

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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

Index No. _____

-against-

NEW YORK CITY POLICE DEPARTMENT, and
JESSICA S. TISCH, in her official capacity as
Commissioner of the New York City Police Department,

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

Beth Haroules

125 Broad Street, 19th Floor
New York, N.Y. 10004
Tel: (212) 607-3300
Fax: (212) 607-3318
Email: bharoules@nyclu.org

Counsel for Petitioner

Dated: April 30, 2025
New York, New York

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PRELIMINARY STATEMENT

This Article 78 action seeks to vindicate the public’s right to know essential information about the New York City Police Department’s implementation of a City initiative under which police officers are to forcibly remove people from the street and transport them to psychiatric facilities for involuntary confinement. Under the Involuntary Removal Policy, a policy directive released by Mayor Eric Adams in November 2022, NYPD officers are to carry out mental-hygiene arrests when they deem an individual unable to meet their “basic needs,” even when no dangerous act has been observed and even if there is no indication of a likelihood of harm to the individual or others.¹

Any program of arresting people who are unhoused and/or who may be living with mental illness for involuntary confinement and treatment implicates a variety of concerns related to constitutional norms of due process, individual autonomy, and dignity. The Involuntary Removal Policy also raises significant issues about biased-based, racist policing and the harms associated with police contact with people living with mental illness. Interactions between police officers and vulnerable New Yorkers who are unhoused and living with mental health challenges continue to feature prominently in our local and national conversation. And recent violent attacks on the subway have rekindled safety concerns and heightened calls for law enforcement and the courts to do more to remove people unhoused people off the streets and out of the subway. It is also being reported that Governor Hochul and the State Legislature will enshrine the “basic needs” standard that underpins the Involuntary Removal Policy in Article 9 of the

¹This is the second lawsuit that the NYCLU has had to file a lawsuit to compel NYPD to comply with its obligations under FOIL concerning the Adams Administration’s Involuntary Removal Policy *See NYCLU v. NYPD*, Index No. 152493/2023 (Waterman, J.). In the NYCLU’s 2023 litigation to enforce its December 2022 FOIL request, the NYPD made a complete production of all the then-available responsive policy and training materials requested by the NYCLU, almost immediately after the NYCLU filed its Article 78 petition. *See NYCLU v. NYPD*, 152493/2023, Doc. No. 21. *See also* Verified Petition (“VP”) ¶ 18-21.

New York State Mental Hygiene Law in this year's New York State budget process.

Accordingly, the public's right to information about the NYPD's implementation of this Involuntary Removal Policy continues to be paramount.

The NYCLU directed a FOIL request to the NYPD on December 20, 2023 (the "December 2023 Request"). The records requested by the NYCLU in its December 2023 Request relate to a discrete policy: the plan announced by the Mayor on November 28, 2022 to mandate the NYPD to effect mental hygiene arrests of New Yorkers who are deemed, by the NYPD, to be unable to meet their "basic needs."

The December 2023 Request seeks the policies, procedures and training materials that the NYPD has publicly claimed have been updated or created since the NYPD produced a selection of those materials pursuant to a court order in the NYCLU's first Article 78 proceeding. The NYCLU also seeks data concerning the numbers of people impacted by the Involuntary Removal Policy – including the numbers of people voluntarily or involuntarily transported by the NYPD for psychiatric evaluation, disaggregated by race and including specifically the number of individuals transported for the purpose of a psychiatric evaluation because the individual "display[ed] an inability to meet basic living needs" as that term was set forth in the Involuntary Removal Policy.

The records responsive to the December 2023 Request should be both readily identifiable and available for production because the Mayor and members of his administration have consistently released data that, they claim, demonstrates the efficacy and operations of the Involuntary Removal Policy throughout the past fifteen months. For example, the Mayor extensively discussed the success of the Involuntary Removal Policy at his press conference on November 29, 2023. Moreover, the Mayor, members of the NYPD and members of the Adams

Administration have discussed, selectively but extensively, data and clinical information about the individuals “removed” in a variety of public oversight fora over the past year, citing to data but not making that data publicly available. And, as mandated by Local Law 116/2023 and Local Law 34/2024, the City has recently released two sets of data reports to the New York City Council.

