UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, *et al*., Plaintiffs,	:	08 Civ. 01034 (SAS)
-against-	:	ECF CASE
THE CITY OF NEW YORK, *et al.,* Defendants.	:	

SHIRA A. SCHEINDLIN, U.S.D.J.:

POST-TRIAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CLAIMS

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I. THE CITY IS LIABLE FOR A WIDESPREAD PATTERN AND PRACTICE OF SUSPICIONLESS STOPS AND FRISKS IN VIOLATION OF THE FOURTH AMENDMENT.

A. NYPD Officers Have Engaged in a Widespread Pattern and Practice of Unconstitutional Stops and Frisks.

Since the beginning of the current Mayoral and NYPD administration in 2002, the annual number of documented stops and frisks of New Yorkers has increased astronomically, from about 92,000 to a peak of over 680,000 in 2011, dipping slightly in 2012 to a still dramatic number totaling more than 530,000. Plaintiff's Proposed Findings of Fact ("FoF") ¶60. Even assuming the accuracy of the stop factors checked by officers on completed UF250 forms, the NYPD has conducted *at least* 268,481 unconstitutional ("apparently unjustified") stops since 2004. FoF ¶4. Moreover, this number is only a floor because, as Professor Fagan testified, the NYPD's own stop-and-frisk data suggests that officers are using various combinations of stop factors on the UF250 forms as *post-hoc* rationalizations or "scripts" to cover up for the absence of reasonable suspicion at the time of the stop. FoF ¶¶5-6. For example, officers are checking off the highly subjective and constitutionally questionable "high crime area" and "furtive movement" stop factors with increasing frequency and at roughly the same rate – over 50% of the time – regardless of whether stops occur in high, average and low crime areas. FoF ¶6. Moreover, examples of individual NYPD officers following such scripts in their stop activity were presented at trial.[1]

[1] For example, Officer Dang, among the highest stoppers in the third quarter of 2009, checked "area has high incidence of reported offense of type under investigation" in 82.68% of stops, even though the stop locations were widely dispersed throughout a racially and socioeconomically heterogeneous precinct; he checked "time of day, day of week, season corresponding to reports of criminal activity" in 98 of 127 stops made at different times of the day. FoF ¶8. Officer Gonzalez, among the highest stoppers in the third quarter of 2009, checked "fits description," "actions indicative of casing," "high crime area," and "time of day, day of

In addition, the NYPD's abysmally poor "hit rates" for arrests and summonses (12%), weapons recovery (.94-1.18%), and contraband seizure (1.75-1.8%) in its stop and frisk practices since 2004, *see* FoF ¶¶1-2,[2] further expose the constitutional deficiencies in such practices. *United States v. McCrae*, No. 07-CR-772 (JG), 2008 WL 115383, at *3 (E.D.N.Y. Jan 11, 2008) ("indicia of weapon possession that are correlated with actual weapon possession only one in 30 times are clearly constitutionally insufficient to justify an investigative detention"). The rate at which the NYPD's stops lead to an arrest (approximately 6%, FoF ¶3) suggest that stopping people at random would more frequently uncover criminal activity. *McCrae*, 2008 WL 115383, at *3 n.7 (finding "quite significant that [the officer's] methodology for generating 'suspicion' demonstrated at best a success rate of approximately 3.33%, well below the [9%] success rate of the suspicionless roadblocks in [*City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)]").

This "persistent and widespread" practice of unconstitutional stops and frisks by NYPD officers is "so manifest as to imply the constructive acquiescence of" City policy makers and trigger municipal liability. *See Jones v. Town of E. Haven*, 691 F.3d 72, 80 (2d Cir. 2012); *Green v. City of New York*, 465 F.3d 65, 80 (2d Cir. 2006); *see also Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 439 (2d Cir. 2009). As set forth below, in addition to this pattern, the predictable consequence of the affirmative policy choices and deliberate indifference of NYPD decision-makers are also sufficient to impose municipal liability.

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week, season corresponding to reports of criminal activity" on 98.51% of the UF250 forms he completed for that period. FoF ¶7.

[2] Even these disturbingly low numbers are overstated. "Approximately seventeen percent of summonses issued by the NYPD from 2004 and 2009 were thrown out by the New York courts as being facially (*i.e.*, legally) insufficient and more than fifty percent of all summons were dismissed before trial." Op. & Order Certifying Class, dated May 16, 2012, dkt# 206 at 28 n.6 (citing *Stinson v. City of New York*, 282 F.R.D. 360 (S.D.N.Y. 2012)). In addition, prosecution declination rates are nine percent or higher for those crimes that are most commonly indicated on UF250's as the basis for stops. PTE 417 App. B at 8.

B. City Officials Adopted a Policy and Practice of Pressuring Officers to Unreasonably Increase Stop and Frisk Activity.

The City boasts of a "proactive policing" policy that in practice emphasizes numerical targets or quotas virtually above all other criteria for implementing and evaluating the City's stop and frisk practices. *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 126 (2d Cir. 2004) (Sotomayor, J.) (municipalities are liable for causing subordinates to apply policies unconstitutionally).

NYPD chiefs at CompStat meetings regularly discuss enforcement activity by emphasizing quantity rather than whether the activity is being conducted upon reasonable suspicion or probable cause. FoF ¶¶56-59. *De facto* quotas have been imposed in precincts across the City, and officers are pressured by their supervisors to increase their enforcement numbers. FoF ¶¶61-67, 74-81. Moreover, Operations Order 52 and the Quest for Excellence constitutes an express policy that requires officers to fulfill numerical performance goals or face adverse employment actions if they fail to meet them. FoF ¶¶62, 68-69, 72. Supervisors conduct performance reviews based upon numbers and whether enforcement activity matches the locations, times, and categories of reported crimes, without any review of the activity's constitutionality. FoF ¶¶82-85.

Pressure from the top has been felt across and down the NYPD chain of command. Silverman and Eterno's 2008 and 2012 surveys of retired officers documented widespread top-down pressure to conduct stops and frisks that peaked significantly during the Bloomberg- Kelly era, at the same time that pressure to obey constitutional laws was at its nadir. FoF ¶¶75-81. High-level NYPD policymakers have been aware of the existence of these *de facto* quotas for years and have done nothing to stop them. FoF ¶¶71-74.

