

February 22, 2024

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York*, 08-CV-1034 (AT),
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
End of Year Monitor Update

Dear Judge Torres:

This is the Monitor's second annual year-end report. I am submitting this update to apprise you of developments over the past year. As this is the tenth year of the Monitor being in place, it is fair to state that none involved envisioned the monitorship continuing for ten years. Although the NYPD has made strides in some areas, it is quite unsettling that the NYPD is not in compliance with the Court-ordered reforms in these cases. As we have advised repeatedly, the NYPD must focus on accountability at all levels within the Department. Last June, we issued a report that showed that compliance was declining especially within the Neighborhood Safety Teams. There have also been many changes in the NYPD's leadership. We have seen a notable improvement in the last few months in terms of the NYPD's efforts to timely share relevant information and to work on an accountability plan. We hope that we will be able to report on much more progress at the end of this year.

I. Transparency

Community Liaison. On December 16, 2022, the Court appointed Germain Thompson to serve in the newly created role of independent Community Liaison. As Community Liaison, Mr. Thompson is engaging with the communities most impacted by the NYPD's stop-and-frisk practices and communicating their experiences, perspectives, and recommendations to the Monitor and the Court. To achieve these goals, the Liaison has hired four community organizers and a consultant to assist in his efforts, as well as an administrative assistant and a social media specialist.

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As part of his role, the Community Liaison is organizing community meetings and listening sessions and conducting grassroots outreach to the community. On October 24, 2023, the Community Liaison and the Monitor conducted a community forum at the Restoration Plaza in Bedford Stuyvesant, Brooklyn. We had a productive conversation with community members regarding the Monitor's role and how the Monitor can address stop-and-frisk-related issues that the community currently faces. We will be holding three more joint forums in 2024, with the next session to be held in Queens on February 26, 2024. We look forward to continuing to receive feedback from the Community Liaison Team about the community's perspectives on stops, frisks, and searches.

II. Neighborhood Safety Teams (NST)

In June 2023, the Monitor issued a report on the practices of the NYPD's NSTs.¹ The Monitor team reviewed a random sample of the NST stops from April 2022 to October 2022, examining the NSTs' stop reports and body-worn camera (BWC) videos. The Monitor team determined that officers had reasonable suspicion for only 76% of the stops—an unacceptably low number. Similarly, NST officers had reasonable suspicion for only 73% of the frisks assessed and had a legal basis for only 63% of the searches assessed. The Monitor team determined that the Department's oversight of these unlawful NST stops, frisks, and searches was inadequate.

After the Monitor issued the Nineteenth Report on NST practices, the NYPD conducted refresher training for incumbent NST members. The NYPD also developed training for officers newly assigned to NST and Public Safety Team (PST) units. The sessions include a discussion of the law governing investigative encounters and its complexities, common deficiencies; a review of BWC videos; and a presentation from a representative from the Health and Wellness Section. The instructors cover five categories of NST deficiencies observed citywide:

- **Misapplication of Character of Armed Suspect Training** – e.g., generic bulges in pockets and waistbands, using level 3 language or tools at level 2 encounters, etc.
- **Improper Stop-Report Writing and Supervisory Review** – e.g., failure to note on the stop report frisks and/or searches that occurred; supervisors approving their own

¹ New York Police Department Monitor, NINETEENTH REPORT OF THE INDEPENDENT MONITOR (June 5, 2023), <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf>.

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stop reports; supervisors approving impermissible frisks and/or searches on the stop reports.

- **Unlawful Searches** – e.g., cars, bags, and lifting clothing, etc., without a legal basis.
- **Underreporting of Stops** – persons being frisked and/or searched and the encounter not being reported on a stop report.
- **BWC Compliance** – e.g., late activation, failing to categorize videos, and failing to note the apparent race and gender in appropriate BWC fields for Level 2 encounters.

While the Monitor team found the training well-targeted to address unlawful stops, frisks, and searches, the team's recent audits demonstrate that additional training is not sufficient to change officer behavior.

