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Police Reform Organizing Project

Changing the NYPD:
A Progressive Blueprint for Sweeping
Reform

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ABOUT THE POLICE REFORM ORGANIZING PROJECT



Through research and analysis, public education, policy advocacy, and coalition building, the Police Reform Organizing Project aims: to stop the current wasteful, ineffective, unjust, illegal, bullying, homophobic, transphobic, and racially biased practices of the NYPD; to create a strong, independent entity that monitors and assesses police priorities and policies and that effectively investigates and punishes abusive conduct; and, to establish and implement local problem solving measures that strengthen communities while reducing crime.

ABOUT THE WALTER LEITNER INTERNATIONAL HUMAN RIGHTS CLINIC



Leitner Center
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Through real-world human rights lawyering experiences, the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice trains Fordham Law School students to be strategic, reflective, and creative social justice advocates. The Clinic works in partnership and solidarity with grassroots justice organizations on human rights projects focusing on access to justice and sexual health and rights. The Clinic employs a range of advocacy methods including legal and policy analysis, human rights trainings, public interest litigation, submissions before human rights bodies, and direct legal assistance.

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CHANGING THE NYPD: A PROGRESSIVE BLUEPRINT FOR SWEEPING REFORM

Executive Summary

For the past twenty years, under the mayoralities of Rudy Giuliani and Michael Bloomberg, the New York City Police Department (NYPD) has increasingly engaged in various practices which are illegal and unconstitutional. These tactics are counterproductive, in that they decrease trust in and cooperation with the police, and have had an especially harmful impact on the city's most vulnerable and defenseless populations: African-American and Latino youth, LGBT persons, the homeless, mentally ill people, Muslims, street vendors, and sex workers.

The NYPD's highly controversial stop-and-frisk policy and other aggressive policing tactics have engendered deep antagonism between the NYPD and many New Yorkers, as was clearly manifested in the results of the recent mayoral election. On August 12, 2013, the United States District Court for the Southern District of New York found that the NYPD's stop-and-frisk practices are unconstitutional. In *Floyd v. City of N.Y.*, the court held that the NYPD carried out these practices in an invasive and racially discriminatory manner in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.¹ Noting that over eighty percent of the 4.4 million people the NYPD stopped and frisked between January 2004 and June 2012 were African-American or Latino,² the court called for comprehensive reform of the NYPD's practices to protect the rights and liberties of all New Yorkers.³

The federal court ruling touched a nerve for communities across the city victimized by stop-and-frisk.⁴ The issue of the NYPD's harsh and aggressive policing tactics generally and stop-and-frisk specifically, became major focal points of the 2013 mayoral campaign. Mayor Bill de Blasio, along with other leading candidates in the Democratic Party's primaries, called for comprehensive reform of the NYPD's policies.⁵

¹ *Floyd v. City of N.Y.*, Nos. 08 Civ. 2, 1034, 12 Civ. 2274 SAS 013 WL 4046209 at *34, 75 (S.D.N.Y. Aug. 12, 2013).

² *Floyd*, 2013 WL 4046209 at *1. POLICE REFORM ORG. PROJECT, CRIMINALIZING COMMUNITIES: NYPD ABUSE OF VULNERABLE POPULATIONS iii (2013), *available at* <http://www.leitnercenter.org/files/WLIHRC%20and%20Prop%20Report%20-%20Spring%202013.pdf>.

³ See, *Floyd v. City of N.Y.*, Nos. 08 Civ. 1034, 12 Civ. 2274 SAS, 2013 WL 4046217 at *1 (S.D.N.Y. Aug. 12, 2013).

⁴ See, e.g., I. Bennet Capers, *Moving Beyond Stop-and-Frisk*, N. Y. Times, Aug. 12, 2013 at A23; THE BRONX DEFENDERS, *The Bronx Defender Hails Today's 'Stop and Frisk' decision by federal Judge Scheindlin*, (Aug. 12, 2013),

<http://www.bronxdefenders.org/the-bronx-defenders-hails-todays-stop-and-frisk-decision-by-federal-judge-scheindlin/>

⁵ Liz Goodwin, *Police Department's 'Stop-and-frisk' Program Could Decide NYC Mayoral Race*, YAHOO! NEWS, (Sept. 10, 2013), <http://news.yahoo.com/stop-and-frisk-police-tactic-could-decide-nyc-mayoral-race-180710235.html>.

On October 31, 2013, the Second Circuit Court of Appeals stayed the Floyd ruling and its accompanying reforms pending the City’s appeal.⁶ During the mayoral election campaign, Bill de Blasio vowed to withdraw the City’s appeal upon taking office. He followed through on that pledge on January 30th when he announced that the City had reached an accord with the plaintiffs in the suit.

The landmark stop-and-frisk ruling and the accompanying public support for NYPD reform present an ideal opportunity for Mayor de Blasio and his new Police Commissioner William J. Bratton to implement a rights-based policing program that works in partnership with communities. This report is meant to serve as a resource to help guide the de Blasio/Bratton administration through the tricky waters of managing meaningful reforms in NYPD policing practices and policy.

Part I highlights straightforward policy shifts that Mayor de Blasio and Police Commissioner Bratton can immediately implement with little political or bureaucratic risk or opposition. These reforms include disbanding the peddler squad that harasses street vendors, establishing community intervention teams that work with mental health professionals to respond to people in psychiatric crisis, eliminating police confiscation of condoms in someone’s possession as evidence of prostitution, ending the practice of arresting homeless people for ‘quality of life’ offenses, and dismantling the NYPD’s often illegal arrest of individuals on criminal trespassing charges in public housing and private apartment buildings enrolled in “Operation Clean Halls.”

Part II presents longer-term and expansive institutional reforms. The section details the need for a paradigm shift in NYPD policing, one that reorients the NYPD from punitive policing and an aggressively enforced, illegal quota system towards promoting public safety and working in partnership with communities. This part proposes community-oriented problem-solving measures that engage and collaborate with neighborhood leaders, residents, local service programs, community centers, and places of worship. Such an approach will also entail enhanced and multifaceted oversight of the NYPD that should bring together community groups, the recently-created Inspector General, the court monitor mandated by the *Floyd* decision, the City Council, and the Mayor’s Office.

Part III recommends reforms in what has been in recent years the toxic culture of the Department, reforms that will result in significant changes in practices, including strengthening the NYPD liaison office for LGBT communities, legalizing and regulating the sale and possession of small amounts of marijuana, ending the unwarranted surveillance of New York’s Muslim communities, and ensuring robust protection of First Amendment rights for all New Yorkers.

Recommendations

To the Mayor’s Office and the New York Police Department (NYPD):

Re: Readily Implementable Reforms

⁶Ligon v. City of New York, 13-3123, 2013 WL 5835441 (2d Cir. Oct. 31, 2013) superseded in part sub nom. In re Reassignment of Cases, 13-3123, 2013 WL 5998139 (2d Cir. Nov. 13, 2013).

- **Street Vendors:** Dismantle the NYPD’s Street Peddler’s Unit, and shift responsibility for supervising street vendors to the Department of Consumer Affairs.
- **People with Mental Illness:** Establish a program of Community Crisis Intervention Teams (CCITs).
- ***No Condoms as Evidence:** Stop the practice of using condoms as evidence of sex-work related offenses, and of arresting people on that basis. Encourage the New York State Legislature to pass the “No Condoms as Evidence” bill.
- **Homeless People:** Eliminate, as the basis for making arrests, “quality of life” offenses like disorderly conduct and loitering that unfairly target homeless people.
- **Trespass Affidavit Program: Dismantle the Trespass Affidavit Program.** Mayor de Blasio and Commissioner Bratton should end the NYPD’s participation in this program which has often resulted in officers arresting people on the charge of trespass while they are standing in the hallway or lobby of the building where they live.