However, Mayor Adams and members of his Administration have sought to control the media narrative, and the information available to the public, by selectively choosing the data they choose to disclose. The Adams Administration has also been largely able to avoid oversight by the New York City Council, the New York City Public Advocate, and the New York City Comptroller with respect to the Involuntary Removal Policy. As a result, fundamental details on the Involuntary Removal Policy, including how it is being implemented and overseen and the outcomes for those individuals who are “removed” for involuntary psychiatric treatment, are scarce. More importantly, however, the City’s refusal to share data and outcomes across the litany of outreach programs not only defeats oversight of the initiative, the City limits the ability of providers to coordinate care and undermines efforts to build trust, stabilize individuals, and connect them to services.

The NYPD has refused to respond to the NYCLU’s December Request for more than fifteen months. Rather than provide a timely response and production of the records that are clearly readily identifiable and immediately available for production, over the past fifteen months, the NYPD has unilaterally and repeatedly adjourned the date by which they would provide its response to the NYCLU’s request. As a result, the NYCLU has yet to receive any determination from the NYPD with respect to the December 23 Request and not a single document in response.

The last unilateral extension the NYPD granted itself was to March 13, 2025, some fifteen months after the date of the original acknowledgement of the NYPD's receipt of the December 2023 Request. It defies credibility that the NYPD is still searching for records responsive to the December 2023 Request. The NYPD's failure to provide the NYCLU with responsive records is simply unreasonable and an unlawful violation of the New York State Freedom of Information Law.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. The Involuntary Removal Policy

On November 29, 2022, Mayor Eric Adams announced at a press conference that he had issued a Mayoral directive to the NYPD and other City agencies. The directive is titled "Mental Health Involuntary Removals as of 11/28/2022" (the "Involuntary Removal Policy" or the "Directive"). VP ¶¶ 1, 15. The Involuntary Removal Policy mandates the NYPD, and other City agencies, to remove for psychiatric evaluation and treatment, any person who "appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous act has been observed," pursuant to sections 9.41 and 9.58 of the Mental Hygiene Law. VP ¶ 16. The Involuntary Removal Policy mandates that a number of City agencies, including the NYPD, "update their policies and protocols" and train their staff according to the agency roles and responsibilities outlined in the Directive. VP ¶ 17.

The Involuntary Removal Policy requires NYPD police officers with little to no expertise in dealing with individuals with mental disabilities to determine, on the street or in the subways, whether an individual should be forcefully detained against their will and transported to a hospital for psychiatric assessment because those NYPD police officers have determined that person is unable to meet their basic needs. Id. VP ¶ 18.

The Involuntary Removal Policy provides vague, broad, and undefined standards that

would establish when an individual’s “inability to meet essential needs” rises to the level of “likely to result in serious harm” sufficient to permit the NYPD to effectuate a so-called mental hygiene arrest pursuant to Mental Hygiene Law § 9.41. VP ¶ 19.²

B. The NYCLU’s December 20, 2023 FOIL Request

Since the Involuntary Removal initiative was implemented in November 2022, data the Adams Administration has released on the efficacy and operations of the Involuntary Removal Policy has largely been selectively offered only by Mayor Adams at press conferences, in press releases from his Administration, in tweets and other social-media posts offered by members of the Adams Administration. VP ¶¶ 3, 10, 23-26, 29-36. The New York City Council has criticized the information released recently by the City to the New York City Council as mandated by Local Law 116/2023, as “incomplete, preventing a clear understanding of the policy’s impacts and outcomes.” VP ¶ 36.

