, <https://patch.com/new-york/parkslope/not-one-social-distancing-ticket-all-park-slope-data>.

34. Accounts of harsh tactics in enforcement of social distancing in Black and Latinx communities have been contrasted with the gentler approach taken in the Hasidic community in Williamsburg, Brooklyn, *see* Ashley Southall *Scrutiny of Social-Distance Policing as 35 of 40 Arrested Are Black*, New York Times (May 7, 2020) *available at* <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html> (“Officers issued 12 tickets at a recent funeral that drew a crowd of 2,500”) or with respect to crowded public parks in white communities. *See also* Ben Yakas, *Brooklyn Yeshiva Allegedly Caught Holding Classes With At Least 60 Students Inside*, Gothamist (May 18, 2020), *available at* <https://gothamist.com/news/brooklyn-yeshiva-allegedly-caught-holding-classes-least-60-students-inside> (police raid an illegal yeshiva with 100 children inside, in violation of social distancing mandates but “NYPD said no summonses were issued against the people operating the school.”).

35. On May 2, 2020, a photo was posted on Twitter, a public social media platform, which I personally reviewed. Jeremiah Moss @jeremoss, Twitter, (May 2, 2020, 6:41 p.m.),

<https://twitter.com/jeremoss/status/1256715403188998146>. The photo depicted NYPD Officers distributing masks to predominantly white individuals in Washington Square Park.

36. On May 2, 2020, a photo was posted on Twitter, a public social media platform, which I personally reviewed. NYPD NEWS, @NYPDnews, Twitter, (May 2, 2020, 3:15 p.m.), <https://twitter.com/nypdnews/status/1256663527479279617>. The photo depicted a white woman in being handed a mask by an NYPD Officer.

37. On May 2, 2020, a photo depicting a large and congested crowd of predominantly white individuals failing to maintain social distancing or wear mask at Christopher St. Pier was published. The photo was posted on Twitter, a public social media platform, which I personally reviewed. Welcome2theBronx™, @Welcome2theBX, Twitter, (May 2, 2020, 9:52 p.m.), <https://twitter.com/Welcome2theBX/status/1256763447209066496>.

38. On May 3, 2020, Kate Reese, a 27 year-old white woman observed multiple families seated and gathered in a Red Hook park, enjoying their day. Ms. Reese observed that the only Black family in the park, among the other predominantly white families, was approached and ultimately asked to leave the park by the NYPD. The declaration of Ms. Reese is attached hereto as Exhibit 5.

39. On May 8, 2020, Gothamist reported that limitations would be put in place to stem the flow of large gatherings in some public parks. *NYPD Will Limit How Many People Can Enter Hudson River Park And Domino Park*, Ben Yakas, Gothamist, (May 8, 2020), available at, <https://gothamist.com/news/nypd-will-limit-how-many-people-can-enter-hudson-river-park-and-domino-park>.

Statements and Actions of New York City and State Officials Convey Compelling Public Interest Against NYPD Enforcement of Social Distancing

40. Brooklyn Borough president, Eric Adams, noted New York’s social distancing mandates nowhere set forth criminal conduct: “the enforcement of social distancing is not a crime and we should stop treating it like a crime. It’s reculturing. It’s rethinking how we have to exist in a COVID, or any virus-like, environment.” *See* Jarrett Murphy, *Eric Adams Says Cops Should Not Enforce Social Distancing*, City Limits (May 7, 2020) available at <https://citylimits.org/2020/05/07/eric-adams-says-cops-should-not-enforce-social-distancing/>.

41. On May 8, 2020, the New York Daily News reported outrage by New York City public officials upon learning of the racially disproportionate social distancing arrests in New York City. *See* Anna Sanders and Rocco Parascandola, *‘That’s abysmal’: NYC politicians outraged after NYPD reveals 81 percent of social distancing arrests have been minorities*, New York Daily News, (May 8, 2020), available at, <https://www.nydailynews.com/coronavirus/ny-coronavirus-social-distancing-enforcement-20200508-taominwawrhtlajdqj5gbdce-story.html>.

42. On May 11, 2020, Gothamist reported on the decision of District attorneys in New York City to decline to prosecute social distancing arrests. *NYC District Attorneys Won't Prosecute Social Distancing Arrests Ordered By De Blasio*, Jake Offenhartz, Gothamist, (May 11, 2020), available at, <https://gothamist.com/news/nyc-district-attorneys-wont-prosecute-social-distancing-arrests-ordered-de-blasio>.

43. On May 13, 2020, New York City Comptroller, Scott Stringer, wrote on Twitter, a public social media platform, responding to the incident described in ¶ 31 *supra*: “Inhumane. A young child watching their mother slammed to the ground. There is no possible justification for this. Let me say this AGAIN — the NYPD cannot be involved in social distancing enforcement.” which I personally reviewed. Scott Stringer, @NYCComptroller, Twitter, (May

13, 2020, 10:39 p.m.), <https://twitter.com/NYCComptroller/status/1260761717866475521>

(emphasis in original).

Statements and Actions of NYPD Leadership and Mayor Bill de Blasio Show Deliberate Indifference to Public Concerns About Racially Disparate Policing by NYPD Officers

44. The NYPD officers involved in NYPD enforcement of social distancing included uniformed and plainclothes officers. See e.g., Kim Bellware, *Violent arrest in New York raises questions about police enforcement of social distancing orders*, The Washington Post (May 5, 2020) available at <https://www.washingtonpost.com/nation/2020/05/05/donni-wright-nyc-arrest/> (“Shea has said there’s no “hard and fast rule” on how or even whether plainclothes officers should aggressively enforce social distancing”). As a matter of course, they had graduated from the police academy, and received training in appropriate police encounters, the *de Bour* levels, and permissible stops, questions, and frisks. See NYPD Monitor, Training, available at <http://nypdmonitor.org/training/>.

45. On May 8, 2020, Gothamist reported on Mayor Bill de Blasio’s response to recent disproportionate social distancing enforcement. *De Blasio Shrugs Off Leaked Data Showing Massive Racial Disparities In NYPD’s Social Distancing Arrests*, Jake Offenhartz, Gothamist, (May 8, 2020), available at, <https://gothamist.com/news/de-blasio-shrugs-leaked-data-showing-massive-racial-disparities-nypds-social-distancing-arrests>.

