SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BLACK LIVES MATTER D.C., STOP POLICE TERROR PROJECT D.C., AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA, Plaintiffs, v. MURIEL BOWSER, KEVIN DONAHUE, PETER NEWSHAM, Defendants.	No. 2018 CA 003168 B

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to D.C. Sup. Ct. R. Civ. P. 65(a), Plaintiffs Black Lives Matter D.C., Stop Police Terror Project D.C., and the American Civil Liberties Union of the District of Columbia hereby move for a preliminary injunction enjoining Defendants Muriel Bowser, Kevin Donahue, and Peter Newsham from continuing to unreasonably delay complying with Title II(G), the stop-and-frisk data collection requirement, of the Neighborhood Engagement Achieves Results (NEAR) Act of 2016, D.C. Code § 5-113.01(a)(4B).

In support of this motion, Plaintiffs state as follows:

1. Plaintiffs have a reasonable likelihood of prevailing on their claims that Defendants have unreasonably delayed implementing Title II(G) of the NEAR Act of 2016, the stop-and-frisk data collection requirement.

2. Plaintiffs will suffer irreparable harm if a preliminary injunction is not granted because the data that is required to be collected under the NEAR Act, which Plaintiffs have a right to obtain under the D.C. Freedom of Information Act, will be irreparably lost if the data collection requirement is not implemented.

3. The irreparable harm that Plaintiffs will suffer is greater than any harm to Defendants if the relief is granted.

4. Requiring Defendants to refrain from further unreasonable delay in implementing the NEAR Act's stop-and-frisk data collection provision is in the public interest.

A Memorandum of Points and Authorities in support of this motion is filed herewith.

Dated: May 8, 2018

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs Black Lives Matter D.C., Stop Police Terror Project D.C., and the American Civil Liberties Union of D.C. have filed this equitable action to compel the Metropolitan Police Department (MPD) to comply with the stop-and-frisk data collection provision of the Neighborhood Engagement Achieves Results (NEAR) Act of 2016, which mandates that MPD officers collect fourteen categories of data regarding every investigative stop they conduct in the District of Columbia (the "data collection requirement"). This data is critical to understanding how D.C. law enforcement officers are interacting with the community they serve and to determining whether any subset of D.C. residents is being disproportionately subjected to stops and frisks.

The NEAR Act has been in effect since June 30, 2016 and the data collection requirement has been fully funded by the D.C. Council since October 2016. However, the District of Columbia

government and MPD have admitted that they have taken no substantive steps since the NEAR Act was passed toward ensuring that these categories of data are in fact collected consistently and systematically. Instead, various officials have given conflicting statements regarding the provision's implementation status, alternatively stating that the NEAR Act was "fully implemented"; that the data collection requirement was not "mission critical" and thus not a priority; that "[i]mplementation has begun, but will require alternative ways to analyze data"; that there are certain categories of required data MPD "do[es]n't collect at all"; and that some of the required data that *is* being collected is not kept "in a manner that can easily be sorted or consistently reviewed."

Most recently, an MPD spokesperson admitted that in the two years since the NEAR Act passed, the department has "not expended" any of the $150,000 in funding allocated by the D.C. Council for implementation of the data collection requirement. In sum, the District of Columbia has "unreasonably delayed" implementation of this compulsory provision of law. Because that delay is causing irreparable injury to the Plaintiffs by ensuring that data to which plaintiffs have a legal right is irretrievably lost, this Court should enjoin Defendants from further unreasonable delay.

STATEMENT OF FACTS

The Council of the District of Columbia unanimously passed the NEAR Act on March 1, 2016, and it became effective on June 30, 2016, following the federally-mandated congressional review period. Title II(G) of the NEAR Act amended the D.C. Code to require that MPD officers record the following information about all police stops made in the District of Columbia:

A. The date, location, and time of the stop;
B. The approximate duration of the stop;
C. The traffic violation or violations alleged to have been committed that led to the stop;
D. Whether a search was conducted as a result of the stop;

E. If a search was conducted:
    i. The reason for the search;
    ii. Whether the search was consensual or nonconsensual;
    iii. Whether a person was searched, and whether a person's property was searched; and
    iv. Whether any contraband or other property was seized in the course of the search;
F. Whether a warning, safety equipment repair order, or citation was issued as a result of a stop and the basis for issuing such warning, order, or citation;
G. Whether an arrest was made as a result of either the stop or the search;
H. If an arrest was made, the crime charged;
I. The gender of the person stopped;
J. The race or ethnicity of the person stopped; and
K. The date of birth of the person stopped.

D.C. Code § 5-113.01(a)(4B). Specifically, the statute requires that "[t]he Mayor of the District of Columbia . . . cause the Metropolitan Police force to keep" these records. § 5-113.01(a). The statute incorporates by reference the meanings of "contact", "frisk", and "stop" as defined in Metropolitan Police Department General Order 304.10, which establishes internal policies and procedures governing stops and frisks. *See* D.C. Code § 5-113.01(4D). A "stop" is defined as "[t]he temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person," and a "frisk" is defined as "[a] limited protective search for concealed weapons or dangerous instruments." MPD GO-OPS-304.10 §§ II.2, II.3, *available at* https://go.mpdconline.com/GO/GO_OPS_304_10.pdf.