Mayor Adams conducted a press conference on November 29, 2023 to coincide with the one-year anniversary of his announcement of the Involuntary Removal Policy. VP ¶ 4. At that press conference, Mayor Adams touted the success of the City’s implementation of this mental hygiene arrest initiative, shared certain data about the numbers of people connected to services as a result of this initiative and, further, claimed that “[a]ll agencies involved in the

² No court has ever determined the propriety of the use of the inability/failure to meet essential needs standard for purposes of a person’s “removal from the community for assessment and involuntary admission” by law enforcement personnel. And the caselaw the City relies on in favor of that proposition only addresses inpatient commitment and inpatient treatment situations. Law enforcement personnel are not – nor are they capable of filling the role of – clinicians and there is no trained clinician present during the mental hygiene arrest process – in that person’s home or in a street or subway interaction with that person – where the assessment contemplated in the Involuntary Removal Policy is to be made. The law is in fact only settled that in order to satisfy substantive due process requirements, “**the continued confinement** of an individual must be based clear and convincing evidence that the person is mentally ill and that he poses a substantial threat of physical harm to himself (resulting) from a refusal or inability to meet his essential needs for food, clothing or shelter.” *Boggs v. Health Hosps. Corp.*, 132 A.D.2d 340 [1st Dept. 1987][emphasis supplied]; *In re Application of Consilvio v. Diane W.*, 269 A.D.2d 310 [1st Dept. 2000]; *Matter of Carl C.*, 126 A.D.2d 640 [2d Dept 1987]; *Matter of Scopes v. Shah*, 59 A.D.2d 203 [3d Dep’t 1977].

involuntary removal process have now created mechanisms to better track all involuntary removals.” *Id.*

Just after Adams’ November press conference, the NYCLU filed the December 2023 Request with the NYPD. VP ¶ 5. The NYCLU’s request was intended to obtain, and make public, a complete set of critical information about the efficacy and operations of the first year of the NYPD’s implementation of the Involuntary Removal Policy. VP ¶ 37. The December 2023 Request seeks the policies and training materials that the NYPD has publicly indicated it has updated, or created, since the NYPD produced those materials pursuant to court order in the NYCLU’s 2023 Article 78 proceeding. VP ¶¶ 6, 38. These are records that should be easily available and immediately produced.

The December 2023 Request also seeks data concerning the efficacy and operations of the Involuntary Removal Policy, including the numbers of people voluntarily or involuntarily “removed” by the NYPD for psychiatric evaluation, disaggregated by race, including the number of individuals transported for the purpose of a psychiatric evaluation because the individual “display[ed] an inability to meet basic living needs” as that term was set forth in the Involuntary Removal Policy. VP ¶ 39.³ This is all data that should be easily available and immediately produced because it is data that, in fact, has already been selectively curated and publicly disclosed by Mayor Adams and members of his administration on a number of occasions. *Id.* Yet, the NYPD has completely stonewalled providing any response to the December 2023 Request, claiming that it continues its search for responsive records. VP ¶ 7.

³ To the extent that the newly developed NYPD’s “tracking mechanisms” were insufficient to provide the data the NYCLU sought, the NYCLU requested that the NYPD provide Aided Reports and/or Threat, Resistance or Injury (T.R.I.) Interaction Reports, relating to people who had been involuntarily transported for psychiatric evaluation, as the NYPD Patrol Guide mandates must be completed. *Id.*

For the reasons set forth below, it defies credibility that the NYPD is still searching for the responsive records.

C. The City's Release of Selectively Curated Data Demonstrates that Responsive Records are Readily Identifiable and Immediately Available for Production in Response to the December 2023 Request.

The data concerning the Involuntary Removal Policy that the City has reported, to date, has been tardy, incomplete and opaque, and certainly does not support the Administration's description of the success of the Involuntary Removal Policy initiatives. However, the data that has been released demonstrates that records responsive to the December 2023 Request should be readily identifiable and immediately available for production.

In the first instance, it is clear that some, if not all, of the NYPD policies and training materials have, in fact, been significantly updated between the time the NYPD produced these documents to NYCLU in May 2023. NYPD Commissioner Tisch, and other Adams Administration personnel have, several times, publicly admitted those materials have been updated since the Involuntary Removal Policy was first issued in November 2022. VP ¶ 38.