C. The City Has Been Deliberately Indifferent to Violations of the Constitutional Rights of its Citizens.

1. Inadequate Supervision and Monitoring

To establish a municipality's deliberate indifference on a failure to supervise theory, the plaintiff must show that the need for more or better supervision to protect against constitutional violations was "obvious." *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir. 1995) (citations omitted). "An obvious need may be demonstrated through proof of repeated complaints of civil rights violations," and through "expert testimony that a practice condoned by the defendant municipality was contrary to the practice of most police departments" and "presented an unusually high risk that constitutional rights would be violated." *Id.* (citations omitted).

Supervisors up the NYPD's chain of command do not meaningfully review the UF250s or stop-and-frisk entries in officer memo books to ensure compliance with the Constitution. FoF ¶¶94-97, 99-100. The City fails to meaningfully audit activity to ensure compliance with the Constitution. FoF ¶¶108-121, 193-195. The NYPD fails to monitor officers who have had civilian complaints in connection with stops and frisks or racial profiling to protect the public from officers with a history of unconstitutional behavior. FoF ¶¶108-121, 193-195. This failure of policy makers has continued for years, despite an obviously high risk of constitutional violations in the absence of adequate oversight, FoF ¶88, 113-114, 197-198, and against a backdrop of widespread complaints and independent reports about unlawful NYPD stops. *See* FoF ¶¶157-173, 181-182, 184.

2. Inadequate Training

The millions of street encounters between the NYPD and New Yorkers have produced a long and voluminous history of unconstitutional stops and frisks that has rendered obvious the need for more and better training. *See Walker v. City of New York*, 974 F.2d 293 (2d Cir. 1992).

Specifically, the NYPD does not provide adequate training on reasonable suspicion or racial profiling. FoF ¶¶122-128. Officers are not given sufficient training on how to complete an activity log or UF250, FoF ¶125, while the lesson plans for sergeants do not provide training on how to review street stops for reasonable suspicion, FoF ¶¶129. The Rodman's Neck training incorrectly instructs officers on what constitutes a *Terry* stop. FoF ¶¶130-131; *Ligon v. City of New York*, 2013 U.S. Dist. LEXIS 22383 at *160-165 (S.D.N.Y. Feb. 14, 2013). The NYPD's training on the characteristics of armed suspects trains officers to see suspicious behavior in ordinary objects, clothing, and behavior, and thus increases the likelihood of suspicionless stops. FoF ¶¶132-134.

3. Inadequate Discipline

The City's failure to discipline offending officers sends a tacit message of acceptance and approval. *DiSorbo v. Hoy*, 74 F. App'x 101, 104 (2d Cir. 2003). The NYPD fails to issue command disciplines for improper stops or racial profiling. FoF ¶136. The CCRB has no meaningful disciplinary power, and the Department Advocate repeatedly ignores the CCRB's recommendations to discipline officers. FoF ¶¶148-156. The NYPD typically employs the mildest form of discipline, if any, for an improper stop and frisk and training that is aimed at improving "communication" rather than understanding the limits of police authority. FoF ¶¶153-155. The NYPD's Office of the Chief of Department does not track stop and frisk activity or racial profiling complaints. FoF ¶¶143,146.

D. The City's Policies and Practices Caused Plaintiffs and Class Members To Suffer Unconstitutional Stops and Frisks in Violation of the Fourth Amendment.

Monell's test for causation is "more encompassing than . . . a narrow, immediate focus on the cause of the [violation]," *Dodd v. City of Norwich*, 827 F.2d 1, 6 (2d Cir. 1987), and is determined simply by whether the City's policy would result in a reasonably foreseeable

violation of rights. *Cash*, 654 F.3d at 331-32; *see also City of Oklahoma City v. Tuttle,* 471 U.S. 808, 823 (1985) (plaintiff must show "affirmative link" between policy and constitutional violation); *Dodd*, 827 F.2d at 6 (injury must fall "within the scope of the original risk" of unlawful policy). *See also* Section III.A *infra*.

1. The 19 Encounters with NYPD Officers Were Seizures.

As this Court has previously ruled, a forcible *Terry* stop has occurred for purposes of the Fourth Amendment when, under the totality of the circumstances, the police conduct would have communicated to a reasonable person that he was not "free 'to disregard the police and go about his business.'" *See Ligon v. City of New York*, 2013 U.S. Dist. LEXIS 2871, at *151-52 (S.D.N.Y. Jan 8, 2013) (listing factors indicative of forcible *Terry* stop) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991)); *see also Florida v. Royer*, 460 U.S. 491, 502-03 (1983) (retaining an individual's driver's license may constitute a seizure). The City appears to concede that Plaintiffs' and class members' stops, among the millions made each year, constitute seizures, except in four cases: the stop of Kristina Acevedo, the April 2007 stop of David Floyd, the February 2008 stop of David Ourlicht, and the stop of Lalit Clarkson. In fact, these encounters bore multiple hallmarks of Fourth Amendment seizures.[3]

2. The Scripts Deployed by NYPD Officers in This Case Evidence a Lack of Reasonable Suspicion.

The statistical evidence demonstrates that the NYPD has a practice of conducting stops without the individualized, articulable, and otherwise reasonable suspicion required under *Terry*. *See supra* Section I.A. At the same time, the testimonial evidence in the case is fully illustrative of the statistical proof of NYPD officers' heavy reliance on pre-textual scripts – *i.e.*, the practice

[3] *See*, *e.g.*, Tr. (Acevedo) 1695:18-1704:11; Tr. (Clarkson) 2637:22-2640:25; Tr. (Floyd) 166:2-171:25; Tr. (Ourlicht) 4195:8-4199:23.

of stopping first and checking off reasons from a menu of rationalizations after. *See* FoF ¶¶7-8, 33. Without detailing the unlawful stops of each of the witnesses, Plaintiffs here simply highlight a number of the predominant bases relied upon for stops in this case.[4]

a. Improper Use of the "High Crime Area" Stop Factor

As this Court has recognized, "'[a]n individual's presence in an area of expected criminal activity, *standing alone*, is not enough to support a reasonable particularized suspicion that the person is committing a crime.'" *Floyd v. City of New York*, 813 F. Supp. 2d 417, 443 n.227 (S.D.N.Y. 2011) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)) (emphasis added). Thus the stop of Mr. Clarkson, which was based solely on mere proximity to a purported drug prone location, Tr. (Clarkson) 2641:1-22, was facially unconstitutional. Likewise, the stop of Mr. Ourlicht in June 2008, based exclusively on a report of a gun in the area, Tr. (Ourlicht) 4206:15-17, is *per se* unconstitutional. *See Ybarra v. Illinois*, 444 U.S. 85 (1979); *United States v. Jaramillo*, 25 F.3d 1146 (2d Cir. 1994).

