

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
CLIVE LINO and DARYL KHAN,
on behalf of themselves and all others
similarly situated

Plaintiffs,

-versus-

THE CITY OF NEW YORK; RAYMOND W. KELLY,
New York City Police Department Commissioner, in his
individual and official capacities; JANE DOE, New York
City Police Lieutenant, in her individual and official
capacities; and JOHN DOES 1-3, New York City Police
Officers, in their individual and official capacities,

Defendants.
-----X

**CLASS ACTION
COMPLAINT**

PRELIMINARY STATEMENT

1. This is a class-action, civil rights case to vindicate the right of New Yorkers not to have their names and addresses included in a massive police database used to conduct criminal investigations. To protect individuals from the stigma of having a police record, New York law requires the sealing of all records relating to a summons or arrest unless the person is convicted of or pleads guilty to a misdemeanor or felony. In New York City, however, the New York City Police Department is refusing to seal information about people who are arrested or given a summons as part of the Department's stop-and-frisk operation, even when all charges against them are dismissed. Instead, the Department is retaining these peoples' names and addresses in its massive stop-and-frisk database and is using that information to conduct criminal investigations. As a result, a huge number of

law-abiding people – most of whom are black or Latino – are being treated as criminal suspects.

2. Since 2003 the NYPD has stopped and interrogated people nearly three million times, with blacks and Latinos experiencing over 80 percent of the stops. For each stop, a police officer completes a form that includes the name and address of the person stopped. Even though nearly 90 percent of people stopped have done absolutely nothing unlawful – as evidenced by the fact that they are neither arrested nor given a summons – the NYPD is entering the personal information of every person stopped into a Department database. According to NYPD Commissioner Raymond Kelly, the NYPD is retaining this information “indefinitely,” and the database “is used primarily by Department investigators during the course of a criminal investigation.”
3. The NYPD’s stop-and-frisk database is a gross violation of the privacy interests of millions of New Yorkers. It also violates state law for those people who are arrested or given a summons in conjunction with the stop and who have a right to have the records of that summons or arrest sealed. Since 2003, for instance, the stop-and-frisk program has resulted in approximately 360,000 arrests and summonses. Upon information and belief, a substantial number of these summonses and arrests have been dismissed. Moreover, upon information and belief, many arrests and summonses that were not dismissed resulted in the individual only paying a fine for a minor, non-criminal violation. New York law requires that police records associated with all these summonses and arrests be sealed, including the stop-and-frisk forms that record the names and addresses of

those stopped. The NYPD and the City of New York are fully aware of their legal obligation to seal these records but have refused to comply with the statute, thereby violating the legal rights of possibly hundreds of thousands of people.

4. The plaintiffs Clive Lino and Daryl Khan have been stopped, questioned, searched, arrested, and given summonses that were dismissed. In addition, Mr. Lino has paid a summons for a minor violation in conjunction with a stop-and-frisk. Since the plaintiffs were forced to provide the police with their names and addresses, they are now among the huge number of people whose personal information should be sealed but instead is included in the NYPD database. Because the NYPD refuses to seal their records, they are at serious risk of becoming the targets of future NYPD investigations.
5. The defendants have violated the rights of Mr. Lino, Mr. Khan, and all others similarly situated under the laws of the State of New York. Defendants have also violated Mr. Khan's rights under the United States and New York Constitutions. The plaintiffs seek a declaration that the defendants' actions have been unlawful, injunctive relief, damages, and attorney's fees.

PARTIES

6. Plaintiff CLIVE LINO is a 29-year-old resident of New York City.
7. Plaintiff DARYL KHAN is a 35-year-old resident of New York City.
8. Defendant THE CITY OF NEW YORK is a municipal corporation within the State of New York.

9. Defendant RAYMOND KELLY is the Commissioner of the New York City Police Department, which is an agency of the City of New York. He is sued in his official capacity.
10. Defendant LIEUTENANT JANE DOE is an NYPD police lieutenant who arrested Mr. Khan. She is sued in her official and personal capacities.
11. Defendant OFFICER JOHN DOE 1 is an NYPD police officer who arrested Mr. Khan. He is sued in his official and personal capacities.
12. Defendant OFFICER JOHN DOE 2 is an NYPD police officer who arrested Mr. Khan. He is sued in his official and personal capacities.
13. Defendant OFFICER JOHN DOE 3 is an NYPD police officer who arrested Mr. Khan. He is sued in his official and personal capacities.

