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Hon. Analisa Torres  
United States District Court  
500 Pearl St.  
New York, NY 10007-1312

Re: Comment on the Report to the Court on Police Misconduct and Discipline, September 19, 2024

Dear Hon. Analisa Torres,

Brooklyn Defender Services submits these comments in response to the Report to the Court on Police Misconduct and Discipline by Hon. James Yates, dated September 19, 2024 (“Discipline Report”). Our comments highlight Brooklyn Defenders’ grave concern over the New York City Police Department’s ongoing use of illegal, racist policing practices. Our comments below focus on several of the recommendations in the Discipline Report which highlight the need for transparency within NYPD, data collection and oversight by city council, strengthening CCRB’s authority to recommend disciplinary actions. We also address the need for a review of NYPD’s racially biased tactics and technologies that contribute to unlawful police-citizen encounters.

Brooklyn Defender Services (“BDS”) is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. We provide multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to approximately 23,000 nearly people each year. Many of the people we serve, primarily Black, Latine, and low-income New Yorkers, have experienced abuse and misconduct at the hands of the New York City Police Department (“NYPD” or “Department”). For many years, BDS has joined our colleagues and the communities we serve in calling for meaningful, top-down change to the NYPD.

In recent years, police departments have faced demands from across the country to analyze long-standing abusive practices and the continued employment of perpetrators of abuse within their ranks. The Discipline Report empirically confirms the concerning patterns of abuse and harm our clients have reported for decades and exposes NYPD’s refusal to hold staff accountable.

### **Discipline Report: NYPD Continues its Illegal and Discriminatory stop and frisk Practices Despite Federal Court Ruling**

In 2013, the United States District Court for the Southern District of New York ruled in *Floyd, et al. v. City of New York, et al.* that the New York City Police Department’s (“NYPD” or “Department”) stop and frisk practices violated the Fourth Amendment and the Fourteenth

Amendment of the U.S. Constitution.<sup>1</sup> The court found that NYPD’s use of stop and frisk amounted to a “policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data . . . [that] resulted in the disproportionate and discriminatory stopping of [B]lacks and Hispanics in violation of the Equal Protection Clause.”<sup>2</sup> At the height of the NYPD’s stop and frisk abuses, hundreds of thousands of Black and Latine New Yorkers were stopped each year—many of whom had committed no crime at all.

As a remedy in the *Floyd* case, Judge Scheindlin ordered a number of reforms and instituted an independent monitor to oversee the NYPD’s stop and frisk practices. Since August 2013, Independent Monitor Mylan Denerstein and her team have evaluated the NYPD’s use of stop and frisk, reviewed NYPD training materials, audited body worn camera footage and NYPD reports, assessed compliance with the constitution, reported findings to the court and the public, and recommended new avenues for accountability.<sup>3</sup> In this time, the Monitor has prepared 22 public reports. The most recent, published on October 7, 2024, Dernerstein cautioned that the NYPD has increased the use of unconstitutional, racially motivated stop and frisk practices over the last year: “The NYPD appears to be headed in the wrong direction and must take immediate steps, including discipline when appropriate, to correct this failure to properly document *Terry* stops.”<sup>4</sup>

The Discipline Report was issued on September 19, 2024 in response to your request for an in depth, critical examination of the efficacy, fairness, and integrity of the city’s policies, practices and procedures with respect to police misconduct during stops.<sup>5</sup> Despite ongoing independent monitoring and the supervision by this court, NYPD continues to use unconstitutional stop and frisk tactics and flagrantly disregards public accountability efforts.

The Discipline Report indicates that after a downward trend in stops for several years (with a low of 8,948 in 2021), the number of stop and frisk reports has nearly doubled to 15,102 and 16,971 in 2022 and 2023 respectively.<sup>6</sup> The racial disproportionality in stops has actually *increased* since the 2013 court finding. While in 2013 Black and Hispanic New Yorkers were 5.0 and 2.6 times more likely to be stopped and frisked than white New Yorkers, in 2019 that jumped up to 6.6 and

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<sup>1</sup> James Yates, *Report to the Court on Police Misconduct and Discipline* (Sept. 19, 2024), at 1, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf>

<sup>2</sup> *Id* at 7

<sup>3</sup> NYPD Monitor, *Our Work*, (2023), <https://www.nypdmonitor.org/our-work/>

