

To be argued by:
JANE L. MOISAN

NEW YORK SUPREME COURT

Appellate Division-First Department

Index No. 100250/2015

JUSTINE LUONGO, ATTORNEY-IN-CHIEF, CRIMINAL DEFENSE PRACTICE, LEGAL
AID SOCIETY,

Petitioner-Respondent,

-against-

RECORDS ACCESS OFFICER, CIVILIAN COMPLAINT REVIEW BOARD,

Respondent-Appellant,

-and-

OFFICER DANIEL PANTALEO,

Respondent-Intervenor-Appellant.

BRIEF OF *AMICI CURIAE* COMMUNITIES UNITED FOR POLICE REFORM AND 33 ORGANIZATIONS*IN SUPPORT OF PETITIONER-RESPONDENT

Joo-Hyun Kang
Director
COMMUNITIES UNITED FOR
POLICE REFORM
520 Eighth Avenue, Suite 1800
New York, New York 10018
Phone: (212) 695-0869

*A full list of *amici*
reproduced within.

Jane L. Moisan, Esq.
David B. Rankin, Esq.
Vanessa Selbst
RANKIN & TAYLOR, PLLC
Counsel for Amici
11 Park Place, Suite 914
New York, NY 10007
Phone: (212) 226-4507
Facsimile: (212) 652-9480
Jane@drmtlaw.com

September 6, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION1

STATEMENT OF INTEREST.....1

ARGUMENT.....3

I. NEW YORK’S FREEDOM OF INFORMATION LAW PROTECTS THE PUBLIC’S
RIGHT TO BE INFORMED OF AND REVIEW GOVERNMENTAL DECISION-
MAKING.3

 A. Further Shielding of Police Officer Records Threatens to Corrode Community
 Faith in Government.3

 B. Access to Personnel Files Has Been A Critical Component of Community-Led
 Police Reforms Across the Country.6

II. EXTENDING CRL § 50-a’S PROTECTION TO INDEPENDENT AGENCY
RECORDS WOULD BE CONTRAY TO THE PLAIN MEANING OF THE LAW.8

 A. Where the Plain Meaning of the Statute is Unambiguous, Statutory Interpretation
 is Outside the Scope of the Judicial Inquiry.8

 B. The Primary Goals of the CCRB’s 1993 Move to Become an Independent Agency
 Were Increased Accountability and Transparency.9

 C. An Overly Broad Interpretation of §50-a is Contrary to Legislative History and
 Intent of the Law.10

III. THE FACTORS OF THE REQUEST’S VERY LIMITED SCOPE AND THE
TREMENDOUS PUBLIC INTEREST AT PLAY IN THIS CIVIL PRODEDING
COUNSEL IN FAVOR OF PUBLIC DISCLOSURE.11

CONCLUSION.....13

PRINTING SPECIFICATION STATEMENT.....15

APPENDIX.....16

TABLE OF AUTHORITIES

CASES

Capital Newspapers v. Div'n of Hearst Corp. v. Burns, 67 N.Y.2d 562, 566 (1986)10

Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992).....8

Floyd, et al. v. City of New York, 08-CV-1034 (AT) (2008)1

Matter of Luongo v. Records Access Officer, 49 Misc. 3d 708 (Sup. Ct. N.Y. Co. 2015) *passim*

Mayor, et al. v. Council of City of New York, Index No. 451543/2013 (2013)2

Washington Post Co. v. New York State Ins. Dep't., 61 N.Y. 2d 557, 564 (1984)5, 8

STATUTES

New York Civil Rights Law (“CRL”) § 50-a *passim*

New York’s Freedom of Information Law (“FOIL,”), Public Officers Law §§ 84 *et seq.*,4

OTHER AUTHORITIES

Baltimore Police Officer in Freddie Gray Arrest Once Hospitalized Over Mental Health, DAILY NEWS, Apr. 30, 2015, <http://www.nydailynews.com/news/crime/freddie-gray-arrest-mental-health-issues-article-1.2205747>6

Ferrise, Adam, *Cleveland Police Never Reviewed Independent Personnel File Before Hiring Officer Who Shot Tamir Rice*, Cleveland.com,(Dec. 2014), http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_never_reviewe.html6

Is Police Misconduct a Secret in Your State?, WNYC RADIO, Oct. 2015, available at <http://www.wnyc.org/story/does-public-have-right-police-personnel-records/>6