*On May 13th Commissioner Bratton announced a policy barring confiscation of condoms as arrest evidence in prostitution, prostitution in a school zone, and loitering for the purposes of prostitution cases, definitely a step in the right direction of needed reform. But the policy leaves in place a loophole that will likely result in the continuation of this counterproductive and unfair practice: police can still use the possession of condoms to justify an arrest and confiscate condoms from sex workers and trafficking survivors as evidence where promoting and trafficking is suspected. We very much share the perspective of Sienna Baskin, co-director of the Sex Workers Project at the Urban Justice Center, as expressed in a statement issued on May 13th: "...we are concerned that under this policy, police can still use the fact that a sex worker has condoms in their possession as a basis for arrest for prostitution even if they don't physically vouch for them as evidence."

Re: Institutional Reforms

- **Abolish the Quota System:** Abolish the illegal, aggressively enforced quota system for evaluating the job performance of police officers on the ground.
- **Strengthen NYPD Oversight**
 - Appoint an NYPD Inspector General pursuant to the Community Safety Act who will work alongside the court-selected monitor to implement a joint-remedial process for NYPD reform.
 - Encourage community involvement in NYPD oversight by holding public forums where members of the community can air their grievances. Direct the Inspector General to attend, and encourage the court monitor to do so.
 - Encourage the City Council to use its oversight powers to conduct investigations of the NYPD.
- **Improve Community/Police Relations:** Involve the community in crime prevention by implementing practical community policing programs, such as Boston’s ‘Operation Ceasefire’ and New Orleans’s ‘NOLA for Life’ that studies have shown to be successful. Credible research has provided much evidence that such approaches, featuring heavy participation of

community members, are highly effective in establishing stable neighborhoods and combating crime.

Re: Reforms in Agency Culture

- **LGBT Communities:** Follow and update NYPD patrol guidelines specifying better treatment of LGBT communities and create a more robust NYPD LGBT Liaison Office. End law enforcement violence and harassment against LGBT and HIV-affected people.
- **Marijuana Reform:** Support the legalization and regulation of marijuana in New York State. Curtail marijuana-related arrest practices.
- ****Muslim Surveillance:** End the suspicion-less surveillance of Muslim-Americans, starting by having the NYPD disavow its “radicalization” theory, on which discriminatory surveillance is based and which treats with suspicion people engaging in First Amendment-protected activities, including: wearing traditional Islamic clothing, growing a beard, abstaining from alcohol and becoming involved in social activism - meaning, essentially anyone who identifies as Muslim, holds Islamic beliefs or engages in Islamic religious practices. Also, reinstate the Handschu Agreement, which ensures that investigations are based only on specific information about a future crime and not based on political or religious speech.
- **Free Speech:** Demonstrate greater flexibility in facilitating protests around the city by issuing more permits in a timely manner and increasing the number of venues available. Limit the use of coercive policing techniques such as protest pens and grant demonstrators free access to public spaces.

**Our original recommendation in this report called on the de Blasio/Bratton Administration to start addressing the problem of unwarranted Muslim surveillance by "dismantling the Zone Assessment & Demographic Unit of the NYPD's Intelligence Division." On April 15th, Commissioner Bratton announced that the Department had taken this step. We commend the Mayor & Commissioner for making this constructive decision and urge them to adopt the document's other relevant proposals which would fully address the harm and injustice caused by the NYPD's intrusive and unjustified spying on the Muslim community.

Part I: Readily Implementable Reforms

This section highlights proposed reforms and policy shifts that qualify as easy political lifts, and that aim to eliminate the NYPD's harassment of vulnerable groups such as street vendors, mentally ill persons, sex workers, and homeless people. These reforms include disbanding the peddler's squad that harasses street vendors, establishing crisis intervention teams to respond to mentally ill persons, eliminating police confiscation of condoms in someone's possession as evidence of prostitution, ending the practice of arresting homeless people for 'quality of life' offenses, and shutting down the Trespass Affidavit Program.

Stop Street Vendor Harassment

Street vendors, who form an integral part of life in New York City, face harassment by the NYPD on a daily basis. There are over 20,000 street vendors in New York, most of them people of color belonging to immigrant groups, who are small business owners with limited resources and means of income.⁷ Each year, NYPD officers arrest about 7,000 street vendors and write more than 40,000 tickets, often for minor violations such as a street cart not being the proper distance from the curb. Also, the NYPD frequently confiscates the carts, usually the vendors' only source of revenue, and keeps them for up to a week.⁸

More recently, police officers have also begun to give street vendors criminal summonses instead of less serious civil summonses.⁹ In other U.S. cities, enforcement efforts against street vendors are performed by inspectors from various specialized agencies, like the Health Department or Department of Small Business. In New York City, the NYPD operates a Peddlers' Squad that aggressively targets street vendors for offenses such as operating without a license or selling art work.¹⁰ Shifting the relationship between the NYPD and street vendors is part of an overarching necessary shift from "zero-tolerance" to community-oriented policing strategies. Rather than viewing minor regulatory violations as criminal acts, Mayor de Blasio and Police Commissioner Bratton should recognize and honor the positive role that street vendors play in the culture of New York City.

The NYPD should dismantle the Peddlers Squad. Also, the Department should also stop issuing criminal summonses to street vendors for activity that is not criminal in nature. In addition, Mayor de Blasio's administration should transfer the supervision and regulation of street vendors from the Police Department to the City's Department of Consumer Affairs.

Improve the Response to People in Psychiatric Crisis

⁷ *About SVP*, STREET VENDORS PROJECT, <http://streetvendor.org/about/> (last visited October 21, 2013)

⁸ CRIMINALIZING COMMUNITIES, *supra* note 8, at 8.

⁹ Jennifer Lee, *In Rally, Street Vendors Accuse Police of Harassment*, N. Y. Times, (Oct. 27, 2009), <http://cityroom.blogs.nytimes.com/2009/10/27/in-rally-street-vendors-accuse-police-of-harassment/>

¹⁰ Al Baker, *On the Frontline of the Battle with Peddlers*, N. Y. TIMES, Dec. 10, 2009, at A34.

People with serious mental health concerns, specifically those in psychiatric crisis, are particularly vulnerable during encounters with the police. The NYPD has not sufficiently trained police officers to interact appropriately with persons in psychiatric distress. As a result, police officers often lack an understanding of how their own behavior can, in effect, help to escalate already precarious interactions with individuals who may be incapable of cooperating with police demands.¹¹

To ensure that the city can deal effectively and humanely with individuals with serious mental health concerns, New York's new leaders should establish an alternative response to people in psychiatric crisis. Over 2,700 localities in the United States, including Chicago, Houston and Memphis, employ Community Crisis Intervention Teams ("CCITs") to assist police officers in their response to "emotionally disturbed persons"¹² and to decrease the number of arrests.¹³

In New York, CCITs would involve: (a) standardized training for police officers and emergency dispatchers; (b) a collaborative preparation plan between law enforcement officials, mental health professionals and peer advocates; and, (c) access to 24-hour mental health facilities.¹⁴ CCIT officers receive training in de-escalation, because overwhelming a person in mental distress is often counter-productive and can aggravate an already hostile situation.¹⁵ In cities that use CCITs, police officer trainings have the effect of enhancing the trainee's preparedness, skills, and confidence in knowing how to deal with persons in psychiatric crisis, while also increasing their comfort level with people with mental illness.¹⁶ CCITs reduce injuries to police, minimize injuries to bystanders and suspects, decrease lawsuits against the city, and reduce the amount of time-off officers take as a result of such encounters.

Mayor de Blasio's office and the NYPD should empower a group of stakeholders to establish and implement a Community Crisis Intervention Team in New York City. Such a group should include the NYPD, family advocates, mental health providers, mental health advocates, researchers, hospitals officials, and appropriate city agencies.

Establish a No Condoms as Evidence Policy

¹¹ CRIMINALIZING COMMUNITIES, *supra* note 8, at 9.