Moreover, over the past fifteen months, the Mayor and members of his Administration have cited publicly unavailable data and statistics in touting the Involuntary Removal Policy's demonstrated success relating to NYPD's removals of people perceived to be mentally ill from the City's streets and subway system. VP ¶ 23. All of this data would be responsive to the December 2023 Request.

The Adams Administration presented on the NYPD's response protocols for responding to people in mental health crisis at the New York State Daniel's Law Task Force June 2024 meeting. VP ¶ 24. At that meeting, the City used a PowerPoint and presented, verbally, data related to the NYPD response to people in mental health crisis – but did not share that data in the PowerPoint presentation at the meeting or in any written format. VP ¶ 24 This data would be

responsive to the December 2023 Request.

Administration personnel appeared before the New York City Council at a September 2024 oversight hearing relating to the City's mental health crisis response, including the NYPD's participation in the Involuntary Removal Policy. VP ¶ 26. In connection with that hearing, the City released data concerning the City's mental health crisis response model, including data specifically relating to the NYPD's participation in all aspects of mental health crisis response. *Id.* This data would be responsive to the December 2023 Request.

On October 10, 2024, Mayor Adams conducted a press briefing on his new "co-response" operation led by NYPD, to identify and remove unhoused individuals perceived as individuals with "severe mental illness" from the City's subway system. VP ¶ 26. Mayor Adams cited data and statistics in touting the Involuntary Removal Policy's demonstrated success in NYPD removals of people perceived to be mentally ill from the subways. *Id.* This data has not been publicly produced, but it would be responsive to the December 2023 Request.

It became increasingly clear over the course of 2023 that the NYPD and the Adams Administration were withholding fundamental details on the Involuntary Removal Policy. The details ranged from how the Involuntary Removal Policy program was being implemented and overseen, how many individuals were involuntarily removed from the streets and subways of New York City, whether those removals were justified, and what services, if any, the people removed were afforded. VP ¶ 27.

In an effort to ensure accurate and complete data relating to the Involuntary Removal Policy was publicly available, the New York City Council enacted Local Law 116/2023. VP ¶ 28. Local Law 116 mandates annual reporting by this Administration with respect to New Yorkers who appear to be mentally ill and unable to meet their "basic needs" and are removed by

the NYPD from the streets and/or subways for purposes of involuntary admission for psychiatric evaluation and treatment. *Id.* The Administration delayed delivering its first Local Law 116 Report to the New York City Council but released the report on January 31, 2025. VP ¶ 29. There are significant deficiencies with respect to the data reported in the Local Law 116 Report and the report is full of caveats about what information is **not** presented. VP ¶¶ 31-36.

The New York City Council has strongly criticized the information released recently by the City to the New York City Council as mandated by Local Law 116/2023, as “incomplete, preventing a clear understanding of the policy’s impacts and outcomes,” noting that the fundamentally incomplete data raises questions about the effectiveness of the Involuntary Removal Policy in “ensuring New Yorkers experiencing a mental health crisis are connected to treatment that provides them with stability.” VP ¶ 36.⁴ But all of the data referenced by the City in the Local Law 116 Report is, at the very least, partially responsive to the December 2023 Request.

D. NYPD’s Repeated and Unilateral Extensions of its Deadline for Response for Fifteen Months Are Simply Unreasonable and an Unlawful Violation of the New York State Freedom Of Information Law.

