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Via ECF

Hon. Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10077

Re: *Floyd et al. v. City of New York*, No. 08 Civ. 1034

Dear Judge Torres:

We write in connection with the Monitor's submission earlier today of revised Patrol Guide Section 212-11 ("PG 212-11") for this Court's review and approval. While Plaintiffs do not object to PG 212-11 as far as it goes, we reserve Plaintiffs' right to develop further reforms through the ongoing remedial process related to but not directly addressed by this particular Patrol Guide section. Specifically, we reserve Plaintiffs' right to develop two reforms: (1) a meaningful stop receipt that, at a minimum, ensures each person stopped receives accurate information identifying the officer who initiated the encounter, that officer's purported justification for the stop, and information about filing a complaint; and (2) a means of documenting street encounters that officers believe or claim constitute a request for information ("Level 1") or common law right of inquiry ("Level 2") under *People v. De Bour*, 40 N.Y.2d 210 (N.Y. 1976), and its progeny.

PG 212-11 contains the NYPD's written policy on the stop and frisk tactic and it includes instruction on Level 1 and 2 encounters. PG 212-11 currently requires officers to provide members of the public who have been stopped but not arrested a "What is a Stop" (PG383-153) tear-off card. *See* PG 212-11 ¶ 17(b). As the Monitor has explained, this form is part of an NYPD pilot program and he has submitted PG383-153 as information only, not for the Court's approval; further work remains to be done. We see limitations to this pilot form, including without limitation that there is no mechanism to ensure the accuracy of what officers include on

the tear-off receipt. PG 212-11 further directs officers to record stops in a Stop, Question and Frisk Report Worksheet (PG 212-11 at 7), but it does not provide a mechanism for documenting Level 1 and 2 encounters.

We believe the provision of an improved stop receipt to all persons stopped and documentation of Level 1 and 2 encounters are reforms that will be necessary to bring the NYPD's stop and frisk practice into compliance with the Constitution. Evidence in the *Floyd* trial showed that officers can and unfortunately do refuse to provide their badge numbers to people stopped. *See e.g. Floyd v. City of New York*, 959 F. Supp. 2d 540, 625-6 (S.D.N.Y. 213) (Officers who stopped Leroy Downs refused to provide their badge numbers, failed to complete a UF-250 and were not disciplined for that failure). *Compare* PG383-153 (providing a blank space for officers to input their identifying information). Sometimes "officers misunderstand what constitutes a stop", *id.* at 616, and such a misunderstanding "likely leads some officers not to prepare [stop reports] in cases when they wrongly conclude that the encounter did not rise to the level of a stop." *Id.* And sometimes officers refuse or otherwise fail to document encounters that clearly do rise to the level of a stop. *Id.* at n.374; *id.* at 636-7 (Nicholas Peart April 13, 2011 stop found unconstitutional; no UF-250); *id.* at 644-6 & n.623 (Lalit Clarkson stop found unconstitutional; no UF-250). Indeed, an internal NYPD audit disclosed in the Monitor's first status report suggests a continuing problem with officers failing to document all stops. Dkt # 513 at 49-50. An improved and routinely disseminated stop receipt would enable the public to expose potentially problematic behaviors and would enable auditing to determine whether and when more training is necessary to encourage accountability. Documentation of Level 1 and 2 encounters would permit a more comprehensive assessment of stop activity. These two reforms, if sufficiently developed and effectively implemented, would operate in tandem to create a monitoring system that ensures officer stop conduct is constitutional.

We are hopeful that we can work with the City of New York and the Monitor to develop these reforms. We believe these reforms can and should be developed beyond the contours of PG 212-11. By not challenging PG 212-11, we do not waive the right to develop them.

Thank you for your time and consideration.

Respectfully submitted,



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