¹² This term is from *New York Police Department Patrol Guide*, 2004 Edition

¹³ *De Blasio Voter's Ed Responses*, POLICE REFORM ORG. PROJECT 6 (2013), available at <http://www.policereformorganizingproject.org/wp-content/uploads/2013/08/de-Blasio-Voters-Ed-Responses.pdf>

¹⁴ *De Blasio Voter's Ed Responses*, POLICE REFORM ORG. PROJECT 6 (2013), available at <http://www.policereformorganizingproject.org/wp-content/uploads/2013/08/de-Blasio-Voters-Ed-Responses.pdf>

¹⁵ Nick Pinto, *The NYPD's Poor Judgment with the Mentally Ill*, VILLAGE VOICE, Aug. 15, 2012

¹⁶ Michael T. Compton, Masuma Bahora, Amy C. Watson, & Janet R. Oliva, *A Comprehensive Review of Extant Research on Crisis Intervention Teams (CIT) Programs*, J. Am. Acad. Of. Psychiatry and the Law, available at <http://jaapl.org/content/36/1/47.full>

The Department of Health distributes city-branded condoms for free to all New Yorkers to encourage safe sex practices.¹⁷ Yet, due to aggressive policing tactics, many sex workers and transgender women, profiled as sex workers by the police, are afraid to carry condoms. Although it is not illegal to carry condoms in New York, police officers often confiscate condoms and present them as evidence of prostitution-related offenses.¹⁸ Not only does this practice leave sex workers at risk of contracting HIV and other STDs, it also runs contrary to the public health initiatives pursued by the City Department of Health.¹⁹

In response to this policing tactic, the New York State Assembly passed the “No Condoms as Evidence” bill on June 21, 2013.²⁰ The New York State Senate has not acted on the proposed bill.²¹ If enacted in the 2014 legislative session, the bill will prohibit police officers and prosecutors from using condoms as proof of intent to engage in sex-work-related offenses.²² Numerous high-ranking City officials have already come out in support of ending the practice. Former Brooklyn District Attorney, Charles Hynes, wrote an open letter to then NYPD Commissioner Ray Kelly declaring that: “The collection and vouchering of condoms as evidence by the police department needs to immediately cease.”²³ The Manhattan District Attorney’s office has stated that: “Because of public health policy considerations, it is now the practice of the Manhattan D.A.’s office not to introduce condoms as evidence in individual loitering for prostitution cases.”²⁴

*While the bill is in the state legislature awaiting enactment, Mayor de Blasio and Police Commissioner Bratton should immediately put an end to the harmful NYPD practice of confiscating condoms as evidence. Mayor de Blasio should encourage the City Council to renew its efforts to enact a resolution in support of the ‘No Condoms as Evidence’ bill in the state legislature. In addition, all New York City District Attorneys should publicly and immediately stop introducing condoms as evidence for all sex-work-related offenses, including in human trafficking cases. Other City officials and New York State Senators in support of the bill should renew their efforts to vigorously press for the passage of the legislation. Nonetheless, the ultimate status of the bill should not stop the Mayor, Police Commissioner, and the City’s District Attorneys from immediately ending the confiscation of condoms as evidence.

*On May 13th Commissioner Bratton announced a policy barring confiscation of condoms as arrest evidence in prostitution, prostitution in a school zone, and loitering for the purposes of prostitution cases, definitely a step in the right direction of needed reform. But the policy leaves in place a loophole that will likely result in the continuation of

¹⁷ HUMAN RIGHTS WATCH, *SEX WORKERS AT RISK* 13 (2012), available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf.

¹⁸ CRIMINALIZING COMMUNITIES, *supra* note 8, at 5.

¹⁹ *Id.*

²⁰ Chen, Michelle *Criminalizing Condoms* (2012), available at <https://www.commondreams.org/view/2012/07/22-6>

²¹ Press Release, *End the Use of Condoms as Evidence, No Condoms as Evidence Bill Passes Assembly, Making History!* (June 21, 2013), available at <http://www.nocondomsasevidence.org/2013/06/21/no-condoms-as-evidence-bill-passes-assembly-making-history/>.

²² *Id.*

²³ J. David Goodman, *Police in Brooklyn are Told Not to Seize Condoms of Prostitutes*, N.Y. TIMES (May 29, 2013), <http://www.nytimes.com/2013/05/30/nyregion/brooklyn-wont-use-condoms-as-evidence-against-prostitutes.html>.

²⁴ *Id.*

this counterproductive and unfair practice: police can still use the possession of condoms to justify an arrest and confiscate condoms from sex workers and trafficking survivors as evidence where promoting and trafficking is suspected. We very much share the perspective of Sienna Baskin, co-director of the Sex Workers Project at the Urban Justice Center, as expressed in a statement issued on May 13th: "...we are concerned that under this policy, police can still use the fact that a sex worker has condoms in their possession as a basis for arrest for prostitution even if they don't physically vouch for them as evidence."

End Harassment of the Homeless

NYPD officers often target the homeless to fulfill quota requirements and ‘remove “undesirables” from the community for the purposes of fostering “urban renewal.”²⁵ Police arrest homeless people for minor “quality of life” violations and charge them with offenses such as disorderly conduct. However, the criterion for disorderly conduct is entirely in the discretion of the police, and police often arrest homeless individuals for not having identification, for utilizing public spaces, or for passive panhandling, which are all constitutionally protected actions.²⁶ The police have also employed the use of illegal loitering charges against homeless individuals in New York, despite those laws being found unconstitutional by both federal and state courts.²⁷ Homeless people in New York already face daunting challenges, and their situation is made even more burdensome by continuous police harassment.²⁸

The NYPD should eliminate, as the basis for making arrests, “quality of life” offenses like disorderly conduct that unfairly target homeless people. Police harassment of homeless individuals reinforces the cycle of homelessness and results in making the homeless population even more marginalized and vulnerable.

End the Trespass Affidavit Program

The NYPD’s misguided efforts to combat drug use and distribution have led to the implementation of the Trespass Affidavit Program, also known as ‘Operation Clean Halls.’²⁹ Officers have often used their authority under the program to illegally frisk and arrest people inside apartment buildings, frequently arresting residents in the hallways of their own buildings simply for not carrying identification.³⁰

²⁵ CRIMINALIZING COMMUNITIES, *supra* note 8, at 10.

²⁶ *De Blasio Voter’s Ed Responses*, POLICE REFORM ORG. PROJECT 6 (2013), available at <http://www.policereformorganizingproject.org/wp-content/uploads/2013/08/de-Blasio-Voters-Ed-Responses.pdf>

²⁷ *Id.*

²⁸ CRIMINALIZING COMMUNITIES, *supra* note 8, at 11.

²⁹ *Id.*

³⁰ *Id.*

Since July 2012, the Bronx D.A.'s office has refused to prosecute cases filed under the Trespass Affidavit Program unless the arresting officer submits to an interview justifying the arrest.³¹ As of September 2012, trespass arrests in the Bronx had fallen by 38.2 percent compared with 2011.³²

In *Ligon v. City of New York*, the U.S. District Court for the Southern District of New York held that the police had been making illegal stops and arrests outside private apartment buildings.³³ Public housing residents, visitors and advocacy groups brought the suit, claiming the NYPD's practice of subjecting individuals to arbitrary stops and arrests is unconstitutional. The Court granted a preliminary injunction ordering the NYPD to immediately cease the trespass stops.³⁴ The decision emphasized that the practice was applied in an unconstitutional manner, and criticized the NYPD's methods as fostering an attitude of "stop and question first, develop suspicions later."³⁵

Mayor de Blasio and Police Commissioner Bratton should direct the NYPD to dismantle the Trespass Affidavit Program.

³¹ CRIMINALIZING COMMUNITIES, *supra* note 8, at 2.

³² Joseph Goldstein, *Prosecutor Deals Blow to Stop-and-Frisk Tactic*, NY TIMES, Sep. 25, 2012, http://www.nytimes.com/2012/09/26/nyregion/in-the-bronx-resistance-to-prosecuting-stop-and-frisk-arrests.html?pagewanted=all&_r=0

³³ *Ligon v. City of New York*, 910 F. Supp. 2d 517 (S.D.N.Y. 2012)

³⁴ *Id.*

³⁵ *Id.*; Sean Gardiner and Danny Gold, *Judge Halts a Stop-and-Frisk Tactic*, WALL ST. J., Jan. 8, 2013, *available at* <http://online.wsj.com/article/SB10001424127887323482504578229981202346100.html>

Part II: Structural Reforms

This section lays out fundamental and far-reaching reforms, including abolishing the NYPD's quota system and ending the unconstitutional stop and frisk tactic. Mayor de Blasio and Police Commissioner Bratton should shift the NYPD approach away from the aggressive and punitive policing characterized by stop and frisk and driven by the quota system, towards more community-oriented measures that focus on engagement and collaboration with the communities that the Department serves. The Mayor and Commissioner should also provide greater oversight of the NYPD that includes collaboration between community groups, the recently-created Inspector General, the court monitor mandated by the *Floyd* decision, the City Council, and the Mayor's Office.