46. Recalling the City’s strategies used at trial, the NYPD Commissioner has rationalized police misconduct and violence, blamed the people being stopped, suggested additional context would have neutralized public concern, and claimed they were largely criminals. See Jake Offenhartz, *Police Commissioner Says It’s “Dangerous” To Criticize NYPD For Social Distancing Enforcement Disparities*, Gothamist (May 13, 2020) available at

<https://gothamist.com/news/police-commissioner-says-its-dangerous-criticize-nypd-social-distancing-enforcement-disparities>. Recently, when challenged regarding the stark racial disparities in stops and summonses issued for social distancing violations, NYPD began promoting a statistic that 90% of those arrested for actual crime during the COVID-19 pandemic were Black or Latinx, implying the race of these crime suspects justified racially discriminatory policing, and racial disparities in stops, in Black and Latinx communities. *See* Anthony M. DiStefano, *COVID-19-related arrests in the city not racially motivated, NYPD says*, *Newsday* (May 12, 2020) available at <https://www.newsday.com/news/health/coronavirus/nypd-social-distancing-minorities-arrests-1.44590671> (Legal Aid Society notes the “NYPD definition of ‘COVID-related’ in this data set is meaningless. Most importantly, it shed no light on the critical question of how the NYPD can explain and begin to address its pattern of racially discriminatory enforcement of social distancing....”).

47. Throughout the COVID-19 crisis, police misconduct has been publicly defended by police leadership. *See e.g., Coronavirus News: Mom arrested after subway confrontation with NYPD over mask*, *Eyewitness News 7* (May 14, 2020) available at <https://abc7ny.com/viral-video-violent-arrest-kaleema-rozier-nypd/6196707/> (“We are confident that the police officers in this incident acted appropriately and with respect,” the [NYPD] said. “This individual was arrested only after her behavior toward officers warranted police action.”); Michael R. Sisak, *Violent Arrest Raises Concerns About NYPD Distancing Patrols*, *New York Times* (May 3, 2020) available at <https://apnews.com/fa0a3f060e3c19d5dfe157e6d880c48c> (“Police spokeswoman Sgt. Mary Frances O’Donnell said Wright ‘took a fighting stance against the officer’ when he was ordered to disperse”); Kathleen Culliton, *Punching Isn’t Excessive Force, NYPD Commissioner Says*, *Patch* (May 6, 2020) available at <https://patch.com/new-york/new->

york-city/punching-isnt-excessive-force-nypd-commissioner-says (NYPD Commissioner Dermot Shea stated publicly, "A punch should not be assumed to be excessive force.").

48. On May 13, 2020, NYPD Commissioner Shea spoke at a Mayor's Press Availability, and refused to consider any possibility of racial discrimination among the police: "I will push back strongly on any notion that this is business as usual for the NYPD or that this is 'racist police.' I think this could not be anything further from the truth. Let's remember, we are a minority-majority police department – fact." Shea also suggested current racial profiling claims were merely creations of the media: "I would urge caution to everyone now to honestly, before a press conference is held on a ten second video of a street brawl in the middle of the day in Brooklyn in broad daylight, by the way, before it's turned into an agenda for a press conference." See Transcript: Mayor de Blasio Holds Media Availability, May 13, 2020, *available at* <https://www1.nyc.gov/office-of-the-mayor/news/344-20/transcript-mayor-de-blasio-holds-media-availability>.

49. On May 13, 2020, Police Commissioner Dermot Shea also responded to a question during Mayor Bill De Blasio's daily briefing and stated:

We have issued a small number of summonses, even fewer arrests tied to COVID. Are they mostly to minority members of this city? Yes, they are. And I think you knew that answer before you asked the question, but no one is talking about the disparity of the last ten homicide victims in New York City, and I think that should be spoken about or the victims of robberies across the city. Disparities exist in every facet of life, not just in New York City but in this country and it's rooted in much deeper issues than the New York City Police Department.

Transcript: Mayor de Blasio Holds Media Availability, May 13, 2020, *available at* <https://www1.nyc.gov/office-of-the-mayor/news/344-20/transcript-mayor-de-blasio-holds-media-availability>. See also Craig McCarthy, *Dermot Shea defends NYPD after racism claims*

over social-distancing stops, New York Post (May 13, 2020) *available at* <https://nypost.com/2020/05/13/nypd-chief-responds-to-racist-claims-over-social-distancing-stops/> (NYPD Commissioner offered “an extremely heated rant” dismissing claims of racism and saying “they fight when they go to court, they have opened gun cases, they are gang members, and we expect our police officers to do the best they can.”).

50. In addition, there has been no clear and transparent guidance with respect to NYPD enforcement of social distancing as it rolled out, in operation, and in the current claim of a partial rollback. *See e.g.*, Kim Bellware, *Violent arrest in New York raises questions about police enforcement of social distancing orders*, The Washington Post (May 5, 2020) *available at* <https://www.washingtonpost.com/nation/2020/05/05/donni-wright-nyc-arrest/> (“Shea has said there’s no “hard and fast rule” on how or even whether plainclothes officers should aggressively enforce social distancing”).

Plaintiffs’ Requests for Information, Data, and Documentation

51. As media reports began to surface about some of the aforementioned NYPD social distancing-related enforcement actions against individuals of color in certain predominantly Black and Latinx neighborhoods of the City, Plaintiffs grew very concerned that the NYPD’s social distancing enforcement efforts were violating the Court’s prior orders concerning racial profiling and biased policing.

52. On April 22, 2020, I observed an email sent by co-Plaintiffs’ counsel Jonathan Moore, an attorney with Beldock Levine & Hoffman, to NYPD Deputy Commissioner of Risk Management Jeffrey Schlanger and Corporation Counsel for the City, requesting information and data regarding street encounters related to shelter-in-place, social distancing, and mask-wearing

stops, summonses, and arrests. The Court-appointed monitor, Peter Zimroth, and members of his team were copied on this email. A copy of this email is attached hereto as Exhibit 6.

