

**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 Schwirtz 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 Loberera, *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-20200515-3f7ovpdhhza3ngagquftoaraxy-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 marks. *'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 Speri, *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, 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, 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 Mastro Simone, *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 reporter 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/NYCCComptroller/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