After issuing the Nineteenth Report, I directed the Department to prepare a compliance plan addressing the concerns identified in the Report. The NYPD provided us with a draft plan in July 2023, but it had critical gaps. The Department sent a revised plan in December 2023, addressing most of the gaps. The revised plan was a significant improvement from the first draft. The Monitor team met with the Department in January to recommend further improvements in the plan, including increased training, vetting, and review of current NST members; and changes to the Department's plan for sampling and review of BWC videos. The NYPD has submitted a further revised plan which is under review. In addition, the Monitor team is undertaking a more comprehensive audit of NST and PST stops, frisks, and searches, which we will report on later in the year.

In addition, as a result of concerns raised by the encounters reviewed by the Monitor team, the Monitor team scheduled meetings with two precincts: a precinct that had a high compliance rate to learn what practices and strategies could be replicated in other precincts; and a precinct that had a high number of illegal stops, frisks, and searches. The differences between the commands were stark. The first precinct had a culture of accountability. The commanding officer (CO), command executives, and officers watched significant numbers of videos, both of their own interactions and other commands, and offered critiques of each other's footage. The CO told the Monitor he would discuss with the officers directly any concerns he had about any particular stop. He emphasized that the NST unit should make intelligence-based stops rather than random, indiscriminate ones. In contrast, the second precinct did not have the same level of accountability. The command did not have an NST sergeant, several positions in the command were unfilled, the supervisors had fewer years on the job than in the other precinct, and their officers had even fewer years on the job. The Monitor's review of this command's stops showed significant constitutional flaws. The

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Department should learn from the high performing commands and attempt to replicate their best practices. Similarly, the Department should learn from poor performing commands to develop practices so the same types of issues can be avoided.

III. Accountability

A. Early Intervention Program (EIP)

The goal of the Department's EIP is to identify officers with potential issues and at-risk behavior and take appropriate action before they escalate. In 2023, the Plaintiffs raised concerns that certain officers subject to adverse credibility findings by judges were not being reviewed by the Early Intervention Committee (EIC). After meeting with the NYPD, the Monitor team set up meetings with each district attorney's office, the two U.S. Attorney's offices, the Law Department, and the Office of Court Administration, to find out how those offices collected information on adverse credibility determinations and suppression decisions, and how information was communicated to the NYPD. These meetings showed that the process could be improved. The NYPD has now contacted each office and provided them with a single email address for the offices to send both adverse credibility determinations and suppression decisions. The Monitor team will follow up to ensure that the NYPD is receiving the required information.

The Monitor team has observed EIC meetings and is not persuaded they are effective, and, again, has seen a lack of accountability by commanding officers for their officers' actions. The Department agrees the program could be more effective with some changes. Consequently, the Department and the Monitor team will be meeting to determine if changes to the program can be made, with the Court's approval, that will result in a more effective program. First, COs must take more responsibility for their officers and recommend appropriate interventions. Many times, the CO recommended that no intervention was necessary despite the seriousness of the situation. Second, the effectiveness of interventions needs to be measured. There is little to no evidence that intervention is improving outcomes. Third, the EIP must create a mechanism to share concerns about supervisory responsibility. The EIP is designed to address individual officer issues, but when systematic problems of a unit or command are presented to the Committee, the Department must take a broader look at the performance of the unit and develop appropriate interventions needed for the command, rather than solely for individual officers.

B. ComplianceStat

In addition to the NYPD's NST compliance plan, which they are implementing in 2024, the NYPD is also developing a program they call "ComplianceStat." These will be meetings

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chaired by the Chiefs of the Patrol Services Bureau and the Professional Standards Bureau and attended by four Patrol Borough commanding officers and the precinct commanding officers from those Patrol Bureaus. At each meeting, two Patrol Boroughs will be presenting and two will be observing. Underreporting and stop, frisk, and search compliance will be part of the focus of the meetings. The first ComplianceStat meeting was held on January 31, 2024. Three dominant themes communicated during this review were that: each command and the Patrol Borough needs a process to assess compliance; supervisory oversight entails identifying deficiencies and correcting them; and executive accountability is expected. The continuation of ComplianceStat is critical and we look forward to working with the Department to ensure its effectiveness.