53. Plaintiffs' April 22, 2020 email, directed to requested several categories of materials and information related to the NYPD's social distancing enforcement efforts, including:

- a. Any training or written guidance provided to NYPD personnel concerning enforcement of social distancing restrictions
- b. Information on how street encounters related to social distancing enforcement are documented and associated stop report, summonses, memo book entries and other NYPD documentation of such encounters
- c. A sampling of NYPD body camera videos of such social distancing enforcement-related encounters.
- d. Information on supervisory instruction and review of NYPD officers' social distancing enforcement activity
- e. Data on the number of summonses that have been issued stemming from street encounters involving any reference to social distancing enforcement

54. On April 29, 2020, Plaintiffs renewed the request for information on a videoconference with all parties to the *Floyd*, *Davis*, and *Ligon* cases, convened by the Monitor on the Zoom platform.

55. On May 7, 2020, Plaintiffs again renewed the request for information on a videoconference with parties to the *Floyd*, *Davis*, and *Ligon* cases, convened by the Monitor on the Zoom platform.

56. On May 8, 2020, I observed an email sent by Jonathan Moore renewing Plaintiffs' request for the above-referenced information to NYPD and seeking a response no later than May 11, 2020. A copy of this email is attached hereto as Exhibit 7.

57. To date, Defendants have not produced any of the materials or information requested by Plaintiffs, nor has the Monitor responded to Plaintiffs' discovery requests.

58. On May 22, 2020, at 11:41 AM, I observed an email sent by Darius Charney, an attorney with the Center for Constitutional Rights and counsel to Plaintiffs, to Defendants and Defendants' counsel, copying the Monitor and members of the *Floyd* and *Davis* teams, notifying them of Plaintiffs intent to move the Court for an order to show cause and the relief sought, and requesting consent to the order and relief sought. A copy of this email is attached hereto as Exhibit 8.

59. On May 22, 2020, Raju Sundaran, counsel for Defendants, informed Plaintiffs counsel that Defendants did not consent.

60. Pursuant to Local Rule 6.1(d), Plaintiffs could not proceed under ordinary notice of motion process. The COVID-19 pandemic has quickly and drastically impacted the Plaintiff Classes, with significant threat and documented impact to the lives, health, and safety of the class. The enforcement response of Defendant City, and its agency, NYPD, have and continue to exacerbate the risks to the class in varied and escalating ways described herein. Any further delay, including proceeding by ordinary notice of motion, will result in further violations of the Court's orders in *Floyd* and *Davis* and greatly endanger the lives, health, and safety of the Plaintiffs. No previous application for similar relief has been made.

61. This is Plaintiffs' first request for the relief set forth in Plaintiffs' order to show cause.

Dated: New York, New York
May 26, 2020

/s/ Dominique Day

Dominique Day

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.
----- X

No. 08 Civ. 1034 (AT)

**DECLARATION OF COMMUNITIES UNITED FOR POLICE REFORM (CPR) IN
SUPPORT OF PLAINTIFFS' MOTION FOR EMERGENCY RELIEF**

I, Joo-Hyun Kang, pursuant to 28 U.S.C. § 1746 and subject to penalties of perjury, state the following is true and correct:

1. I submit this declaration in support of Plaintiffs' motion for emergency relief. I am not a party to the above-captioned case.
2. I have been the Director for Communities United for Police Reform (CPR), a citywide campaign to end discriminatory and abusive policing in New York since 2012. Among other responsibilities, in this position I coordinate planning and implementation of the coalition's multiple strategies (including policy, legal, community education, organizing, research, civic engagement, and communications) to end discriminatory policing; represent the campaign/coalition in meetings with elected officials; serve as a media spokesperson for CPR; meet with, organize and speak to community members impacted by discriminatory police practices, including unconstitutional stops and frisks.
3. I have been involved with police accountability issues in New York City since the mid-1990s. From 1996 to 2003, I served as Executive Director of the Audre Lorde Project, a community organizing center for Lesbian, Gay, Bisexual, Transgender communities of color. In this capacity, I was a founding member of the NYC Coalition Against Police Brutality (CAPB) which included and worked with a wide range of grassroots community organizations committed to fighting police brutality. As a founding member of CAPB, I organized, educated, and advocated to end discriminatory policing within Lesbian, Gay, Bisexual, Two Spirit, Trans and gender nonconforming communities of color, and helped to organize community rallies, events and forums aimed at achieving accountability for various cases of police brutality, including the brutality against Jalea Lamot and her family, torture of Abner Louima and death of Amadou Diallo in the late 1990s.

4. I am the co-author of “Organizing at the Intersections: A Roundtable Discussion of Police Brutality Through the Lens of Race, Class, and Sexual Identities”, found in *Zero Tolerance: Quality of Life and the New Police Brutality in New York City*, editors Andrea McArdle and Tanya Erzen, New York University Press, 2001.
5. Around the year 2007, I worked with other grassroots organizations to co-found the People’s Justice coalition following the killing of Sean Bell and other high-profile police shootings. People’s Justice is a coalition of grassroots organizations committed to educating communities of color about their rights when interacting with police.

About Communities United for Police Reform (“CPR”)

6. CPR, launched in 2012, is a non-partisan, multi-strategy campaign to end abusive and discriminatory policing practices in New York and reduce reliance on policing for community safety.
7. CPR runs coalitions of over 200 national, statewide and local organizations from across New York whose members include community members most impacted by police violence, community organizing groups, legal organizations, policy groups, research projects, and others. The organizations in CPR coalitions represent community members from all five New York City boroughs, different walks of life and include individuals with family members who are police officers. The majority of our member organizations are grassroots organizations whose constituencies, memberships or clients are based primarily in low-income communities of color, that are most impacted by abusive policing – including youth, LGBTGNC communities, immigrants, people with disabilities, homeless New Yorkers, public housing residents, and others. Members of these communities bear the bruch of the New York Police Department’s (“NYPD”) unjust stop and frisk practices. This includes organizations that have been leading work on police accountability in Black, Latinx and immigrant communities; organizations representing lesbian, gay, bisexual, and transgender communities; homeless New Yorkers; and youth organizations. Notably, young people of color have been documented as those most impacted by the NYPD’s stop and frisk practices.
8. In addition, CPR partners with a broad range of additional organizations to advance our effort to create a safer New York City for everyone. Many of our partners work on behalf of the communities most unfairly targeted by the NYPD’s stop and frisk practices.
9. CPR’s work is largely focused on police accountability, particularly centering the experiences of those directly affected by discriminatory and abusive NYPD policies and practices. Relevant examples include but are not limited to:
 - a) In 2019, CPR was able to effectively advocate for the inclusion of a change to the City Charter as a ballot item in the election. This ballot item expanded CCRB’s authority to investigate instances where police officers make false official statements. In spite of significant funds driving a misinformation campaign by NYPD police unions, New