Abolish the Quota System

The NYPD's invasive and aggressive targeting of vulnerable communities in New York City is linked to its quota system. To meet their quota requirement, officers resort to ineffective and confrontational policing methods, which erode the NYPD's relationship with many communities.³⁶

The NYPD has continuously denied the existence of quotas and asserts that the NYPD only relies on a set of "productivity goals."³⁷ These "productivity goals" are a euphemism for a quota system. In 2010, the New York State Legislature enacted the Quota Law, which outlawed the use of quotas for summonses, tickets, and stop-and-frisk encounters and prohibited the use of quotas for performance evaluations.³⁸ Yet, the NYPD leadership proceeded with a numbers-focused evaluation process of officers.³⁹ Later in 2010, the Village Voice publicized recordings of senior officers that offered credible testimony of the aggressive top-down pressure to increase enforcement activity and of the threat of adverse consequences for officers who fail to achieve high numbers.⁴⁰

Through 2013, NYPD officials continued to reinforce an institutionalized quota system, absent a sufficient evaluation mechanism that could determine if such enforcement activities were even legally justified."⁴¹

Many officers engage in indiscriminate ticketing, arrests, stop-and-frisks and other harassing techniques to meet required enforcement numbers. As one officer commented, "If I break up a fight between two boys and send them home, I don't get credit. If I help deliver a baby in an emergency, I

³⁶ POLICE REFORM ORG. PROJECT, CRIMINALIZING COMMUNITIES: NYPD ABUSE OF VULNERABLE POPULATIONS iii (2013), available at <http://www.leitnercenter.org/files/WLIHRC%20and%20Prop%20Report%20-%20Spring%202013.pdf>.

³⁷ Graham Rayman, *Ray Kelly Puts NYPD Quota Demands in Writing; Rank and File Not Happy*, VILLAGE VOICE, (Oct. 28, 2011), http://blogs.villagevoice.com/runninscared/2011/10/ray_kelly_puts.php.

³⁸ *Floyd*, 2013 WL 4046209 at *32 n.260.

³⁹ *Id.*

⁴⁰ *Floyd*, 2013 WL 4046209 at *32 n.259.

⁴¹ *Id.*

get no credit. But I score points if I issue a seat belt summons or record two stop-and-frisks.”⁴² The easiest people for officers to target to reach their quota requirements are from the most vulnerable communities in New York City: low-income African-Americans and Latinos, Muslims, sex workers, LGBTQ people, street vendors, people with mental illness, and homeless people.⁴³ Subsequently, these communities have come to fear and distrust the NYPD.⁴⁴ This distrust of the NYPD as a whole ultimately undermines its ability to protect people in high-crime neighborhoods and creates a strained and difficult work environment for officers.⁴⁵ As Patrick J. Lynch, the president of the NYC Patrolmen’s Benevolent Association (PBA), has stated, “Quotas are the worst possible way to try to produce more effective policing. They risk turning officers into automatons and fuel predictable, pervasive distrust between cops and community.”⁴⁶

Floyd reaffirmed the existence of a quota system and the truly damaging effects of such institutional pressures. In the *Floyd* ruling, the court stated, “It is difficult to see any difference between a performance goal and a quota.”⁴⁷ The evidence before the court pointed to performance goals determining the appropriate enforcement activity numbers and an officer’s failure to engage in sufficient proactive enforcement activities resulting in negative performance evaluation and reassignment to a different command.⁴⁸ As the court stated, “imposing numerical performance goals for enforcement activities, without providing effective safeguards to ensure the activities are legally justified, could result in an officer taking enforcement action for the purpose of meeting a [performance goal] rather than because a violation of the law has occurred.”⁴⁹

The Mayor and Police Commissioner should no longer tolerate an institutionalized quota system that has significant negative consequences for the safety of New York City and the fair treatment of its citizens. Police Commissioner Bratton should abolish the aggressively enforced quota system, mend police-community relations and press for a paradigm shift. He should embrace an “inspirational reward system of leadership”⁵⁰ and carry out a systematic overhaul of the current evaluation measures of NYPD officers.

To overhaul the numbers-based quota system, the City’s new leaders must address the relationship between quotas and the motivation of officers.⁵¹ Aggressive quota-driven policing reflects a

⁴² Robert Gangi, *Focused on Numbers, but Not Ones That Count*, N.Y. TIMES (July 17, 2012) <http://www.nytimes.com/roomfordebate/2012/07/17/does-stop-and-frisk-reduce-crime/focused-on-crime-numbers-but-not-ones-that-count>.

⁴³ POLICE REFORM ORG. PROJECT, NEW YORK CITY’S FAILURE: HARSH, UNJUST POLICE TACTICS, *available at* http://www.urbanjustice.org/pdf/publications/PROP_Policy_Paper.pdf.

⁴⁴ CRIMINALIZING COMMUNITIES *supra* note 2.

⁴⁵ *Id.*

⁴⁶ Patrick J. Lynch, Op-ed, *The Real Fix for Stop-and-Frisk*, N.Y. DAILY NEWS (Oct. 7, 2013), <http://www.nydailynews.com/opinion/real-fix-stop-and-frisk-article-1.1476893>.

⁴⁷ *Floyd*, 2013 WL 4046209 at *33 n. 274.

⁴⁸ *Id.* at *33 n.272.

⁴⁹ *Id.* at *33 n.276

⁵⁰ Telephone Interview with John A. Eterno, NYPD Captain (ret.), Professor, Associate Dean, and Graduate Program Director of the Department of Criminal Justice at Molloy College (Oct. 16, 2013).

⁵¹ *Id.*

leadership style based on fear and intimidation. Police Commissioner Bratton should institute a shift from a punitive system to a rewards-based system of leadership, moving supervision from central office personnel to front line superior officers.⁵² Officers on the street have to be motivated to focus on the quality of their policing, in ways that encourage them to utilize nuanced policing tactics.⁵³ This approach entails teamwork between different levels within a precinct, across precincts as well as with other city agencies. For example, the new approach for assessing officers' performance should emphasize not only punitive interactions with New Yorkers like arrests and summonses, but also constructive contacts like meeting with local clergy and social service providers and intervening in minor disputes before they escalate into actual violence and physical harm. The new methods for evaluating beat cops should also include the qualitative judgments of precinct commanders who, if they are effective at their jobs, will know who the good officers are and which officers are shirking their responsibilities or abusing their authority. The new system should encourage officers to be not just law enforcement personnel, but peacekeepers in the communities they patrol⁵⁴ The test of whether officers meet their professional responsibilities would become more than a numbers game as their evaluation would reflect a far richer, multidimensional understanding of policing.⁵⁵

Enact Effective NYPD Oversight

Historically, the NYPD has operated with very little accountability. While Mayor Giuliani created the Commission to Combat Police Corruption in 1995 to investigate wrongdoing within the Department,⁵⁶ the Commission lacks subpoena power and has no access to internal NYPD files.⁵⁷ Furthermore, the NYPD's Internal Affairs Bureau historically has sought to protect the Department and investigate dissidents, rather than stop Departmental wrong-doing.⁵⁸ This lack of effective oversight has been a significant factor in enabling the NYPD to carry out illegal and unjust policies and tactics for years without any bureaucratic or political consequences.

Floyd held that stop-and-frisk as carried out by the NYPD was unconstitutional and racially discriminatory.⁵⁹ The court appointed a court monitor, Peter L. Zimroth, New York City's former Corporation Counsel, to enter a joint-remedial process with the NYPD and community groups to direct changes to the program.⁶⁰ These changes are supposed to relate to NYPD "policies, training,

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *About the Commission*, COMMISSION TO COMBAT POLICE CORRUPTION, <http://www.nyc.gov/html/ccpc/html/about/about.shtml>, (last visited Oct. 1, 2013).

