

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

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In the Matter of	:
	:
NEW YORK CIVIL LIBERTIES UNION,	:
	:
Petitioner,	:
	:
-against-	:
	:
NEW YORK CITY POLICE DEPARTMENT,	:
and RAYMOND KELLY, in his official capacity as	:
Commissioner of the New York City Police	:
Department,	:
	:
Respondents.	:
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Index No. 07/115154

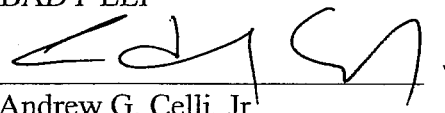
Judge Marilyn G. Diamond

**NOTICE OF MOTION
FOR PERMISSION TO
FILE AN AMICUS
CURIAE BRIEF**

PLEASE TAKE NOTICE that, upon the affirmation of Andrew G. Celli, Jr., dated the 7th of January 2008, and annexed hereto as Exhibit A, the undersigned will move this Court, at the Motion Support Office Courtroom, Room 130, at the Courthouse thereof, located at 60 Centre Street, New York, New York 10007, on January 25, at 9:30 o'clock in the forenoon of that date, or as soon thereafter as counsel may be heard, for an order granting permission to the scholars representing the national research community involved in the study of policing and criminology to file an Amicus Curiae brief in the above-referenced matter, and for such other and further relief as the Court may deem just and proper. A copy of the proposed Amicus Curiae brief is annexed hereto as Exhibit B.

Dated: January 7, 2008
New York, NY

EMERY CELLI BRINCKERHOFF
& ABADY LLP

by 

Andrew G. Celli, Jr.
75 Rockefeller Plaza, 20th Fl.
New York, NY 10019
(212) 763-5000
Attorneys for Amicus Curiae

EXHIBIT A

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

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In the Matter of : Index No. 07/115154
: :
NEW YORK CIVIL LIBERTIES UNION, : :
: :
Petitioner, : : **AFFIDAVIT OF**
: : **ANDREW G.**
-against- : : **CELLI, JR.**
: :
NEW YORK CITY POLICE DEPARTMENT, : :
and RAYMOND KELLY, in his official capacity as : :
Commissioner of the New York City Police : :
Department, : :
: :
Respondents. : :
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ANDREW G. CELLI, JR., an attorney admitted to practice law in the State of New York, hereby affirms as follows:

1. I am an attorney-at-law of the State of New York and a partner of the law firm Emery Celli Brinckerhoff & Abady, LLP. I am fully familiar with all facts set forth herein. By way of background, in addition to representing proposed *amici* herein, I have relevant professional experience with data of the sort at issue in this case. From 1999 to 2003, I served as Chief of the Civil Rights Bureau in the office of New York State Attorney General Eliot Spitzer. In that capacity, I was responsible for the production of the Attorney General's Report, THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES (1999), which was released on December 1, 1999. That Report involved the review of a database reflective of 175,000 "stop, question and frisk" encounters conducted by the New York City Police Department between January 1998 and March 1999; the data reviewed and reported on by the Office of the Attorney General in that Report was of precisely the same nature as the data being sought in the instant

action. Prof. Jeffrey Fagan, one of the proposed *amici* in this case, was the key outside expert for the Attorney General's Office on the 1999 Report.

2. I make this affidavit in support of the Application of the National Research Community (collectively, "Petitioning *Amici*") to Seek *Amicus Curiae* Status. The proposed *amicus* brief is annexed hereto as Exhibit A. All parties to the action have consented to the filing of the proposed *amicus* brief.

3. In the paragraphs that follow, I will identify and briefly outline the professional qualifications and interests of the proposed *amici*.

4. Jeffrey A. Fagan is a Professor of Law and Public Health at Columbia University. He serves as the Co-Director of the Center for Crime, Community and Law. I have known Prof. Fagan since 1999. Prof. Fagan has been researching, writing, and teaching about criminal justice issues for over three decades. He is the author of numerous articles on criminal justice issues. In recent years, he has worked in collaboration with the Chicago Police Department and the Illinois Department of Corrections to evaluate the impact of Chicago's Project Safe Neighborhoods (PSN) program, a federally funded initiative designed to bring federal, state, and local law enforcement together with researchers and community agencies to devise context-specific strategies for reducing gun violence. He served on the Committee on Law and Justice of the National Academy of Science from 2000 to 2006, and served as the Committee's Vice Chair for the last two years. From 1996 to 2006, he was a member of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. He is an elected Fellow of the American Society of Criminology.

5. Other *Amici* have sent their curricula vitae to me, and the information below is derived from that source.

6. Geoffrey P. Alpert is a Professor of Criminology and Criminal Justice at the University of South Carolina. He has been involved in high-risk police research for more than 20 years. He was the Principal Investigator on a racial profiling study in Miami-Dade, Florida and was heavily involved in the recent study on racial profiling conducted in the city of Los Angeles.

7. Ian Ayres is the William K. Townsend Professor at Yale Law School. He is a lawyer and econometrician who has conducted several studies of race discrimination.

8. Robert D. Crutchfield is a Professor of Sociology at the University of Washington. His work focuses on criminology, race and ethnic relations, and the urban community.

9. John J. Donohue III is the Leighton Homer Surbeck Professor at Yale Law School. His recent work has used large-scale statistical studies to estimate the causal impact of law and public policy in a wide range of areas from civil rights and employment discrimination law to school funding and crime control. He is the empirical editor of the *American Law and Economics Review*.

10. Steven N. Durlauf is Kenneth J. Arrow Professor of Economics at the University of Wisconsin at Madison. He has published widely in the areas of econometrics, social economics, economic growth, and macroeconomics. He is a Fellow of the Econometric Society, and coeditor of the *Journal of Applied Econometrics* and general editor of forthcoming revision of the *New Palgrave Dictionary of Economics*.