Yorkers voted in overwhelming support of the ballot item – it passed with over 70% of the vote.

b) CPR organized a citywide coalition of over 200 community organizations, labor unions, advocacy organizations and others to pass the Right to Know Act in 2017, legislation in the City Council directly relevant to changing NYPD's practices with regards to common street encounters: Intro 0541-2014, a local law to mandate NYPD request consent to search an individual unless they have legal basis to engage in said search, and Intro 0182-2014, a local law that requires the New York Police Department officers provide a business card and the reason for law enforcement activity during certain interactions with the public.

c) In 2013, CPR secured passage of the Community Safety Act in the City Council, a pair of bills which were directly relevant to increasing NYPD accountability: Intro 1079-2013, a local law to create a clear mechanism for NYPD oversight and increased transparency through establishment of an Inspector General, and Intro 1080-2013, a ban on biased-based profiling.

d) In 2015 CPR, in partnership with families who have lost loved ones to police in New York, organized to ensure Governor Cuomo issued an Executive Order (Executive Order 147) creating the Office of the Special Prosecutor to investigate some cases where a person dies during an interaction with police in New York State.

e) CPR members have trained tens of thousands of New Yorkers on their rights during interactions with police and while observing police to increase the safety of community members during police encounters.

10. Members of CPR organizations regularly express the concerns of community members impacted by abusive policing practices in many public arenas and media outlets. For example, members have testified about their discriminatory stop and frisk experiences in front of numerous venues including the New York City Council and the New York State Legislature, at press conferences, at townhall meetings, and in front of former President Obama's 21st Century Policing Task Force, the Congressional Black Caucus (CBC), Congressional Progressive Caucus (CPC), Congressional Hispanic Caucus (CHC), and Congressional Asian Pacific American Caucus (CAPAC) in Washington DC. In addition, CPR members have been quoted on policing, police oversight and police reform in the City of New York in media outlets as diverse as the Associated Press, the New York Times, Daily News, Gotham Gazette, El Diario, the Staten Island Advance, Black Entertainment Television, and Amsterdam News.
11. Historically, CPR's interest in these matters dates back two decades, when, after the 1999 killing of Amadou Diallo by the Street Crimes Unit of the New York Police Department, organizations that would later become founding members of CPR approached the Center for Constitutional Rights to file the lawsuit targeting stop-and-frisk practices (*Daniels v City of New York*). The information concerning racial disparities in stop-and-frisk obtained through

Daniels facilitated the filing of Floyd. CPR members are among the named plaintiffs, the main litigating nonprofit legal organizations and key witnesses in Floyd.

12. At different times CPR and/or its member organizations have been involved in *Floyd v. City of New York* and have a strong interest in the outcome of stop and frisk reform efforts. CPR is a named stakeholder in the Joint Remedial Process in *Floyd v City of New York*. (ECF No. #372) CPR has submitted multiple filings to the Court for consideration on this matter. On March 3rd, 2013 CPR submitted a motion for leave to file an *amicus curiae* brief in support of Plaintiffs' remedial proposals in Floyd. The following are just some of the filings we have had accepted by the court: On August 13th, 2013 the Court granted this motion and accepted the brief as filed. (Dkt. #377) On May 16th 2012, the Court granted a request by members of CPR (Bronx Defenders, Brotherhood/Sister Sol, the Justice Committee, the Justice Committee, Picture the Homeless, and Streetwise and Safe) to submit an *amicus curiae* brief in support of Plaintiffs' motion for class certification. (ECF No. # 208) In April 2017, CPR submitted to the Court concerning the NYPD's Body-Worn Camera Pilot (ECF No. #547-1). On July 9th 2018, CPR filed an *amicus curiae* in response to the Facilitator's Final Report uplifting priority reforms for the Court – this filing was supported by over 90 organizations. (ECF No. #611).
13. Communities United for Police Reform has worked to ensure directly impacted New Yorkers were able to participate in the Floyd legal process. CPR members and partners attended and packed the court every day of the historic nine-week Floyd trial. CPR participated extensively in the Joint Remedies Process ("JRP"). The JRP included 28 community forums, with an estimated 1,777 participants – more than half of these participants' participation was facilitated by CPR members and partners. (ECF No. 597 at 7–8.) CPR and CPR members participated consistently throughout the JRP Advisory Committee and process, helping the Facilitator to organize focus groups and recruit participants, and directly organized nine community forums, convening 530 members of directly-impacted communities across the five boroughs. CPR partner organizations organized an additional 6 community forums with an additional 367 participants. Through these activities, CPR endeavored to facilitate direct input in the remedial process from New Yorkers most impacted by stop- and-frisk and trespass enforcement abuses, primarily low-income New Yorkers of color. Since the end of the JRP, CPR and CPR members continue to engage with the Floyd remedial process including through filings with the Court.

Unconstitutional Stop-and-frisk Practices Persist in NYPD's 'Social Distance Enforcement'

14. The issues of racial disparities in enforcement practices are not unfamiliar to the Court. Despite the drop in reported stops, racial disparities have persisted - in 2019 59% of stops were of Black people and 29% Latinx people. Year after year, Black and Latinx New Yorkers have comprised of 80-90% of stops by the NYPD. While comprehensive stop information has not been released for the COVID-19 period (which is its own problem), the limited enforcement data that has been publicly shared tracks with prior enforcement patterns: In one report by CBS, 92% of social distance related arrests were of Black and Latinx New Yorkers. In data released by Brooklyn District Attorney Eric Gonzalez, 35 of the 40 people arrested in Brooklyn for social distancing enforcement were Black, 4 were

Hispanic. In conjunction with the data, there have also been multiple videos released of abusive encounters where ‘social distancing enforcement’ was either the pretext and/or false explanation after-the-fact and have resulted in Black and Latinx people being punched, kicked, pepper-sprayed, thrown to the ground, or otherwise assaulted. Some of these began as unconstitutional stops, and we must not hide that.