IV. Fourteenth Amendment

A. Racial Disparities Report (Twentieth Report)

The Monitor team used a variety of statistical analyses to assess the Department's compliance with its racial profiling policies and with the Fourteenth Amendment. Dr. John MacDonald, an expert on the Monitor team, conducted analyses that will be reported in the Monitor's Twentieth Report to be filed later this year. The total number of Black and Hispanic people subjected to stop encounters dropped significantly between 2013 and 2022, though the overall share of stops and arrests by race and ethnicity remained largely unchanged. Dr. MacDonald found that much of the racial disparities in 2022 were driven by the high rate of stops in a limited number of specific neighborhoods and precincts. With respect to the outcomes of encounters after the stop, Dr. MacDonald found that racial disparities in post-stop outcomes diminished over the course of the Monitorship with respect to summonses, arrests, uses of force, and the recovery of a weapon or other contraband. However, racial disparities remain with respect to frisks and searches. This report will be released in the first quarter of 2024.

B. Stop, Question, and Frisk Dashboard

NYPD has not yet begun to monitor and audit its members' use of stop-and-frisk practices in compliance with the Fourteenth Amendment. The NYPD is in the process of further developing a visualization dashboard that tracks and analyzes NYPD's stop, frisk, search, and arrest data, among others, by officer, command, bureau, or borough, and citywide. The dashboard also cross-references Census data. The Department has not yet begun to use the dashboard. We will be meeting with the NYPD to discuss the Department's plans for Fourteenth Amendment monitoring as well as a timeline for actively using the dashboard and

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how it can be used as an accountability tool for both Fourth and Fourteenth Amendment compliance.

C. Racial Profiling Complaint Investigations

In 2021, the City Council passed Local Law 47 (2021), which amended the City Charter to clarify that investigating allegations of “racial profiling and bias-based policing” falls under the Civilian Complaint Review Board’s (CCRB) “abuse of authority” jurisdiction.² The CCRB hired a director and staff for the unit, developed internal guidelines for bias investigations, and began to receive complaints in October 2022. By May 2023, the CCRB had begun investigating over 100 profiling complaints, but it was unable to complete those investigations because the NYPD did not provide certain data necessary for a thorough and complete investigation. The Monitor brought these serious concerns to the attention of the Court,³ and discussions among the CCRB, the NYPD, and the New York City Law Department resulted in a Memorandum of Understanding (MOU) between the agencies on June 8, 2023. The NYPD is providing the data needed, as required by the MOU. As of November 30, 2023, the CCRB has substantiated two allegations of racial profiling.⁴ The Monitor team will be reviewing how the NYPD handles profiling and bias policing complaints that are substantiated by the CCRB.

V. Auditing

A. Stop Report and BWC Compliance

The Monitor team completed its review of 2022 stops and is now reviewing 2023 stops. A summary of stop, frisk, and search compliance rates comparing 2021 to 2022 and comparing the Monitor’s assessments with the NYPD Quality Assurance Division’s (QAD) assessments is provided below. As you will see, compliance rates decreased in all three areas in 2022, with frisk and search compliance rates declining significantly.⁵

² N.Y.C. Local Law No. 47 (2021), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAAdmin/0-0-0-132892>.

³ *Floyd*, ECF No. 912.

⁴ Civilian Complaint Review Board, EXECUTIVE DIRECTOR’S MONTHLY REPORT (Dec. 2023), https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2023/12132023-monthlystats.pdf.

⁵ Starting in the third quarter of 2021, if the Monitor team’s review of a stop determined that the stop was not based on reasonable suspicion, any subsequent frisk and/or search would also be deemed deficient unless there was independent reasonable suspicion for the frisk and/or an

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	Stops		Frisks		Searches	
	2021	2022	2021	2022	2021	2022
Monitor	89.4%	88.7%	84.2%	76.1%	79.6%	70.1%
QAD	93.8%	93.2%	90.8%	87%	91.1%	89.2%

The data shows a very slight decline in compliant stops, with unconstitutional reported stops increasing from 10.6% in 2021 to 11.3% in 2022. Unconstitutional frisks rose from 15.8% in 2021 to 23.9% in 2022. Unlawful searches rose from 20.4% in 2021 to 29.9% in unlawful searches. These increases are substantial.