In its Committee Report on the proposed legislation, the D.C. Council's Committee on the Judiciary and Public Safety ("Judiciary Committee") quoted the Obama Administration's Task Force on 21st Century Policing, which emphasized that "data collection, supervision, and accountability are . . . part of a comprehensive systemic approach to keeping everyone safe and protecting the rights of all involved during police encounters." Declaration of Shana Knizhnik ("Knizhnik decl."), Attach. A at 23. The Committee Report further noted the importance of the data collection requirement by pointing out that the Task Force had "strongly encouraged local

governments to allocate infrastructure and IT staff expertise to support law enforcement reporting on activities implementing their recommendations." *Id.* The Committee Report's "Section-By-Section Analysis" makes clear that the purpose of Title II(G) is "to require the Metropolitan Police Department to collect *additional* data on stops and use of force incidents" beyond what MPD had collected previously. *Id.* at 60 (emphasis added). As MPD's recent release of the data for all "incident reports classified as 'stop and frisk' from 2010 to 2016" makes clear, the pre-NEAR Act data collection practices lack many of the critical data points required by the Act, including: the duration of the stop; the specific violation or other justification that led to the stop; whether a search occurred and if so, the reason for and result of that search; whether the stop was consensual; whether a warning, order, or citation was issued; and whether and for what charge an arrest was made. *See* Knizhnik Decl., Attach. J; *cf.* D.C. Code § 5-113.01(a)(4B)(B)-(G). Moreover, the data release suggests that under the existing regime, MPD officers are not systematically collecting data for each stop and frisk conducted. Specifically, the data release reflects only 23,326 stops over a period of seven years, *see* Knizhnik Decl., at ¶ 2(J)—a number that is almost certainly under-inclusive given that MPD reports 33,383 *arrests* in 2016 alone. *See* Metropolitan Police Department, Annual Report 2016, at 33, *available at* https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20Annual%20Report%202016_lowres.pdf.

The D.C. Council allocated $150,000 in funds for Fiscal Year 2017 specifically to implement the data collection requirement, based on a fiscal impact analysis performed by the D.C. Office of the Chief Financial Officer concluding that this amount was sufficient for that purpose. *See* Knizhnik Decl., Attach. B at 128; Knizhnik Decl., Attach. C at 7-9. The D.C. Budget that included these allocated funds was approved by Congress, Knizhnik Decl., Attach. D at C-12;

Knizhnik Decl., Attach. E, and went into effect on October 1, 2016. *See* Knizhnik Decl., Attach. F.

On February 10, 2017, Plaintiff American Civil Liberties Union of the District of Columbia (ACLU-DC) filed a FOIA request for all data collected pursuant to the data collection requirement since the implementation of the Act. *See* Knizhnik Decl., Attach. Q. MPD responded on April 5, 2017, stating that "[a]lthough the NEAR Act became law[,] it ha[d] not been implemented as of the date of the search, and existing records do not contain the NEAR data which is the subject of your request." Knizhnik Decl., Attach. R.

In a February 27, 2017 letter to D.C. Councilmember Charles Allen in advance of the D.C. Council Judiciary Committee's Fiscal Year 2016 Performance Oversight hearings, MPD Chief Peter Newsham responded to the Committee's question regarding MPD's "progress and plans for implementation" of the NEAR Act data collection requirement by stating that compliance was "challenging." Knizhnik Decl., Attach. G at 56. Newsham described how "Cobalt," the computer software MPD has used since Fall 2015 to "document incidents, offenses, field contacts, missing persons, and arrests" needed "additional work" with respect to certain other "mission critical issues" and "other important programming areas" that MPD had previously planned to "roll out" in "later phases," but which ostensibly took priority over the data collection requirement. *Id.* at 56-57. Newsham stated that the department was "working to come into compliance, but must evaluate where these changes fit with mission critical objectives." *Id.* at 57.

Although the Office of the Mayor stated in January 2018, that Defendant Bowser's administration had "fully implemented" the NEAR Act, Knizhnik Decl., Attach. H at 7, in February the Office of the Mayor conceded that implementation of the data collection requirement

"ha[d] begun, but w[ould] require alternative ways to analyze data." Knizhnik Decl., Attach. I at 4.

On February 22, 2018, Defendant Donahue, the Deputy Mayor for Public Safety and Justice, admitted in testimony before the D.C. Council Judiciary Committee that there were certain required elements of data that the MPD "do[es]n't collect . . . at all," and that doing so would require "a fundamental change to . . . an I.T. System" and/or a new "police protocol." *See* Council of the District of Columbia, *Committee on the Judiciary and Public Safety, Performance Oversight Hearing* at 3:11:33-3:11:42. (Feb. 22, 2018), *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4370. Donahue said the government "ha[s] turned [its] attention" to "articulating clearly and honestly here's what [it is] not collecting" and what "I.T. investment or change in procedure" would be required to collect all that is required under the NEAR Act. *Id*. at 3:11:20-3:21:08.

On February 26, 2018, Defendant Newsham submitted his pre-oversight hearing responses to the D.C. Council Judiciary Committee, responding again to the same question the committee had asked a year earlier regarding the implementation status of the data collection requirement. He admitted that not even "half of the data" required under the statute was being collected. *See* Knizhnik Decl., Attach. K at 54. He claimed that MPD "will be examining if there are creative ways to use existing data to address the same issues, such as with potentially capturing other data through DMV records." *Id*.

In March 2018, MPD Communications Director Dustin Sternbeck stated that "MPD officers have the ability to collect most of the data required in the legislation," but "the data is not collected in a manner that can easily be sorted or consistently reviewed" since much of it is "only documented in the narrative text portion" of the relevant forms used by MPD. *See* Knizhnik Decl.,

Attach. L. Sternbeck did not explain which categories of data might be available in the "narrative text portion" of existing forms or whether that information is collected on a consistent and systematic basis. Although Sternbeck referred to MPD's "continu[ed] . . . efforts … to identify a process from which [MPD] can extract usable information from the raw data and / or narrative information," he admitted that "[a]n end date for this work has not yet been confirmed." *Id.* Sternbeck also revealed that MPD's delay cannot be chalked up to an exhaustion of available funds for implementation; on the contrary, he admitted that MPD has "not expended" *any* of the $150,000 in funding allocated by the D.C. Council for implementation of the data collection requirement. *Id.*

On March 29, 2018, the D.C. Council Judiciary Committee held another oversight hearing. Councilmember Allen again asked Defendant Donahue whether the data required by the NEAR Act was being collected; if not, what infrastructure changes needed to be made to collect the data; and why those changes could not have been made with the $150,000 in funds previously allocated. *See* Council of the District of Columbia, *Committee on the Judiciary and Public Safety, Budget Oversight Hearing* (Mar. 29, 2018), at 2:56:08-2:57:31, *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4448. Defendant Donahue stated that compliance would require changing both MPD's Cobalt System and the DMV's ticket processing system, and that he did not know how much those changes would cost or how long they would take. *Id.* at 2:57:35-2:59:04. When further pressed on why it took the D.C. government two years to determine that two systems needed to be changed, Defendant Donahue stated that they had "sequenced" implementation of the NEAR Act based on other provisions of the law that contained explicit deadlines, to which Councilmember Allen responded by stating that he "continue[d] to be very frustrated" because the D.C. council "didn't sequence the law," but rather

passed certain requirements that were not meant to be "slowly phased in." *Id.* at 3:04:26-3:05:18. He also expressed the importance of the provision, stating that it would be "vital information" that helps policymakers, the police force, and residents in achieving "transparency and accountability" and to "make the right decisions in terms of where . . . policies and laws may need to . . . change." *Id.* at 3:05:20-3:05:35.