In addition, courts must be "particularly careful to ensure that a 'high crime area' factor is not used with respect to entire neighborhoods or communities in which members of minority groups regularly go about their daily business, but is limited to specific, circumscribed locations where particular crimes occur with unusual regularity." *United States v. Montero-Camargo*, 208 F.3d 1122, 1138 (9th Cir. 2000); *accord United States v. Caruthers*, 458 F.3d 459, 467 (6th Cir. 2006). Yet, NYPD officers' conception of a "high-crime area" is often so large—sometimes encompassing an entire borough—as to render it meaningless and subject to persistent

[4] There is no reason for the Court to disregard witness testimony where the Defendant has failed to identify the officers involved. The City clearly did not search adequately for the stopping officers, FoF ¶34-37, and in any case, Plaintiffs do not seek to hold any individual police officer liable. Courts have credited testimony about unidentified officers and used circumstantial evidence to infer that they were police officers even in damages actions. *See, e.g., Rodriguez v. City of New York*, 2012 WL 1658303 (S.D.N.Y. May 11, 2012).

manipulation. *See e.g.,* FoF ¶9 (Mr. McDonald's stop justified on theory that an area spanning all of Queens represented a "high crime area"), ¶¶10-12 ((supposed "burglary pattern" used to justify Mr. Floyd's stop consisted of burglaries that occurred almost a mile away from Floyd's home and 25 days to 2 months prior to his stop).

b. Furtive Movements do Not Establish Reasonable Suspicion

As this Court has already ruled, the highly vague and subjective "furtive movement" stop justification is likewise insufficient to establish reasonable suspicion on its own, *see Floyd v. City of New York*, 813 F. Supp. 2d 417, 448 n. 254 (S.D.N.Y. 2011), and even when used in conjunction with other factors, must be scrutinized. *See United States v. McKoy*, 402 F. Supp. 2d 311, 320 (D. Mass. 2004); *United States v. Broomfield*, 417 F.3d 654, 655 (7th Cir. 2005). Thus, Mr. McDonald's placement of his hands within his jacket pockets on a cold winter night and "just mov[ing] [his] body a little" cannot be sufficient grounds for suspicion of criminal activity. Tr. (McDonald) 3681:23-3682:15, 3703:5-9. Mr. Floyd's daytime "jostling" of a lock using a set of keys for no more than 30 seconds in order to enter an apartment, Tr. (Kelly) 1449:13-16, 1454:8-20, is no more furtive an action that thousands of New Yorkers undertake every day, *see Reid v. Georgia*, 448 U.S. 438, 441 (1980), notwithstanding the incredible and contradictory testimony of the arresting officers that Mr. Floyd glanced over his shoulder or that the officers believed the keys were a set of burglary tools. FoF ¶33. Mr. Almonor's alleged furtive look over his shoulder to view oncoming traffic prior to crossing the street, Tr. (Dennis, B.) 1072:15-1075:7, and Mr. Ourlicht's style of walking, Tr. (Moran) 4054:6-4056:4, also do not provide a basis for reasonable articulable suspicion.

c. Generalized Suspect Descriptions Do Not Establish Reasonable Suspicion

A general description alone, even where jacket color and age of suspect is provided, does not give rise to reasonable suspicion, *see People v. Dubinsky*, 734 N.Y.S. 2d 245, 245 (App. Div.

2001). For example, Mr. Lino was stopped based on a clothing description that didn't match and a height and age description that could encompass, as this Court pointed out, the entire population Black men in the City of New York. Tr. (Arias) 3485:10-3486:8; *see Washington v. Lambert*, 98 F.3d 1181, 1190-91 (9th Cir. 1996) ("If the general descriptions relied on here can be stretched to cover [plaintiffs] then a significant percentage of [Black] males walking, eating, going to work . . . might well find themselves subjected to similar treatment"); *see also infra* Sections II.A, E (discussion of crude suspect description of Almonor).

d. Anonymous Tips Alone Cannot Give Rise to Reasonable Suspicion.

An officer may not base reasonable suspicion on an anonymous call unless the caller provides sufficient predictive information. *Florida v. J.L.*, 529 U.S. 266, 272 (2000). An anonymous caller's description of three Black men with some matching articles of clothing is insufficient to justify the August 5, 2006 stop of Mr. Peart. *See* Tr. (White) 6238:24-6241:11; Z8-T at 2:12-15 (call originated from payphone). A stop is unreasonable where the

> only aspects of the caller's information that were corroborated by their initial observations were that a Black man in white clothing was riding a bicycle on a particular street. Absent any other information indicative of the caller's reliability, such as the provision of information predictive of activity suggesting criminal involvement, or prior experience with the particular informant, the information known to the police at the time of their initial observation of Muhammad was insufficient to justify stopping him.

United States v. Muhammed, 463 F.3d 115, 123 (2d Cir. 2006).[5]

e. Generic Bulges Do Not Give Rise to Reasonable Suspicion

A "generic bulge in a pocket can be explained by too many innocent causes to constitute 'reasonable' suspicion." *Singleton v. United States*, 998 A.2d 295, 302 (D.C. 2010); *See also In Re Yoda*, 934 N.Y.S.2d 37 (N.Y. Fam. Ct. 2011); *Ransome v. Maryland*, 816 A.2d 901, 908 (Md.

[5] Officer White's testimony that Mr. Peart – and both of his companions – had "suspicious bulges" (cellphones) was another example of a *post hoc* justification, belied by White's failure to mention the bulges as a stop justification prior to trial. Tr. (White, B.) 6245:18-6252:3.