<sup>4</sup> Mylan Denerstein, *Twenty-Second Report of the Independent Monitor: Underreporting of Terry Stops by the NYPD*, (October 7, 2024), <https://www.nypdmonitor.org/wp-content/uploads/2024/10/2024.10.07-937-1-NYPD-Underreporting-of-Terry-Stops-Report.pdf>

<sup>5</sup> James Yates, *Report to the Court on Police Misconduct and Discipline* (Sept. 19, 2024), at 1, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf>

<sup>6</sup> *Id* at 8

3.2 times respectively.<sup>7</sup> Strikingly, many of these stops are never recorded by the NYPD officer. As the report indicates:

There is a disturbingly high percentage of substantiated findings by CCRB [Civilian Complaint Review Board] for SQF [stop, question, frisk] misconduct when the encounter was not documented by a stop report. Where no stop report was filed, and articulation is not the issue, there appears to be a greater likelihood that a constitutional violation occurred.... Pure and simple, in CCRB's experience, there is a much higher incidence of unlawful behavior when a stop, which is the subject of a complaint, is made but not reported than when misconduct is alleged, and a report is filed.<sup>8</sup>

When New Yorkers experience racially biased and unconstitutional policing practice, there are a number of ways to make a complaint of misconduct. Yet, when cases where the CCRB or another oversight body has substantiated that an officer did engage in unconstitutional stop-and-risk, “officers rarely, if ever, receive a penalty.”<sup>9</sup>

### **Police Misconduct, Reporting, and Oversight**

Appropriate NYPD officer conduct is dictated by the law, court orders, and the NYPD Patrol Guide. This court has been charged with overseeing misconduct related to unconstitutional use of stop and frisk, specifically. This misconduct may happen when an officer uses racial bias to initiate a stop, improperly conducts a stop, fails to complete a required report, or misrepresents the stop in reporting.<sup>10</sup>

There are several mechanisms for the public to report police conduct. New Yorkers who have experienced police misconduct are able to file complaints with the Civilian Complaint Review Board (CCRB), which hears only a small fraction of the disciplinary matters involving NYPD officers. The vast majority of misconduct reviews are handled internally by units within the NYPD, including the Internal Affairs Bureau (IAB). In addition to the CCRB and the NYPD, misconduct complaints can be filed with independent agencies that have limited jurisdiction over police conduct, including the Commission on Human Rights (CHR), the Commission to Combat Police Corruption (CCPC), and the Office of the Inspector General for the NYPD (NYPD-OIG). Additionally, NYPD receives notice of officer misconduct through internal reporting from other officers or supervisors, quality-assurance audits, and court decisions.

The Discipline Report stresses that, while the NYPD does expand resources and effort to investigate “misconduct claims in general...the same cannot be said of disciplinary efforts

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<sup>7</sup> *Id* at 111-12

<sup>8</sup> James Yates, *Report to the Court on Police Misconduct and Discipline* (Sept. 19, 2024), at 129-130, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf> *Discipline-Report.pdf* at 129-130.

<sup>9</sup> *Id* at Appendix 1, at 480

<sup>10</sup> *Id* at 32.

regarding compliance with the Fourth and Fourteenth Amendments.”<sup>11</sup> The report went on to further point out that “[d]iscipline for illegal stops and frisks, even when substantiated by CCRB, is not pursued with the same vigor and resolve as for other misconduct.” What’s more, “[p]enalties for wrongdoing involving stops, questions, frisks, or searches of persons (“SQFS”) even when repeated, are rare.”<sup>12</sup> While civilians can bring complaints to multiple bodies, the NYPD Commissioner can, and regularly does, reject or downgrade CCRB *and* internal NYPD recommendations for officer misconduct.

## Recommendations:

### 1. Improve Transparency, NYPD Data Collection, and City Council Oversight

Police transparency is an essential measure for holding the NYPD, and other law enforcement agencies, accountable for the discriminatory and abusive policing practices they employ. These practices criminalize and harm New Yorkers, disproportionately Black and brown New Yorkers, LGBTQIA+ New Yorkers, and New Yorkers experiencing homelessness. Discriminatory and abusive policing practices make all New Yorkers less safe. However, according to the Discipline Report there is still a lack of transparency and “investigations [on stops and frisks] and potentially useful data are not shared between agencies or departments as well as could be.”<sup>13</sup>

Public defenders usually become aware of police misconduct in connection with an encounter that results in an arrest. It is only after an arrest that someone is brought to court and speaks with their attorney about what happened to them. The vast majority of police-citizen encounters that do not result in an arrest often go unreported and overlooked. That is why the How Many Stops Act (Local Law No. 43 of 2024), which went into effect January 20, 2024, is such an important law and must be fully implemented. The new law will bring greater transparency by requiring the NYPD to issue regular reports detailing information on three out of the four levels of police encounters between police and civilians (the framework established by the Court of Appeals in *People v. Debour* regulating police restriction on citizen freedom of movement), including the race/ethnicity, age, and gender of the civilian involved, the factors that led to the interaction, and whether the interaction led to a summons or use of force incident. The data obtained as a result of this law will assist the city and the public in monitoring and regulating the actions of the NYPD.