FACTS

Clive Lino

14. Clive Lino is a 29-year-old black man graduating in May 2010 from Mercy College with a Master's degree in English and special education. In 2002 he earned his Bachelor's degree in sociology from St. John Fisher College in Rochester, New York, where he was the president of the Black Student Union. Mr. Lino works full-time with special-needs children at a residential facility for students in crisis.
15. Mr. Lino has been a resident of New York since 1986 and a resident of Harlem since 1991. He lives with his mother, brother, sister, and nephew. Mr. Lino's father is a native and resident of Belize, where he has worked as a police officer and currently serves as a magistrate judge.

16. Mr. Lino has been the frequent target of NYPD stop-and-frisk activity. Between February of 2008 and August of 2009, he was stopped at least thirteen times.
17. Frustrated with being the object of unjustified police attention, Mr. Lino began in February 2008 documenting each incident with letters to the Civilian Complaint Review Board, the Office of the Manhattan Borough President, the NYPD Internal Affairs Bureau, local politicians, and various civil rights organizations. Mr. Lino has written, "I am constantly and increasingly being hassled, threatened, intimidated, and harassed by NYPD officers." He also wrote that "they make me feel like a criminal or suspect when I haven't done anything wrong."
18. On April 18, 2009, Mr. Lino and his cousin were getting into his brother's car on Morris Avenue in the Bronx when they were stopped by five NYPD officers. Mr. Lino provided ID when prompted. The officers threw Mr. Lino against a wall, frisked him, handcuffed him, and searched his pockets. Mr. Lino asked repeatedly why he was being stopped and what he had done wrong, but he received no answer. After about thirty minutes, the officers issued Mr. Lino summonses for spitting in public and possessing an open container. Both summonses were dismissed. The Bronx County Criminal Court issued Mr. Lino a notice of dismissal stating that records of his summons had been sealed pursuant to New York Criminal Procedure Law section 160.50.
19. On at least one other occasion when he was stopped and questioned by NYPD officers, Mr. Lino was issued a summons for a noncriminal violation for which he paid a fine.

Daryl Khan

20. Mr. Khan is a 35-year-old white man of Middle Eastern descent, a freelance journalist, and stay-at-home father of twin toddlers. He and his family live on Gates Avenue in the Clinton Hill neighborhood of Brooklyn. Other than the incident at issue in this complaint, Mr. Khan has never been arrested and has no criminal record.
21. Mr. Khan graduated with a double major in journalism and government and politics from the University of Maryland in 1998. He moved to New York eleven years ago to pursue his passion for journalism and shortly thereafter began working as a freelance reporter for the *New York Times*.
22. In 2003 Mr. Khan was hired by *Newsday* as a staff reporter covering the crime beat. His office was located in the NYPD's headquarters, and his daily responsibilities included visiting crime scenes and interviewing on-duty NYPD officers. Through his work, Mr. Khan became familiar with the legal rights of people stopped by the police and was accustomed to interacting with police officers.
23. Mr. Khan is close to his parents, brother, and two sisters. His sister Courtney lives nearby in Brooklyn and travels frequently to Washington, D.C. where his parents reside.
24. At about 8:00 p.m. on Wednesday, October 7, 2009, Mr. Khan was riding his bike in the street past the Tompkins Houses public housing project near his sister's apartment in the Bedford-Stuyvesant neighborhood of Brooklyn when two NYPD officers (Lieutenant Jane Doe and Officer John Doe 1) in an unmarked van pulled

him over and accused him of riding his bike on the sidewalk. Mr. Khan had not ridden his bike on the sidewalk at any point during the trip and told this to the officers. He gave the officers his name, but he did not produce identification because he was not carrying any.