⁵⁷ Editorial, *Can They Police Themselves?*, N.Y. TIMES, Nov. 7, 2011, at A24.

⁵⁸ *See generally* Graham Rayman, *NYPD Internal Affairs Went Digging for Dirt for Dirt on Whistleblower Cop Adrian Schoolcraft's Father and Sister*, VILLAGE VOICE, (Sept. 27, 2013), http://blogs.villagevoice.com/runninscared/2013/09/nypd_internal_a.php.

⁵⁹ *See generally* *Floyd v. City of N.Y.*, Nos. 08 Civ. 1034, 12 Civ. 2274 SAS, 2013 WL 4046217 (S.D.N.Y. Aug. 12, 2013).

⁶⁰ *Id.* at *3, *12-13.

supervision, monitoring, and discipline regarding stop-and-frisk.”⁶¹ Importantly, the court did not explicitly grant Zimroth subpoena power.⁶² Additionally, Zimroth’s authority extends only to bringing the Department into constitutional compliance within the context of *Floyd’s* ruling.⁶³ The court also ordered the NYPD to implement pilot programs for officer-mounted video cameras in the neighborhood in each borough with the highest incidence of stop-and-frisk encounters.⁶⁴ On September 4, 2013, the court issued a supplemental order appointing Nicholas Turner, the President and Director of the Vera Institute, as a court facilitator for the joint-remedial process.⁶⁵

Ten days after the *Floyd* decision, on August 22, 2013, the New York City Council overruled then Mayor Bloomberg’s veto to pass two related pieces of legislation collectively known as the Community Safety Act.⁶⁶ One part of the Act established a new Inspector General (“IG”) for the NYPD. The provisions of the law established the IG as of January 2014 and granted the new office subpoena power over the NYPD.⁶⁷

The confluence of the creation of the IG and the court monitor should prove fruitful, but any effective oversight must be multi-faceted and community-oriented. No single body, office, or person can be relied on to effectively oversee an organization as large and with as much institutional power as the NYPD. Thus, the IG and court monitor, who each have limited but complementary goals and powers, can operate most effectively through collaboration with each other and the community at large.

The IG and court monitor should foster community involvement in police oversight by organizing and promoting public forums in different parts of the city. Providing platforms for traditionally marginalized communities to engage in these issues directly and air their grievances publicly should help foster a broader public discussion about the proper role and reach of the NYPD. The *Floyd* ruling calls for the court facilitator to hold public forum meetings for community members in each borough.⁶⁸ The IG should attend these meetings and direct investigations toward problematic policing issues raised there. Further, the IG’s office should use its subpoena power to gain access to documents related to all lawsuits brought by community groups against the NYPD, especially for the new protected classes now empowered by the Community Safety Act.⁶⁹

⁶¹ *Id.*

⁶² *See Id.* at *4. Instead, the court instructed Zimroth to “regularly conduct compliance and progress reviews” of the NYPD’s compliance with the Joint Remedial Process. *Id.*

⁶³ *Id.* (“The Monitor’s duties, responsibilities, and authority will be no broader than necessary to end the constitutional violations in the NYPD’s stop and frisk practices described in the Liability Opinion.”).

⁶⁴ *Id.* at *11.

⁶⁵ Dareh Gregorian, *Judge Names Community Facilitator Turner to Aid in Stop-and-Frisk Reforms*, DAILY NEWS, (Sept. 4, 2013), <http://www.nydailynews.com/new-york/judge-names-community-facilitator-stop-and-frisk-ruling-article-1.1445630>.

⁶⁶ J. David Goodman, *Council Reverses Bloomberg Veto of Policing Bills*, N.Y. TIMES, (Aug. 22, 2013), <http://www.nytimes.com/2013/08/23/nyregion/council-overrules-bloomberg-on-police-monitor-and-profiling-suits.html?pagewanted=all>.

⁶⁷ *Id.*

⁶⁸ *Floyd v. City of N.Y.*, Nos. 08 Civ. 1034, 12 Civ. 2274 SAS, 2013 WL 4046217 at *13 (S.D.N.Y. Aug. 12, 2013).

⁶⁹ Community Safety Act, *Int. 1080-2013*

Mayor de Blasio should encourage the new City Council to conduct its own investigations into complaints against the NYPD.⁷⁰ These investigations could be helpful because the City Council, as an elected body, may very well be more responsive to community concerns than the unelected IG and court monitor. Further, City Council investigations can put pressure on the IG and court monitor to vigorously carry out their duties and direct them towards potential topics of investigation.

Mayor de Blasio should direct the IG to subpoena evidence about policing controversies, encourage effective transparency, and publish all subpoena requests online. Also consistent with its legal authority, the IG's office should make available for public access relevant (redacted if necessary) subpoena materials.

Finally, Police Commissioner Bratton should champion measures to increase transparency. In April 2013, Mayor de Blasio in his former role as Public Advocate issued a report that gave the NYPD and "F" for transparency.⁷¹ The document concluded that the NYPD had the highest number of unanswered Freedom of Information Law requests, in violation of its obligation under relevant federal law, and with "no clear way to follow-up or appeal after a request."⁷² The Police Commissioner should apply the recommendations made in this report, such as publishing more information online and establishing a centralized venue for filing requests.⁷³ He should also mend the NYPD's relationship with the press and permit commanding officers to reach out and respond to journalists' requests and questions. Furthermore, the commissioner must ensure access for the newly appointed court monitor and Inspector General to necessary NYPD information and records to aid these two officials in developing an improved system for monitoring supervision and discipline.

Provide Community Involvement in Crime Prevention

The NYPD's aggressive policing practices have distanced the NYPD from the communities that need security the most. The NYPD should adopt alternative policing methods to stop-and-frisk that strengthen ties between the police and local communities. As such, the NYPD should pursue various police-community partnerships that address the needs of individual communities and that prioritize peer-to-peer social services intervention rather than law enforcement institutions in the community.

"Operation Ceasefire," implemented in Boston during the mid-1990s, is one example of a program that strengthened police-community ties and that led to a reduction in violence.⁷⁴ The effort involved cooperation between repeat offenders in gangs, community leaders, social service representatives and law enforcement officials. This framework effectively prohibited harsh policing

⁷⁰ N.Y.C. CHARTER CH. 2 §29 (2009), *available at* <http://www.nyc.gov/html/charter/downloads/pdf/citycharter2009.pdf>. The City Council has broad power to investigate and compel production of testimony and documents from city agencies. *Id.*

⁷¹ OFFICE OF BILL DE BLASIO, *BREAKING THROUGH BUREAUCRACY: EVALUATING GOVERNMENT RESPONSIVENESS TO INFORMATION REQUESTS IN NEW YORK CITY* (2013), *available at* <http://www.streetsblog.org/wp-content/pdf/deBlasioFOILReport.pdf>

⁷² *Id.* at p. 13.

⁷³ *Id.*

⁷⁴ Interview with David Kennedy, Professor of John Jay College in N.Y.C. (Oct. 16, 2013).

tactics targeting the whole community that would lead to an adversarial relationship between the community and law enforcement. Instead, officials declared that their primary objective was to reduce the number of deaths due to gang violence and promised not to make arrests as long as gang members ceased violence and did not retaliate in response to previous violence by enemy gangs. Breaking this truce would lead to aggressive targeting of the individuals who retaliated. Social service representatives worked with community leaders and gang members to provide career assistance and job training. Working in tandem, these interventions led to a reduction in homicide rates.⁷⁵

The “High Point Initiative” is another example of a police-community partnership project that several cities adopted to curtail drug-related crimes and mend adversarial relations between the police and the community.⁷⁶ Through these programs, the police arrested violent drug dealers, while summoning nonviolent drug dealers to a call-in, where they met with officers, social service providers, ex-offenders, community leaders, and family members.⁷⁷ Officials offered the drug dealers a temporary suspension of cases against them once they ceased their criminal activity.⁷⁸

The NYPD could also adopt a community-based policing strategy that reduces police intervention, while stressing community self-policing. “NOLA for Life” in New Orleans is a noteworthy example of this approach.⁷⁹ The goals of NOLA for Life include ending community violence, promoting employment, rebuilding neighborhoods, and reforming the police.⁸⁰ It seeks to achieve these goals through a variety of methods, including mentoring programs, improving job and housing opportunities for former inmates, increasing teenage awareness regarding the consequences of criminal behavior, and emphasizing community conflict-resolution and trauma-counseling. Community outreach and dialogue are the keys to the program’s success.⁸¹ Furthermore, government services are tailored to the specific needs of the community,⁸² and as such, are linked with local initiatives that target those needs, thus potentially yielding greater success in assisting these communities.