The NYPD responded to the December 2023 Request by email from the NYC Open Records FOIL portal on December 27, 2022. VP ¶ 40. In that response, the NYPD indicated that the NYCLU could “expect a response on or about Tuesday, May 7, 2024.” *Id.* The NYPD did not indicate that responsive documents would be produced on that date, nor did the NYPD

⁴ The Council has also enacted Local Law 34/2024, legislation that mandates quarterly reporting by the Administration with respect to “sweeps” or removals involving individuals experiencing homelessness and the outcomes for those individuals. These “sweeps” have resulted in the mental hygiene arrests of unhoused New Yorkers. VP ¶ 28 n.2. The Administration released reports for the first three quarters of 2024 in March 2025; the data in the Administration’s reports, are also incomplete and provide insufficient information by which to evaluate precisely whom the City’s homeless sweeps are targeting. *Id.* As is the case with the data referenced in the Local Law 116 Report discussed below, the data in the Local Law 34 quarterly reports is also, at the very least, partially responsive to the December 2023 Request.

proffer any reason for the need for the lengthy extension to the legal deadline pursuant to 21 NY Comp. Codes R. & Regs. § 1401.5[c] [3].⁵ No further information or explanation concerning this response date was provided. VP ¶ 40.

The NYLCU filed an administrative appeal on January 10, 2024 on the basis that this deadline set by the NYPD was not reasonable. VP ¶ 41. The NYPD denied the administration appeal on January 25, 2024 and extended the NYPD's responsive time from May 7, 2024 to August 3, 2023[sic].” The asserted basis for the denial was that “[a]s of this writing, the search for records responsive to your request remains ongoing. Upon receipt of the records, a thorough review must be conducted for the possible application of redactions pursuant to any applicable exemptions under Public Officers Law §87(2). It is therefore estimated that the RAO will issue a determination on or about August 3, 2023.” VP ¶ 42.

On May 8, 2024, the NYPD issued a unilateral extension of its responsive time to August 2, 2024. VP ¶ 43. On July 24, 2024, the NYPD issued another unilateral extension of its responsive time to October 28, 2024. VP ¶ 44. On November 3, 2024, the NYPD informed the NYCLU that it was further extending its responsive time to March 13, 2025. The NYPD indicated that its search “for responsive records is still in progress.” VP ¶ 45.

On November 9, 2024, the NYCLU filed a second administrative appeal. VP ¶ 46. On November 26, 2024, the NYPD denied the NYCLU's administrative appeal, indicating that the NYPD's “search for records responsive to your request remains ongoing [and that the NYPD]

⁵ 21 N.Y. Comp. Codes R. & Regs. § 1401.5 provide specifically as follows:

(c)(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within 20 business days from the date of such acknowledgment, providing a statement in writing stating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part [...].

estimated that the RAO will issue a determination on or about December 13, 2024. VP ¶ 47.

Rather than provide a timely response and production of the records sought, the NYPD provided the NYCLU with two dates by which they would provide its response to the NYCLU's request – December 13, 2024 and March 13, 2025. VP ¶ 48.

However, the NYPD did not issue any determination on December 13, 2024, nor did the NYPD issue any determination on or about March 13, 2025. VP ¶ 49. The NYCLU has yet to receive any determination from the NYPD with respect to the December 2023 Request. VP ¶ 50. The NYCLU has yet to receive any records responsive to the December 2023 Request. VP ¶ 51.

Given the importance of the Involuntary Removal Policy, the high amount of public and media attention it has garnered, and the central role the NYPD plays in implementing the Involuntary Removal Policy, it is unacceptable for the NYPD to conceal information regarding its role in the implementation of the Involuntary Removal Policy from the public.

Petitioner has timely commenced this Article 78 proceeding, *see* CPLR § 217, to force the NYPD to comply with its obligations under FOIL and provide Petitioner with records responsive to its December 20, 2023 FOIL Request. VP ¶ 52.

ARGUMENT

I. THE NYPD VIOLATED FOIL BY FAILING TO PRODUCE RECORDS WITHIN A REASONABLE TIMEFRAME.

Under FOIL, an agency may not ignore a request or unreasonably delay its response (*see* Public Officers Law § 89 [3][a]). Here, the NYPD's proposed response deadline—nearly fifteen months after the NYCLU's FOIL request—and, further, its failure to produce any responsive documents, has constituted an unwarranted denial of the NYCLU's request. The NYPD's refusal to release any record of this highly controversial initiative directed by the Adams

Administration, and carried out by the NYPD, keeps valuable records shrouded by a cloak of secrecy that undermines the purposes that FOIL serves: namely, fostering transparency and accountability between the government and the public.