2003); *United States v. Wilson*, 953 F.2d 116, 125-26 (4th Cir. 1991). Thus, Ourlicht's stop in January 2008 was unconstitutional because it was in large part based upon a "suspicious bulge" that upon Officer Moran's cross examination did not exist. E.g., Tr. (Moran) 4062:7-4063:6; *see also* Tr. 3729:1-16; 3746:19-3747:20 (Officer French's belief that McDonald's hands in pocket on cold winter night constituted suspicious bulge).

3. The Plaintiffs and Class Members Suffered Unconstitutional Frisks and Searches.

A frisk of an individual is "a serious intrusion." *Terry v. Ohio*, 392 U.S. 1, 26 (1968). As such, in order "to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009); *accord United States v. Lopez*, 321 F. App'x 65, 67 (2d Cir. 2009).

The evidence demonstrates that the NYPD routinely conducts unlawful frisks.[6] For example, Mr. Downs was frisked and searched without any basis to suspect he was armed or dangerous. Tr. (Downs) 4102:1-4105:20. Mr. Sindayiganza was unlawfully frisked after being stopped for the misdemeanor crime of harassment despite the fact that the stopping officers had no basis to suspect he was armed or had engaged in a violent crime. Tr. (White, L.) 3117:1-7. *See El-Ghazzawy v. Berthiaume*, 636 F.3d 452, 457-58 (8th Cir. 2011) (frisk and handcuffing unconstitutional absent report that plaintiff was armed or dangerous, suspected crime was not dangerous and plaintiff remained calm). Stopping officers also frisked, among others, Mr. Floyd as a matter of course, without any suspicion of dangerousness or fear for their safety. *See* FoF ¶124. *See also e.g.,* Tr. (Ourlicht) 4267:2-4; (Dennis) 272:22-273:13. The abysmally low rate of gun seizures during stops by the NYPD–0.12 to 0.15 percent–further strongly suggests that thousands of frisks are not justified by a *bona fide* fear for safety. *See* FoF ¶2.

[6] Some NYPD officers did not even know the standards for frisks. FoF ¶124.

During the course of stops, NYPD officers also frequently exceeded the scope of frisks permitted by the Fourth Amendment by reaching into class members' pockets or thumbing through their personal belongings after all dangers were neutralized and when probable cause did not exist to do so. Tr. (Peart) 341:21-25; 342:1-6; (Almonor) 129:4-12; (Downs) 4102:25-4105:20; (Lino) 17:40:16-22; (Acevedo) 1701:22-1702:3. These searches clearly violated the Fourth Amendment. *See Minnesota v. Dickerson*, 508 U.S. 366, 378–79 (1993).

4. Plaintiffs and Class Members' Unconstitutional Stops are Attributable to the City's Affirmative Policies and Practices and Deliberate Indifference.

The stopping officers of the named plaintiffs and class members who testified at trial admitted many of the hallmarks and consequences of the City's widespread practice of pressuring officers to conduct unconstitutional stops and the City's deliberately indifferent failure to train, monitor, discipline and supervise its officers. *See, e.g*. Pressure/Performance Goals: FoF ¶¶61, 67 Agron, Salmeron, Pichardo (Dennis stop), Figueroa and Leek (Lino 2/24/11), Arias (Lino 2/5/08); Failure to Train: FoF ¶123 Moran and Eddy (Ourlicht 1/30/08), Dennis (Almonor), Vizcarrondo (Acevedo), ¶124 Kelly and Joyce (Floyd 2/27/08), White, L. (Sindayiganza); ¶133 French (McDonald); Failure to Discipline: FoF ¶141 Salmeron (Dennis), ¶147 Rothenberg (Provost); Failure to Supervise/Monitor: FoF ¶93 French (McDonald), Kelly (Floyd 2/27/08), Korabel (Almonor), Leek (Lino 2/24/11); Houlahan (Provost), ¶94 Loria (McDonald), Korabel (Almonor), Agron (Dennis), Moran (Ourlicht 1/30/08), Kelly (Floyd 2/27/08), Giacona (Downs), ¶95 Korabel (Almonor), DeMarco (Acevedo), ¶139 Figuero, Leek (Lino), ¶140 Hawkins, DeMarko, Vizcarrando (Acevedo), ¶141 Salmeron (Dennis).

II. THE CITY IS LIABLE FOR WIDESPREAD PATTERN AND PRACTICE OF RACE-BASED STOPS AND FRISKS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

To prevail on their Equal Protection claim, Plaintiffs must prove that the City's stop and frisk policy discriminated against Blacks and Latinos "on the basis of race." *Washington v. Davis*, 426 U.S. 229, 239 (1976). Plaintiffs need only show that a discriminatory purpose has been "a motivating factor" for the City's actions, *Village of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252, 265 (1977), not that an intent to discriminate "was the 'dominant' or 'primary' one." *Arlington Heights*, 429 U.S. at 265; *see also Hayden v. Patterson*, 594 F.3d 150, 163-64 (2d Cir. 2010); *Personnel Adm'r v. Feeney,* 442 U.S. 256, 279 (1979).

Likewise, Plaintiffs need not prove that decision-makers exhibited overt racial hostility or antipathy or that police officers candidly admitted their racial bias in order to prove intentional discrimination. *See Grutter v. Bollinger*, 539 U.S. 306 (2003); *Ferrill v. Parker Group. Inc.,* 168 F.3d 468, 473 & n.7 (11th Cir. 1999) ("ill will, enmity, or hostility are not prerequisites of intentional discrimination"). The guarantee of equal protection goes beyond punishing racist men wearing white hoods; because of the harmful, stigmatizing and lingering effect of racial discrimination, the Fourteenth Amendment proscribes governmental policies or pronouncements that are even in part motivated by racial classification, identification or stereotype. *See Palmore v. Sidoti*, 466 U.S. 429 (1984). Accordingly, it is no defense to Police Commissioner Kelly's overtly racialized explanation of the City's stop and frisk policy, *see* FoF ¶48, to assert that he has positive feelings and beneficent intentions for the City's black population, *Melendres*, 2013 U.S. Dist. LEXIS 73869, at *243-44 (D. Ariz. May 24, 2013) ("the lack of racial antipathy as a motivation makes no difference in the constitutional analysis); *Adarand Constructors, Inc. v. Pena,* 515 U.S. 200, 230 (1995), nor is it a defense that the NYPD may be majority minority.