### 2. Strengthen CCRB’s Authority to Recommend Disciplinary Actions

While civilians can bring complaints to multiple bodies, the NYPD Commissioner can, and regularly does, reject or downgrade CCRB *and* internal NYPD recommendations for officer misconduct. The NYPD Commissioner receives substantiated findings of misconduct via a referral

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<sup>11</sup>*Id* at 7

<sup>12</sup> *Id* at 7

<sup>13</sup> James Yates, *Report to the Court on Police Misconduct and Discipline* (Sept. 19, 2024), at 1, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf>

from the CCRB or an internal department investigation.<sup>14</sup> “All other recommendations for discipline are referred to, and left to, the discretion of the Police Commissioner, who may accept or reject a finding and who will then decide whether to impose a penalty, guidance, or neither.”<sup>15</sup> This includes when an NYPD officer negotiates a plea with the NYPD Administrative Prosecution Unit (APU). “In the first half of 2023 alone, 26 pleas were presented to the Police Commissioner after negotiations between the officer and APU and after approval by the deputy trial commissioner, the Police Commissioner disapproved 13 of those pleas, either dismissing the charges or imposing no penalty.”<sup>16</sup> One analysis of released CCRB data found 260 instances, between 2014 and 2018 alone, where the Commissioner overruled, downgraded, or dismissed cases where serious misconduct by police was substantiated by the CCRB and charges were recommended.<sup>17</sup> In 2019, the rate of agreement between the CCRB and the NYPD commissioner was 51% for most cases. In more serious cases of alleged misconduct, it was less than 32%. A New York Times investigation found that as of November 2020, Police Commissioner Shae had imposed the CCRB’s recommended penalty in 2 out of 28 cases in which charges were brought.<sup>18</sup>

When police are not held accountable, victims of police misconduct suffer twice over. First from the police practices inflicted on them, and then again through the city’s failure to deliver any semblance of accountability to their abusers. As defenders, we see officers with long histories of civil rights abuses continue to police the same streets and harm community members. We also see these harms compounded by retaliatory actions taken by officers against people who lodge complaints against them or their colleagues, discouraging future victims from coming forward at all. This cycle of abuse has been repeated on the streets of New York for too long, the people we represent carry long-term psychological and emotional effects from being treated as subhuman by omnipresent police forces in their neighborhoods.

This behavior is enabled in part due to the complicity of the police commissioner, who can—and regularly does—reject and downgrade CCRB and internal recommendations for disciplining officers. There are currently no meaningful mechanisms for holding the NYPD accountable when the Police Commissioner retains veto power over any internal findings and recommendations for discipline. As a result, individual officers engage in abuse and misconduct with the knowledge that the Department will not hold them accountable.

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<sup>14</sup> *Id* at 2.

<sup>15</sup> *Id* at 2.

<sup>16</sup> *Id* at 328.

<sup>17</sup> ProPublica, “What it Looks Like When the Police Commissioner has Unchecked Power”  
<https://projects.propublica.org/nypd-unchecked-power/>

<sup>18</sup> See, New York Times, “A Watchdog Accused Officers of Serious Misconduct. Few Were Punished”  
<https://www.nytimes.com/2020/11/15/nyregion/ccrb-nyc-police-misconduct.html>

In light of the demonstrated inefficacy of the current system at reining in police abuse and biased policing, the City Council should explore utilizing every option at its disposal to allow for a more active role for the City Council in the selection and approval of the NYPD Commissioner. Additionally, the City Council should take this opportunity to explore ways to empower the CCRB and implement meaningful police accountability measures, including removing the Police Commissioner's final authority over NYPD discipline.