Councilmember Allen also asked Defendant Newsham about collection of the NEAR Act Stop & Frisk Data. Chief Newsham stated that the D.C. government was "guilty" of not prioritizing the data collection requirement and of not having "a complete understanding of the necessary infrastructure changes that would be required." *Id.* at 5:58:27-5:59:43. Chief Newsham agreed that the lack of implementation was "not acceptable," but stated he believed Defendant Donahue was "determined to get this done, particularly after [Councilmember Allen's] conversation with him." *Id.* at 6:02:50-6:03:02. Councilmember Allen responded that he was also dedicated, and commented that "two years in . . . if we haven't had those conversations before, I don't know why." *Id.* at 6:03:04-6:03:08.

On April 26, 2018, Defendant Bowser sent a letter to D.C. Council Chairman Phil Mendelson regarding the Fiscal Year 2019 budget. *See* Knizhnik Decl., Attach. P. In that letter, she requested an additional $300,000 for MPD and an additional $200,000 for the DMV in order "to fully fund and implement the data collection requirements under the NEAR Act." *Id.* at 5, 9. She specified that these funds would come from a reduction to the "Emergency Rental Assistance Program," a program that provides short-term funding to low-income D.C. residents facing eviction. *Id.* at 10.

On March 28, 2018, Plaintiffs submitted another FOIA request for data on all stops and frisks conducted beginning on the NEAR Act implementation date, as well as for documents

reflecting MPD's plan for achieving full implementation of the data collection requirement. *See* Knizhnik Decl., Attach. S. On April 24, 2018, the Government gave notice that it was exercising its right to a 10-day extension pursuant to D.C. Code § 2-532(d)(2). On May 1, 2018, MPD's FOIA Officer indicated that the Government would provide a sample of ten forms documenting ten stops conducted from 2016-2018. *See* Knizhnik Decl., at ¶ 6. On May 7, 2018, the Government provided fourteen forms documenting stops conducted in 2016 and noted that it was "still in the process of completing data quality and validation checks" on reports from 2017 and 2018. Knizhnik Decl., Attach. T. However, the samples provided reflected the same data collection practices in place prior to the passage of the NEAR Act. *See* Knizhnik Decl., at ¶ 6. Further, the Government has provided no documents—nor indicated that such documents exist—reflecting any plans or timetables for achieving full compliance with the data collection requirement. *See id.*[1]

APPLICABLE LEGAL STANDARD

Preliminary injunctive relief is warranted where "the moving party has clearly demonstrated (1) that there is a substantial likelihood [it] will prevail on the merits; (2) that [it] is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to [it] from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order." *In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007). A party seeking relief "need not show a mathematical probability of success on the merits." *Id.* at 837. "Rather, the level of probability of success that must be demonstrated will vary according to the court's assessment of the other factors pertinent to the analysis." *Id.*

[1] This portion of the Knizhnik Declaration reflects new developments since the Complaint was filed on May 4.

ARGUMENT

I. Plaintiffs Have a Substantial Likelihood of Success on the Merits Because Implementation of the Data Collection Requirement Has Been Unreasonably Delayed.

The NEAR Act's data collection requirement unambiguously requires MPD officers to record fourteen categories of data after every investigative stop conducted in the District of Columbia. D.C. Code § 5-113.01(a)(4B). Although MPD has for years recorded some stop-and-frisk data on a non-systematic basis, *see supra* p. 4; Knizhnik Decl., Attach. J; MPD GO-OPS-304.10 § III.D, *available at* https://go.mpdconline.com/GO/GO_OPS_304_10.pdf, the NEAR Act's data collection requirement was passed with the explicit purpose "to require the Metropolitan Police Department to collect *additional* data on stops and use of force incidents." Knizhnik Decl., Attach. A at 60 (emphasis added). In the nearly two years since the NEAR Act was passed, the Mayor's Office and MPD have failed to implement any of the changes that would be required to collect such additional data. Indeed, MPD admits that it has not touched any of the $150,000 that has been allocated by the D.C. Council for this specific purpose since October 2016.

The District's failure to act in accordance with the requirements of the NEAR Act is contrary to law. There is no acceptable excuse for why no action has been taken in two years to comply with this simple and straightforward statutory mandate. Indeed, Defendants' public obfuscation as to their noncompliance suggests, at best, incompetence and, at worst, bad faith. In either event, Plaintiffs are likely to succeed in their claim that the Mayor's Office and MPD have unreasonably delayed implementation of the data collection requirement.

a. Applicable Standards for D.C. Common Law Unreasonable Delay Claims

The D.C. Administrative Procedure Act (DCAPA) provides that in reviewing a "contested case," the D.C. Court of Appeals can "compel agency action unlawfully withheld or unreasonably delayed." D.C. Code § 2-510(a)(2). While the DCAPA applies by its terms only in the Court of