Levine, Sam, *Chicago Police Really didn't Want To Release Video of a Cop Shooting Laquan McDonald 16 Times*, Huffington Post, Nov. 2015, http://www.huffingtonpost.com/entry/chicago-laquan-mcdonald-video_us_565603e0e4b079b2818a06f66

The New York Civil Liberties Union Foundation, *Civilian Review of Policing: A Case Study Report* (1993), at page 20 (quoting Report of the National Advisory Committee on Civil Disorders (New York, Bantam Books, 1968),

<http://www.nyclu.org/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf>10

New York State Committee on Open Government, *Annual Report to the Governor and State Legislature* (December 2014)4,6, 11

The Office of the Inspector General for the NYPD (OIG-NYPD), New York City Department of Investigation. *Observations on Accountability and Transparency in Ten NYPD Chokehold Cases* (2015), 2, http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold_report_1-2015.pdf10

Parascandola, Rocco, *Exclusive: NYPD Suddenly Stops Records On Cop Discipline In Move Watchdogs Slam As Anti-transparency*, New York Daily News (August 24, 2016), <http://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145>3

INTRODUCTION

Over the last several decades, New York, like the country at large, has experienced a cycle of unconstitutional police abuses and incidents of police violence, a systemic lack of meaningful and timely accountability for the perpetrators of police abuses, and resulting public outrage. The increased availability of video footage, often from bystanders and those who observe and document police misconduct, has made the public more aware of incidents of police abuse of authority, excessive force, and unjust killings by police nationally and locally. In the aftermath of the deaths of individuals like Ramarley Graham, Shantel Davis, Eric Garner, and many others, the systemic failures of the New York City Police Department (“NYPD”) to hold officers accountable when they unjustly kill New Yorkers has become increasingly clear. The amici present this brief to emphasize the importance of transparency in promoting accountability and implementing appropriate reform.

STATEMENT OF INTEREST

Communities United for Police Reform (“CPR”) is a campaign of community-based, policy advocacy, legal, and other organizations that represent a broad spectrum of New Yorkers, including those most directly impacted by discriminatory and abusive policing. CPR also coordinates broad coalitions for specific initiatives, such as the coalition of over one hundred organizations which supported the City Council’s passage of the Community Safety Act in 2013, two laws that promoted increased NYPD accountability and transparency.

CPR has appeared on behalf of a coalition of organizations as amici in two other litigations involving the NYPD. On August 13, 2013, the Honorable Shira A. Scheindlin granted CPR leave to appear as amici in *Floyd, et al. v. City of New York*, 08-CV-1034 (AT), at Docket 377. Additionally, on December 18, 2013, Judge Anil C. Singh granted CPR leave to appear on

behalf of members of the Community Safety Act Coalition as amici in *Mayor, et. al v. Council of City of New York*. See, Index No. 451543/2013, Docket Nos. 61-62.

Thirty-three organizations, including legal organizations, policy advocacy organizations, research organizations, directly-affected communities, grassroots organizations, and faith-based organizations, now explicitly join this brief and urge the Court to reject the City's appeal. An accounting of these signatory organizations is included in the Addendum, along with the individual statements of each organization reflecting the impact this Court's decision poses to them.

The fairly recent change in this administration's policy and its resulting lack of transparency regarding public disclosure of substantiated complaints of excessive force, abuse, disrespect and other misconduct of officers is a serious obstacle to police accountability efforts. Many of our members and partners have experienced incidents of excessive force and police brutality personally, and too many New York City families that we and our members work with and support have lost loved ones in unjust police incidents.

Four years after the killing of Ramarley Graham, his family has still not been able to verify the names and badge numbers of all of the officers involved in killing Ramarley, abusing his family, or engaging in other contemporaneous misconduct. Like other families, they are forced to rely on media reports of whether a particular officer may or may not be facing internal charges, without confirmation of the substance of those charges or timeline for internal departmental trials.

Our members and other New Yorkers who have experienced police excessive force and abuse should be able to know the identity of officers and whether the officers involved have prior substantiated complaints. This is essential for trying to change a disciplinary system that is

fundamentally broken. Depriving New Yorkers of this information - particularly those directly impacted by such abuses on a regular basis - reinforces the unfortunate message that police officers are above the law and can act with impunity.