This Court should order the NYPD to provide responsive records promptly.

II. THE NYPD’S PROPOSED FIFTEEN MONTH TIMEFRAME TO RESPOND TO THE NYCLU’S REQUEST IS UNREASONABLE UNDER THE CIRCUMSTANCES AND THEREFORE VIOLATES FOIL.

The NYPD failed to meet its obligations under FOIL by failing to respond to the NYCLU’s request within a reasonable amount of time and by instead unilaterally granting itself multiple unreasonable responsive deadlines to advise the NYCLU whether or not it had responsive records and whether or not it would produce records that should be readily available, immediately, for production. In response to a written request for records, “an agency must either disclose the record sought, deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search” (*Matter of Beechwood Restorative Care Ctr. v Signor*, 5 NY3d 435, 440–441 [2005]; *see also* Public Officers Law § 89 [3] [a]).

An agency is required to provide a statement of the approximate date, which should be reasonable under the circumstances, when the request will be granted or denied (Public Officers Law § 89 [3] [a]).⁶ “The determination of whether a period is reasonable must be made on a case by case basis taking into account the volume of documents requested, the time involved in locating the material, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure” (*Matter of Linz v NYPD*, NYLJ [Sup Ct,

⁶ *See also* Public Officers Law § 89[4][a] (“Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial); *see also* New York Department of State, Committee on Open Government, Explanation of Time Limits for Response (June 2005), <https://opengovernment.ny.gov/explanation-time-limits-response> (“if the specific date given [by an agency for granting access to requested records] is unreasonable, a request may be considered to have been constructively denied”).

NY County 2001] (rejecting as “unreasonable” the NYPD’s proposed delay of four months to respond to an extremely voluminous request for records involving every 911 call made in the City of New York over a period of several years—plus related code books and dispatch information);⁷ *see also Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 465 [2007]; *Miller v New York State Dep’t of Transp.*, 58 AD3d 981, 983 [3d Dept 2009] (finding that respondent could reasonably take three months to provide access to all documents responsive to FOIL request seeking 30 categories of documents and over 11,000 responsive documents)). Here, by contrast, the NYPD appears to have merely proposed to respond – not produce responsive documents – by March 15, 2025, fifteen months after the NYCLU’s FOIL request – and has neither responded nor produced responsive records. The NYPD’s response is plainly unreasonable under the circumstances.

A. Revisions to the NYPD Policies and Protocols and Training Materials Developed Pursuant to the Involuntary Removal Policy Are Readily Available and Must be Produced.

The NYPD immediately produced training materials to the NYCLU after the NYCLU filed its 2023 Article 78 proceeding relating to the Involuntary Removal Policy. VP ¶ 22. In its December 2023 Request, the NYCLU requested any updated, or newly created, NYPD “policies and protocols developed pursuant to the Involuntary Removal Policy, including any pre-existing policies or protocols that have been modified pursuant to the directive.”

The NYPD almost certainly has responsive records available that should be readily producible. Indeed, NYPD Commissioner Tisch has already publicly noted, on multiples occasions, that the NYPD Involuntary Removal Policy training materials have been updated and

⁷ A copy of the decision in *Matter of Linz v NYPD*, which was not officially reported, is attached as Addendum A. The *Linz* decision is also available on the website of the New York State Commission on Open Government at <https://opengovernment.ny.gov/system/files/documents/2021/01/linz.pdf>.

are being used to train NYPD officers. VP ¶ 38. Moreover, the Local Law 116 Reports also notes that the NYPD Aided Report protocols set forth in the NYPD Patrol Guide has also been updated to track data relating to the Involuntary Removal Policy. VP ¶ 38.

