

May 15, 2020

**Via Email**

Mayor Bill de Blasio  
City Hall  
New York, NY 10007

Commissioner Dermot Shea  
New York City Police Department  
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New York, NY 10038



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Donna Lieberman  
Executive Director

Robin Willner  
President

Re: NYPD Enforcement of COVID-19 Related Social Distancing Measures

Dear Mayor de Blasio and Commissioner Shea:

On behalf of the New York Civil Liberties Union, we write to express our concerns regarding the NYPD's enforcement of COVID-19 related social distancing measures – in particular, the stark racial disparities, use of force, lack of transparency, and infringements on constitutionally-protected protest activity that have emerged in that enforcement. We are dismayed by the Department's stubborn defense of NYPD behavior that has generated legitimate public outcry about excessive force, racial bias, and increased health risks to police and public alike. We also believe that the NYPD's enforcement of the current state Executive Order against New Yorkers exercising their constitutional right to protest—while outdoors and observing mask and social distancing guidelines—violates their First Amendment rights. While we recognize the need to ensure public health and safety as the city responds to the pandemic, the NYPD's actions are—and must be—bound by the Constitution. A pandemic calls for many measures that would be unacceptable under other circumstances; but it does not justify measures that are not required to protect the public health like discriminatory policing, excessive force, or a total ban on all outdoor expressive activity.

**The NYPD is Neither a Credible Nor Appropriate Public Health Force**

From the outset of this public health crisis, your administration has insisted that the appropriate response to various issues—ranging from overcrowding in grocery stores<sup>1</sup> to the opening of city streets for pedestrian and bicycle

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<sup>1</sup> Dave Goldiner, *De Blasio Asks NYC to Rat Out Coronavirus Crowders*, N.Y. Daily News, Apr. 18, 2020, <https://www.nydailynews.com/coronavirus/ny-coronavirus-de-blasio-nyc-social-distancing-police-20200418-kidh4tqokzavbojoknoej2mv5y-story.html>.



traffic—is a heavy police presence and enforcement.<sup>2</sup> But police officers are not the public officials best suited to respond to COVID-19 related restrictions for two critical, but related reasons. First, the NYPD is not—nor should it endeavor to be—a public health agency. Second, the communities most impacted by the virus do not have sufficient trust in the NYPD for its officers to function as effective public health messengers.

Despite the progress that has been made in recent years to move beyond the era of mass stop and frisk and racial profiling, the NYPD has not done enough to build relationships with the communities most impacted by abusive and discriminatory policing. Under your administration, the NYPD's continuing embrace of broken windows policing tactics, its push to dramatically expand the reach of Section 50-a, and its reflexive fear mongering in response to historic bail reform measures have undercut any efforts to establish trust and credibility in these communities. The same low-income communities of color that have been impacted the most by this abusive and discriminatory policing are now the communities with the highest rates of infection and death from COVID-19.<sup>3</sup> The ensuing lack of trust and credibility makes the NYPD an entirely inappropriate messenger for delivering public health information or encouraging compliance with public health directives in this time of crisis.

This lack of trust is only further reinforced by the alarming racial disparities in NYPD enforcement, with the Department's own data showing that more than 80 percent of those ticketed for social distancing-related enforcement are Black and Latinx.<sup>4</sup> Beyond the disparities in the numbers themselves, the images of NYPD officers handing out masks to white sunbathers in a crowded West Village park juxtaposed with video of officers without masks violently arresting three people of color in the East Village for allegedly violating social distancing is striking,<sup>5</sup> and further supports minimizing the Department's role in public health enforcement. When confronted with the racial disparities in NYPD enforcement, Commissioner Shea responded that they resulted from

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<sup>2</sup> Julia Marsh & David Meyer, *De Blasio Calls Off Coronavirus Street Closures, Citing Lack of NYPD Resources*, N.Y. Post, Apr. 6, 2020,

<https://nypost.com/2020/04/06/coronavirus-in-ny-de-blasio-calls-off-street-closures/>.

<sup>3</sup> Sanya Mansoor, *Data Suggests Many New York City Neighborhoods Hardest Hit by COVID-19 are also Low-Income Areas*, Time, Apr. 5, 2020,

<https://time.com/5815820/data-new-york-low-income-neighborhoods-coronavirus/>.