B. Underreporting

Officers’ failures to document their stops in stop reports has been a problem from the very beginning of the monitorship, and it remains a problem today. Every quarter, the Monitor team reviews a random sample of BWC videos categorized as “Investigative Encounters” to determine whether the encounter might involve a stop. If the video appears to illustrate a stop, the video is sent to the NYPD to investigate if a stop did occur and if so whether a stop report was completed. For 2022, only 69% of stops in the audit were documented—meaning that 31% of stops were undocumented, a number that is too high. Encounters labeled by officers as Level 2 encounters were the most problematic, as only 21% of confirmed stops (categorized as Level 2 by officers) had stop reports. The Monitor team will be meeting with the NYPD to further address underreporting. The NYPD’s RAND audits have been ineffective in identifying unreported stops, and the Monitor team will work with the Department to determine how it can better audit its own stop encounters to identify units which are disproportionately underreporting.

VI. Reporting

Eighteenth Report – Trespass Affidavit Program (TAP) Report. On March 3, 2023, the Monitor issued a report assessing whether the Trespass Affidavit Program, which the NYPD formally terminated on September 30, 2020, actually ceased self-initiated interior patrols and trespass enforcement in former TAP buildings without a legitimate predicate to enter the building. Analysis of data from October 2020 through October 2021 revealed that most precincts did *not* appear to continue to engage in random or routine interior patrols of residential buildings, but that three precincts *did* engage in TAP-like activity after the TAP

independent legal basis for the search. This change in assessing frisks and searches accounts for a portion of the decline in compliance of frisks and searches.

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program officially ended. The NYPD has developed a compliance plan for ensuring that its members' actions reflect that TAP has been terminated, and the Department is undertaking an audit of the three commands highlighted in the Monitor's TAP Report.

Nineteenth Report – Neighborhood Safety Teams Report. As noted above, the Monitor issued a report on the practices of the NYPD's NSTs, assessing BWC videos and stop reports to determine that the NST was problematically noncompliant with the Court's order, and that the Department's oversight of the NSTs' stops was inadequate. Also noted above, the Department has developed a compliance plan to address the Monitor's concerns, which the Monitor will be reviewing to ensure the plan is satisfactory.

Twentieth Report – Racial Disparities Report. The next report to be filed by the Monitor will be Dr. MacDonald's report on racial disparities in the Department's stop-and-frisk practices, as noted above. The Report is expected to be issued in the first quarter of 2024.

Twenty-First Report – General Compliance Report. The Monitor's next general compliance report is expected to be complete in the first half of 2024. It will review the NYPD's compliance with the Court's orders and assess data about NYPD policing in 2020 through 2023. The report broadly analyzes stop-and-frisk data to determine whether the NYPD's policies and practices are compliant with the Court's orders, including its policies on stops, frisks, and searches and stop reporting; racial profiling policies; interior patrols at New York City Housing Authority properties; supervision; training; accountability (including auditing, the Early Intervention Program, and performance evaluations); complaints and discipline; BWC usage; and the role of the Community Liaison.

ISLG and Stanford Studies. Researchers from the City University of New York's Institute for State and Local Governance (ISLG) and Stanford University are conducting studies focused on Fourth and Fourteenth Amendment compliance in police-civilian encounters in the City. The studies cover legal compliance in police-citizen encounters, racial disparities in compliance and escalation of encounters, and appropriate documentation of encounters. The ISLG study is expected to be completed in 2024 and the Stanford study the next year.

Discipline Report. James Yates, a member of the Monitor team, has completed drafting his report describing the NYPD's discipline system. A draft was shared with the parties for comment, and Judge Yates has revised the report as appropriate. The report is expected to be submitted to the Court in 2024.

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VII. Conclusion

Reported stops, frisks and searches conducted by patrol officers are generally compliant, especially encounters resulting from 911 calls. However, the reported stops, frisks, and searches by the NYPD's specialized units (NST and PST) are significantly less compliant than those of patrol officers. This pattern is very troubling. In addition, undocumented stops continue to plague the NYPD and hinder the Department's efforts at achieving substantial compliance. Better oversight is needed at all supervisory levels within the Department. The Department has come a long way since the monitorship began, but the Department must take real steps to institute accountability.

Respectfully,



Mylan L. Denerstein
Independent Monitor

cc: All Parties of Record