Further, the recent policy change is part of a larger systemic pattern that shields police officers and their supervisors who engage in misconduct from accountability. The overly broad misinterpretation of CRL § 50-a to diminish transparency has become a troubling and expanding pattern with this administration, including the recent reporting that the NYPD is instituting new rules to prevent disclosure of outcomes of internal disciplinary trials. If left to stand, this new internal rule would shield the officers involved in killing New Yorkers like Eric Garner or Ramarley Graham from public disclosure of whether they were disciplined or fired.¹

CPR and the thirty-three signatories of this brief are the organizations for whom the information routinely being withheld by the CCRB is most critical in carrying out their organizational mandates to serve their communities and hold police accountable through policy advocacy, research, organizing, public education, and legal work; as well as organizations whose memberships and constituencies include those who have lost loved ones in NYPD incidents or have survived police brutality and are directly impacted when such information is denied to the public.

ARGUMENT

- I. **NEW YORK'S FREEDOM OF INFORMATION LAW PROTECTS THE PUBLIC'S RIGHT TO BE INFORMED OF AND REVIEW GOVERNMENTAL DECISION-MAKING.**
 - A. **Further Shielding of Police Officer Records Threatens to Corrode Community Faith in Government.**

¹ Rocco Parascandola and Graham Rayman, "NYPD Won't Share Actions Against Disciplined Cops" Daily News, Aug. 24, 2016, available at <http://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145> (last accessed on August 29, 2016).

Transparency is necessary for the proper functioning of any government institution. This principle is recognized by the plain text of New York's Freedom of Information Law ("FOIL"), Public Officers Law §§ 84 *et seq.*, which states that "[t]he people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society."

In 1976, the New York State Legislature passed New York Civil Rights Law ("CRL") § 50-a, which provides in relevant part, that "[a]ll personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state ... shall be considered confidential and not subject to inspection or review without the express written consent of such police officer ... except as may be mandated by lawful court order: CRL § 50-a(1). The purpose of the law was to protect police officers serving as witnesses in criminal proceedings from impeachment by attorneys who engaged in what they termed "fishing expeditions" of unsubstantiated complaints.

While the purpose of CRL § 50-a was to provide narrowly-tailored protection to officers in a specific situation, courts have granted police departments wide latitude in construing the exception more broadly than intended. According to the New York State Committee on Open Government's 2014 annual report, "[CRL § 50-a's] narrow exemption has been expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer." New York State Department of State, Committee on Open Government, Annual Report to the Governor and State Legislature [Dec. 2014], at 3, ("Comm. on Open Gov't 2014 Report"). This runs counter to the central premise that "FOIL is generally liberally construed and its [statutory]

exemptions narrowly interpreted so that the public is granted maximum access to the records of government.” *Washington Post Co. v. New York State Ins. Dep’t.*, 61 N.Y.2d 557, 564 (1984).

Still, despite police departments’ practice of using CRL § 50-a as a shield, the Civilian Complaint Review Board (“CCRB”), an agency made independent from the NYPD in a 1993 charter amendment, routinely released its records pursuant to FOIL requests as late as September 2014. In the last year and a half, however, following mounting criticism of police misconduct, and perhaps feeling empowered by the laissez-faire attitude of courts in limiting CRL § 50-a’s application, the CCRB has begun denying FOIL requests, citing CRL § 50-a and misapplying the law. Now, the City and CCRB’s overly broad interpretation of CRL §50-a, which serves to cloak all information about every officer’s conduct, including the most basic summary information, provides a tremendous obstacle to transparency and only serves to corrode community faith in government.

Respondent-appellants in this case ask this Court to overturn the holding of the New York Supreme Court. Judge Schlesinger held that a summary record of substantiated CCRB complaints did not fall within the narrow exception to FOIL of police department “personnel records.” In so doing, they are asking this Court not only to overturn a completely valid and reasoned ruling, but also to uphold a morally- and legally-indefensible *de facto* policy of absolute secrecy which the NYPD and CCRB have instituted through a perverse interpretation of CRL §50-a. This erroneous interpretation may be fueled by both agencies’ representation by the New York City’s Law Department

B. Access to Personnel Files Has Been A Critical Component of Community-Led Police Reforms Across the Country.

Only New York, California, and Delaware have laws that completely restrict public access to police officers' personnel records.² Of those three states, New York is functionally the most restrictive. *See*, Comm. on Open Gov't 2014 Report, at page 5 ("no other state provides the unique protection afforded [to police officers in New York] in § 50-a.").