<sup>4</sup> Erin Durkin, *Black and Latino New Yorkers Get Vast Majority of Social Distancing Summonses*, Politico, May 8, 2020, <https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

<sup>5</sup> Poppy Noor, *A Tale of Two Cities: How New York Police Enforce Social Distancing by the Color of Your Skin*, The Guardian, May 4, 2020,

<https://www.theguardian.com/world/2020/may/04/coronavirus-new-york-police-enforce-social-distancing>.



existing socio-economic disparities.<sup>6</sup> But while it is certainly true that many people of color experience discrimination and disadvantage rooted in social and economic circumstances, mistreatment by the police cannot be justified in those terms. Nor do “socioeconomic” realities begin to justify the clear examples of the NYPD’s remarkably different approaches in policing New Yorkers of different races and neighborhoods.

The NYPD cannot serve a credible role in encouraging compliance with social distancing so long as officers continue to couple their approach with pre-pandemic criminal enforcement priorities. In the East Village incident, it was reported that officers escalated the encounter upon allegedly observing marijuana in plain view.<sup>7</sup> And on social media, the NYPD Transit Bureau boasted of its continued commitment to enforcing turnstile jumping and marijuana-related offenses.<sup>8</sup> New Yorkers of color who are disproportionately targeted for this type of enforcement have little reason to put their trust in public health enforcement from the same agency that continues to emphasize criminal enforcement. Notably, the New York State Attorney General is currently investigating the NYPD in order to determine whether the Department is unfairly targeting communities of color with aggressive social distancing enforcement; this comes on top of an ongoing investigation to determine the extent to which officers are profiling people of color in the transit system.<sup>9</sup>

In a recent statement, the President of the Police Benevolent Association said, “This situation is untenable: the NYPD needs to get cops out of the social distancing enforcement business altogether.”<sup>10</sup> On this point, if not others

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<sup>6</sup> Ashley Southall, *NYPD Commissioner Denies Racial Bias in Social Distancing Policing*, New York Times, May 13, 2020, <https://www.nytimes.com/2020/05/13/nyregion/nypd-social-distancing-race-coronavirus.html>.

<sup>7</sup> Poppy Noor, *A Tale of Two Cities: How New York Police Enforce Social Distancing by the Color of Your Skin*, The Guardian, May 4, 2020, <https://www.theguardian.com/world/2020/may/04/coronavirus-new-york-police-enforce-social-distancing>.

<sup>8</sup> NYPD Transit (@NYPDTransit), “Some people may disagree - but transporting ziplock bags of marijuana & a digital scale in your backpack does not make you an essential traveler in the eyes of the Transit police. Hopping a turnstile while doing so didn’t help either. Nice grab by our District 1 team!” May 2, 2020, Tweet, <https://twitter.com/nypdtransit/status/1256594296230330369?s=21>.

<sup>9</sup> Priscilla De Gregory & Craig McCarthy, *Letitia James Calls Out NYPD for “Unequal” Social Distancing Enforcement of Minorities*, N.Y. Post, May 13, 2020, <https://nypost.com/2020/05/13/letitia-james-calls-out-nypd-for-unequal-social-distancing-enforcement-of-minorities/>; Ashley Southall, *Subway Arrests Investigated Over Claims People of Color Are Targeted*, N.Y. Times, Jan. 13, 2020, <https://www.nytimes.com/2020/01/13/nyregion/letitia-james-fare-beating-nypd.html>.

<sup>10</sup> Police Benev. Ass’n of the City of New York, *PBA Statement on Social Distancing Enforcement*, May 4, 2020, <http://nycpba.org/press-releases/2020/social-distancing-enforcement/>.



raised in the statement, we can agree. It makes little sense to put the burden on officers who do not have the requisite background or training in disease control and prevention to contain the spread of COVID-19. And with alarmingly high rates of infection among the NYPD's ranks and thousands more officers calling out sick due to potential exposure,<sup>11</sup> the city needs a better option than continuing to risk the health and safety of NYPD officers and the people with whom they interact.

The enforcement of public health restrictions should be the responsibility of public health agencies like the Department of Health and Mental Hygiene, whose officers and inspectors have enforcement authority under city and state law.<sup>12</sup> To the detriment of our residents, the city has invested much less in public health and other social service providers than it has in the NYPD. The unfortunate result is that far more NYPD personnel are available for enforcement than professionals from agencies that are not driven by a punitive, criminal law enforcement approach. While these unequal levels of investment and staffing may explain the current reliance on police officers to enforce social distancing, it cannot be an excuse for keeping this paradigm in place moving forward. As your administration and the City Council work to negotiate a budget for the upcoming fiscal year, we urge you to increase investments in the city's public health infrastructure and social safety net and to significantly reduce the NYPD's footprint in areas like physical and mental health responses, homeless outreach, youth services, and other areas where officers are currently responding to non-law enforcement needs. Public health officials and social service providers, not police officers, must be hired in sufficient numbers to respond to the city's public health needs.