15. The experiences captured in the data and the videos are only part of the picture. Since the emergence of the COVID-19 crisis, in our experience, there has been an uptick in what sound like unconstitutional stops and searches – and an uptick in those unconstitutional and unnecessary interactions escalating into physical violence. Through March and April we and CPR member groups have seen an increase in terms of overall support requests. As a result, CPR and CPR members have done intake with numerous New Yorkers since the pandemic was officially recognized in NYC who have had or have witnessed interactions with police during the COVID-19 period. Through this intake process, several trends have emerged including: (a) a majority of these interactions have involved Black and Latinx New Yorkers, primarily young people; (b) in situations where arrests were made or summons issued, the charges were unrelated to ‘social distancing’ violations in most interactions – they include “resisting arrest”, “disorderly conduct” and/or “obstruction of governmental administration” – charges that are well known as police brutality cover-up charges; (c) in some interactions no summonses were issued or arrests made, even when force, such as pepper-spray, using chokeholds and tasing were used; (d) in interactions where no summonses were issued or arrests made officers consistently refused to provide the reason for initiating the stop OR a business card as is mandated by the Right to Know Act.
16. When New York State’s “PAUSE” went into effect, we were notified of encounters where New Yorkers of color were stopped by police before entering the transit system or as they were leaving and asked to prove that they were essential workers. This is despite the fact that there are no directives stating that the subway can only be used for work-related travel and no guidance issued that New Yorkers must carry proof of the nature of their trips. This is just one example of the types of baseless and unconstitutional stops New Yorkers are being subjected to, regardless of their legal rights to be in public.
17. These abusive and discriminatory interactions are occurring in primarily Black and Latinx working class neighborhoods, including the South Bronx, Central Brooklyn, East New York, Harlem, Jamaica, Far Rockaway, Lower East Side and other neighborhoods throughout New York City. There is overlap between historically high stop precincts and some of the precincts with the highest number of complaints including, but not limited to the 75th and 40th precincts. Some of these interactions have occurred in and around public housing – in addition to the individual stories we have received, we have also heard of reports of ongoing, abusive and illegal behavior by police at or around public housing including engaging in unconstitutional and baseless stops and unwarranted arrests of public housing residents. At least one individual, a Black public housing resident in his 40s, commented to us that he has avoided leaving his apartment as much as possible since his last interaction with police and says he has been followed by police in unmarked vehicles once while going to the store and once while waiting for a cab.

18. In one encounter which occurred in the Lower East Side, NYPD claimed they approached two people on the street to engage in ‘social distancing enforcement’ but wound up arresting one person involved for marijuana possession. Similarly, in an incident in Brooklyn on May 2nd, a group of people were brutalized in what began as ‘social distancing enforcement’ and resulted in one of the people involved being charged with low-level marijuana possession. Both of these incidents happened in the context of low-level marijuana possession being decriminalized in New York State since 1977, and despite changes to NYPD operations orders and the further decriminalization of marijuana by the Legislature in 2019. In both scenarios, ‘social distancing enforcement’ was used as the pretext to initiate interactions (including potentially unconstitutional stops) which resulted in unrelated charges, and multiple people being physically harmed.
19. When considering the enforcement data, the direct experiences being recounted through the intake process, and the recent media coverage and related viral videos, it is evident that NYPD’s ongoing selective enforcement practices have resulted in ‘social distancing enforcement’ being used as a pretext to initiate and escalate interactions, primarily street encounters, with Black and Brown New Yorkers. For the last year, members of Communities United for Police Reform have said that stop-and-frisk is occurring with greater frequency – and that in certain neighborhoods, the experience of rates of stops are similar to those prior to the findings in *Floyd v. City of New York*. In light of the COVID-19 crisis, in our experience, there has been an uptick in what sound like unconstitutional stops and searches – and an uptick in those unconstitutional and unnecessary interactions escalating into physical violence. Through March and April we and CPR member groups have seen an increase in terms of overall support requests.
20. Understanding the long history of discriminatory and abusive street encounters at the core of *Floyd v City of New York* – and seeing the disparate enforcement practices emerging from ‘social distancing enforcement’ it was alarming to hear Police Commissioner Dermot Shea say he “would not stand for” the police department being called racist at a May 13th press conference. In his comments, the Police Commissioner also attempted to discredit what New Yorkers saw with their eyes on video by broadly claiming that the people being targeted “have open gun cases,” and “are gang members” though there is no evidence in support of either blanket claim. Even if true, such claims would not negate whether an unconstitutional stop or abusive policing took place. These types of defensive, inflammatory and dismissive remarks regarding valid criticism of the NYPD’s racist practices are dangerous. It is meant to discredit those who are victimized by police violence, facilitates under-reporting of complaints, and functions as part of the City and NYPD’s misleading public relations with claims that the NYPD has been “reformed” and “transformed” since *Floyd* -- while this is far from true in the areas that the *Floyd*, *Davis* and *Ligon* litigations raised. The fearmongering is akin to how Mayor Bloomberg & Police Commissioner Kelly responded to community concerns about stop-and-frisk, including falsely claiming that Black and other New Yorkers of color were “understopped”. It is very similar to Mayor Bloomberg and the NYPD’s talking points in the period before Judge Scheindlin’s *Floyd* ruling, and before the City Council passed the Community Safety Act – as well as their remarks in trying to unsuccessfully appeal both. The immediate practical impact of under-reporting is largely due to the fact that Black, Latinx and other New Yorkers of color have

seen that historically – including the recent period – the NYPD does not discipline or terminate abusive officers when they harm civilians in a meaningful or timely way. The fact that Officer Francisco Garcia was only put on modified duty instead of being suspended, with no word of whether disciplinary charges would be brought re the incident in the Lower East side is a perfect example for why many in communities of color do not have faith in the legitimacy of the NYPD or the City of New York’s response to unconstitutional and abusive policing.