25. Upon stopping Mr. Khan, the officers did not issue him a summons for riding on the sidewalk. Rather, two more officers (Officers John Doe 2 and 3) arrived on the scene and the four officers detained, questioned, and searched Mr. Khan for approximately thirty minutes. The officers repeatedly demanded to know where Mr. Khan lived and why he was in the neighborhood.
26. Mr. Khan told the officers several times that he had done nothing wrong and that he did not understand why they would not either write him a ticket or let him go. He also said repeatedly that he did not want to tell the officers where he lived or answer their questions and that he knew his rights and cared about protecting them. In response, the officers pulled him from his bike, threw him against the side of the van, and slapped hand-cuffs tightly around his wrists. One officer donned gloves and searched Mr. Khan's pockets, over his objections.
27. The officers indicated to Mr. Khan that he was being detained and searched for various reasons, including that he was riding around at night, that he was not carrying identification, and that he had "fucking disrespected a lieutenant."
28. The officers issued Mr. Khan two summonses, one for disorderly conduct and another for riding his bike on the sidewalk.
29. After the officers had issued the summonses, they forced Mr. Khan to return to his sister's apartment building and questioned the woman seated at the front desk of

the building's office, who told them "He is a very nice man. He takes care of his babies." Mr. Khan asked the officers for their names, badge numbers, and tax ID numbers. All refused, and the officers departed.

30. In total, Mr. Khan was detained for approximately forty-five minutes. At no point did the officers act with reasonable suspicion or probable cause or otherwise have any lawful basis for their treatment of Mr. Khan. Both summonses issued to Mr. Khan were dismissed.

31. On January 5, 2010, Mr. Khan filed a Notice of Claim with the City of New York.

The NYPD's Retention of Personal Information that Should Be Sealed

32. The NYPD Patrol Guide provides that every time an NYPD officer stops and questions someone on the street, the officer must complete a "Stop, Question and Frisk" worksheet, also known as a UF-250. This worksheet is used to record information about the encounter, including the name and home address of the person stopped. The NYPD Patrol Guide requires that a UF-250 be completed even if the stop results in an arrest or summons.

33. In March 2006 the NYPD issued an Operations Order requiring that the information from all UF-250s be compiled in a centralized computerized database ("stop-and-frisk database").

34. New York state law mandates the sealing of records of arrests and summonses that do not terminate in a conviction for a misdemeanor or felony. Section 160.50 of the New York Criminal Procedure Law provides, in every case in which proceedings end favorably for an accused, that "all official records and papers of a . . . police agency . . . shall be sealed and not made available to any person or

public or private agency.” Section 160.55 provides, with two exceptions, that in cases in which an individual is deemed to have committed only a non-criminal “violation” or traffic infraction, “all official records and papers of a . . . police agency . . . shall be sealed and not made available to any person or public or private agency.”

35. Since just 2003, NYPD officers have made nearly three million stops. In about 360,000 of those stops, the NYPD has made an arrest or issued a summons. Upon information and belief, a substantial number of those arrests and summonses, like the summonses issued to Mr. Khan and Mr. Lino, resulted in favorable dispositions for the defendants or only the payment of a fine for a minor, non-criminal violation. Under the sealing provisions of Criminal Procedure Law sections 160.50 and 160.55, these individuals have a right to have records associated with those summonses and arrests sealed, including the information in the stop-and-frisk database.
36. In February 2007, the New York Civil Liberties Union wrote to NYPD Commissioner Raymond Kelly to object to the NYPD’s maintenance of a centralized database of hundreds of thousands of law-abiding New Yorkers. The NYCLU requested that the NYPD remove from its database identifying information about law-abiding persons who were stopped. It also noted that the Department was bound by the sealing provisions of section 160.50 of the Criminal Procedure Law and asked that the NYPD take steps to assure that the stop-and-frisk records of individuals be sealed in accordance with the statute. Commissioner Kelly has never responded to the NYCLU’s request.