When re-building the NYPD’s relationship with various communities, Police Commissioner Bratton should consider the potential impact of new policies on young people in particular. Research indicates that negative encounters with the police during an individual’s developmental years can

⁷⁵ *Id.*; *Chart-Ceasefire Youth Homicides in Boston*, Harvard Kennedy School, <http://www.hks.harvard.edu/programs/criminaljustice/research-publications/gangs,-guns,-urban-violence/operation-ceasefire-boston-gun-project/chart-ceasefire> (last visited Dec. 17, 2013)

⁷⁶ David Kennedy, *DRUGS, RACE AND COMMON GROUND: REFLECTIONS ON THE HIGH POINT INTERVENTION 262*, NATIONAL INSTITUTE OF JUSTICE (2009), *available at* <http://www.nij.gov/journals/262/high-point-intervention.htm>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Michelle Krupa, ‘NOLA for Life’ Murder-Reduction Plan Highlights Mayor Mitch Landrieu’s State of the City Speech, *NEW ORLEANS TIMES PICAYUNE* (May 22, 2012), http://www.nola.com/politics/index.ssf/2012/05/nola_for_life_murder-reduction.html.

⁸⁰ *Id.*

⁸¹ One of the outreach methods of the initiative is for ex-criminals to be utilized for the prevention of violence and revenge killings.

⁸² See *NOLA For Life*, CITY OF NEW ORLEANS (Nov. 15, 2013), *available at* <http://www.nola.gov/health-department/violence-prevention/nola-for-life/>.

undermine his or her confidence in the justice system.⁸³ It is thus imperative that the NYPD's new policies foster interactions with family members, relevant community bodies, and social service groups.⁸⁴ Educational, employment and personal development opportunities may mitigate the potential negative impact of police contact.⁸⁵ Thus, each local precinct should have relationships with neighborhood organizations that it can call on and make referrals to when dealing with youth in trouble.

Police Commissioner Bratton must also rebuild the trust between various communities and the NYPD. Each precinct should assign officers to specific areas and expand the duties of the Borough Liaison Unit, whose officers are "chosen for their knowledge of local conditions, contacts with community organizations, and an ability to communicate with community members and police in the field."⁸⁶This Unit has failed to reach its full potential under the current quota system. Yet, under a new approach, it can fulfill its mission of "detecting community unrest and implementing early intervention strategies as well as acting as first responders when a crisis does occur."⁸⁷ The Community Partnership Program should maintain and update its website to promote positive relationships between patrol officers and the community, and ultimately serve as an active platform for NYPD and local neighborhood involvement. These recommendations apply to other NYPD Liaison Units, from LGBT to New Immigrant Outreach. The Police Commissioner should assign authority to these units and make their efforts public. The NYPD cannot highlight the activities of these units solely for public relations purposes, but should have them serve as vital platforms for developing NYPD-community relations. An officer's relationship with the community should be a significant factor in his/her evaluation process.

⁸³ Vera Institute, *Coming of Age with Stop-and-frisk factsheet* (September 2013), available at <http://www.vera.org/sites/default/files/resources/downloads/stop-and-frisk-fact-sheet.pdf>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶See Community Affairs Special Outreach Programs and Services, N.Y.C. POLICE DEP'T, http://www.nyc.gov/html/nypd/html/community_affairs/special_outreach_programs.shtml (last visited Nov. 15, 2013)

⁸⁷ *Id.*

Part III - Reforms in Departmental Culture

Part III recommends substantive reforms in the NYPD's toxic agency culture. These proposed changes include strengthening the NYPD Liaison office for LGBT communities, legalizing the sale and possession of small amounts of marijuana, ending surveillance of New York's Muslim communities, and ensuring robust protection of First Amendment rights for all New Yorkers.

Protect LGBT Communities

In a recent study by Make the Road, fifty-one percent of LGBT respondents in Jackson Heights, Queens who were stopped by the NYPD said that they were verbally or physically harassed by officers. In addition, sixty-one percent of transgender respondents who had been stopped by police stated that they suffered harassment,⁸⁸ while many reported being accused by officers of using fake identification.⁸⁹ A recent study found that eighty percent of transgender women in New York reported NYPD harassment or false arrests.⁹⁰ Additionally, community violence against LGBT individuals remains a persistent problem. A June 2013 Anti-Violence Project Report shows a four percent increase in violence against LGBT people and people living with HIV in 2012.⁹¹

The new guidelines of the updated Patrol Guide is a step in the right direction toward improving relations with the LGBT community, but these provisions do not sufficiently protect LGBT New Yorkers from violence. The NYPD should further update the Guide to mandate that officers more proactively respond to reports of LGBT-related violence or harassment.

In addition, the NYPD can greatly improve and expand its Liaison Office, which the Department created to enable direct communication between the NYPD and LGBT communities.⁹² The Office currently lacks precinct-level liaisons.⁹³ Moreover, the Office's website is outdated, inactive, and does not advise LGBT community members on how to file LGBT-specific complaints.⁹⁴ To remedy these problems, the Office should appoint people with special training to deal with LGBT issues at the precinct level. The Department should also list these appointees on the Office's website, and provide information on filing LGBT-specific complaints.

⁸⁸ MAKE THE ROAD, *TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS* 5 (2012), available at

http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf.

⁸⁹ Gene Demby, Stop-and-frisk Too Harsh on Gay Blacks and Latinos, *Advocates Say*, HUFFINGTON POST (June 15, 2012),

http://www.huffingtonpost.com/2012/06/15/stop-and-frisk-gay-blacks-latinos-transgender-nypd_n_1599470.html.

⁹⁰ CRIMINALIZING COMMUNITIES, *supra* note 8, at 6.

⁹¹ Press Release, *Sue Yacka, Anti-Violence Project* (June 4, 2013), available at

http://www.avp.org/storage/documents/2012_mr_nyclocal_hvreport.pdf.

⁹² NYPD - Lesbian Gay Bisexual Transgender Liaison Unit, N.Y.C. POLICE DEP'T,

http://www.nyc.gov/html/nypd/html/community_affairs/lgbt.shtml (last visited Oct. 29, 2013).

⁹³ *Id.*

⁹⁴ *Id.*

The Community Safety Act,⁹⁵ among other protections, prohibits the NYPD from discriminating against individuals based on gender, gender identity, or sexual orientation.⁹⁶ Individuals can also sue for injunctive relief to stop NYPD action that has a discriminatory impact.⁹⁷ This private right of action allows LGBT individuals to challenge NYPD practices against the LGBT community. The newly created Inspector General can help in this respect, as the IG will be able to compel the NYPD to produce data and reports documenting their activities, goals, and quotas,⁹⁸ which LGBT groups on their own may have a difficult time compelling the NYPD to disclose.