21. Unfortunately, Commissioner Shea is acting like Commissioner Kelly in defending the NYPD’s inexcusable practices, refusing to hold officers accountable for abusive and violent behavior, and attempting to demonize Black and other communities of color as a way to deflect and justify unconstitutional, racist and violent policing. CPR and CPR’s member and partner organizations had to resist and overcome this same demonization and deflection when Kelly was the Commissioner.
22. These enforcement trends are deeply concerning to us. In mid-March, CPR released a letter calling for a moratorium on low-level enforcement including for ‘quality of life’ offenses including so-called ‘sweeps’ of homeless New Yorkers, and low-level drug enforcement, including marijuana-related stops, summonses and arrests. Since then, we have only seen abusive encounters increase. We are concerned that as the weather gets warmer and more New Yorkers head outside, unnecessary interactions between police and New Yorkers of color will continue to increase – and unfortunately, bring with them an increase in abusive encounters. This will be particularly perilous in light of conflicting messaging and directives from the city and state in regards to recommended behavior and norms during the pandemic.
23. Mayor de Blasio’s recent announcement that NYPD will not be issuing summons or making arrests for social distance violations “absent of a crime or other violation being committed” has already been shown as baseless given the continued NYPD abuses, and would still allow NYPD to use ‘social distancing enforcement’ as a pretext to start an interaction. Historical and current practices show that this “discretion” will be applied in racially-targeted ways and will continue to negatively impact Black, Latinx and other New Yorkers of color. For CPR, this situation is untenable and we fear that unnecessary and unconstitutional interactions that police routinely escalate will result in additional violence against New Yorkers, even risking unjustified killings by police.
24. For all of the reasons provided above and in the interest of justice, CPR supports the Plaintiffs’ motion for emergency relief.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated: New York, New York
May 25, 2020

Joo-Hyun Kang

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,

Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,

Defendants.
----- X

No. 08 Civ. 1034 (AT)

DECLARATION OF CRYSTAL POPE

I, Crystal Pope, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, state the following is true and correct:

1. I am a 30 year old, Black woman who lives in Hamilton Heights, in Manhattan. This is a neighborhood in the City of New York.

2. On April 4, 2020, I was walking in my neighborhood in the vicinity of 143rd Street and Hamilton Place just before 7:00 pm when I observed the police dispersing a group of several adolescent Black boys, approximately 11-14 years old. I had heard the police were enforcing social distancing guidelines and believed it was part of that. Two uniformed police officers were shooing about ten young boys away. I have a son about that age and I had seen these boys in the neighborhood previously.

3. As the boys dispersed, I was walking toward 144th Street and Hamilton Place. The police officers walked into an apartment building at 135 Hamilton Place. Two of the neighborhood boys also walked into the building behind the police.

4. As I was walking to the building, I could see a police officer choking one of the kids they had dispersed through the window. One police officer was in the vestibule area and the other police officer was in the lobby area, lifting one of the young boys from the neighborhood up by the neck and choking him.

5. At that time, I opened the door to enter the building. Immediately after I opened the door, I was maced by the police.

6. I have lived in my neighborhood my entire life. In my area, there is a lot of police brutality. Before the incident even occurred, I was thinking, "God forbid something happens," as I entered the building and saw the police officer lifting the boy by his neck. I later learned that the police officers had noticed the boys behind them when they reached the elevator, had immediately turned, stated, "Why are you walking behind me?", and grabbed one of them by the throat.

7. I became aware that some of the officers' body-worn cameras were on at the time of this incident. I was informed that others in the area sought the police officers' names and badge numbers to no avail. People in the vicinity were telling the police loudly that they were supposed to provide their names and badge numbers. After I finished rinsing out my eyes, I was informed that the police had refused to provide their names or badge numbers to anyone.

I declare under the penalty of perjury that the foregoing information is true and correct to the best of my knowledge.

Dated: New York, New York
May 25, 2020

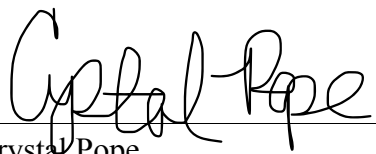

Crystal Pope

EXHIBIT 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,
Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,
Defendants.
----- X

No. 08 Civ. 1034 (AT)

DECLARATION OF STEVE MERETE

I, Steven Merete, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, state the following is true and correct:

1. I am a 51-year-old, Hispanic man who lives at in the Bronx, a borough of City of New York.
2. On April 28, 2020, I was standing outside my home on Intervale Avenue with two friends. My building is located next to a deli. A group of officers had just made an arrest up the block. As they were coming back down the street, they immediately approached some other individuals standing outside the deli and began yelling at everyone to leave and disperse. This was a large group of officers and I was not part of a larger group. I was social distancing from other individuals on the street at this time.
3. Since I was in front of my home, I did not have anywhere to leave to. Before I had an opportunity to convey this information, officers pushed me from behind. They forcefully picked me up and slammed me in the ground. I was punched in the chest, resulting in bruising across my ribcage.

4. At least four other individuals were arrested in the same incident. I observed officers being aggressive and assaultive.
5. Some of the officers were wearing masks on their face, while others were not. I was brought to the precinct for booking and was placed in a holding cell with other people. I was not provided personal protective equipment. I spent almost 24 hours in custody before I was released the following day at arraignments. I learned at my arraignment that I was charged with resisting arrest and disorderly conduct.
6. Upon release, I went to the emergency room at St. Barnabas Hospital to be seen for my injuries. I was prescribed Motrin for the pain and reported the bruising that I sustained during my violent arrest the night before.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated: New York, New York
May 25, 2020

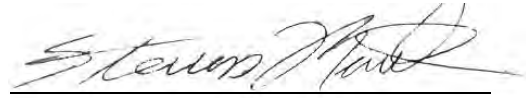

Steven Merete

EXHIBIT 4

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,
Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,
Defendants.
----- X

No. 08 Civ. 1034 (AT)