37. On August 24, 2008, the NYCLU settled the case of Leonardo Blair, an innocent New Yorker who brought suit against the NYPD in the aftermath of his unlawful search, seizure, and arrest, which had resulted in the issuance of two summonses that were dismissed. In settling the case, the NYPD agreed to treat Mr. Blair's stop-and-frisk database entry as "sealed and subject to New York Criminal Procedure Law § 160.50." Following this settlement, the NYCLU expressly requested of the New York City Law Department that the NYPD seal the database records of all New Yorkers who, like Mr. Blair, had summonses or arrests that had been disposed of in their favor. After conferring with NYPD officials, the Law Department refused.
38. In April 2009, the New York City Council Committee on Public Safety held an oversight hearing on NYPD stop-and-frisk practices. At the hearing the NYCLU testified about its concerns about the NYPD's retention of the personal information of innocent New Yorkers in its stop-and-frisk database. In the aftermath of the hearing, Councilmember Peter Vallone, Jr., Chair of the Public Safety Committee, wrote to Commissioner Kelly to express concern about the NYPD's retention of personal information of law-abiding New Yorkers in the database and to inquire about the nature and duration of the information stored in the database and the ways in which the NYPD uses that information.
39. On June 29, 2009, Commissioner Kelly responded to Councilmember Vallone by letter, stating that the information collected during stop-and-frisk encounters is "a tool for investigators to utilize in the subsequent location and apprehension of criminal suspects." Commissioner Kelly further explained that the personal

information collected in the database “remains there indefinitely, for use in future investigations.”

40. In his response to Commissioner Kelly on August 18, 2009, Councilman Vallone wrote that he “remain[ed] very concerned over the indefinite keeping of information obtained from a stop when...the encounter concludes with no infraction or arrest.” Councilman Vallone also stated that the indefinite retaining of an innocent individual's information in a police database raises “legitimate privacy concerns” and urged Commissioner Kelly to review the Department's practices in light of the requirement under New York law that the records of innocent persons be sealed.
41. In recent months, public outcry about the NYPD's stop-and-frisk database has mounted. On March 1, 2010, the *New York Times* published a column entitled “Watching Certain People” that sharply criticized the stop-and-frisk database as an affront on innocent, mostly minority New Yorkers. *Times* columnist Bob Herbert called the NYPD's maintenance of the database a “gruesome, racist practice that should offend all New Yorkers.” On March 12, 2010, the *New York Times* published a second Bob Herbert column, entitled “Big Brother in Blue,” which discussed the New York City Council's efforts to urge Commissioner Kelly to abolish “his huge, noxious database of innocent New Yorkers.”
42. On March 10, 2010, Christine Quinn, Speaker of the New York City Council, and Councilmember Vallone sent a letter to Commissioner Kelly expressing “serious concern” that the stop-and-frisk database “raises significant privacy concerns” for innocent New Yorkers. The letter states that the NYPD's policy of keeping a

permanent, searchable database of innocent persons “violates the spirit” of New York Criminal Procedure Law section 160.50 because it increases the possibility that an innocent citizen will be the target of a future criminal investigation.

43. Upon information and belief, the NYPD, pursuant to the policy, practice, or custom alleged above, has not sealed information contained in its stop-and-frisk database concerning Mr. Lino and Mr. Khan.

CLASS ALLEGATIONS

44. The plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all persons who have been arrested or issued summonses, whose NYPD records are subject to sealing under sections 160.50 or 160.55 of the Criminal Procedure Law, and whose personal information is maintained in the NYPD’s stop-and-frisk database.
45. The class is so numerous that joinder of all members is impractical. Since 2003, NYPD officers have stopped, frisked, and arrested or issued a summons to a person approximately 360,000 times. On information and belief, in a substantial number of these instances Criminal Procedure Law sections 160.50 or 160.55 requires the sealing of all related police records, including personal information maintained in the NYPD’s stop-and-frisk database.
46. There are questions of law and fact common to the class that predominate over questions affecting only individual members, including but not limited to whether New York Criminal Procedure Law sections 160.50 or 160.55 require the NYPD to seal the stop-and-frisk database records of those whose police records must be sealed under those two sections.

47. The claims of the class representatives are typical of the claims of the class members and, by pursuing their own interests, the class representatives will advance the interests of the absent class members. Each class member has been stopped, frisked, and arrested or issued a summons that has resulted in a favorable disposition or in conviction for a sealable non-criminal violation, and for each class member the NYPD has failed to seal the database record of the incident.
48. The class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and the absent class members, and the class representatives will vigorously prosecute this action on behalf of the class.
49. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.
50. Defendants have consistently acted and refused to act in ways generally applicable to the class. Thus, final declaratory and injunctive relief with respect to the class as a whole is appropriate.