11. Andrew Gelman is a Professor in the Departments of Statistics and Political Science at Columbia University. He serves as the Director of the Applied Statistics

Center, and contributed to the Office of the New York State Attorney General's report, THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES (1999).

12. David F. Greenberg received his B.S., M.S., and Ph.D. degrees from the University of Chicago. He is Professor of Sociology at New York University. As a specialist in the statistical analysis of criminal justice data, he has published research dealing with the effects of police on crime rates.

13. Candace Kruttschnitt is a Professor in the Department of Sociology at the University of Toronto. She has published extensively on the subject of female offending and victimization. Her recent books include MARKING TIME IN THE GOLDEN STATE: WOMEN'S IMPRISONMENT IN CALIFORNIA (with Rosemary Gartner, Cambridge University Press, 2005) and GENDER AND CRIME: PATTERNS IN VICTIMIZATION AND OFFENDING (with Karen Heimer, New York University Press, 2006). She was Vice President of the American Society of Criminology, Chair of the Crime, Law and Deviance Section of the American Sociology Association, and she is a member of the Police Foundation. She received her B.A. degree from the University of California, Berkeley, her M. Phil, M.A., and Ph.D. degrees from Yale University in sociology.

14. Daniel S. Nagin is Teresa and H. John Heinz III Professor of Public Policy and Statistics at the Heinz School, Carnegie Mellon University.

15. John Pfaff is an Associate Professor of Law at Fordham Law School. His empirical research examines the sentencing practices of state courts, the forces (including policing) that have shaped U.S. prison populations, and the deterrent effect of criminal law and policy. Before teaching, he received both his J.D. and Ph.D. in Economics from the University of Chicago.

16. Glenn Pierce is currently Acting Director of the Institute for Security and Public Policy and Principal Research Scientist for the College of Criminal Justice at Northeastern University. He has conducted research on a broad range of social and economic issues and has obtained funding for his research from a variety of agencies including the National Institute of Justice, the National Institute of Mental Health, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the National Science Foundation.

17. Michael L. Radelet is Professor and Chair of the Department of Sociology at the University of Colorado. He is a leading criminologist and expert on the death penalty.

18. Margo Schlanger is a Professor of Law and Director of the Civil Rights Litigation Clearinghouse at Washington University in St. Louis. Prior to teaching, she worked in the U.S. Department of Justice Civil Rights Division, where she focused on systemic civil rights investigations of jails, prisons, and police departments. Her empirical work has focused on prisoner litigation, but she has a longstanding professional interest in policing as well; for example, she has served as an advisor on racial profiling and data collection to the Police Executive Research Forum.

19. Wesley G. Skogan is a Professor at Northwestern University. His research focuses on the police, crime prevention projects and community-oriented policing. His most recent book on policing is *POLICE AND COMMUNITY IN CHICAGO* (2006). He chaired a committee of the National Research Council that produced a book reviewing research on American policing, *FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE* (2004).

20. Mercer Sullivan is an Associate Professor in the Rutgers School of Criminal Justice. He is the author of the widely cited book "GETTING PAID": *YOUTH CRIME AND WORK IN THE INNER CITY*. He has served as Editor of the *Journal of Research in Crime and*

Delinquency and as panel member and researcher on issues of youth crime and justice for the National Research Council.

21. Tom R. Tyler is a University Professor at New York University. He teaches in the Psychology Department and the Law School. His research is concerned with the factors shaping public compliance with the law and cooperation with the police and the courts.

22. Samuel Walker is Emeritus Professor of Criminal Justice at the University of Nebraska at Omaha. He is the author of eleven books on policing, criminal justice history and policy, and civil liberties. His current research focuses on police accountability, citizen oversight of the police, and police Early Warning systems.

23. David Weisburd is Walter E. Meyer Professor of Law and Criminal Justice and Director of the Institute of Criminology of the Hebrew University Faculty of Law, and Professor of Criminology and Criminal Justice at the University of Maryland, College Park. He serves as a Senior Fellow at the Police Foundation in Washington, D.C., and Chair of its Research Advisory Committee. Professor Weisburd is an elected Fellow of the American Society of Criminology and of the Academy of Experimental Criminology. He is Co-Chair of the steering committee of the Campbell Crime and Justice Group, and a member of the Campbell Collaboration International Steering Group. He also was a member of the National Research Council working group on Evaluating Anti-Crime Programs and its panel on Police Practices and Policies. He received his Ph.D. from Yale University, where he was a Research Associate at Yale Law School, and also served as Senior Research Associate at the Vera Institute of Justice in New York and Associate Professor and Director of the Center for Crime Prevention Studies at Rutgers University. Professor Weisburd is author or editor of fourteen books and more than seventy scientific articles that cover a wide range of criminal justice research topics, including

crime at place, violent crime, white collar crime, policing, illicit markets, criminal justice statistics and social deviance. Professor Weisburd is editor of the JOURNAL OF EXPERIMENTAL CRIMINOLOGY and serves on a number of journal editorial boards including CRIMINOLOGY, the JOURNAL OF CRIME AND DELINQUENCY, and the JOURNAL OF QUANTITATIVE CRIMINOLOGY.

24. Christopher Winship is the Diker-Tishman Professor of Sociology and Director of Graduate Studies at Harvard University. He is the author of numerous scholarly articles on a variety of topics including policing and police-community relations.

25. Franklin E. Zimring is the William G. Simon Professor of Law and Director of the Earl Warren Legal Institute at the University of California at Berkeley School of Law. He is the the author of numerous articles on criminal justice and policing issues. He has served as a consultant to the Department of Justice, Federal Bureau of Prisons and Federal Bureau of Investigation, among other governmental entities.

26. Petitioning *Amici* have no personal connections to the parties to this action and no financial interest in the outcome of the litigation. They are not being compensated by either party.