Moreover, the fact that crime deterrence may be the ultimate goal of the City's race-based stop practices does not make them any less constitutionally infirm. *See Johnson v. California*, 543 U.S. 499 (2005) (racial classification to control prison gang activity subject to strict scrutiny); *Md State Conf. of NAACP Branches* v. *Md State Police,* 454 F.Supp.2d 339, 349 (D.Md. 2006); *Melendres*, 2013 U.S. Dist. LEXIS 73869, at *243-44.

The Court can find discriminatory purpose if it can infer from the facts that "discriminatory racial intent was the most likely motivation for the action in question, or that the defendant's alternative explanation for [its] action is impossible." *Prompt Courier Serv., Inc. v. Koch*, 1990 WL 100904, at *8 (S.D.N.Y. Jul. 13, 1990) (citing *Gibson v. American Broadcasting Companies, Inc.,* 892 F.2d 1128, 1132 (2d Cir.1989)). The inference can be derived either from: (1) a City law or policy that expressly classifies on the basis of race; or (2) a facially neutral law or policy that is applied in discriminatory manner; or (3) a facially neutral law that has discriminatory effect and discriminatory purpose. *See Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999).

A. The City's Use of Racial Criteria and Reliance on Racial Stereotype as Part of its Stop and Frisk Policy Constitutes a Per Se Violation of the Fourteenth Amendment.

Plaintiffs do not contend that the City's written stop and frisk policy contains an express racial classification. Nevertheless, the evidence in the case demonstrates that the City's highest officials intend to target and intimidate Blacks and Latinos while the NYPD as a whole has effectively incorporated impermissible racial stereotype into its stop and frisk practices. FoF ¶50.

First, unrebutted evidence reveals that Commissioner Kelly's avowed motivation for the explosion in stop and frisks under his watch is to instill fear in Black and Latino males that they could be stopped by the police every time they leave their homes to deter them from carrying

guns. FoF ¶48. The articulation of this race-based policy criteria by the Commissioner is sufficient to impose liability on the municipality. *Amnesty Am.* 361 F.3d at 125; *see also Sorlucco v. New York City Police Dep't*, 971 F.2d 864, 870-871 (2d Cir. 1992) (Police Commissioner's single act of firing plaintiff "might be sufficient" to support liability against New York City).[7] This race-based motivation, in turn, infiltrated the entire NYPD command structure. Commanders have understood – and communicated to their patrols – that officers should be targeting the "right people" for stops, FoF ¶49-55, which Chief Esposito suggested reflects an operational profile of "young men of color in their late teens, early 20s." FoF ¶50. *See also* FoF ¶51(Inspector McCormack expressly equated "the right people the right time, the right place" with stopping "male blacks 14 to 20, 21."); PTE 557-D (128 of 134 stops by Officer Gonzalez, one of the City's highest stoppers in 2009, were of Blacks or Latinos); FoF ¶8 (of Officer Dang's numerous stops in a 43%-Black neighborhood, 95% were Black). That profile has ensnared thousands of Black and Latino New Yorkers every year, including plaintiffs and class members whose stops were based on little or no more than the crude racial criteria "Black male." FoF ¶52 (Almonor stop, Lino stop).

Thus, the City's policy, at least in part, "expressly incorporate[s] racial bias" in a manner that violates the Fourteenth Amendment. *Melendres*, 2013 U.S. Dist. LEXIS 73869, at *235 (trial evidence demonstrated that Sheriff's policy and practice "permitted officers to make racial classifications" which was sufficient for discriminatory intent); *Cf. Bush v. Vera*, 517 U.S. 952, 968 (1996) ("to the extent that race is used as a proxy" for political tendencies, "a racial stereotype requiring strict scrutiny is in operation").

[7] As this Court has already held, stop and frisk based on deterrence rather than reasonable suspicion likewise constitutes a violation of the Fourth Amendment. *See* Dkt # 201 at 65.

The City's defense of these effectively racialized practices is, in essence, that minorities commit more crime and that most crime occurs in minority neighborhoods, so one would expect more stops of minorities. FoF ¶¶22,49-50. However, Fagan's analysis renders this theory demonstrably false as an empirical matter by showing that the racial composition of an area, over and above its crime rate, predicts the level of stop activity more strongly than does crime suspect race, *see* Section II.B.1 *infra*., as does the City's own stop and frisk data showing that 9 out of every 10 people stopped are not engaged in criminal activity when stopped, which belies the City's claim that crime suspects are the best proxy for the pool of people most likely to be stopped. FoF ¶22.

The City's crude presumption actually underscores the ongoing Equal Protection violation in this case. By justifying discriminatory stop and frisk rates on the theory that Blacks and Latinos in general commit more crime, the City affirmatively embraces a racial profile that incentivizes and generates more unlawful stops of Blacks and Latinos, including the innocent Plaintiffs and class members in this case. *See Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 729 (1982) (invalidating gender classifications that would "perpetuate [] stereotype[s]" about women). The City has wound itself into a vicious, discriminatory circle that discards the fundamental constitutional requirement that law enforcement sanction be based on individualized criteria.

In response to the analogous racial profiling epidemic on New Jersey highways in the 1990s, the New Jersey Attorney General considered – and rejected – precisely the same self-fulfilling and flawed logic relied upon by the City here to justify the State Police's discriminatory stops of Black motorists. The AG observed that "[m]any of the facts that are relied upon to support the relevance of race and ethnicity in crime trend analysis, however, only

demonstrate the flawed logic of racial profiling, which largely reflects a priori stereotypes that minority citizens are more likely than whites to be engaged in certain forms of criminal activity."[8] The Department of Justice's policy guidance on racial profiling likewise instructs that the "affirmative use of such generalized notions" regarding race-based discrepancies in crime rates, in "routine, spontaneous law enforcement activities is tantamount to stereotyping. . . . This is the core of racial profiling and must not occur."[9]

Reliance on overbroad generalizations about the propensities of classes of individuals to justify government policy is *per se* unconstitutional. *See United States v. Virginia*, 518 U.S. 515 (1996). As Justice Ginsburg explained, the core problem with basing government decisions on generalized tendencies of women (even if empirically true on the average) is that it produces a self-fulfilling prophecy that continually perpetuates discriminatory generalizations. *See id*. at 534. The same is obviously true in the race context. *See* AG Report at 67-68 ("The evidence [that racial groups generally commit more crime] is, in reality, tautological and reflects as much as anything the initial stereotypes of those who rely upon these statistics. To a large extent, these statistics have been used to grease the wheels of a vicious cycle — a self-fulfilling prophecy.").