JURY DEMAND

51. The Plaintiffs demand a trial by jury in this action on each and every one of their claims.

FIRST CAUSE OF ACTION

52. The Defendants have violated Plaintiffs' rights under section 160.50 of the New York Criminal Procedure Law.

SECOND CAUSE OF ACTION

53. The Defendants have violated Plaintiffs' rights under section 160.55 of the New York Criminal Procedure Law.

THIRD CAUSE OF ACTION

54. The Defendants have violated Daryl Khan's rights under the First, Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

55. The Defendants have violated Daryl Khan's rights under section 12 of Article I of the New York State Constitution.

FIFTH CAUSE OF ACTION

56. The Defendants have violated Daryl Khan's rights under the common law of the State of New York to be free from false arrest, false imprisonment, malicious prosecution, and assault and battery.

JURISDICTION AND VENUE

57. This Court has subject-matter jurisdiction over Plaintiffs' claims pursuant to Article 30 of the New York Civil Practice Law and Rules, section 3001.
58. Venue is proper pursuant to Article 5 of New York Civil Practice Law and Rules, sections 503(a), 503(c), and 505(a).

PRAYER FOR RELIEF

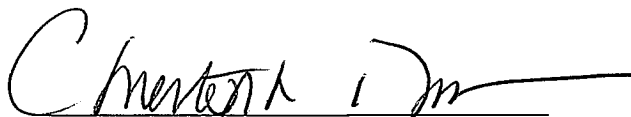
WHEREFORE, Plaintiffs request that this Court:

- (1) Certify this action as a class action, pursuant to Article 9 of the New York Civil Practice Law and Rules;
- (2) Issue a declaratory judgment that the NYPD is violating New York Criminal Procedure Law section 160.50 by not sealing the stop-and frisk records, including

personal information in the NYPD stop-and-frisk database, of individuals whose stop-and-frisk arrests or summonses are disposed of favorably so as to trigger the sealing provisions of that section;

- (3) Issue a declaratory judgment that the NYPD is violating New York Criminal Procedure Law section 160.55 by not sealing the stop-and-frisk records, including personal information in the NYPD stop-and-frisk database, of individuals whose stop-and-frisk arrests or summonses result only in their being deemed to have committed a non-criminal violation or traffic infraction;
- (4) Issue a declaratory judgment that the Defendants violated the rights of Daryl Khan under the First, Fourth and Fourteenth Amendments to the United States Constitution and violated the Constitution and laws of the State of New York;
- (5) Issue an injunction requiring the Defendants to seal all records, including but not limited to personal information in the NYPD's stop-and-frisk database, concerning Daryl Khan's October 7, 2009 arrest;
- (6) Issue an injunction requiring the Defendants to seal all records, including but not limited to personal information in the NYPD's stop-and-frisk database, concerning every instance in which Clive Lino was issued a summons in conjunction with a stop-and-frisk and the disposition of that summons required sealing under either Criminal Procedure Law section 160.50 or 160.55;
- (7) Issue an injunction requiring the Defendants to seal all stop-and-frisk records, including any personal information in the NYPD stop-and-frisk database, for every person whose records must be sealed pursuant to Criminal Procedure Law sections 160.50 or 160.55;
- (8) Award compensatory damages for violations of Mr. Khan's rights under the United States Constitution, the New York State Constitution, and the laws of New York including Criminal Procedure Law section 160.50;
- (9) Award attorneys' fees and costs; and
- (10) Grant any other relief the Court deems appropriate.

Respectfully Submitted,



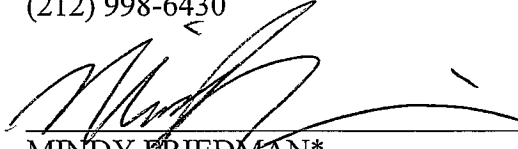
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Dated: May 19, 2010
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