27. Petitioning *Amici* seek *amicus curiae* status to submit to the Court the attached proposed *amicus* brief for the purpose of assisting the Court in its deliberations. The issue raised in this action relates to the disclosure of a New York City Police Department (NYPD) database that contains information about over 850,000 police stops of civilians made since January 1, 2006. The database is critical resource that will enable the national research community to analyze how to reduce crime in New York City and nationwide.

28. Petitioning *Amici* are concerned that the NYPD is resisting the disclosure of the database at issue by raising concerns about law enforcement and invasions of privacy.

Our proposed *amicus curiae* brief focuses the Court's attention on the City's historical experience with the release of this type of data, which produced only positive consequences, and on large cities nationwide that consistently release this type of data in an effort to promote better law enforcement outcomes. Petitioning *Amici* are not aware that any of the parties to this action have raised such arguments for the Court's consideration.

29. The proposed *amicus curiae* brief or the status of Petitioning *Amici* as *amicus curiae* will not delay this action or otherwise substantially prejudice the rights of any of the parties.

30. Petitioner New York Civil Liberties Union and all Respondents have consented to the filing of this amicus brief.

31. No previous requests for this relief have been made.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 7, 2008

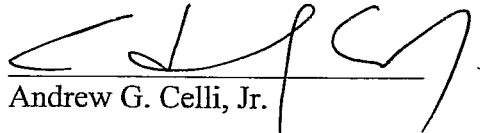

Andrew G. Celli, Jr.

EXHIBIT B

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**APPLICATION OF THE NATIONAL RESEARCH COMMUNITY
TO SEEK *AMICUS CURIAE* STATUS**

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STATEMENT OF INTEREST

Amici are distinguished social scientists – criminologists, economists, sociologists, statisticians, and other scholars – with extensive experience in researching and evaluating crime rates and policing strategies. *Amici* believe that the New York City Police Department database containing information about over 850,000 police stops of civilians made since January 1, 2006 (the “NYPD Database”) should be made public so that scholars from across the nation can review, analyze, and report on the data. The ability of trained social science professionals to access and work with datasets of this sort is essential to the creation of knowledge in the fields of policing and social science generally, and to the development of new, more effective and fairer techniques for combating crime. This brief focuses solely on the value that the database has to the national research community; it does not address the legal issues in the case.

Amici have dedicated their professional careers to determining what makes policing strategies effective, and what approaches and techniques help make communities safe. They have collaborated with police departments in Chicago, Miami-Dade County, and Los Angeles, as well as with law enforcement agencies at the federal level (including the Department of Justice and the Federal Bureau of Investigation), to study, test and develop crime-reduction strategies, and they have published their work in peer-reviewed journals such as THE JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, CRIMINOLOGY AND PUBLIC POLICY, JUSTICE RESEARCH AND POLICY, THE JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY, and dozens of books, law reviews articles and legal periodicals. Their work has been lauded by police professionals as important additions to the national dialogue on policing.

Geoffrey P. Alpert is a Professor of Criminology and Criminal Justice

at the University of South Carolina. He has been involved in high-risk police research for more than 20 years. He was the Principal Investigator on a racial profiling study in Miami-Dade, Florida and was heavily involved in the recent study on racial profiling conducted in the city of Los Angeles.

Ian Ayres is the William K. Townsend Professor at Yale Law School. He is a lawyer and econometrician who has conducted several studies of race discrimination.

Robert D. Crutchfield is a Professor of Sociology at the University of Washington. His work focuses on criminology, race and ethnic relations, and the urban community.

John J. Donohue III is the Leighton Homer Surbeck Professor at Yale Law School. His recent work has used large-scale statistical studies to estimate the causal impact of law and public policy in a wide range of areas from civil rights and employment discrimination law to school funding and crime control. He is the empirical editor of the *American Law and Economics Review*.

Steven N. Durlauf is Kenneth J. Arrow Professor of Economics at the University of Wisconsin at Madison. He has published widely in the areas of econometrics, social economics, economic growth, and macroeconomics. He is a Fellow of the Econometric Society, and coeditor of the *Journal of Applied Econometrics* and general editor of forthcoming revision of the *New Palgrave Dictionary of Economics*.

Jeffrey Fagan is a Professor of Law and Public Health at Columbia University, and Director of the Center for Crime, Community and Law at Columbia Law School. He served on the Committee on Law and Justice of the National Academy of Science from 2000 to 2006, and served as the Committee's Vice Chair for the last two years. From 1996 to 2006, he was a

member of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. He is an elected Fellow of the American Society of Criminology.

Andrew Gelman is a Professor in the Departments of Statistics and Political Science at Columbia University. He serves as the Director of the Applied Statistics Center, and contributed to the Office of the New York State Attorney General's report, THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES (1999).

David F. Greenberg received his B.S., M.S., and Ph.D. degrees from the University of Chicago. He is Professor of Sociology at New York University. As a specialist in the statistical analysis of criminal justice data, he has published research dealing with the effects of police on crime rates.

Candace Kruttschnitt is a Professor in the Department of Sociology at the University of Toronto. She has published extensively on the subject of female offending and victimization. Her recent books include MARKING TIME IN THE GOLDEN STATE: WOMEN'S IMPRISONMENT IN CALIFORNIA (with Rosemary Gartner, Cambridge University Press, 2005) and GENDER AND CRIME: PATTERNS IN VICTIMIZATION AND OFFENDING (with Karen Heimer, New York University Press, 2006). She was Vice President of the American Society of Criminology, Chair of the Crime, Law and Deviance Section of the American Sociology Association, and she is a member of the Police Foundation. She received her B.A. degree from the University of California, Berkeley, her M. Phil, M.A., and Ph.D. degrees from Yale University in sociology.

Daniel S. Nagin is Teresa and H. John Heinz III Professor of Public Policy and Statistics at the Heinz School, Carnegie Mellon University.

John Pfaff is an Associate Professor of Law at Fordham Law School. His empirical research examines the sentencing practices of state courts, the forces (including

policing) that have shaped U.S. prison populations, and the deterrent effect of criminal law and policy. Before teaching, he received both his J.D. and Ph.D. in Economics from the University of Chicago.