Appeals, judicial review of agency action or inaction outside of the "contested case" context is available under the same standard, as individuals "aggrieved by an agency's decision" in "noncontested matters . . . may initiate an appropriate equitable action in the Superior Court to seek redress." *Capitol Hill Restoration Soc., Inc. v. Moore*, 410 A.2d 184, 188 (D.C. 1979); *accord, e.g.*, *District of Columbia v. Sierra Club*, 670 A.2d 354, 359 (D.C. 1996); *United States v. D.C. Bd. of Zoning Adjustment*, 644 A.2d 995, 999 n.9 (D.C. 1994). Such a case should be viewed as an action "to enforce a statutory requirement (and not a petition for review of a particular agency order) under the court's general equitable powers to hear 'any civil action or other matter at law or at equity brought in the District of Columbia.'" *Am. Univ. In Dubai v. D.C. Educ. Licensure Comm'n*, 930 A.2d 200, 206 (D.C. 2007) (quoting D.C. Code §§ 1-204.31, 11-921 (2001)). "This type of equitable review of administrative action is well recognized in judicial history," and is "an important and essential remedy against administrative abuse." *Columbia Realty Venture v. D.C. Hous. Rent Comm'n*, 350 A.2d 120, 123 (D.C. 1975). Indeed, "[t]he authority of courts to grant relief from unlawful agency action existed at common law, and it was merely reinforced (and not created) by the federal Administrative Procedure Act . . . and similar local enactments." *Sierra Club*, 670 A.2d at 358; *see also Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Nat'l Mediation Bd.*, 425 F.2d 527, 534-35 (D.C. Cir. 1970) (describing the historical basis of courts' "general and presumptive jurisdiction . . . to consider whether an agency's action has been unlawfully withheld or delayed").

In situations that do not fall under the category of "contested cases," review is thus "properly in the Superior Court," and "the scope of that review in the Superior Court . . . is the same as [the D.C. Court of Appeals'] scope of review of a contested case under the DCAPA." *Kegley v. District of Columbia*, 440 A.2d 1013, 1018 (D.C. 1982); *accord Barry v. Holderbaum*,

454 A.2d 1328, 1332 (D.C. 1982); *District of Columbia v. King*, 766 A.2d 38, 44 (D.C. 2001). The D.C. Court of Appeals, in turn, "look[s] to case law interpreting the federal APA for guidance" where the DCAPA's requirements are "closely analogous" to those of the federal APA. *Andrews v. D.C. Police & Firefighters Ret. & Relief Bd.*, 991 A.2d 763, 769 n.11 (D.C. 2010) (citation and internal quotation marks omitted); *accord District of Columbia v. Craig*, 930 A.2d 946, 967 (D.C. 2007); *Coakley v. Police & Firemen's Ret. & Relief Bd.*, 370 A.2d 1345, 1348 (D.C. 1977). In the unreasonable-delay context, the Court of Appeals has implicitly recognized that federal APA cases are persuasive authority for DCAPA and D.C. common law unreasonable-delay cases. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 n.3 (D.C. 2011) (citing *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987), a federal APA case, in commenting on the availability of "judicial review of whether [agency action] was unreasonably delayed"); *Fesjian v. Jefferson*, 399 A.2d 861, 866 (D.C. 1979) (noting the court's power to compel MPD to act upon firearm re-registration applications by quoting a case "commenting on identical provision of the Federal Administrative Procedure Act, 5 U.S.C. § 706"); *Citizens Ass'n of Georgetown, Inc. v. Washington*, 291 A.2d 699, 705 n.15 (D.C. 1972) (citing, in a non-contested case, federal cases interpreting unreasonable delay under the federal APA).

In the seminal case setting forth the "contours of a standard" for evaluating whether agency inaction warrants relief under the federal APA, the D.C. Circuit outlined six primary considerations that "provide[] useful guidance in assessing claims of agency delay":

(1) the time agencies take to make decisions must be governed by a "rule of reason,"
(2) where [the legislature] has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason,
(3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
(4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority,

(5) the court should also take into account the nature and extent of the interests prejudiced by delay,
(6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

Telecomm. Research & Action Ctr. v. F.C.C., 750 F.2d 70, 80 (D.C. Cir. 1984) ("*TRAC*") (internal quotations and citations omitted). The D.C. Circuit has clarified that "these factors function not as a hard and fast set of required elements" in unreasonable delay cases. *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). Rather, "[r]esolution of a claim of unreasonable delay is ordinarily a complicated and nuanced task requiring consideration of the particular facts and circumstances before the court," *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100 (D.C. Cir. 2003), and "each case must be analyzed according to its own unique circumstances." *Burwell*, 812 F.3d at 189.

In applying these factors, the D.C. Court of Appeals has highlighted an important corollary to these principles: "budgetary constraints are not an extraordinary circumstance warranting unreasonable delay." *Washington Teachers' Union, Local No. 6 v. Labor*, 11-OA-36, 2012 WL 939054, at *1 (D.C. Jan. 27, 2012) (per curiam) (ordering the Office of Employee Appeals to state "what actions it intend[ed] to undertake to address the delay in assigning administrative law judges in order to come into compliance with" the applicable D.C. regulation mandating an initial decision within 120 business days of filing).

As shown below, applying these standards here yields the unmistakable conclusion that the Defendants' delay in implementing the NEAR Act is unreasonable.

b. TRAC *Factors One, Two, Three, and Five: Defendants' Delay Is Unreasonable In the Context of the Statute and the Interests at Stake*

Defendants have failed to implement the data collection requirement for nearly two years. While "[t]here is 'no *per se* rule as to how long is too long' to wait for agency action, . . . a reasonable time for agency action is typically counted in weeks or months, not years." *In re Am.*

Rivers & Idaho Rivers United, 372 F.3d 413, 419 (D.C. Cir. 2004) (quoting *In re Int'l Chem. Workers Union,* 958 F.2d 1144, 1149 (D.C. Cir. 1992)). Ultimately, the time an agency takes to complete a mandated task must comply with the "rule of reason." *Oil, Chem. & Atomic Workers Int'l Union v. Zegeer*, 768 F.2d 1480, 1487 (D.C. Cir. 1985) (quoting *TRAC*, 750 F.2d at 80). Common sense dictates that what may be reasonable for a complex, intricate decision-making process may be unreasonable for a simple, straightforward undertaking. In this case, the "rule of reason" suggests that implementing the data collection requirement should not take two years.