Enact Marijuana Legalization and Regulation

New York law does not treat possession of less than 25 milligrams of marijuana as a crime, unless it is being ‘burned’ or held in public view.⁹⁹ However, NYPD officers often circumvent this law by ordering individuals carrying concealed marijuana to expose it and then arresting them for having marijuana in plain sight.¹⁰⁰ A recent report by the ACLU found that New York State conducts the highest number of marijuana possession arrests in the country.¹⁰¹ These arrests reflect a stark racial bias, as 86 percent of the arrests involve African-Americans or Latinos, even though research shows that people of color and white people use marijuana in equal proportions.¹⁰² These low-level marijuana possession arrests can result in a permanent criminal record, deportation, loss of child custody, and access to public housing and financial aid for students.¹⁰³

In 2013, New York State Senator Liz Krueger announced plans to introduce a bill that would provide for the legalization and regulation of the possession and sale of small amounts of marijuana.¹⁰⁴ If passed into law, the bill will permit adults to grow up to six marijuana plants at home, and the New York State Liquor Authority will be responsible for regulating the sales of marijuana. Marijuana would be taxed at \$50 per ounce, with 80 percent of the revenue going to the state’s general fund, and the remaining 20 percent being allocated towards establishing substance abuse and job training programs.¹⁰⁵

⁹⁵ Khorri Atkinson, *New York City Council Overrides Bloomberg’s Veto of Community Safety Act*, N.Y. NEW AMSTERDAM NEWS (Aug. 22, 2013), <http://amsterdamnews.com/news/2013/aug/22/new-york-city-council-overrides-bloombergs-veto-co/>.

⁹⁶ *About the Community Safety Act*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/about-community-safety-act> (last visited Nov. 18, 2013).

⁹⁷ Community Safe Act, Int. No. 1080, *available at* <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1444267&GUID=BCB20F20-50EF-4E9B-8919-C51E15182DBF&Options=ID|Text|&Search=1080>.

⁹⁸ MUN. CODE §34-803.

⁹⁹ CRIMINALIZING COMMUNITIES, *supra* note 8, at 2.

¹⁰⁰ *Id.*

¹⁰¹ AM. CIVIL LIBERTIES UNION, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 14 (2013), *available at* <http://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Marijuana Policy Reform Bills*, MARIJUANA POLICY PROJECT, <http://www.mpp.org/legislation/marijuana-policy-reform-bills.html> (last visited Dec. 4, 2013).

¹⁰⁵ *Id.*

There is much statistical evidence that not treating marijuana as a criminal issue reduces the costs of law enforcement, while not increasing marijuana use.¹⁰⁶

In Colorado voters recently approved a ballot referendum that legalized the sale of marijuana in specific stores to those over the age of twenty-one.¹⁰⁷ As a result, Colorado expects to see law enforcement savings of \$12 million and \$24.1 million in revenue in 2014.¹⁰⁸ Washington state voters also approved a similar referendum in 2012, legalizing possession and personal use of up to an ounce of marijuana for those twenty-one years old and over.¹⁰⁹ Legal sales are expected to commence after Washington's State Liquor Control Board establishes a workable licensing system.¹¹⁰

Mayor de Blasio should urge New York State policy makers to examine these models and support the Krueger bill legalizing marijuana. Passing the Krueger bill would effectively close the legal loopholes that now allow the abusive and discriminatory NYPD practice of marijuana possession arrests. Legalization and regulation could generate revenue enabling the state to invest in rehabilitation programs for people addicted to drugs and education programs for all New Yorkers.

End Muslim Surveillance

In August of 2011 a Pulitzer-prize winning Associated Press investigation revealed that the NYPD conducts an extensive surveillance program of Muslim communities in the tri-state area.¹¹¹ Under its Intelligence Division's warrantless surveillance program, NYPD officers have unlawfully spied on Muslim-Americans without reasonable suspicion for over a decade.¹¹² The classified documents that the AP made public also unveiled that the Intelligence Division's Zone Assessment and Demographics Units have systematically mapped various Muslim neighborhoods throughout New York City since 2002 in violation of investigation guidelines.¹¹³ The NYPD Intelligence Division has also utilized personal

¹⁰⁶ Marijuana Decriminalization & Its Impact on Use, NORML, <http://norml.org/aboutmarijuana/item/marijuana-decriminalization-its-impact-on-use-2> (last visited Nov. 5, 2013). For example, a study by the National Academy of Sciences in 1999 affirmed that there is "little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use." MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE BASE (Janet E. Joey, et al. eds., 1999).

¹⁰⁷ Phil Tenser, Out-of-State Money Funded Push to Pass Amendment 64 and Legalize Marijuana in Colorado, THE DENVER CHANNEL, (Nov. 8, 2012), <http://www.thedenverchannel.com/news/local-news/out-of-state-money-funded-push-to-pass-amendment-64-and-legalize-marijuana-in-colorado>.

¹⁰⁸ David Knowles, *Colorado Becomes World's First Regulated Market for Recreational Marijuana as it Anticipates Millions in Tax Revenues*, N.Y. DAILY NEWS (May 28, 2013), <http://www.nydailynews.com/news/national/colo-1st-legal-recreational-pot-market-article-1.1356799>.

¹⁰⁹ Ella Peterson, Marijuana Legalization: Colorado and Washington State Grapple With Implementing New Laws, POLICY MIC, Jan. 10, 2013, <http://www.policymic.com/articles/22459/marijuana-legalization-colorado-and-washington-state-grapple-with-implementing-new-laws>.

¹¹⁰ CRIMINALIZING COMMUNITIES, *supra* note 8, at 1.

¹¹¹ Matt Appuzzo & Adam Goldman, *Probe Into NYPD Intelligence Operations*, ASSOCIATED PRESS, (Aug. 31, 2011), available at <http://www.ap.org/Index/AP-In-The-News/NYPD>.

¹¹² *Id.*

¹¹³ *Id.*

informants and undercover police officers, known as “rakers,” to stake out mosques, restaurants, businesses, student associations, and other Muslim-affiliated organizations, often entrapping individuals into political conversations to make them sound like fundamentalist sympathizers, often entrapping individuals into political conversations to make them sound like fundamentalist sympathizers.¹¹⁴

Recent reports regarding the NYPD’s surveillance practices indicate that the Department secretly labeled entire mosques as terrorist organizations.¹¹⁵ Under this designation police conduct “terrorist enterprise investigations” using informants to record sermons and spy on imams, often without specific evidence of any criminal wrongdoing.¹¹⁶

Such ongoing abusive policing tactics have culminated in the re-opening of the federal court case, *Handschu v. Special Services Division*.¹¹⁷ This case began in 1971 and concerns the Handschu decree, which came about as a result of a settled matter involving unlawful police investigations.¹¹⁸ The Decree provides guidelines for surveillance and prohibits the NYPD from spying on political and religious organizations without specific suspicion of criminal wrong-doing. The terms of the Handschu Decree were modified in 2003, and under the modified guidelines, the NYPD Intelligence Chief can alone authorize investigations for a year at a time and undercover operations for four months at the time.¹¹⁹ The requirement for the police to have ‘specific information’ about a future crime in order to conduct investigations was relaxed to now allow the police to act when facts ‘reasonably indicate’ a previous, present or future crime.¹²⁰ The modified guidelines also allowed the NYPD to conduct investigations without having to go before a three-person council known as the Handschu Authority.¹²¹ Unfortunately, the NYPD has violated even the more relaxed guidelines under the modified Decree by conducting investigations without reasonable suspicion.¹²²

A second lawsuit brought against the NYPD, *Raza v. City of New York*, alleges that the City of New York, Mayor Michael Bloomberg, Police Commissioner Raymond Kelly, and Deputy Commissioner David A. Cohen conducted unlawful surveillance on Muslim-Americans and Muslim organizations throughout the City.¹²³ The outcome of the lawsuit is still pending but the status of the case

¹¹⁴ *Id.*

¹¹⁵ Matt Appuzzo & Adam Goldman, *NYPD Designates Mosques as Terrorism Organizations*, ASSOCIATED PRESS, (Aug. 28, 2013), <http://bigstory.ap.org/article/nypd-designates-mosques-terrorism-organizations>

¹¹⁶ *Id.*

¹¹⁷ *Handschu v. Special Servs. Div.*, 288 F. Supp. 2d 411 (S.D.N.Y. 2003).

¹¹⁸ *Id.*

¹¹⁹ *Handschu*, 288 F. Supp. 2d at 424

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Matt Appuzzo & Adam Goldman, *NYPD Designates Mosques as Terrorism Organizations*, ASSOCIATED PRESS, (Aug. 28, 2013), *available at* <http://bigstory.ap.org/article/nypd-designates-mosques-terrorism-organizations>

¹²³ Complaint, *Raza v. City of N.Y.*, No. 13 CV 3448 (S.D.N.Y. 2013), *available at* https://www.aclu.org/sites/default/files/assets/nypd_surveillance_complaint_-_final_06182013_1.pdf. The complaint alleges that the defendants unconstitutionally violated the plaintiffs’ freedom of religious worship, denied them equal treatment under the law, and invaded their privacy. The American Civil Liberties Union requested an injunction to end these practices, and called for an order to destroy all documents produced as a result of the unlawful spying. *Id.*

should not stop the city's new leaders from taking immediate action regarding the NYPD's invasive policing tactics towards the Muslim community.