Glenn Pierce is currently Acting Director of the Institute for Security and Public Policy and Principal Research Scientist for the College of Criminal Justice at Northeastern University. He has conducted research on a broad range of social and economic issues and has obtained funding for his research from a variety of agencies including the National Institute of Justice, the National Institute of Mental Health, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the National Science Foundation.

Michael L. Radelet is Professor and Chair of the Department of Sociology at the University of Colorado. He is a leading criminologist and expert on the death penalty.

Margo Schlanger is a Professor of Law and Director of the Civil Rights Litigation Clearinghouse at Washington University in St. Louis. Prior to teaching, she worked in the U.S. Department of Justice Civil Rights Division, where she focused on systemic civil rights investigations of jails, prisons, and police departments. Her empirical work has focused on prisoner litigation, but she has a longstanding professional interest in policing as well; for example, she has served as an advisor on racial profiling and data collection to the Police Executive Research Forum.

Wesley G. Skogan is a Professor at Northwestern University. His research focuses on the police, crime prevention projects and community-oriented policing. His most recent book on policing is *POLICE AND COMMUNITY IN CHICAGO* (2006). He chaired a committee of the National Research Council that produced a book reviewing research on American policing, *FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE* (2004).

Mercer Sullivan is an Associate Professor in the Rutgers School of Criminal Justice. He is the author of the widely cited book “GETTING PAID”: YOUTH CRIME AND WORK IN THE INNER CITY. He has served as Editor of the Journal of Research in Crime and Delinquency and as panel member and researcher on issues of youth crime and justice for the National Research Council.

Tom R. Tyler is a University Professor at New York University. He teaches in the Psychology Department and the Law School. His research is concerned with the factors shaping public compliance with the law and cooperation with the police and the courts.

Samuel Walker is Emeritus Professor of Criminal Justice at the University of Nebraska at Omaha. He is the author of eleven books on policing, criminal justice history and policy, and civil liberties. His current research focuses on police accountability, citizen oversight of the police, and police Early Warning systems.

David Weisburd is Walter E. Meyer Professor of Law and Criminal Justice and Director of the Institute of Criminology of the Hebrew University Faculty of Law, and Professor of Criminology and Criminal Justice at the University of Maryland, College Park. He serves as a Senior Fellow at the Police Foundation in Washington, D.C., and Chair of its Research Advisory Committee. Professor Weisburd is an elected Fellow of the American Society of Criminology and of the Academy of Experimental Criminology. He is Co-Chair of the steering committee of the Campbell Crime and Justice Group, and a member of the Campbell Collaboration International Steering Group. He also was a member of the National Research Council working group on Evaluating Anti-Crime Programs and its panel on Police Practices and Policies. He received his Ph.D. from Yale University, where he was a Research Associate at Yale Law School, and also served as Senior Research Associate at the Vera Institute of Justice in New

York and Associate Professor and Director of the Center for Crime Prevention Studies at Rutgers University. Professor Weisburd is author or editor of fourteen books and more than seventy scientific articles that cover a wide range of criminal justice research topics, including crime at place, violent crime, white collar crime, policing, illicit markets, criminal justice statistics and social deviance. Professor Weisburd is editor of the JOURNAL OF EXPERIMENTAL CRIMINOLOGY and serves on a number of journal editorial boards including CRIMINOLOGY, the JOURNAL OF CRIME AND DELINQUENCY, and the JOURNAL OF QUANTITATIVE CRIMINOLOGY.

Christopher Winship is the Diker-Tishman Professor of Sociology and Director of Graduate Studies at Harvard University. He is the author of numerous scholarly articles on a variety of topics including policing and police-community relations.

Franklin E. Zimring is the William G. Simon Professor of Law and Director of the Earl Warren Legal Institute at the University of California at Berkeley School of Law. He is the author of numerous articles on criminal justice and policing issues. He has served as a consultant to the Department of Justice, Federal Bureau of Prisons and Federal Bureau of Investigation, among other governmental entities.

SUMMARY OF ARGUMENT

1. The NYPD Database should be released so that scholars can use it both to analyze current police strategies for reducing crime in New York City and nationwide, and to help develop new and better such strategies going forward.
2. As past experience has proven, providing access to the NYPD Database is likely to produce positive outcomes for policing and for the City as a whole, and will not undermine the goals or methods of law enforcement.

3. The NYPD is out of step with police departments nationwide, which release data of this sort in an effort to encourage research and generate ideas to promote better law enforcement outcomes.

ARGUMENT

1. The NYPD Database Should Be Released So That Scholars Can Use It Both To Analyze Current Police Strategies For Reducing Crime In New York City And Nationwide, And To Help Develop New And Better Such Strategies.

Distinguished social scientists are participating in this *amicus* effort to draw the Court's attention to the importance of the database which the New York City Police Department (NYPD) has compiled and for which access is being sought. The law enforcement technique known as "stop, question and frisk" (sometimes referred to as "SQF") involves the lawful use of police authority to briefly detain and question civilians under a "reasonable suspicion" standard. *Terry v. Ohio*, 392 U.S. 1 (1968). The NYPD Database is comprised of the records of over 850,000 SQF encounters since January 1, 2006. It includes the time, place, outcome, and general circumstances of these encounters, the race and ethnicity of persons stopped, and the command or precinct of the officers involved. The Database is the *only* source of information that compiles these statistically relevant variables.