We also recommend that the city partner with local, community-based organizations and leaders to identify community-based solutions for monitoring and enforcing social distancing and other health-related measures. Equipping trusted local leaders with information and resources to educate their neighbors on the impact of COVID-19 and the importance of social distancing measures—decoupled from the inherent threat of criminalization present in every police encounter—can promote voluntary compliance with those measures. We welcome your commitment to expand the number of non-NYPD “social distancing ambassadors” to engage New Yorkers and seek

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<sup>11</sup> Joseph Ostapiuk, *NYPD Coronavirus Death Total Reaches 30; Department's Sick Rate Continues to Fall*, Apr. 20, 2020, <https://www.silive.com/coronavirus/2020/04/nypd-coronavirus-death-total-reaches-30-departments-sick-rate-continues-to-fall.html>.

<sup>12</sup> See N.Y. Pub. Health L. § 12-b (willful violation of health laws, and the enforcement provision for many of Governor Cuomo's executive orders in response to the coronavirus); NYC Admin. Code § 17-138 (designating NYC Department of Health and Mental Hygiene officers and inspectors as peace officers).



compliance with these measures,<sup>13</sup> but this cannot be the only step that we take. We urge your administration to think creatively about forging these partnerships and investing in the development of community leaders, including making such opportunities available to young people by preserving funding for the Summer Youth Employment Program.

### **The NYPD Must Disavow Broken Windows Policing Tactics and Provide Greater Transparency**

To the extent that alternative enforcement resources are not immediately available, it is imperative that the NYPD not continue to police communities as if this were business as usual. It is past time for the NYPD to disavow its commitment to broken windows enforcement tactics. COVID-19 spreads through exactly the kind of close person-to-person contact that enforcement activity requires, so the enforcement of a minor offense could expose both officers and the public to infection. For encounters that do take place, officers must be required to properly wear personal protective equipment like face masks to limit the risk of exposure. And with major crime down while the city remains mostly shut down, there is little justification for the Department to maintain staffing at current levels or to continue paying officers for overtime.

The Department cannot ask for the public's trust without a commitment to greater transparency. The NYCLU calls for the immediate release of all relevant data on all NYPD social distancing enforcement, including demographic information on the subjects of enforcement activity. The NYPD has reported that officers have made around one million social distancing contacts between March 16th and May 5th,<sup>14</sup> but it has not provided data on the location of these interactions or demographic information on the subjects of these contacts, making it impossible to measure whether the disparities that have emerged from summons and arrest activity are also reflected in the Department's overall approach to the pandemic response.

And while the release of summons data was an important first step, that data only reflects those charged with violations of emergency procedures and acts likely to spread disease, and may not capture the full universe of social distancing enforcement. It has been reported that arrests for social distancing violations have involved charges for disorderly conduct, obstructing

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<sup>13</sup> *NYC to Expand Number of Non-NYPD "Social Distancing Ambassadors" to 2,300 Following Viral Videos of Arrests*, CBS 2 New York, May 10, 2020, <https://newyork.cbslocal.com/2020/05/10/social-distancing-ambassadors/>.

<sup>14</sup> *NYPD Says It's Reevaluating Social Distancing Enforcement Policies and Procedures*, CBS 2 New York, May 4, 2020, <https://newyork.cbslocal.com/2020/05/04/east-village-social-distancing-arrest/>.



governmental administration, unlawful assembly, and resisting arrest.<sup>15</sup> To provide a meaningful picture of NYPD’s activities during the pandemic, the NYPD should release, on a weekly basis, comprehensive data on low level enforcement, which would include disorderly conduct, marijuana, and other summons activity.

Lastly, to the extent that officers abuse their already expansive authority during this crisis, the Department must commit to holding those officers accountable through meaningful disciplinary investigations and consequences, where warranted.<sup>16</sup>

We cannot police our way out of this pandemic, and our city cannot continue to prioritize investment in law enforcement solutions to public health crises. We urge you to realign the city’s approach to COVID-19 related enforcement so that it comports with public health principles.