DECLARATION OF MALIK HARRIS

I, Malik Harris, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, state the following is true and correct:

1. I am a 22-year-old Black man who lives in Queensbridge North NYCHA Housing Complex, in Long Island City, Queens. This is a neighborhood in the City of New York.
2. On May 2, 2020, I was walking with a friend within the confines of the Queensbridge North Housing complex at approximately 4:45 pm when I approached by plainclothes officers. Upon approach in the courtyard, they asked us where our face masks were. I pulled my disposable face mask up over my mouth and nose. I was then further asked to provide my name and identification. I informed the officers that I did not have a form of identification on me when they abruptly turned me around placed my hands in cuffs behind my back. When I asked officers why I was being arrested, they did not respond.
3. As these officers dragged me by my arm towards the police transport van, people in the vicinity began to gather. One of the officers, who was a rather large man, kneed me in my side and threw me onto a parked vehicle. As I was held down forcibly against the top of

this parked car, one of the officers started yelling at the crowd “[d]o you want it? Back up, back up,” while brandishing his taser at myself and at bystanders that began to gather. One bystander was filming this encounter. Additional officers responded, and at least one of the officers that interacted with me was not wearing a mask. Several officers that showed up were either not wearing a mask or wearing a mask incorrectly. At no point did any of these officers allow me to put my own mask on.

4. During this entire time, I was holding my disposable face mask in my hand.
5. I am diagnosed with asthma and require the use of an inhaler. I am considered high risk for potential coronavirus transmission. Because of my medical condition, I take precautions to protect myself against potential exposure to COVID-19 by following CDC guidelines as best as I can.
6. When I arrived at the precinct, the officers took my mask away from me, along with my other personal property, and vouchered it. I was searched illegally and marijuana was recovered from my pocket. One of the officers involved in my arrest taunted me that he was going to allege I assaulted him and told me he hoped I would be remanded. I was placed into a holding cell for over eight hours with handcuffs and leg shackles on until I was transported to central booking. The handcuffs left marks on my wrists. I was not provided a new mask nor soap or hand sanitizer. No soap was available in the bathroom at the precinct either.
7. When I arrived at central booking, I was put into a cell with over 20 over individuals. It was impossible to socially distance from one another. None of us had masks and no masks were provided for us. No soap or hand sanitizer was available either.

8. At my arraignment, almost 24 hours later, I learned that I was being charged with resisting arrest and unlawful possession of a marijuana in the second degree. I pled not guilty on all counts. I was subsequently sent to Rikers Island to await my next court date.
9. Upon admission to Rikers Island, I was placed in general population and shared a dorm with over 50 other men. I was provided one mask for the entire three weeks I was held in detention and I did not have access to soap or hand sanitizer.
10. As of May 22, 2020, the Queens District Attorney's Office dismissed the charges against me.
11. I am afraid to return to my home after this incident. I am currently seeking mental health counseling to address the trauma I've sustained from this police encounter.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated: New York, New York
May 25, 2020

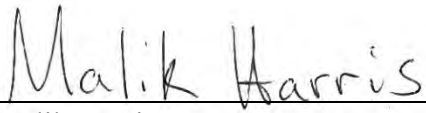

Malik Harris

EXHIBIT 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
DAVID FLOYD, *et al.*,
Plaintiffs,

-against-

CITY OF NEW YORK, *et al.*,
Defendants.
----- X

No. 08 Civ. 1034 (AT)

DECLARATION OF KATE REESE

I, Kate Reese, pursuant to 28 U.S.C § 1746 and subject to the penalties of perjury, state the following is true and correct:

1. I am a 28-year-old white woman who lives in Gowanus, in Brooklyn. This is a neighborhood in the City of New York.
2. On May 3, 2020, at around 6pm in the evening, I was biking around in the Red Hook neighborhood of Brooklyn. I observed some children biking back and forth. I was biking by one of the large parks by the Ikea store when I observed multiple families gathered in the park.
3. I observed that most of the families gathered in the park appeared to be white while only one or two other families appeared to be black. I observed police officers off towards the side streets. Police asked one family, who appeared to be Hasidic, to disperse, and the apparent patriarch of the family complied and began to collect their things and walk away.

4. The officers then walked towards another black family and began a terse exchange with one of the men. The encounter appeared to escalate as two additional officers showed up and asked one of the women to step aside and requested her identification.
5. The only black family in the park was asked to leave as the other families in the park were allowed to remain without any issues.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated: New York, New York
May 25, 2020

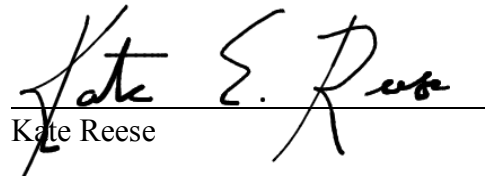

Kate Reese

EXHIBIT 6

From: Jonathan C. Moore
Sent: Wednesday, April 22, 2020 12:49 PM
To: SCHLANGER, JEFFREY; Zimroth, Peter L.; Richard Jerome; Cooper, David (Law); Savasta, Nancy (Law); Nelson, Genevieve (Law); rsundara (rsundara@law.nyc.gov)
Cc: Dominique Day; Luna Droubi; Lupe Aguirre; Katherine "Q" Adams; Marc Arena; Ian Head; Nahal Zamani; Omar Farah; 'dcharney@ccrjustice.org'
Subject: Current Police Behavior

Jeffrey,

We write to raise two issues.

First, as you no doubt heard on the call with CPR, many communities are concerned about police behavior during the COVID-19 crisis. As counsel for the Plaintiffs in *Floyd* we too are concerned about this issue. Street encounters related to enforcement of City and State shelter-in-place, face-covering, and social distancing requirements fall squarely within the scope of the liability and remedial orders in this case.

We are therefore requesting the following information:

- Any FINEST messages, operations or interim orders, training bulletins, announcements or training sessions, or other directives or guidance provided to NYPD MOS concerning enforcement of shelter-in-place, face-covering, and social distancing requirements during the COVID-19 crisis.
- Information on how these encounters are being documented and associated stop report, summonses, memo book entries and other documentation.
- A sampling of BWC videos that show the NYPD's enforcement of shelter-in-place, face-covering, and social distancing requirements.
- Information on what kind of supervisory instruction and review is being undertaken regarding the enforcement of shelter-in-place, face-covering, and social distancing requirements.
- Information concerning the number of summonses that have been issued stemming from street encounters involving any reference to shelter-in-place, face-covering, and social distancing requirements.