The NYPD Database is an invaluable resource for evaluating criminal justice strategies in New York City. It provides the most comprehensive look at SQF encounters since 1999, when a similar NYPD dataset was analyzed by the Center for Violence Prevention and Crime Research of Columbia University on behalf of the Office of the New York Attorney General. Social scientists nationwide, including those participating in this *amicus* effort, are eager to analyze the information in the NYPD Database. *Amici* believe that access to the database will assist them in reaching conclusions in several areas of critical concern to the law.

enforcement community, and to the public generally. Among those areas of inquiry are the following:

1. *Accuracy, Clearance Rates, and Effectiveness*: To what extent does SQF activity by police contribute to solving crimes and bringing offenders to justice? How can police activity of this sort be made even more productive in fighting crime?
2. *Efficacy and Resource Constraints*: How effectively and for what purposes is SQF being used, and what resources are necessary for its deployment? What are the optimal levels of policing for crime control in different precincts? What conditions allow police officers to be more effective in certain neighborhoods compared with others? What are the best ways to utilize limited police resources?
3. *Fairness*: Are the costs of policing equally impacting all communities within the City? Are certain groups facing disproportionate police contact?
4. *Keeping communities safe*: What is the best way to ensure that crime rates remain low and stable throughout New York City, and what role does SQF play in that effort?

Social science research on each of these issues will help law enforcement to identify and develop strategies designed to keep New Yorkers safe.¹ In addition, because the

¹ See generally Durose, M. R., Smith, E. L., & Langan, P. A., CONTACTS BETWEEN POLICE AND THE PUBLIC (2007); Langan, P., Greenfeld, L. A., Smith, S. K., Durose, M. R., & Levin, D. J., *Contacts Between Police and The Public: Findings From the 1999 National Survey* (2001); Moore, M.H., *Legitimizing Criminal Justice Policies and Practices*, FBI LAW ENFORCEMENT BULLETIN, October: 14-21 (1997); Novak, K. J., Hartman, J. L., Holsinger, A. M., & Turner, M. G. *The Effects of Aggressive Policing of Disorder on Serious Crime*, POLICING INT. J. POLICE STRAT. & MGMT., 22, 171-190 (1999); Parker, K. F., Stults, B. J., & Rice, S. K., *Racial Threat*,

NYPD's criminal justice strategies are replicated in cities nationwide,² analysis of the NYPD Database will likely improve criminal justice strategies across the United States.

Advancement of social science research and the public interest require that datasets such as the NYPD Database be made public. Dozens of archives collect data of this sort,³ and the sharing of datasets is increasingly demanded by academic norms.⁴ Prominent social science institutions – from the National Archive of Criminal Justice Data to the National Institute of Justice, the National Science Foundation, the National Institutes of Health, and the Centers for Disease Control and Prevention – all require or strongly encourage the sharing of datasets as social goods and as valuable resources for generating knowledge to enhance public safety.⁵

Concentrated Disadvantage And Social Control: Considering The Macro-Level Sources of Variation in Arrests, CRIMINOLOGY, 43(4), 1111-1134 (2005); Schafer, J. A., Carter, D. L., & Katz-Bannister, *Studying Traffic Stop Encounters*, JOURNAL OF CRIMINAL JUSTICE, 32(2), 159-170 (2004); Sklansky, D. A., *Police and Democracy*, MICHIGAN LAW REVIEW, 103, 1699 (2005); Skogan, W. G., & Frydl, K. (Eds.), FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE (2004); Tyler, T. R., & Huo, Y. J., BUILDING TRUST IN THE LAW (2002); Tyler, T. R., & Wakslak, C. J., *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority*, CRIMINOLOGY, 42(2), 253-282 (2004).

² For example, the NYPD's development of a policing strategy known as "order-maintenance policing" captured the popular imagination in the 1990s, and influenced police theory and practices in cities both in the United States and abroad. J. Fagan & G. Davies, *Policing Guns: Order Maintenance and Crime Control in New York*, 2, in GUNS, CRIME, AND PUNISHMENT IN AMERICA (2003).

³ See generally U.S. Department of Justice, Ramirez, D., McDevitt, J., & Farrell, A., *A Resource Guide on Racial Profiling Data Collection Systems* (2000); U.S. General Accounting Office, RACIAL PROFILING: LIMITED DATA AVAILABLE ON MOTOR VEHICLE STOPS (2000).

⁴ See generally Ayres, I., SUPER CRUNCHERS: WHY THINKING-BY-NUMBERS IS THE NEW WAY TO BE SMART (2007); Ayres, I., *Give Freakonomics a Chance*, THE ECONOMISTS' VOICE, 4(5), 1 (2007).

⁵ NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, *Policy on Archiving Data*, at <http://www.icpsr.umich.edu/NACJD/archive-data.html> ("The criminal justice field as a whole benefits when professional researchers test each other's conclusions, verifying, refining or refuting original findings. . . . Sharing of data also fosters the development and testing of new conclusions"); NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, *Solicitation: Data Resources Program 2008: Funding for the Analysis of Existing Data 7*, at

For these reasons, the national research community, represented by *amici* here, urges the Court to order the release of the NYPD Database pursuant to the Freedom of Information Law, N.Y. Public Officers Law § 84, *et seq.*

2. As Past Experience Has Proven, Providing Access To The NYPD Database Is Likely To Produce Positive Outcomes For Policing And For The City As A Whole And Will Not Undermine the Goals or Methods of Law Enforcement.

The release of the NYPD Database is consistent with past practice and thus would be neither unprecedented nor risky. In 1999, the NYPD made SQF data available to the Office of the New York State Attorney General (“OAG”), by sharing a database comprised of 175,000 “UF-250” forms spanning a 15-month period from January 1998 to March 1999. At the time, officers were required to fill out the forms each time they conducted a SQF encounter – forms that reflected precisely the same information collected in the NYPD Database.