MPD already collects some information about stops and frisks conducted in the District of Columbia, but the existing digital forms contain fields corresponding to only about half of the NEAR Act's data collection requirements. Knizhnik Decl., Attach. K at 54. While additional information can be entered in an open-ended "narrative" portion of the form, this means that information required under the NEAR Act is collected haphazardly, or in many cases not at all. All that would be required to bring MPD's practices into compliance with the NEAR Act's data collection requirement is (1) an IT adjustment to add the necessary fields to the digital form, and (2) an amendment to the MPD policy governing stops and frisks, currently codified in MPD General Order 304.10, to provide that each of the categories of information required by the NEAR Act must be collected for every "stop" and "frisk" conducted by MPD officers. It is unreasonable for such a straightforward process to have taken more than two years, particularly since the existing contract with the company that created and maintains the "Cobalt" system provides that the contractor is obligated to make any necessary changes, "including those to code, interface, database and/or configuration," including "new system releases and new functionality development," for the duration of the five-year contract. Based on this language, an experienced IT professional who has examined the contract believes it should not cost the District of Columbia

government any additional funds to add additional fields in the Cobalt system for the collection of additional categories of data about stops and frisks. *See* Declaration of Scott Stewart ("Stewart decl."), ¶ 12.

The D.C. Council's own expressed frustration with Defendants' failure to implement the data collection requirement further demonstrates the unreasonableness of Defendants' delay in the context of the legislature's intent. At the February 2018 Oversight Hearing, Councilmember Allen expressed his frustration with the Government's inability to even articulate what changes would be necessary to achieve full compliance, stating in his questioning of Defendant Donahue, "We're coming up on two years since the NEAR Act. There are specific data elements that are to be requested. I guess what I'm hearing you say is we don't collect the data that way. So what was it that we passed two years ago? Was it, was it a recommendation? Or was it a law?" He continued, "[P]art of the frustration is that it feels like we talked through some of these same issues about a year ago at last year's hearing and we put $150,000 into the budget to try to help give you the resources that you need to make sure we are collecting what we have. . . . [W]e've been told resources that are needed to do the things we're talking about, . . . and have provided them. And it sounds like we're going to get a request back to say these are the things we need to get there. And that's the source of frustration is it feels like we had that conversation about a year ago." Council of the District of Columbia, *Committee on the Judiciary and Public Safety, Performance Oversight Hearing* (Feb. 22, 2018), at 3:16:40-3:29:51, *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4370.

The interests at stake here are not merely "economic" in nature; rather, they directly involve "human health and welfare." *TRAC*, 750 F.2d at 80. "When an agency's recalcitrance, inertia, laggard pace or inefficiency sorely disadvantages the class of beneficiaries [the legislature]

intended to protect, judicial review . . . is in order." *In re Am. Fed'n of Gov't Employees, AFL-CIO*, 790 F.2d 116, 117 (D.C. Cir. 1986) (internal quotations omitted). An individual's "constitutionally protected interest[]" in remaining free from "the invasion" of an unreasonable search or seizure goes directly to every person's interest in liberty and dignity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Although the NEAR Act does not modify the substantive standards governing when and how MPD officers conduct stops and frisks, requiring data to be collected for every stop or frisk is likely to cause police officers to adhere more faithfully to the law and will increase officers' accountability to their supervisors and police accountability to the public at large. In those ways, the data collection requirement is designed to benefit the "welfare" of every individual who may be subject to a stop or frisk by an MPD officer.

A recent report by the D.C. Office of Police Complaints underlines the human need for the NEAR Act stop-and-frisk data. The report found that of the 2,224 total reported uses of force in Fiscal Year 2017 (October 1, 2016 through September 30, 2017), *eighty-nine percent* involved black individuals. See Knizhnik Decl., Attach. M at 18. While uses of force constitute greater Fourth Amendment intrusions than investigatory stops and frisks, it is intuitive that they involve similar police behavior, and such statistics help to confirm reports indicating a similar racial disparity in the use of stops and frisks by MPD. For example, a recent report by WUSA9-TV analyzed pre-NEAR Act data about investigatory stops from 2010 to 2016 released last month by MPD and found that approximately *eighty percent* of those stops involved black individuals. *See* Knizhnik Decl., Attach. N. As D.C. Circuit Judge Janice Rogers Brown has noted, D.C. police reportedly have a practice of subjecting individuals "who fit a certain statistical profile" to "intrusive searches unless they can prove their innocence" "[d]espite lacking any semblance of particularized suspicion when the initial contact is made." *United States v. Gross*, 784 F.3d 784,

789 (D.C. Cir. 2015) (Brown, J., concurring). Without the data collection required by the NEAR Act, such practices, which would clearly be unlawful and contrary to public policy, remain impossible to document comprehensively so as to facilitate meaningful reform. *Cf.* Mike Conneen, *D.C. Police Chief Cathy Lanier defends MPD stop and frisk policy*, ABC7 WJLA (Oct. 27, 2014) (D.C. Police Union Chairman Delroy Burton, responding to claims of racial profiling in MPD's stop-and-frisk practices, noting that Council members concerned with those practices "could only talk about anecdotes" and "didn't present any evidence, any facts, any specifics"), http://wjla.com/news/crime/cathy-lanier-d-c-police-chief-to-testify-on-use-of-stop-and-frisk-other-practices-108450. After all, "[s]earches that result in no weapons or contraband being found do not—as a practical matter—make it to the courthouse door." *Morgan v. United States*, 121 A.3d 1235, 1245 n.10 (D.C. 2015) (Easterly, J., dissenting) (quoting *United States v. McKoy,* 402 F.Supp.2d 311, 314 (D. Mass. 2004)).

c. TRAC *Factors Four and Six: Defendants' Explanations Regarding Competing Priorities are Insufficient and May Indicate Bad Faith*

Ultimately, "[t]he agency must justify its delay to the court's satisfaction," *Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987). Although a finding of "impropriety" is not required in order to find unreasonable delay by an agency, *TRAC*, 750 F.2d at 80, "[i]f the court determines that the agency delays in bad faith, it should conclude that the delay is unreasonable." *Cutler*, 818 F.2d at 898; *cf. In re Monroe Communications Corp.*, 840 F.2d 942, 946-47 (D.C. Cir. 1988) (holding that "unrebutted allegation of bad faith," namely an "institutional antipathy" toward the type of proceeding at issue, required the court to "retain jurisdiction over the case until" the administrative proceeding at issue occurred "to ensure the kind of progress promised," despite lack of "egregious delay" under the facts).