Across the country, the public's ability know the contents of and review of police personnel files has been an important tool in police reform efforts. In Cleveland, after the shooting of Tamir Rice, a Freedom of Information request led to disclosure of Timothy Loehmann's personnel file, which showed that his abysmal performance in a different police department had led to his dismissal prior to the incident. As a result, the Cleveland police department amended its hiring policy to include a review of all public personnel files.³ In Chicago, Freedom of Information Law litigation resulted in a judicial order compelling the release of the dash-cam video showing the police shooting of Laquan McDonald, previously withheld on the basis that it would jeopardize an ongoing investigation and the officers' right to a fair trial.⁴ In Baltimore, after Freddie Gray's death, a Freedom of Information request uncovered information about a prior incident where Lieutenant Brian Rice was placed on administrative leave, which prompted public scrutiny into the Baltimore police department's disciplinary

² "Is Police Misconduct a Secret in Your State?" The TakeAway, WNYC RADIO, Oct. 15, 2015, *available at* <http://www.wnyc.org/story/does-public-have-right-police-personnel-records/> (Last visited Aug. 31, 2016).

³ Ferrise, Adam "Cleveland Police Never Reviewed Independence Personnel File Before Hiring Officer Who Shot Tamir Rice" CLEVELAND.COM, Dec. 2014, *available at* http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_never_reviewe.html (Last visited August 11, 2016).

⁴ Sam Levine "Chicago Police Really Didn't Want To Release Video of a Cop Shooting Laquan McDonald 16 Times" HUFFINGTON POST, Nov. 2015, *available at* http://www.huffingtonpost.com/entry/chicago-laquan-mcdonald-video_us_565603e0e4b079b2818a06f6 (Last visited August 31, 2016).

practices.⁵ The Baltimore police department ultimately cooperated with the United States Department of Justice in a thorough investigation of its departmental practices and is expected to soon carry out major changes via a consent decree.

As a result of the denial of the FOIL request in this case, despite the two years that have passed since the tragic death of Eric Garner, his family, his community and the public at large are still being denied answers – about Officer Pantaleo’s personnel history, about what the NYPD and CCRB might have known, and about what the NYPD could have done differently to prevent that tragedy from occurring. Meanwhile, a quick Google search reveals an extensive detailing of Eric Garner’s history with the criminal justice system, despite the fact that witnesses have indicated Mr. Garner had just helped to break up a fight and was not committing a crime at the time that officers interacted with him, resulting in his death. The leaking of the histories (including sealed histories) of criminal justice interactions of police brutality victims by the NYPD and other departments is common-place, which effectively puts victims who are unable to defend themselves on trial in the press in order to justify incidents of police brutality.

There cannot be true accountability when publicly-available information is so one-sided. New Yorkers cannot move forward and improve the failed system of police accountability when the NYPD and CCRB continue to hide behind a cloak of secrecy, shielded by a faulty interpretation of CRL § 50-a.

⁵ “Baltimore Police Officer in Freddie Gray Arrest Once Hospitalized Over Mental Health” DAILY NEWS, Apr. 30, 2015, available at <http://www.nydailynews.com/news/crime/freddie-gray-arrest-mental-health-issues-article-1.2205747> (Last visited August 31, 2016).

II. EXTENDING CRL §50-a's PROTECTION TO INDEPENDENT AGENCY RECORDS WOULD BE CONTRARY TO THE PLAIN MEANING OF THE LAW.

The plain language of CRL § 50-a does not support denial of FOIL requests in cases where the documents are prepared and held by an independent agency, such as here, by the CCRB. Furthermore, the legislative intent of CRL § 50-a was to prevent broad “fishing expeditions,” and as such, it does not support denial in cases where the request is limited in scope, such as here where Legal Aid has requested only a summary of *substantiated* complaints. Public access to records is an important principle of democracy, and FOIL’s exceptions must be limited in scope. *Washington Post Co. v. New York State Ins. Dep’t.*, 61 N.Y.2d at 564 (“FOIL is generally liberally construed and its [statutory] exemptions narrowly interpreted so that the public is granted maximum access to the records of government.”)