In order to review and statistically analyze the data provided in 1999, the OAG retained experts at Columbia University. On December 1, 1999, the OAG released its analysis of the SQF data, THE NEW YORK CITY POLICE DEPARTMENT’S “STOP & FRISK” PRACTICES (available at http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html) (“OAG Report” or “Report”). The Report documented the legal, strategic, and tactical implications of SQF in

<http://www.ncjrs.gov/pdffiles1/nij/sl000792.pdf> (“[The National Institute of Justice] *requires* recipients of research grants to submit a complete data set for archiving upon completion of the grant.”); NATIONAL SCIENCE FOUNDATION, *Data Archiving Policy*, at <http://www.nsf.gov/sbe/ses/common/archive.jsp> (“Data sharing strengthens our collective capacity to meet scientific standards of openness by providing opportunities for further analysis, replication, verification and refinement of research findings.”); NATIONAL INSTITUTES OF HEALTH, *Data Sharing Policy*, at http://grants.nih.gov/grants/policy/data_sharing/ (“Data sharing is essential for expedited translation of research results into knowledge, products, and procedures to improve human health.”); CENTERS FOR DISEASE CONTROL AND PREVENTION, *Policy on Releasing and Sharing Data*, at <http://www.cdc.gov/od/foia/policies/sharing.htm> (“[P]ublic health and scientific advancement are best served when data are released to, or shared with, other public health agencies, academic researchers, and appropriate private researchers in an open, timely, and appropriate way. The interests of the public—which include timely releases of data for further analysis—transcends whatever claim[s] . . . [of] ownership of data”)

New York City during the relevant time period, and applied various statistical methodologies to the data. The OAG Report resulted in findings significant to policing and public policy; indeed, the Report stimulated significant discussion in the law enforcement and legal communities.

The publication of the 1999 OAG Report teaches important lessons about the appropriateness of the release of data of the sort sought in this case. Even as the leadership of the NYPD contested the findings of the OAG Report, at no time did any law enforcement official assert that the OAG's analysis and release of this data hindered the City's law enforcement capabilities or created any danger to the public. Indeed, as a lens through which policing and public policy could be viewed, the OAG Report produced only positive consequences. For example, the Report prompted the NYPD to issue an order banning racial profiling, and to create a new, more consistent method for documenting SQF encounters. The Report also sparked productive meetings and symposia that brought together police officers, community leaders, and scholars to discuss effective law enforcement strategies and build trust between the NYPD and minority communities. The OAG Report, which was widely cited, even helped shape the public discourse about racial profiling within the City and nationwide, having been a major topic of discussion at symposia at Harvard Law School, New York University School of Law, and elsewhere. These positive outcomes resulting from the OAG Report would not have occurred without the NYPD's disclosure of data concerning stop and frisk practices. All this was achieved without compromising the safety of New Yorkers, as evidenced by steadily declining crime rates in the ensuing years.

In this case, similar positive outcomes are likely to result if the NYPD releases the NYPD Database. It is well-established that increased transparency results in better law enforcement practices and greater community understanding and support for police officers. The

OAG Report from 1999 demonstrates this fundamental principle to be true in New York City. For this reason, the NYPD's objections to releasing the database due to an alleged impact upon law enforcement capabilities, N.Y. Public Officers Law §§ 87(2)(e)-(f), (i), are misplaced.

Likewise, to the extent that the NYPD objects that "an unwarranted invasion of personal privacy" will result from the release of the database, N.Y. Public Officers Law §§ 87(2)(b) and 89(2), those concerns are unfounded. The petitioner is seeking the NYPD Database with individually identifiable information redacted. (*See* NYCLU Complaint, at ¶ 1.) And, even if the database did not remove every trace of individually identifiable information, social scientists would nonetheless be bound by federal law to prevent disclosure of identifying information about human subjects. *See generally* Federal Policy for the Protection of Human Subjects, 42 U.S.C. 289, *codified at* 45 C.F.R. § 46, *et seq.*

The historical experience with this type of data release demonstrates that scholarly analysis of policing yields positive outcomes, not increased dangers for law enforcement officers or violations of privacy for ordinary citizens. To achieve these positive outcomes, the national research community, represented here by more than twenty scholars, who are *amici* herein, asks the Court to order the NYPD to release the database at issue.

3. The NYPD Is Out Of Step With Police Departments Nationwide, Which Consistently Release Data Of This Sort In An Effort To Encourage Research And Generate Ideas To Promote Better Law Enforcement Outcomes.

The NYPD's refusal to permit access to the database is out of step with the practices of major police departments elsewhere in the country. Nationwide, municipalities and police departments have released the type of data at issue here and collaborated productively with social scientists in an effort to promote better law enforcement outcomes. Among the departments that release this information are those in Chicago, Miami, Seattle, Boston, and

Washington, D.C. Each of these cities faces crime patterns similar to New York City's. But none of their police departments has asserted that law enforcement objectives will be hindered, or citizens' privacy will be compromised, by a thorough and independent analysis of data related to police activities. Indeed, empirically, no such problems have arisen as a result of their decisions to release data of this sort.

To the contrary, to a large degree, police departments in these cities have striven to work cooperatively with social scientists, all in an effort to better understand and evaluate their crime-reduction strategies. For example, the Chicago Police Department and the Illinois Department of Corrections have shared data on Chicago neighborhood-level crime rates with social scientists to evaluate the impact of Chicago's Project Safe Neighborhoods (PSN) program, a federally funded initiative designed to bring federal, state, and local law enforcement together with researchers and community agencies to devise context-specific strategies for reducing gun violence. The researchers concluded that the PSN strategies resulted in "a significant decline in homicides at a faster rate than similar control areas or the city as a whole."⁶ The empirical analysis suggests that the approaches used by Chicago's PSN program are worth replicating in cities nationwide.⁷

Likewise, the Miami-Dade County, Florida Police Department, the Boston Police Department, and the Metropolitan Police Department in the District of Columbia engage social

⁶ A. Papachristos, T. Meares & J. Fagan, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, 4 JOURNAL OF EMPIRICAL LEGAL STUDIES 265 (July 2007).