These stereotypes produce lasting social and individual damage. *See United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en banc) ("Stops based on race or ethnic appearance . . . send a clear message that those who are not white enjoy a lesser degree of constitutional protection – that they are in effect assumed to be potential criminals first and individuals second."); DOJ Report at 4 (Racial stereotyping "casts a pall over every member of

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[8] *See* Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling at 66, April 20, 1999, available at http://www.state.nj.us/lps/intm_419.pdf ("AG Report").

[9] U.S. Dep't of Justice, Civil Rights Division, *Guidance on the Use of Race by Federal Law Enforcement Agencies* at 4, June 2003, available at: http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf ("DOJ Report").

certain racial and ethnic groups . . . and offends the dignity of the individual improperly targeted."). Plaintiffs testimony in this case bore eloquent witness to the damage such stereotyping has caused them and their families. *See* Tr. (Floyd) 181:24-182:25, (Almonor) 134:1-134:9, (Lino) 1750:24-1751:11, (Dennis) 277:18-23. The court has an obligation to break the discriminatory circle undergirding the City's policy. *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot directly or indirectly, give them effect.").

Plaintiffs' Fourteenth Amendment claim is further supported by the principle of non-discrimination enshrined within human rights instruments ratified by the United States.[10]

B. The Statistical Evidence is Sufficient to Demonstrate Discriminatory Purpose.

A law or policy, even if "otherwise neutral on its face, must not be applied so invidiously as to discriminate on the basis of race." *Wash. v. Davis*, 426 U.S. at 241; *Hayden*, 180 F.3d at 48. Statistical evidence can demonstrate a prima facie case of intentional discrimination. *United States v. City of New York*, 2013 U.S. App. LEXIS 9671 (2d Cir. May 14, 2013); *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977); *Castaneda v. Partida*, 430 U.S. 482, 495 (1977). While it is "rare" for "impact alone" to prove discriminatory intent, *Arlington Heights*, 429 U.S. at 266 (1977), the statistical evidence in this case does far more than prove a disparate impact: it actually accounts for and conclusively refutes the City's purportedly race neutral reasons for the disparate impact, demonstrating that the disparities in the raw data are "unexplainable on grounds other than race," and thus sufficient to prove intentional

[10] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, ratified by the United States on June 8, 1992, art. 2.6, 26. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21 1965, 660 U.N.T.S. 195 [hereinafter CERD]. The U.S. Supreme Court has looked to CERD when evaluating equal protection claims and so should this Court. *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring).

discrimination. *See id* at 266; *Segar v. Smith*, 738 F.2d 1249 (D.C. Cir. 1984) (affirming finding of liability for discriminatory treatment pattern and practice claim when plaintiffs' statistics were statistically significant and accounted for nondiscriminatory explanations of disparity); *E.E.O.C. v. O & G Spring and Wire Forms Specialty Co.*, 38 F.3d 872, 876 (7th Cir. 1994) ("strong statistics may prove a case [of intentional discrimination] on their own").

1. The Statistical Significance of Findings that Stops are Race-Based

Even if the Court credits the City's position that crime conditions drive the *deployment* of officers to certain areas of the City, the statistical evidence proved that race was a motivating factor for the *stops* that ultimately occurred in those areas. Fagan's negative binomial and hierarchical Poisson regression analyses isolated the effect of race on stop activity after controlling for crime, officer deployment, and all other relevant race-neutral influences. FoF ¶¶14-15. [11] Moreover, as Fagan demonstrated, using crime suspect race data rather than his joint population-crime rate benchmark would be methodologically unreliable, FoF ¶20 and the City's experts made no showing that any of their criticisms of his methods would produce different results. *See* FoF ¶¶29-31 [and others]; *EEOC v. Joint Apprenticeship Comm. of the Joint Indus. Bd. of the Elec. Indus.*, 186 F.3d 110, 119-20 (2d Cir. 1998) ("JAC argues that EEOC's statistics are based on stale census data, but makes no showing that more recent census data would produce significantly different results."); FoF ¶28.

In addition, as set forth in Section II A. *supra*, the NYPD's attempts to refute evidence of discriminatory intent by comparing stop rates of minorities to their representation in crime suspect data, constitutes proof that the NYPD is racially profiling in carrying out the City's

[11] In addition, minorities are more likely to subjected to the use of force during a stop than are Whites stopped for the same crime, and when evidence of a crime is discovered during a stop, minorities are more likely to be arrested whereas Whites are more likely to simply receive a summons for the same crime. FoF ¶16.

policy; officers believe minorities are inherently more suspicious than Whites, and are using race as a proxy for reasonable suspicion. It is no wonder then, that, "furtive movements" is checked in 39.92% of stops of whites, but 48.3% for blacks and 45.22% for Hispanics. PTE 417 at 23.

2. Statistical Evidence Regarding Racial Disparities Is Practically Significant.

"[T]he substantiality of a disparity is judged on a case-by-case basis." *Smith v. Xerox Corp.*, 196 F.3d 358, 366 (2d Cir. 1999). Professor Fagan's statistical findings alone establish that race-based stops occur on a scale large enough to warrant this Court's intervention. *Sobel v. Yeshiva University*, 839 F.2d 18, 35 (2d Cir. 1988); *Easterling v. Dep't of Corr.*, 783 F. Supp. 2d 323, 332-33 (D. Conn. 2011). *See also* FoF ¶¶23, 27.