Here, the City and CCRB’s construal of CRL §50-a seeks to turn a narrow FOIL exemption into a blank check for NYPD secrecy. This construal is unsupported by the plain meaning of the statute, unsupported by legislative history, disfavored by relevant provisions of FOIL, and runs contrary to public policy in that it threatens the greatest and most basic underpinnings of our democracy – transparency and accountability. As such, this Court should affirm the holding of the New York Supreme Court.

A. Where the Plain Meaning of the Statute is Unambiguous, Statutory Interpretation is Outside the Scope of the Judicial Inquiry.

It is the most basic tenet of statutory interpretation that “courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (internal citations and quotations omitted).

CRL §50-a provides a special right of privacy to police officers by restricting public access under FOIL for a very specific category of records, namely “personnel records used to evaluate performance toward continued employment or promotion, *under the control of any police agency or department of the state...*” CRL § 50-a(1) (emphasis added). This law unequivocally limits the exception to records controlled by police agencies or departments of the state. The CCRB is an agency wholly independent of the NYPD. It is neither a police agency nor a department of the state. As such, CRL § 50-a simply cannot be read to include as “personnel records” any records created or controlled by the CCRB.

Judge Schlesinger correctly held that the CCRB’s independent status meant that its records fell outside the scope of CRL § 50-a. *Matter of Luongo v. Records Access Officer*, 49 Misc. 3d 708, 716 (Sup. Ct. NY Co. 2015). Any argument offered by respondent-appellants to the contrary is not pertinent and refuted under the first and most basic canon of statutory interpretation which provides that a statute’s unambiguous meaning ends judicial inquiry.

B. The Primary Goals of the CCRB’s 1993 Move to Become an Independent Agency Were Increased Accountability and Transparency.

Respondent-appellant’s argument that the independent nature of the CCRB should be ignored despite the plain text of the statute (*see* Records Access Officer Br. 10-18) is not only a thinly-veiled attempt to obfuscate CRL § 50-a’s unambiguous and unequivocal meaning, but it also ignores the history of the CCRB and the intention of the 1993 city council. That City Council established the CCRB as an independent agency, specifically for the purpose of achieving increased accountability and transparency that was not possible without independence from the NYPD. Respondent-appellants’ argument that because the CCRB used to operate within the NYPD, “previously confidential disciplinary records should ... [not lose] such protection” (*Id.* at 12) completely misses the point. That the CCRB’s shift to independent agency

status means that its records now fall outside the scope of the police-agency-record FOIL exemption is *precisely* the sort of accountability and transparency that the shift was intended to cause.

As a matter of fact, public access to records was one of the primary goals of the CCRB. In 1968, President Johnson created the Kerber Commission, which released a landmark report that led to the creation of several cities' independent review boards, including New York City's. The commission set out a few necessary principles and procedures, one of which was that the "results of [an] investigation should be made public."⁶ Similarly, the New York Civil Liberties Union's 1993 recommendations for the newly-created CCRB also included the directive to "[m]aximize openness in the civilian review process: Provide public access to complaint hearings and the review agency's findings, including discipline recommended and imposed."⁷ So to the extent that increased transparency and accountability stem from the CCRB's 1993 establishment as an independent agency, that result was specifically considered and intended by the New York City Council.

C. An Overly Broad Interpretation of CRL § 50-a is Contrary to the Legislative History and Intent of the Law.

Even if, despite the statute's plain meaning, one found that CRL § 50-a could apply to CCRB records in some cases, the legislative history makes it clear that a summary of the type requested in this case would not fall within the scope of the statute, which must be narrowly construed.⁸ CRL § 50-a was enacted to provide privacy protection to officers in order to prevent zealous attorneys from uncovering a wide swath of potentially baseless and unsubstantiated

⁶ The New York Civil Liberties Union Foundation, *Civilian Review of Policing: A Case Study Report* (1993), at page 20 (quoting *Report of the National Advisory Committee on Civil Disorders* (New York, Bantam Books, 1968)), available at

<http://www.nyclu.org/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf>

⁷ *Id.* at 128

⁸ *Capital Newspapers v. Div'n of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986) ("[e]xemptions [to FOIL] are to be narrowly construed to provide maximum access.").

complaints that could be used to unfairly discredit police officers serving as witnesses in criminal proceedings.