⁷ The Chicago Police Department also has released valuable data about street guns and homicides, from which social scientists have drawn important lessons about law enforcement. See, e.g., Griffiths, E. & Chavez, J., *Communities, Street Guns, and Homicide Trajectories in Chicago, 1980-1995: Merging Methods for Examining Homicide Trends across Space and Time*, CRIMINOLOGY 42(4):941-978 (2004).

scientists to investigate issues such as racial profiling,⁸ and social scientists study racial profiling in other cities, with no adverse effects on law enforcement or citizens' privacy.⁹ In addition,

⁸ See, e.g. Alpert, G. P., Dunham, R. G., & Smith, M. R., *Investigating Racial Profiling By The Miami-Dade Police Department: A Multimethod Approach*, CRIMINOLOGY AND PUBLIC POLICY, 6(1), 25-56 (2007); Antonovics, K., & Knight, B. G., *A New Look at Racial Profiling: Evidence From The Boston Police Department* (2004) (unpublished manuscript); Lamberth, J. L., *Data Collection and Benchmarking of the Bias Policing Project: Final Report for the Metropolitan Police Department in the District of Columbia* (Sept. 2006).

⁹ See, e.g., San Jose (California) Police Department, *Vehicle Stop Demographic Study* (Dec. 17, 1999); Melchers, R., *Do Toronto Police Engage in Racial Profiling*, CANADIAN JOURNAL OF CRIMINOLOGY AND CRIMINAL JUSTICE, 45(3), 347-366 (2004); Skogan, W.G., *POLICING CHICAGO STYLE* (2006); Fagan, J., & Davies, G., *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, FORDHAM URBAN LAW JOURNAL, 28, 457-504 (2000); Alpert, G. P., MacDonald, J. M., & Dunham, R. G., *Police Suspicion and Discretionary Decision Making During Citizen Stops*, CRIMINOLOGY, 43(2), 407-434 (2005); Anwar, S., & Fang, H., *An Alternative Test of Racial Prejudice in Motor Vehicle Searches: Theory and Evidence* (2004), (unpublished manuscript); Ayres, I., *Outcome Tests of Racial Disparities in Police Practices*, JUSTICE RESEARCH AND POLICY, 4, 131-142 (2004); Banks, R. R., *Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Disclosure*, UNIVERSITY OF CALIFORNIA AT LOS ANGELES LAW REVIEW, 48(5), 1075-1124 (2001); Barnes, K. Y., *Assessing the Counterfactual: The Efficacy of Drug Interdiction Absent Racial Profiling*, DUKE LAW JOURNAL, 54 (2005); Beckett, K., Nytop, K., & Pflingst, L., *Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests*, CRIMINOLOGY, 44(1), 105-137 (2006); Becton, C. L., *The Drug Courier Profile: All Seems Infected That Th' Infected Spy, As All Looks Yellow to the Jaundic'd Eye*, NORTH CAROLINA LAW REVIEW, 65, 417- 476 (1987); Bjerck, D., *Racial Profiling, Statistical Discrimination, and The Effect of a Colorblind Policy on the Crime Rate*, JOURNAL OF PUBLIC ECONOMIC THEORY, 9(3), 521-545 (2007); Davis, A. J., *Race, Cops, and Traffic Stops*, UNIVERSITY OF MIAMI LAW REVIEW, 51: 425-443 (1997); Fridell, L., Lunney, R., Diamond, D., Kubu, B., Scott, M., & Laing, C., *RACIALLY BIASED POLICING: A PRINCIPLED RESPONSE* (2001); Gelman, A., Fagan, J., & Kiss, A., *An Analysis of the NYPD's Stop-and-Frisk Policy in the Context of Claims of Racial Bias*, JOURNAL OF AMERICAN STATISTICAL ASSOCIATION (2005); Garrett, B., *Remedying Racial Profiling*, COLUMBIA HUMAN RIGHTS LAW REVIEW, 33 (1), 41-148 (2001); Gold, A. D., *Media Hype, Racial Profiling, and Good Science*, CANADIAN JOURNAL OF CRIMINOLOGY AND CRIMINAL JUSTICE, 45(3), 391-399 (2003); Gross, S. R., & Barnes, K. Y., *Road Work: Racial Profiling and Drug Interdiction on The Highway*, MICHIGAN LAW REVIEW, 101(3) (2002); Harris, D. A., *The Importance of Research on Race and Policing: Making Race Salient to Individuals and Institutions Within Criminal Justice*, CRIMINOLOGY AND PUBLIC POLICY, 6(1) (2007); Harris, D. A., *The Stories, The Statistics, and The Law: Why "Driving While Black" Matters*, UNIVERSITY OF MINNESOTA LAW REVIEW, 84 (2001); Harris, D. A., *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 87(2), 544-582 (1997); Hernandez-Murillo, R., & Knowles, J., *Racial Profiling or Racist Policing? Bounds Tests in Aggregate Data*, INTERNATIONAL ECONOMIC REVIEW, 45(3), 959-989 (2004); Holbert, S., &

social scientists have researched and published scholarly pieces on where crime takes place (so called, “hot spots”) and where “calls for service” originate in cities such as Seattle¹⁰ and Jersey City, NJ.¹¹ Social scientists also have researched and published on traffic stop patterns – including the location of stops and policing patterns – in the cities of Los Angeles¹² and Wichita, Ks.,¹³ as well as the states of Massachusetts,¹⁴ Maryland,¹⁵ New Jersey,¹⁶ and North Carolina.¹⁷