As noted, in the nearly two years since the NEAR Act was passed, D.C. government officials have alternatively stated that the data collection provision was not "mission critical," that the NEAR Act had been "fully implemented," that "[i]mplementation has begun, but will require alternative ways to analyze data," that "almost half of the data" required under the statute is being collected, and that "[a]n end date" for full implementation "has not yet been confirmed." *See supra* pp. 5-7. These statements are both internally inconsistent and misleading as to what steps Defendants have and have not taken with respect to the required collection of data under the NEAR Act.

All publicly available information indicates that Defendants have continued the pre-NEAR Act regime of allowing officers, under a protocol created prior to the NEAR Act, to collect incomplete data using forms that do not contain adequate fields to comply with the NEAR Act's requirements – and that they have not even required officers to follow the prior protocol consistently. *See id.* In other words, they have not taken any concrete steps, either with respect to the necessary technology or training of officers, to *increase* the information collected during stops and frisks in order to comply with the NEAR Act. Instead, they have made a decision, in contravention of the D.C. Council's judgment, that compliance with the data collection requirement is not "mission critical" and have not spent any of the $150,000 allocated by the D.C. Council to achieve compliance with it.

At the same time, they have tried multiple times to characterize their data collection practices pre-dating the NEAR Act's passage as full or partial "implementation" of the NEAR Act. Further, they have attempted to distract the public and the D.C. Council by releasing non-compliant pre-NEAR Act data, *see* Knizhnik Decl., Attach. J, stating that doing so was in the "spirit of the NEAR Act." *See* Council of the District of Columbia, *Committee on the Judiciary and Public*

Safety, Performance Oversight Hearing at 3:12:01-3:12:46. (Feb. 22, 2018), *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4370. When pressed regarding the demonstrated lack of implementation, they have at times implied that processes have been put into motion to achieve compliance, but merely that an "end date" has not yet been confirmed. *See* Knizhnik Decl., Attach. L. Defendants have also claimed, without support, that compliance can be achieved simply by using "alternative ways" of analyzing the non-compliant data. Knizhnik Decl., Attach. I. Ultimately, however, Defendants have admitted that they have not spent any of the money that the Council allocated for implementation and that they are "guilty" of not implementing the law at all. Council of the District of Columbia, *Committee on the Judiciary and Public Safety, Budget Oversight Hearing* (Mar. 29, 2018), at 5:58:38-5:59:46, *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4448 (testimony of Chief Newsham).

Moreover, even a brief examination of the current protocols, which do not require officers to collect numerous points of data required by the NEAR Act, indicates that no "alternative way" of analyzing the existing data could fulfill the D.C. Council's intent under the NEAR Act. A government agency actually intending to fulfill the legislative mandate with which it was tasked would very easily come to the same conclusion, and would create a plan to change the existing data collection systems to comply with the new requirements. Defendants have created no such plan, have spent none of the money allocated for doing so, and instead have attempted to reverse-engineer the data MPD officers already collected prior to the passage of the NEAR Act to approximate compliance with the requirements of a law that explicitly requires them to collect more than they already do.

The obfuscation and misdirection as to what concrete steps, if any, have actually been taken to ensure full compliance with the data collection provision, combined with the defendants' unilateral determination that the requirement is not "mission critical" and their decision not to spend any of the allocated funds intended to meet it, indicate nothing short of an "institutional antipathy" toward fully complying with the law. *In re Monroe Communications Corp.*, 840 F.2d at 946. As a result, the court should find that Defendants' delay is unreasonable, and order a prompt timeline for full compliance, on this basis alone. *See id.* at 946-47; *see also Cutler*, 818 F.2d at 898 ("If the court determines that the agency delays in bad faith, it should conclude that the delay is unreasonable."). At the very least, Defendants should "have a hard time claiming legitimacy for [their] priorities." *In re Barr Laboratories, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991).

Even if the Court does not find that the government has acted (or failed to act) in bad faith, the Government's delay is still unreasonable. "If the court finds an absence of bad faith, it should then consider the agency's explanation, such as administrative necessity, insufficient resources, or the complexity of the task confronting the agency." *Cutler*, 818 F.2d at 898. In this case, the lack of complexity of the task confronting the agency, as well as the unexpended resources allocated towards achieving that task, point to the same conclusion: the District government's delay in implementing the data collection requirement is unreasonable.

Placing the NEAR Act's legislative mandate in the context of Defendants' existing protocols and procedures clarifies why the implementation of the data collection requirement has been unreasonably delayed. Unlike new government functions created by the NEAR Act's comprehensive approach to criminal justice reform in D.C., the data collection requirement imposes a straightforward duty that is far from complex. MPD has required its officers to collect certain information about every stop and frisk conducted in the District of Columbia since August

2013. *See* MPD GO-OPS-304.10 § III.D (requiring MPD officers to "maintain records of all stops [and] frisks," including "all pertinent details of the incident, including all factors relied upon in determining that the stop or frisk was justified."), *available at* https://go.mpdconline.com/GO/GO_OPS_304_10.pdf. The digital forms currently used by MPD officers to record these stops include fields for about half of the data categories required by the NEAR Act. *See* Knizhnik Decl., Attach. K at 53.

As noted, the current forms contain an open-ended "narrative" field in which officers may input additional details. However, any of the additional data required by the NEAR Act that does appear in the "narrative" field appears there only by happenstance, since MPD's existing rules do not require those categories of data be collected. *Cf.* MPD GO-OPS-304.10 § III.D.2, III.D.3 (stating that officers shall record "all pertinent details" of both forcible and non-forcible stops and frisks, but not explaining what such details must include), *available at* https://go.mpdconline.com/GO/GO_OPS_304_10.pdf. MPD admits that that since much of the required data may be, at best, "only documented in the narrative text portion," it is "not collected in a manner that can easily be sorted or consistently reviewed." Knizhnik Decl., Attach. L. But the NEAR Act does not state that MPD officers *may* collect the enumerated categories of data in their discretion – it states that such records "shall" be kept. D.C. Code § 5-113.01(a).