In a memorandum in support of CRL § 50-a, Senator Padavan expressed the drafters' concern with police officers "bearing the brunt of fishing expeditions by some attorneys who are subpoenaing personnel records in an attempt to attack the officer's credibility." (R.109).

Another memorandum to Governor's counsel stated the bill was "directed at purported abuses involving the indiscriminate perusal of police officers' personnel records by defense counsel in cases where the police officer is a witness." (R.110). Over time, the legislative purpose of CRL § 50-a has been lost, and the NYPD has been using it as a broad shield, "to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer." Comm. on Open Gov't 2014 Report, at 3.

III. THE FACTORS OF THE REQUEST'S VERY LIMITED SCOPE AND THE TREMENDOUS PUBLIC INTEREST AT PLAY IN THIS CIVIL PROCEEDING COUNSEL IN FAVOR OF PUBLIC DISCLOSURE.

There are fundamental differences between Legal Aid's request for a summary of CCRB records and the requests the drafters of CRL § 50-a hoped to curtail. Leaving aside the most obvious, that Officer Pantaleo is not a witness in a criminal proceeding, there are three main distinctions:

- 1.) A request for a summary rather than broad records is limited in scope;
- 2.) A request for only those complaints that were substantiated by the CCRB is limited and non-abusive; and
- 3.) The tremendous public interest in this information outweighs any small risk of harm.

A request for a summary report rather than a request for records does not fall within the definition of “personnel records” as contemplated by the legislature because the request is narrow, specific, and targeted in scope. CRL § 50-a was passed because “every public and private communication concerning an officer’s behavior is entered into his personnel folder and may, therefore, be disclosed in the course of a defense counsel’s attempt to discredit him.” (R.104). By requesting access to a particularized set of information, Legal Aid is engaging in behavior very different than that which the legislature contemplated in enacting CRL § 50-a.

The fact that Legal Aid requested a summary of *substantiated* CCRB complaints only further underscores the wide gap between the facts of this case and the legislative intent of CRL § 50-a. The memorandum from Senator Padavan reveals that the supporters of the bill were especially concerned with “the disclosure of unverified and unsubstantiated information that the records contain.” (R.109) That concern makes sense, because the disclosure of that sort of information was much more likely to lead to abuse and unjustified reputational damage if revealed. Here, Legal Aid has requested information only about those complaints that have been through the CCRB’s extensive investigation process and which the CCRB has deemed to be meritorious, which does not happen in the case of the overwhelming majority of complaints. For instance, between 2009 and 2013, the CCRB received 1,022 complaints alleging chokeholds by NYPD officers. Of the 462 cases that CCRB investigated fully, it substantiated only nine complaints, which means that the CCRB substantiated less than 1% of complaints received, and less than 2% of complaints that led to investigations.⁹ Clearly, a request for information on substantiated complaints is *extremely* limited in scope, and therefore, requesting information about only substantiated complaints is far afield from “engaging in a fishing expedition.”

⁹ The Office of the Inspector General for the NYPD (OIG-NYPD), New York City Department of Investigation. *Observations on Accountability and Transparency in Ten NYPD Chokehold Cases* (2015), 2, available at http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold_report_1-2015.pdf

Lastly, in enacting CRL § 50-a, the legislature was concerned about attorneys who posed a great risk of abuse and harassment of the police officers. Judge Schlesinger clearly laid out the case for why the risk of harm to Officer Pantaleo is minimal in this case, given his immense public exposure due to the public video of Eric Garner's death. *Matter of Luongo*, 49 Misc. 3d at 718-19. While it is certainly true that the release of Officer Pantaleo's records is permissible under this statute, the logic should extend to other cases where evidence has not necessarily already entered the public sphere. Risks are typically assessed in relation to reward. It can be inferred that the drafters of CRL § 50-a were concerned that in cases with a high risk of harassment or abuse, the reward (discrediting a witness) was too small to justify the risk. In this case, Legal Aid seeks answers to questions in the wake of a national tragedy, in the context of what many would argue is a moment of national crisis in systemic lack of transparency and accountability for police killings of unarmed Black and Latina/o people and serious public debate about the efficacy and adequacy of police department practices. The importance of public access to this information is far greater than in those cases CRL § 50-a sought to address, and as such, some hypothetical risk of potential reputational harm to an officer is a small price to pay for the public's access to information.