Rose, L., *Making Sense of the Data: The Shortcomings of Racial Profiling Data Collection and Analysis*, LAW ENFORCEMENT TECHNOLOGY, 33(7), 40, 42-44, 46-47 (2006); Johnson, K. R., *The Case for African American and Latina/o Cooperation in Challenging Racial Profiling in Law Enforcement*, FLORIDA LAW REVIEW 55 (2004); Katz, C. M., Webb, V. J., & Schaeffer, D. R., *An Assessment of The Impact of Quality-of-Life Policing on Crime and Disorder*, JUSTICE QUARTERLY, 18(4), 825-876 (2001); Knowles, J., Perisco, N., & Todd, P., *Racial Bias in Motor Vehicle Searches: Theory and Evidence*, JOURNAL OF POLITICAL ECONOMY, 109, 203–224 (2001); Little, L. L., *It’s About Time: Unraveling Standing and Equitable Ripeness*, BUFFALO LAW REVIEW, 41:933–989 (1993); Lundman, R. J., & Kaufman, R. L., *Driving While Black: Effects of Race, Ethnicity, and Gender on Citizen Self-Reports of Traffic Stops and Police Actions*, CRIMINOLOGY, 41(1), 195-220 (2003); Miller, J., *Profiling Populations Available for Stops and Searches*, Police Research Series Paper No. 121, Home Office Research, Development and Statistics Directorate, London, United Kingdom (2000); Miller, J., Bland, N., & Quinton, P., *Measuring Stops and Searches: Lessons from UK Home Office Research*, JUSTICE RESEARCH AND POLICY, 4 (2002); Smith, M., & Alpert, G., *Searching for Direction: Courts, Social Science and The Adjudication of Racial Profiling Claims*, JUSTICE QUARTERLY (2003); Rudovsky, D., *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW, 3, 296–366 (2001); Waddington, P. A. J., Stenson, K., & Don, D., *In Proportion: Race, and Police Stop and Search*, BRITISH JOURNAL OF CRIMINOLOGY, 44(6), 889-914 (2004); Warren, P., Tomaskovic-Devey, D., Smith, W., Zingraff, M., & Mason, M., *Driving While Black: Bias Processes and Racial Disparity in Police Stops*, CRIMINOLOGY, 44(3), 709-738 (2006); Whitney, M. J., *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches: Rethinking the Use of Statistics To Prove Discriminatory Intent*, BOSTON COLLEGE LAW REVIEW, 49(1) (2008).

¹⁰ Weisburd, D. L., Bushway, S. D., Lum, C., & Yang, S.-M., *Trajectories of Crime at Places: A Longitudinal Study of Street Segments in the City of Seattle*, CRIMINOLOGY, 42(2), 283-321 (2004).

¹¹ Braga, A., Weisburd, D., Waring, E., Greene Mazerolle, L., Spelman, W. & Gajewski, F., *Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment*, CRIMINOLOGY 37(3) (1999).

¹² Alpert, G. P., *Proposed Pedestrian and Motor Vehicle Stop Data Analyses Methodology Report*, Prepared for the City of Los Angeles (Jan. 2005).

¹³ See, e.g., Persico, N. G., & Todd, P., *Using Hit Rates To Test For Racial Bias in Law Enforcement: Vehicle Searches in Wichita* (2005) (unpublished manuscript).

In none of these cities or states has any law enforcement agency ever raised security or privacy concerns as a reason for denying social scientists access to data of the sort sought herein.

The federal government recognizes the value of social science analysis of criminal justice data. The National Institute of Justice (NIJ) of the U.S. Department of Justice regularly offers grants to social scientists who work in collaboration with law enforcement to evaluate criminal justice strategies.¹⁸ In fact, NIJ is currently seeking “applications for funding to conduct research on policing to improve law enforcement policies and operations at the State and local levels.”¹⁹ The NIJ’s solicitation explains: “Effective law enforcement and crime prevention are of critical importance to ensuring the safety of communities throughout the country. *Given the limited resources of most police departments and other local agencies and groups, it is especially important to determine the effectiveness of police department policies.*”²⁰

The NYPD’s refusal to make the NYPD Database available makes it an outlier among police forces in large urban areas nationwide. The NYPD should release the database and

¹⁴ Massachusetts Office of the Attorney General, REPORT OF THE ATTORNEY GENERAL’S CIVIL RIGHTS DIVISION ON BOSTON POLICE DEPARTMENT PRACTICES (1990)

¹⁵ Maryland released this data pursuant to a compromise with the U.S. Department of Justice prior to the issuance of the 2003 Consent Decree in *Wilkins v. Maryland State Police*, No. 98-1098 (D. Md.).

¹⁶ See, e.g., Lange, J. E., Johnson, M. B., & Voas, R. B., *Testing the Racial Profiling Hypothesis for Seemingly Disparate Traffic Stops on the New Jersey Turnpike*, JUSTICE QUARTERLY, 22(2), 193-223 (2005); Lamberth, J. L., *Revised Statistical Analysis of the Incidence of Stops and Arrests of Black Drivers/Travelers on the New Jersey Turnpike Between Exits or Interchanges 1 and 3 From the Years 1988 Through 1991* (1994) (unpublished manuscript). In addition, the State of New Jersey has released traffic stop data pursuant to a Freedom of Information request.

¹⁷ NORTH CAROLINA STATE BUREAU OF INVESTIGATION, *North Carolina Traffic Stops Statistics*, at <http://trafficstops.ncsbi.gov/>; Zingraff, M., Mason, H. M., Smith, W. R., Tomaskovic-Devey, D., Warren, P., McMurray, H. L., & Fenlon, C. R. et al., *Evaluating North Carolina State Highway Patrol Data: Citations, Warnings and Searches in 1998* (2000).

¹⁸ See, e.g., Fredrickson, D. D., & Siljander, R. P., RACIAL PROFILING (2002).

¹⁹ NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, *Solicitation: Research on Policing 3*, available at <http://www.ncjrs.gov/pdffiles1/nij/sl000826.pdf> (Application Deadline: Feb. 12, 2008).

²⁰ *Id.* (emphasis added).

adopt an approach toward collaboration with social scientists that is consistent with national norms.

CONCLUSION

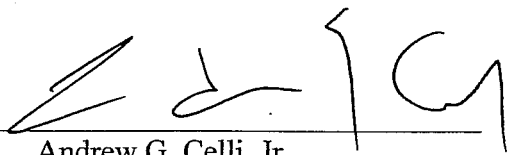
For the reasons stated above, the Court should grant petitioner access to the New York City Police Department database that contains information about over 850,000 police stops of civilians made since January 1, 2006.

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New York, New York

Respectfully submitted,

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