The only way to ensure that this data is kept in a systematic and consistent (rather than discretionary and haphazard) way is to add additional, explicit entry fields into the forms used by MPD to record details of stops and frisks and to amend MPD's General Order to track the NEAR Act's requirements and clarify the mandatory nature of these new reporting requirements. These two steps, (1) a new form and (2) new rules, are straightforward. In the 18 months since the D.C. Council funded this provision of the NEAR Act, the Mayor and the MPD have failed to provide

any explanation for why the $150,000 allocated for this specific purpose would be insufficient to make the necessary changes. Indeed, the existing contract with the IT company that created and maintains the Cobalt computer system used by MPD suggests that such changes should not require any additional expenditures at all. *See* Stewart Decl., ¶ 12. If the government had taken reasonable steps to comply with the law, and had found that additional resources were needed, Defendants should have asked the Council for more money, or at the very least indicated that the allocated funds were insufficient to achieve compliance and explained why. The fact that Defendants have only now, two years after the law was passed, come to the conclusion that they will need an additional half million dollars to implement the data collection requirement, *see* Knizhnik Decl., Attach. P at 5, 9, shows that they have not been taking reasonable steps to comply with the law. Additionally, the new half-million dollar budget request also raises significant questions about Defendants' seriousness in pursuing NEAR Act data collection. The Mayor has proposed taking the money from the Emergency Rental Assistance Program (ERAP), a politically popular program to help low-income District residents facing housing emergencies. This budget request is a political non-starter, and the Mayor knows it. *See* Council of the District of Columbia, *Committee on Human Services*, *Budget Mark-Up* (May 3, 2018), at 09:02-10:53 (Councilmember Brianne Nadeau stating that the Committee on Human Services "reject[ed] . . . outright" the Mayor's proposed cuts to ERAP, which "should not be reduced when the continued need is undeniable"), *available at* http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4513. The Mayor's proposal does not explain why the additional money is needed despite the $150,000 prior allocation and the fact that the existing Cobalt contract covers changes. *Cf. supra* pp. 14-15. In any event, "budgetary constraints are not an extraordinary circumstance warranting unreasonable delay."

Washington Teachers' Union, Local No. 6 v. Labor, 11-OA-36, 2012 WL 939054, at *1 (D.C. Jan. 27, 2012) (per curiam).

Rather than take the needed steps to comply with the law, MPD has focused its purported "efforts" on "identify[ing] a process from which [MPD] can extract usable information from the raw data and / or narrative information" included in the *existing* forms, which do not contain sufficient fields to ensure that the required categories of information are collected for every investigative stop. *See* Knizhnik Decl., Attach. K at 53; Knizhnik Decl., Attach. L. Even if the required data *were* routinely included in the narrative section, developing a process whereby it could be extracted would inevitably and obviously be far more expensive and time-consuming. Stewart Decl. ¶¶ 10-11.

In February 2017, Defendant Newsham described several "competing priorities" that ostensibly explained MPD's delay in implementing the data collection requirement. However, he did not explain why such changes necessarily competed with the changes required by the NEAR Act. The "mission critical issues" listed as priorities in Chief Newsham's February 2017 letter to the D.C. Council's oversight committee all involved changes that needed "to be addressed in the [Cobalt] system." It would seem intuitive that the changes required by the NEAR Act could be made at the same time as other changes to the technology used to document stops and frisks, or at least that a plan to make such changes should be incorporated into existing information technology plans and priorities. Chief Newsham stated in February 2017 that MPD needed to "evaluate where the[] changes" required by the NEAR Act "fit with mission critical objectives." But as of February 2018, it is clear that Defendants have conducted no such evaluation, as they could not even articulate what "I.T. investment or change in procedure" would be required to collect all that is required under the NEAR Act, let alone a plan or timetable for such changes.

Ultimately, in the context of the statute and the substance of the requirement itself, the interests at stake, and the conflicting and confusing excuses given for the Government's inaction, the two-year delay has stretched beyond the "rule of reason." Although "an agency's control over the timetable of a proceeding is entitled to considerable deference," *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 n.3 (D.C. 2011) (citing *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987)), "[t]here is a point when the court must 'let the agency know, in no uncertain terms, that enough is enough.'" *In re Int'l Chem. Workers Union*, 958 F.2d 1144, 1150 (D.C. Cir. 1992). After two years of "recalcitrance, inertia, laggard pace or inefficiency" by the D.C. Government and MPD, *In re Am. Fed'n of Gov't Employees, AFL-CIO*, 790 F.2d at 117, that point has been reached.

II. Plaintiff Organizations Are Suffering and Will Continue To Suffer Irreparable Harm in the Absence of Relief.

The harm caused by the Defendants' failure to fully implement the data collection requirement is irreparable.

Plaintiffs have submitted Freedom of Information Act requests for the data required to be collected under the NEAR Act. *See* Knizhnik Decl., Attach Q; Knizhnik Decl., Attach. S. Plaintiffs have a right to obtain that data, once the District has collected it as the law requires. However, Defendants' failure to implement the data collection requirement in a timely manner ensures that Plaintiffs cannot vindicate that right because the data simply doesn't exist. The data that should have been collected since the data collection requirement went into effect, but wasn't, will never be recovered. For the nearly two years that have already passed, thousands of stops and frisks have undoubtedly occurred on the streets of D.C. For each of those stops, the data categories required under the NEAR Act should have been collected. However, because of the Defendants' inaction, that data is irretrievably lost, and its loss cannot be compensated with economic damages. With

each passing day that the data collection requirement is not fully implemented, the irreparable loss increases, and, consequently, so does the irreparable harm to Plaintiffs. Courts have recognized that parties who have a right to certain records under FOIA "would be irreparably harmed by the destruction of responsive records." *Landmark Legal Found. v. E.P.A.*, 910 F. Supp. 2d 270, 280 (D.D.C. 2012). Plaintiffs, who have a right under the D.C. FOIA to each of the categories of data required under the NEAR Act, are irreparably harmed by the failure to create and maintain those records just as much as they would be by their subsequent destruction.