By contrast, Dr. Purtell's testimony that the results of Table 5 lack "practical significance" was wholly detached from "practicality," as his analysis addressed an imaginary city where minority population differs by a mere one percent from census tract to census tract. Fagan starkly demonstrated the implications that Table 5's coefficients had for heavily-minority tracts through a method that, despite Purtell's claims to the contrary, is commonly used to interpret regression results. FoF ¶17; *Citizens for a Better Gretna v. Gretna*, 636 F. Supp. 1113, 1128 (E.D. La. 1986) (extrapolating from regression coefficients to predict the increase in a candidate's support if the black proportion of the voters increased by 50%).[12]

The practical significance of Fagan's evidence is perhaps best reflected in the close match between his statistical predictions about scripts and race-based stops and the overwhelming testimonial evidence from plaintiffs and class members, officers and supervisors,

[12] *See also* Ryan J. Owens & David A. Simon, *Explaining the Supreme Court's Shrinking Docket*, 53 William & Mary L. Rev. 1219 (2012) (extrapolating from the coefficients of a negative binomial regression model to predict the increase of certiorari grants at three levels of the independent variable, while other explanatory variables were held constant); Ahmed E. Taha, *Judge Shopping: Testing Whether Judges' Political Orientations Affect Case Filings*, 78 U. Cin. L. Rev. 1007 (2010) (similar statistical methodology).

bringing concretely to life his predictions.

C. Direct and Circumstantial Evidence Bolsters the Statistical Proof of Discriminatory Intent.

Even if the Court concluded that statistical evidence alone did not demonstrate intentionally discriminatory implementation of stop and frisk, that evidence combined with direct and circumstantial evidence adduced in this case conclusively demonstrates discriminatory purpose. *See Pyke* 238 F.3d 107 at 110; *Arlington Heights*, 429 U.S. 252 at 264-65. *See also Doe v. Vill. Of Mamaroneck*, 462 F. Supp. 2d 520, 547 (S.D.N.Y. 2006) (finding municipality liable for intentional discrimination against Latino day laborers despite facially neutral "quality of life" enforcement policy). Courts making findings of intentional discrimination have used a combination of direct and circumstantial evidence to supplement evidence of discriminatory impact.

1. Direct Evidence

While it is rare to find, direct evidence of the sort adduced in this case is sufficient to prove discriminatory purpose. *Arlington Heights*, 429 U.S. at 266-68. Public statements from decision-makers alone demonstrate discriminatory purpose. *See Melendres v. Arpaio*, 2013 U.S. Dist. LEXIS 73869 at *250-51 (D. Ariz. May 24, 2013). As described in Section II.A. *supra*, unrebutted evidence demonstrates that Commissioner Kelly and other high and mid-level supervisors throughout the NYPD have expressly acknowledged and encouraged the use of race and crude stereotypes about race and crime in officer stop-and-frisk decision making.

2. Circumstantial Evidence

Courts consider a range of circumstantial evidence relevant to the determination of discriminatory intent. These include:

a. A history of discriminatory policing practices. *See Davis*, 2013 WL 1288176 at *19; FoF ¶¶157-159, 192-196 (1999 Attorney General report and *Daniels* litigation). Indeed, the City's human rights abuses have become so internationally notorious that this year, the UN Human Rights Committee asked the U.S. to "provide information on steps taken to address discriminatory and unlawful use of 'stop and frisk' practices by officers of the New York Police Department," which violate the principle of non-discrimination in the ICCPR.[13]

b. Indifference to evidence of racial profiling. *Davis*, 2013 WL 1288176, at *19. The evidence of the City's indifference to powerful evidence of racial profiling in the NYPD is overwhelming.[14] *See* FoF ¶¶157-162 (failure to implement AG's 1999 recommendations); FoF ¶¶164-174 (failure to respond to repeated community and CCRB complaints). FoF ¶¶177-184 (failure to take seriously the RAND report's recommendations); FoF ¶¶127-128, 186-190. (failure to discuss racial profiling within NYPD). Chief Esposito's testimony evidences such a level of deliberate indifference to racial profiling that taken alone, it would support an inference of racial profiling. *See* FoF ¶186 (Esposito never discussed racial profiling toll with Commissioner Kelly); FoF ¶¶171-173 (Esposito claims he never heard racial profiling complaints despite numerous complaints lodged with his office); FoF ¶161 (Esposito never read 1999 AG Report).

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[13] UN Human Rights Committee, List of issues to be taken up in connection with the consideration of the fourth periodic report of the United States of America (CCPR/C/USA/4), adopted by the committee at its 107th session, March 11 – 28, 2013, available at http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm.

[14] In the equal protection context, the inquiry into circumstantial evidence of discriminatory intent is substantially equivalent to the inquiry into *Monell* deliberate indifference; acquiescing in known patterns of discrimination without sufficient remediation not only establishes City policy, it also establishes the intent behind the policy.

c. Failure to comply with settlement in race discrimination lawsuit. *Johnson v. Hugo's Skateway*, 974 F.2d 1408, 1413 (4th Cir. 1992); *Dent v. U.S. Tennis Assn*., 2008 WL 2483288, at *2 (collecting cases). *See* FoF ¶¶192-196 (non-compliance with *Daniels* settlement).

d. Inadequacy of remedial steps. *Melendres*, 2013 U.S. Dist. LEXIS 73869 at *245 (cosmetic changes to alter appearance of racial profiling, but not actual practice, is proof of discriminatory intent). *See* FoF ¶¶143-156 (failure to implement adequate mechanisms to identify and remediate racial profiling); FoF ¶¶150, 187 (Department Advocate's persistent indifference to racial profiling); FoF ¶¶127-128 (failure to adequately train on racial profiling paper policies).

e. Poor record keeping/monitoring: *Melendres*, 2013 U.S. Dist. LEXIS 73869 at *249 (defendant's "failure to monitor its deputies' actions for patterns of racial profiling was exacerbated by its inadequate recordkeeping"). *See* FoF ¶¶94-100 (failure to properly review stop and frisk paperwork); FoF ¶¶108-121 (failure to adequately audit stop and frisk activity).