B. NYPD Data Relating to the Involuntary Removal Policy
Is Readily Available and Should be Produced.

Mayor Adams conducted a press conference on November 29, 2023 press conference to coincide with the one-year anniversary of his 2022 announcement of the Involuntary Removal Policy. At his 2023 press conference, Mayor Adams touted the success of the City's implementation of this mental hygiene arrest initiative, shared certain data about the numbers of people connected to services as a result of this initiative and, further, claimed that "[a]ll agencies involved in the involuntary removal process have now created mechanisms to better track all involuntary removals." VP ¶ 4.

Given this representation by the Mayor and the ongoing presentation of data and reports by the NYPD, the acknowledged lead agency "involved in the involuntary removal process," the NYPD should have the data the NYCLU sought in its December 2023 Request, readily identifiable and/or via the "mechanisms to better track all involuntary removals" noted by the Mayor on November 29, 2023 and that data should be made immediately available for FOIL production to the NYCLU.

For fifteen months, the NYPD has continuously claimed that it is still searching for records responsive to the NYCLU's December 20, 2023 FOIL request while, as noted above, the NYPD and other Adams Administration personnel and agencies have publicly provided a selectively curated raft of data plainly responsive to the request on any number of separate occasions. VP ¶¶ 7, 23-36.

Overall, these reasons underscore the unreasonableness of the NYPD's proposed nearly

fifteen-month timeframe to respond to the NYCLU's FOIL request (*see Matter of Linz v NYPD*, NYLJ [Sup Ct, NY County 2001]). Therefore, this Court should order the NYPD to produce promptly all records responsive to the request.

III. THE NYCLU IS ENTITLED TO ATTORNEYS' FEES.

The NYCLU respectfully requests an award of reasonable attorneys' fees and litigation. Courts are required to assess reasonable attorneys' fees and costs when a party has "substantially prevailed" and the agency had "no reasonable basis for denying access" to the records in dispute. (Public Officers Law § 89 [4] [c] [ii]). If this Court orders the NYPD to disclose requested documents in response to this petition, or if the NYPD voluntarily provides documents after the filing of the petition, as it did after the NYCLU filed its first Article 78 proceeding in 2023, the NYCLU will have "substantially prevailed" for the purposes of this provision. *See NYCLU v. NYPD*, 152493/2023, Doc. 22 ("A petitioner substantially prevails within the meaning of Public Officers Law § 89 (c) when it receives 'all the information that it requested and to which it was entitled in the underlying FOIL litigation,' irrespective of the "voluntariness of such disclosure" [...]) Here, Petitioner substantially prevailed on its on its FOIL request because, pursuant to the Stipulation of Partial Settlement, Respondents voluntarily agreed to produce records responsive to Petitioner's FOIL request, rendering the merits of the petition moot") (*see also Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79–80 [2017] [finding that the petitioner "substantially prevailed" when the respondent had made "no disclosures, redacted or otherwise, prior to petitioner's commencement of [a] CPLR article 78 proceeding"]; *Powhida v City of Albany*, 147 AD2d 236, 239 [3d Dept 1989] [finding that the petitioner substantially prevailed when it was "the initiation of this proceeding which brought about the release of the documents"])). And on the second prong, the NYCLU submits that, given the record before the Court, the NYPD can have "no reasonable basis" for delaying for fifteen months its response to

the NYCLU's request.

CONCLUSION

For the foregoing reasons, the petitioner NYCLU respectfully requests that the Court order the New York City Police Department and the City of New York to abide by Article 6 of the New York Public Officers Law and disclose the records the petitioner requested in its December 20, 2023 FOIL Request and award reasonable attorneys' fees.

Dated: April 30, 2025
New York, New York

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION



Beth Haroules

125 Broad Street, 19th Floor
New York, N.Y. 10004
Tel: (212) 607-3300
Fax: (212) 607-3318
Email: bharoules@nyclu.org

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b

I hereby certify that this brief complies with the word count limitation of 22 NYCRR §202.8-b because the total word count, according to the word count function of Microsoft Word, the word processing program used to prepare this document, of all printed text in the body of the brief, exclusive of the caption, table of contents, table of authorities and signature block is 5132.

Dated: April 30, 2025
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Beth Haroules

Counsel for Petitioner