Second, on a related matter, we would also like to be advised as to whether the SQF training is continuing or has been suspended, as well as whether other training that includes instruction on SQF have been affected by the COVID-19 crisis.

All the best,

Jonathan Moore

On Behalf of Floyd counsel

EXHIBIT 7

From: Jonathan C. Moore [<mailto:jmoore@BLHNY.com>]

Sent: Friday, May 8, 2020 2:14 PM

To: SCHLANGER, JEFFREY <JEFFREY.SCHLANGER@nypd.org>; Zimroth, Peter L.

<Peter.Zimroth@arnoldporter.com>; Richard Jerome <richard.jerome94@gmail.com>; Cooper, David (Law)

<dcooper@law.nyc.gov>; Savasta, Nancy (Law) <nsavasta@law.nyc.gov>; Nelson, Genevieve (Law)

<gnelson@law.nyc.gov>; rsundara (<rsundara@law.nyc.gov>) <rsundara@law.nyc.gov>

Cc: Dominique Day <DDay@BLHNY.COM>; Luna Droubi <LDroubi@BLHNY.com>; Lupe Aguirre

<laguirre@ccrjustice.org>; Katherine "Q" Adams <QAdams@BLHNY.COM>; Marc Arena

<MArena@BLHNY.COM>; Ian Head <ihead@ccrjustice.org>; Nahal Zamani <nzamani@ccrjustice.org>; Omar

Farah <ofarah@ccrjustice.org>; 'dcharney@ccrjustice.org' <dcharney@ccrjustice.org>; Jonathan C. Moore

<jmoore@BLHNY.com>

Subject: RE: Current Police Behavior

May 8. 2020

Jeffrey,

We write again to raise our concerns about current police behavior during the current Covid 19 crisis that we raised with you now over two weeks ago. The article which we have affixed below, as well as other incidents which have been widely reported in the media, raises serious issues concerning whether the NYPD is currently engaged in street encounters that run afoul of P.G. 203-25 and P.G. 212-11, not to mention the injunction which was issued in *Floyd*.

Please provide responses to our April 22nd email by COB Monday, May 11th. Failing that we will look into other options.

For the *Floyd* Plaintiffs,

Jonathan Moore

From: Jonathan C. Moore [mailto:jmoore@BLHNY.com]

Sent: Friday, May 8, 2020 2:59 PM

To: SCHLANGER, JEFFREY <JEFFREY.SCHLANGER@nypd.org>; Zimroth, Peter L.

<Peter.Zimroth@arnoldporter.com>; Richard Jerome <richard.jerome94@gmail.com>; Cooper, David (Law)

<dcooper@law.nyc.gov>; Savasta, Nancy (Law) <nsavasta@law.nyc.gov>; Nelson, Genevieve (Law)

<gnelson@law.nyc.gov>; rsundara (rsundara@law.nyc.gov) <rsundara@law.nyc.gov>

Cc: Dominique Day <DDay@BLHNY.COM>; Luna Droubi <LDroubi@BLHNY.com>; Lupe Aguirre

<laguirre@ccrjustice.org>; Katherine "Q" Adams <QAdams@BLHNY.COM>; Marc Arena

<MArena@BLHNY.COM>; Ian Head <ihead@ccrjustice.org>; Nahal Zamani <nzamani@ccrjustice.org>; Omar

Farah <ofarah@ccrjustice.org>; 'dcharney@ccrjustice.org' <dcharney@ccrjustice.org>

Subject: RE: Current Police Behavior

Jeff,

Sorry. The referenced article is attached below.

Jonathan

<https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html?referringSource=articleShare>

EXHIBIT 8

From: Darius Charney <dcharney@ccrjustice.org>
Sent: Friday, May 22, 2020 11:42 AM
To: Sundaran, Raju (Law); SCHLANGER, JEFFREY; Cooper, David (Law)
Cc: Jonathan C. Moore; Richard Jerome; Savasta, Nancy (Law); Nelson, Genevieve (Law); Dominique Day; Lupe Aguirre; Katherine "Q" Adams; Marc Arena; Ian Head; Omar Farah; Stoughton, Corey; Lee, Jin Hee; Audain, Raymond; Borchetta, Jenn Rolnick; Grace Li; Zimroth, Peter L.
Subject: Re: Current Police Behavior

Raju, Jeff, David-

Given Floyd Plaintiffs' ongoing concerns that the NYPD's recent social distancing enforcement efforts run afoul of the requirements of the Court's prior orders in Floyd, which we have raised with the City and Monitor several times over email and in All-Parties Zoom meetings over the past month, I am writing to notify you that Floyd Plaintiffs intend to move the Court by order to show cause early next week for an emergency order that:

- Finds the NYPD's social distancing enforcement practices to be in violation of the Court's prior orders
- Directs the Monitor to conduct an expedited investigation and evaluation of the NYPD's social distancing enforcement practices and report his findings to the parties, the Court, and the public
- Enjoins the NYPD from conducting any further social distancing enforcement pending the completion of the Monitor's investigation and a determination by the Court of whether and how the NYPD can conduct social distancing enforcement in a manner consistent with the Court's prior orders; and
- Directs the City to produce all of the social distancing enforcement-related discovery requested by Floyd Plaintiffs on April 22.

Pursuant to Judge Torres' Individual Rules, Floyd Plaintiffs ask that you let us know by close of business this afternoon whether you consent to the order Plaintiffs will seek from the Court.

Darius (on behalf of the Floyd Team)

--
Darius Charney
Senior Staff Attorney
Pronouns: He/Him

Center for Constitutional Rights | Justice takes a fight.
666 Broadway, 7th Floor New York, NY 10012
212.614.6475

[ccrjustice.org](https://www.ccrjustice.org) | [facebook](#) | [twitter](#) | [instagram](#) | [linkedin](#)