****Mayor de Blasio and Police Commissioner Bratton should cease the unwarranted surveillance of Muslim New Yorkers, starting by disavowing the NYPD's "radicalization" theory, on which discriminatory surveillance is based and which treats with suspicion people engaging in First Amendment-protected activities, including: wearing traditional Islamic clothing, growing a beard, abstaining from alcohol and becoming involved in social activism - meaning, essentially anyone who identifies as Muslim, holds Islamic beliefs or engages in Islamic religious practices. Now that the Department has disbanded the discredited Zone Assessment and Demographic Unit, city leaders should commit to not transferring its discriminatory mapping practices to other parts of the Department's Intelligence Division. These unlawful operations, have not uncovered any credible terrorist threats or suspicious activity over the last decade.¹²⁴**

The NYPD should also reinstate the Handschu guidelines to guard against illegal and unwarranted investigations and to rebuild relationships with the Muslim communities of New York City. Renewing its commitment to the more relaxed Handschu standards will ensure that the NYPD acts lawfully, thereby fostering an environment in which Muslim-Americans feel free to speak and express their religious views without the fear of police surveillance.

****Our original recommendation in this report called on the de Blasio/Bratton Administration to start addressing the problem of unwarranted Muslim surveillance by "dismantling the Zone Assessment & Demographic Unit of the NYPD's Intelligence Division." On April 15th, Commissioner Bratton announced that the Department had taken this step. We commend the Mayor & Commissioner for making this constructive decision and urge them to adopt the document's other relevant proposals which would fully address the harm and injustice caused by the NYPD's intrusive and unjustified spying on the Muslim community.**

Protect First Amendment Rights

Over the last 20 years, the NYPD has used increasingly more invasive and aggressive tactics in dealing with protestors.¹²⁵ Since the 1990's, protestors in New York have been subjected to pervasive surveillance, excessive use of force, and mass arrests.¹²⁶ The NYPD has also developed a zero tolerance approach towards minor legal infractions¹²⁷ and unnecessarily arrests individuals for any activity it deems impermissible and out of the confines of lawful protesting.¹²⁸ Moreover, the Department is also restrictive in its issuance of permits and often relegates protestors to marginal locations in the city

¹²⁴ Matt Appuzzo & Adam Goldman, *NYPD: Muslim Spying Led to No Leads*, ASSOCIATED PRESS, (Aug. 21, 2012) available at [http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases; Handschu v. Special Servs. Div., 288 F. Supp. 2d 411 \(S.D.N.Y. 2003\)](http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases;Handschu.v.Special.Servs.Div.,288.F.Supp.2d411(S.D.N.Y.2003),availableathttp://www.ap.org/Images/Pages-from-Galati-EBT-6-28-12_tcm28-8694.pdf), available at http://www.ap.org/Images/Pages-from-Galati-EBT-6-28-12_tcm28-8694.pdf

¹²⁵ Alex Vitale, *The Rise of Command and Control Protest Policing in New York*, 1 (2013)

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*, at 2.

or denies them access to public spaces entirely.¹²⁹ There is also a great deal of harassment and unwarranted surveillance of protestors that creates an atmosphere of coercion and intimidation, which impedes free speech and assembly.¹³⁰

The rise of restrictive protest policing began during Rudy Guiliani's mayoral administration (1994-2001) and was further intensified during the Bloomberg administration.¹³¹ In February 2003, individuals protesting against the Iraq War were not only denied the right to march in the city, but officers also attacked protestors with batons and pepper spray. There were numerous accounts of the police using excessive force while making arrests.¹³² Similarly, on the occasion of the Republican National Convention in 2004, the NYPD made 1,800 arrests, the highest ever in the country's history during a political convention, for obstruction of traffic, defiance of police orders, and marching without a permit.¹³³ In 2012, a federal court ruled that these mass arrests by the NYPD were unlawful.¹³⁴

More recently, during the Occupy Wall Street movement in 2011, the police used aggressive and unnecessary force against peaceful demonstrators, interfered substantially with press freedoms, and conducted violent, late-night raids on encampments in public spaces.¹³⁵ As these instances demonstrate, the NYPD has become increasingly hostile to public demonstrations and reacts with disproportionate force. The NYPD's restrictive policies are leading to the criminalization of political protest and are abridging the constitutional right to freedom of speech.

Mayor de Blasio's office and the NYPD should enact policies that allow for increased tolerance of protest activity and recognize freedom of assembly and freedom of speech. The NYPD also needs to demonstrate more flexibility in facilitating protests around the city by issuing more permits and increasing the number of venues available. The City should rescind the requirement of a permit for gatherings of 25 people or more in public parks, along with the restrictions on parades and processions by bicycles on public streets. The police should act on demonstration permit requests within two weeks for events which are more than one month away and within 48 hours if more than two days away. Mechanisms for accommodating emergency protests organized within 48 hours should be reviewed and enhanced. Moreover, the Department should curtail its use of forceful techniques such as protest pens and should grant demonstrators free access to public spaces. Police officers ought to use their discretion to avoid enforcement of minor and isolated legal violations that have no impact on public safety. And, finally, the

¹²⁹ *Id.*, at 1.

¹³⁰ *Protest in New York City*, NEW YORK CIVIL LIBERTIES UNION, <http://www.nyclu.org/issues/freedom-of-speech-and-religion/protest-new-york-city> (last visited Oct. 23, 2013)

¹³¹ Alex Vitale, *The Rise of Command and Control Protest Policing in New York*, 2 (2013)

¹³² *Arresting Protest*, NEW YORK CIVIL LIBERTIES UNION 13-16, Apr. 2003, available at http://www.nyclu.org/files/publications/nyclu_pub_arresting_protest.pdf

¹³³ Larry Neumeister, *2004 Republican National Convention Arrests in NYC Lacked Probable Cause, Says Judge*, HUFFINGTON POST, Oct. 1, 2012, http://www.huffingtonpost.com/2012/10/01/republican-national-convention-2004-arrest-nypd-nyc-lacked-probable-cause-judge_n_1930433.html

¹³⁴ *Id.*

¹³⁵ *Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street*, PROTEST AND ASSEMBLY RIGHTS PROJECT iv, (2012), available at <http://www.leitnercenter.org/files/Report%20-%20SuppressingProtest.pdf>

NYPD ought to improve its communication with demonstrators and be more open to cooperation with journalists and academics.

Conclusion

Mayor de Blasio has taken office with an historic mandate to reform the NYPD. Given the structural deficiencies in the Department and the injustices perpetuated by NYPD practices in recent years, changes are essential. The City can implement some reforms with minimal risk or difficulty, such as ending the use condoms as evidence of sex work, eliminating the harassment of street vendors by disbanding the Peddler Squad, and forming crisis intervention teams to assist people in psychiatric crisis. Other reforms require greater structural changes, such as ending the quota system, increasing NYPD oversight, and altering the philosophy of policing away from an emphasis on punitive interactions and towards collaborating with community members in solving local programs and preventing crime. The new administration and the NYPD should also pursue the legalization and regulation of marijuana, end the unwarranted surveillance of Muslim communities, and adhere to policies that respect the rights of LGBT communities and political protestors.

Widespread grievances against the NYPD and a desire for progressive change were major reasons that New Yorkers gave Mayor de Blasio a landslide election victory in November 2013. Implementing the substantive NYPD reforms recommended in this report could be a cornerstone of such a progressive program. Furthermore, the political benefits of such reforms cannot be underestimated. Such a step would not only help establish a more fair and effective NYPD and, in some cases, save government funds, but would also represent major movement towards both ending the divisions in our city between law enforcement and communities and creating a more livable and inclusive society for all New Yorkers.

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