### **The NYPD’s Response to Protesters Violates New Yorkers’ First Amendment Rights**

Both your administration and the NYPD have recently confirmed that they are interpreting the state Executive Order cancelling “non-essential gatherings” to provide authority for arresting or citing New Yorkers engaged in outdoor expressive activity—even when those individuals are complying with mask and social distancing rules.<sup>17</sup>

On March 23, Governor Cuomo signed [Executive Order 202.10](#), stating: “non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time.” The examples given are social events—not activities protected by the First Amendment to the U.S. Constitution. This is consistent with the Governor’s remarks at a daily press briefing in early May. When asked about individuals protesting his stay at home orders at a rally in Albany, the Governor noted he “disagreed” with the protesters, and said only that police should enforce the

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<sup>15</sup> Alice Speri, *NYPD’s Aggressive Policing Risks Spreading the Coronavirus*, The Intercept, Apr. 3, 2020, <https://theintercept.com/2020/04/03/nypd-social-distancing-arrests-coronavirus/>.

<sup>16</sup> We note that, according to reports, the officer who was placed on modified duty following his involvement in the violent social distancing arrest in the East Village has a long history of alleged misconduct. It is worth emphasizing that your administration’s push to expand Section 50-a in recent years has made it all but impossible for the public to know whether the NYPD ever investigated or disciplined this officer for these alleged incidents and that 50-a will continue to deny the public access to information on how the Department responds in this particular case.

<sup>17</sup> Azi Paybarah, *Protesters Say the Police Use Social Distancing to Justify Crackdown*, New York Times, May 5, 2020, <https://www.nytimes.com/2020/05/05/nyregion/nypd-coronavirus.html>.



rules about masks and social distancing.<sup>18</sup> The Governor did not suggest that the protests themselves violated his Executive Order on non-essential gatherings. Indeed, there are numerous reports of protests across the state—including at the capital in Albany—that public officials have neither broken up nor criticized as unlawful, despite their high profile in the media.<sup>19</sup> The NYPD stands out in enforcing this statewide order against a small group of protesters practicing social distancing – and indistinguishable from other New Yorkers out in public, but for their constitutionally-protected expression.

Recent comments made by Commissioner Shea also reflect hostility toward the First Amendment rights of New Yorkers when their protests are directed at police practices. This past week, Commissioner Shea went even further, stating that media critical of the police is “disturbing” and suggesting that public statements criticizing the police lead to violence against NYPD.<sup>20</sup>

The right to protest—including the right to protest for police reform and accountability—is essential to our democratic values. That is no less true during a public emergency like a pandemic; when government is taking novel measures to restrict our liberty in the name of public health, the public has a right to communicate its values and concerns to their public officials, and public officials have a duty to listen to, not silence, those voices. The NYPD’s reliance on the EO to interfere with New Yorkers’ constitutional rights and official attempts to discredit protesters display a troubling lack of respect for the First Amendment.

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A pandemic is a novel and challenging dynamic for all New Yorkers, for the NYPD, and public officials. But nothing about our current situation justifies the NYPD’s recent actions that violate our constitutional values of equal protection and free speech. We ask you, Mayor DeBlasio, to reduce the NYPD’s budget and instead invest in community efforts that have the expertise and community trust to stop the spread of COVID-19; to immediately disavow broken windows policing tactics and bar all low-level arrests while officers are

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<sup>18</sup> Stephen Williams, *Cuomo Responds to Shutdown Protesters*, The Daily Gazette, May 2, 2020, <https://dailygazette.com/article/2020/05/02/cuomo-responds-to-shutdown-protesters>. Mask and distancing rules were established by Executive Order 202.17, <https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

<sup>19</sup> See, e.g., Kate Lisa, *Protesters in Albany Demand Cuomo Reopen NY*, Adirondack Daily Enterprise, April 24, 2020, <https://www.adirondackdailyenterprise.com/news/politics/2020/04/protesters-in-albany-demand-cuomo-reopen-ny/>.

<sup>20</sup> See NYC Mayor’s Office, Media Availability on COVID-19, YouTube, May 13, 2020, <https://www.youtube.com/watch?v=6X5U10MRbSg&feature=youtu.be> (Shea’s comments begin at 55:45).

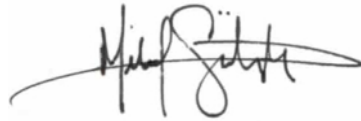
serving in a public health capacity; and to instruct the NYPD that the EO provides no authority for the targeting, arrest, or citation of protesters otherwise complying with mask and social distancing rules.

We wish to continue this conversation, and request a (virtual) meeting to discuss these critical issues relating to the NYPD's role during this time of crisis.

Sincerely,



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Executive Director



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