### **3. Review NYPD's Use of Other Racially Biased Tactics and Technologies**

The federal court found NYPD's use of stop and frisk proliferated an unofficial policy of racially targeting Black and Latine New Yorkers. The NYPD's racist tactics are not limited to basic stop and frisk street encounters. Notably, the NYPD has spent more than \$1 billion in military-grade surveillance resources, primarily in Black, Latine, immigrant, and low-income communities.<sup>19</sup> This technology is repeatedly infringing on New Yorkers' dignity, privacy, and First Amendment freedoms by providing technical justification for disproportionate deployment to Black and Latine neighborhoods.<sup>20</sup> Transparency in funding for the NYPD's use of surveillance technology is necessary for the city to have meaningful oversight of the department's use of this technical justification for broken windows policing, especially when the technology fails to contribute to public safety.

For example, the NYPD spends millions annually on ShotSpotter, a gunshot detection technology. ShotSpotter operates through an extensive network of microphones mounted in targeted neighborhoods, predominantly in Black, Latine, and low-income communities, designed to detect percussive sounds and classify them as gunfire or not based on a combination of algorithmic analysis and human review. However, the NYC Comptroller's recent audit found that ShotSpotter's classifications were accurate only 13% of the time, meaning that 87% of alerts led police to non-gunfire events, often consuming officer resources without adding meaningful safety benefits.<sup>21</sup> Further, Brooklyn Defender Services' own report analyzes nine years of the NYPD's

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<sup>19</sup> Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, *NYTimes* (Sept. 8, 2021)

<sup>20</sup> See, e.g., Elizabeth Daniel Vasquez, Dismantle NYC's Mass Surveillance Project – Start with Jail Recordings, *Truthout.org* (June 1, 2021) at <https://truthout.org/articles/dismantle-nycs-mass-surveillance-project-start-with-jail-recordings/>; James Vincent, NYPD used facial recognition to track down Black Lives Matter activist, *TheVerge.com* (Aug. 18, 2020) at <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>; Jan Ransom and Ashley Southall, N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He landed in a DNA Database, *NYTimes* (Aug. 15, 2019) at <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>.

<sup>21</sup> Office of the N.Y.C. Comptroller, Audit Report on the New York City Police Department's Oversight of Its Agreement with ShotSpotter Inc. for the Gunshot Detection and Location System (June 20, 2024), <https://comptroller.nyc.gov/reports/audit-report-on-the-new-york-city-police-departments-oversight-of-its-agreement-with-shotspotter-inc-for-the-gunshot-detection-and-location-system/>.



Shotspotter performance data, confirming that over the entirety of its use in NYC, over 83% of alerts were not determined to be gunfire.<sup>22</sup>

ShotSpotter's lack of accuracy is not only a potential drain on resources; since ShotSpotter alerts frequently lead to stops based on alerts we now know are highly inaccurate, the system increases the likelihood of stop and frisks without reasonable suspicion or legal justification. Essentially, ShotSpotter functions like an unreliable informant, with police using its alerts to justify stops that lack the evidentiary support required for reasonable suspicion. This pattern not only leads to unjustified stops but also increases the chance that police responding to an alert will approach on heightened alert, raising the risk of escalation during interactions that are based on faulty information. Chicago, along with several other large cities, has since canceled its wasteful and dangerous ShotSpotter contract. New York City's own contract with ShotSpotter is up for renewal in December. While technological tools like Shotspotter are marketed as simple ways to increase the NYPD efficiency, these tools fundamentally alter the landscape of policing and surveillance, disproportionately burdening communities that are already facing the brunt of police interaction and violence.

### **Conclusion: Broken Windows Policing is still NYPD's main tactic**

Overall, the current level of stop and frisk abuses combined with a web of NYPD special response teams, task forces, and use of surveillance technology represents a covert return to the broken-windows policing of the late 1990s and early 2000s. Through them, the NYPD has created a new locus for police-citizen encounters, one that not only lacks oversight and increases the number of unnecessary stops New Yorkers are subjected to, but also one that poses an increased risk of violence for New Yorkers. The data reporting, information sharing, and oversight measures included in the How Many Stops Act, and the recommendations in the Discipline Report, will assist the city in reducing the number of unlawful stops of New Yorkers and hold the Department accountable.

Sincerely,

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<sup>22</sup> Brooklyn Defender Services, Confirmed: ShotSpotter Technology Increases Surveillance and Policing of Black and Latine New Yorkers, While Failing to Reduce Gun Violence, (December 2024), <https://bds.org/assets/files/Brooklyn-Defenders-ShotSpotter-Report.pdf>