Furthermore, the data itself is meant to ensure transparency and accountability in the realm of problems of constitutional dimensions. For every thousand stops and frisks for which the required data is not collected, some number of constitutional violations will go undetected and therefore irreparably unremedied. ACLU-DC is a membership organization that comprises thousands of District of Columbia residents, each of whom has an interest in not being unconstitutionally stopped and frisked by MPD officers. In the absence of the comprehensive data collection required by law, the likelihood that such unlawful stops are never detected increases. By unreasonably delaying implementation of the data collection requirement, Defendants have irreparably harmed and continue to irreparably harm Plaintiffs.

III. The Balance of Harms Favors Entering Relief.

It is clear as a matter of law that "*more* harm will result to [Plaintiffs] from the denial of the injunction than will result to the [Defendants] from its grant." *District of Columbia v. Greene,* 806 A.2d 216, 223 (D.C. 2002) (emphasis in original). Absent a concrete timeline for full implementation of the data collection requirement, the data required under the law will continue to be irreplaceably lost, and organizations such as the Plaintiffs, as well as the D.C. Council, the Mayor's office, the MPD's own leadership, and members of the public, will be unable to gain a

more complete understanding of the contours of the perceived problem of D.C. police's potentially unconstitutional targeting of African-American residents, and thereby act to ameliorate that problem, if it is shown to exist. If the D.C. police are not compelled to collect the data the NEAR Act requires them to collect, accountability and reform will remain elusive, as they have for so many years, and there is a significant likelihood—as suggested in the Office of Police Complaints and WUSA9 reports and Judge Brown's observations regarding MPD tactics—that MPD officers will be able to continue to subject communities of color in the District to disproportionate and unfair treatment.

In contrast, no harm will result to Defendants if the Court issues an injunction, since "[t]he Government cannot suffer harm from an injunction that merely ends an unlawful practice," *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015), or in this case, an injunction that compels practice that is already required by law. Compliance with the law is not a harm to a government agency.

As a result, the balance of harms weighs in favor of the requested injunction.

IV. The Public Interest Favors Entering Relief.

"The public interest is served when . . . agencies comply with their obligations." *N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 21 (D.D.C. 2009). This is certainly true in this case. The NEAR Act's stop-and-frisk data collection provision was modeled after the provision in the Obama White House's Police Data Initiative, which sought to "[u]se open data to build transparency and increase community trust," as well as to ensure "[i]nternal accountability and effective data analysis." Knizhnik Decl., Attach. A at 23. As Judge Easterly explained, suspicionless stops and frisks that go unseen "have significant costs, both individual and societal." *Morgan v. United States*, 121 A.3d 1235, 1245 (D.C. 2015) (Easterly, J., dissenting). The potential

public benefits of increasing accountability and transparency in the realm of stops and frisks cannot be achieved if the District government refuses to implement, or continues to drag its feet in implementing, the NEAR Act's simple and crucial statutory mandate.

CONCLUSION

Rectifying unreasonable agency delay "leaves room for [a] court to exercise discretion in determining how soon the agency must act." *Mashpee*, 336 F.3d at 1102 (citing *TRAC*, 750 F.2d at 80). Plaintiffs respectfully request this court to use its equitable powers to fashion appropriate injunctive relief to ensure that Defendants promptly comply with the NEAR Act's data collection requirement. Specifically, Plaintiffs suggest that the Court should require MPD to design a new digital form with the necessary fields within 30 days of the Court's order, that it implement whatever IT changes are necessary to collect and store that data within another 30 days, and that it train its officers on the use of the new form within another 30 days, so that the data collection requirement is implemented within 90 days from the date of the Court's order.

For the reasons given above, Plaintiffs' motion for a preliminary injunction should be granted.

ORAL HEARING REQUESTED

Plaintiffs respectfully request an oral hearing on the foregoing motion.

Dated: May 8, 2018

Respectfully submitted,

/s/ *Shana Knizhnik*

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BLACK LIVES MATTER D.C., STOP POLICE TERROR PROJECT D.C., AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA, Plaintiffs, v. MURIEL BOWSER, KEVIN DONAHUE, PETER NEWSHAM, Defendants.	No. 2018 CA 003168 B

[PROPOSED] ORDER

Upon consideration of the pleadings, papers, and arguments of counsel, the Court finds that Plaintiffs have shown a strong likelihood they will prevail on the merits, that they will suffer irreparable harm absent preliminary relief, that they will suffer more harm from the denial of the injunction than will result to Defendants from its grant, and that the public interest weighs in favor of the injunction. As a result, Plaintiffs' Motion for Preliminary Injunction pursuant to Rule 65 of the Superior Court Rules of Civil Procedure is hereby GRANTED.

IT IS HEREBY ORDERED, pending further order of the Court, that Defendants shall within 30 days create a new digital form, compliant with the requirements of D.C. Code § 5-113.01(a)(4B), for the collection of stop-and-frisk data, shall within 60 days implement the necessary IT changes to collect and store that data, and shall within 90 days train its officers on

the use of the new form, thereby fully complying with the NEAR Act Stop & Frisk data collection requirements within 90 days of the date of this Order.

IT IS SO ORDERED.

Dated: _____

_____
John M. Campbell, Associate Judge
Superior Court of the District of Columbia

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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PLAINTIFFS' RULE 7.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Superior Court Rule of Civil Procedure Rule 7.1, Plaintiffs Black Lives Matter D.C., Stop Police Terror Project D.C., and American Civil Liberties Union of the District of Columbia, through undersigned counsel, certify that they have no parent corporations and that no publicly held corporation owns 10% or more of their stock.

Dated: May 8, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiffs' Motion for Preliminary Injunction, Memorandum in Support of Motion, and Proposed Order will be served by hand delivery, along with the Complaint, on the following:

Karl A. Racine
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