D. The Existence of Reasonable Suspicion to Stop an Individual Does Not Obviate a Claim of Racial Profiling.

Chief Esposito (and others) revealed his troubling ignorance of the Equal Protection rights of citizens through his startling admission that existence of reasonable suspicion, *ipso facto*, precludes the possibility of racial profiling. FoF ¶191. This reflects "clearly a limited and incorrect understanding" of the Fourteenth Amendment. *Melendres*, 2013 U.S. Dist. LEXIS 73869 at *238. While the existence of bona fide individualized reasonable suspicion might preclude a *Fourth* Amendment claim that a stop was otherwise pretextual or based on race, *see Whren v. United States*, 517 U.S. 806 (1996), the existence of individualized suspicion would not obviate a municipality's liability under the *Fourteenth* Amendment where there is sufficient evidence of a pattern and practice of using race as a motivating factor in stops. *See id*. at 813;

United States v. Scopo, 19 F.3d 777, 786 (2d Cir. 1994) (Newman, J., concurring) (also explaining constitutional dangers of racially pretextual arrests). Even individuals whom officers deem to be suspicious "are entitled to equal protection of the laws at all times." *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997).

Likewise, Chief Esposito's reliance on the mere paper prohibition on racial profiling disregards the unconstitutional results of the NYPD's "proactive policing" practices. Formal proscriptions against racial discrimination are not sufficient if their message is "undermined by other messages in both official and unofficial policies. What really matters, ultimately, is how o*fficial policies are interpreted and translated into actual practices* in the barracks across the state and out on the road." *State v. Ballard*, 752 A.2d 735, 744 (2000) (emphasis added) (cited approvingly by *Chavez v. Ill. State Police*, 251 F.3d 612, 647 (7th Cir. 2003)).

E. The City's Race-Based Stop and Frisk Policy Caused Plaintiffs' Injuries.

Plaintiffs have proven the City's *Monell* liability in each of the three viable ways: through decisions by high-level policy makers to target Blacks and Latinos; a persistent and widespread pattern, (relying upon statistical and anecdotal evidence) of race-based stops; and, evidence demonstrating systemic "deliberate indifference" to a practice of racial profiling – *e.g.*, the foregoing circumstantial evidence of discriminatory intent, *see also* FoF ¶¶157-98.

In any system that takes civil rights seriously, it should be obvious – let alone reasonably foreseeable, *Cash*, 654 F.3d at 331, 341 – that the City's pressure on officers to dramatically increase stop and frisks, particularly of the "right people," *e.g.*, "male, Black" people, would result in the Equal Protection violations that have occurred in this case, and that such violations would only increase as a result of policy makers' persistent head-in-the-sand (*i.e.* deliberately indifferent) attitude toward the long-standing evidence of racial profiling throughout the NYPD

ranks. *See*, *e.g.*, *Perez v. City of New York*, 1999 WL 1495444, at *3 ("[I]t is foreseeable that an officer instructed to stop and question motorists on the basis of race would be negligent as to probable cause"). Here, several of the class members were stopped pursuant to the crude racialized suspect descriptions described in Section II.A *supra*. *See* FoF ¶52 (discussing suspect descriptions used in Almonor, Lino and McDonald stops). In addition, Mr. Ourlicht was treated more harshly during his February 2008 stop than his white friend. *See* Tr. (Ourlicht) 4203:7-12.

While the evidence in these stops are, on their own, indicative of discriminatory purpose, the foregoing circumstantial evidence of city-wide race-based policing, coupled with the lack of reasonable suspicion in all plaintiffs and class members' stops, establishes their Fourteenth Amendment claims. *See* Dkt #153 at 61; *Md. State Conf. of NAACP Branches,* 454 F. Supp. 2d at 349; *Taylor* v. *City of NY,* 2006 U.S. Dist. LEXIS 41429, *20-22 (S.D.N.Y. June 19, 2006); *Feliciano v. Cty. of Suffolk*, 419 F. Supp. 2d 302, 314 (E.D.N.Y. 2005)*; accord Rosen* v. *Thornburgh,* 928 F.2d 528, 533 (2d Cir. 1991).

III. THE COURT IS AUTHORIZED TO ISSUE BROAD INJUNCTIVE RELIEF

A. Even if the Claims of the Class Representatives Are Unproven, the Court May Still Order Relief.

The law is clear that, even in the unlikely event that the claims of named plaintiffs were unproven at trial, the Court may find a basis for *Monell* liability and thus injunctive relief based on the standing of even one unnamed class member. *Melendres*, 2013 U.S. Dist. LEXIS 73869, at *210-11 (citing cases); *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747, 753 (1976); *Gibson v. Local 40, Supercargoes & Checkers of Int'l Longshoremen's & Warehousemen's Union*, 543 F.2d 1259, 1263 (9th Cir.1976); *Binson v. J.E. Robert Co.*, 2006 U.S. Dist. LEXIS 101012, at 44 (E.D.N.Y. June 27, 2006).

B. Broad Permanent Injunctive Relief Is Warranted.

As the Second Circuit recently explained in *United States v. City of New York*, 2013 U.S. App. LEXIS 9671, 60, 62-63 (2d Cir. N.Y. May 14, 2013):

> [A] district court has the duty to render a decree that will eliminate the discretionary effects of past discrimination and prevent like discrimination . . . [and] many provisions [including a court monitor] are well within the District Court's discretion as a remedy for discriminatory impact liability in view of the history of minority hiring by the FDNY and the City's recalcitrance in undertaking remedial steps.

Here, in light of an analogous history of constitutional violations and recalcitrance on the part of the NYPD, the Court should impose the comprehensive injunctive relief sought by Plaintiffs, including a court-appointed monitor and joint remedy process *See* FoF ¶¶199-210.[15]

As set forth in Plaintiffs' March 4, 2013 brief in support of injunctive relief, the City's post-litigation remedial steps do not obviate the need for broad injunctive relief. *See* Dkt 268 at 27 n16. Moreover, these steps do not sufficiently address the widespread and persistent constitutional violations present here. FoF ¶¶200-203, 207-210. In addition, the City's contention that its community board meetings and community interactions demonstrate that a monitor and community input into the remedy are unnecessary are disingenuous given how it has ignored past complaints from community members. FoF ¶¶163, 204-205. Because the NYPD has proven unable or unwilling to police itself, only robust remedies, with a court-appointed monitor and community input, will bring the NYPD, at long last, in compliance with constitutional norms.

CONCLUSION

For the foregoing reasons, the Court should enter judgment in favor of the Plaintiffs on all claims and order broad injunctive relief.

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[15] If the Court does not order the Joint-Remedy Process, Plaintiffs request an opportunity to provide a supplementary detailed list of remedial measures including alternative proposals for community input during the remedial process.

Dated: New York, New York

June 12, 2013

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