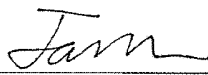
CONCLUSION

Given that no other jurisdiction interprets its laws in such an overly-broad manner as to cause police officers to be essentially exempt from accountability to the public, given that this interpretation by the CCRB is new and the practice of declining FOIL requests began after Daniel Pantaleo's actions resulted in Eric Garner's death, given that FOIL requires its exceptions to be construed narrowly, given that a broad interpretation would be unsupported by both the drafters of §50-a as well as the drafters of the independent CCRB charter amendment in 1993,

and given the tremendous importance of public access to CCRB records, the *amici* respectfully urge this Court to uphold the ruling of the New York Supreme Court that the CCRB summary requested by Legal Aid is not a “personnel record” under the meaning of CRL §50-a and that the CCRB must release the summary, pursuant to FOIL.

Dated: September 6, 2016
New York, New York

Respectfully submitted,

By: 
Jane L. Moisan
David B. Rankin
Vanessa Selbst
Rankin & Taylor, PLLC
Counsel for Amici
11 Park Place, Suite 914
New York, NY 10007

PRINTING SPECIFICATION STATEMENT

This computer generated brief was prepared using a proportionally spaced typeface.

Name of typeface: Times New Roman

Point size: 12

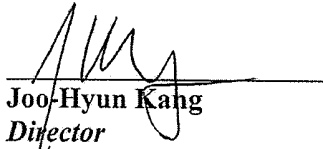
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and excluding pages containing the table of contents, table of authorities, proof of service, certificate of compliance, or any authorized addendum is 4114.

APPENDIX

ADDENDUM

*Statements of Interest from Signatory Organizations
Signing with Communities United for Police Reform*



Joo-Hyun Kang
Director

8/29/2016
Date

Communities United for Police Reform
520 Eighth Avenue, Suite 1800
New York, New York 10018
Phone: 212-695-0869

Communities United for Police Reform (“CPR”) has coordinated the filing of this brief, and hereby certifies a word count of under 7,000 words and certifies that all parties have consented to the filing of this Brief.

I. Legal Organizations, Policy Advocacy Organizations and Research Organizations

The Association of Muslim American Lawyers
233 Broadway, Suite 801, New York, New York 10279

Since its founding in 2005, the Association of Muslim American Lawyers (AMAL) has organized and participated in civil rights work on panel discussions and old-fashioned community activism to promote not only the administration of justice, but also an awareness of American and Islamic jurisprudence among minority and immigrant (and especially Muslim) communities -- all while emphasizing the highest standards of professionalism and integrity. AMAL endeavors to promote the human rights of all marginalized people. We support this important FOIL litigation and would like to be a part of the amicus brief efforts because they support AMAL's core mission as a civil rights organization. Not only does this case reinforce the problems highlighted by Plaintiffs in the pending FOIL case of *Abdur Rashid v. New York City Police Department*, implicating Muslim New Yorkers, but it impacts all New Yorkers, generally, who care about the rule of law and transparency.

Center for Constitutional Rights

666 Broadway, 7th Floor, New York, New York 10012

The Center for Constitutional Rights (CCR) is a non-profit legal, advocacy and educational institution committed to using the law as a tool for progressive social change and to advance the interests of communities most impacted by governmental and social injustice. As lead counsel in the landmark class action litigation, *Floyd v. City of New York*, which resulted in a judgment that the New York Police Department was engaged in a widespread practice of unconstitutional and racially discriminatory policing and which ordered broad reforms to ensure the NYPD respects the constitutional rights of New Yorkers, CCR has a strong interest in ensuring that the NYPD remains accountable to the law and the citizens it is supposed to serve. Disclosing records of substantiated CCRB complaints against Officer Pantaleo is another critical component in the broader effort to ensure transparency and accountability in a department that for too long has operated with impunity for its wrongdoing.

Center for Popular Democracy

449 Troutman Street, Suite A, Brooklyn, New York 11237

The Center for Popular Democracy (CPD) works to create equity, opportunity, and a dynamic democracy in partnership with over 50 high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda. Transparency and accountability are fundamental to ending the type of biased and dehumanizing policing that led to the death of Eric Garner, and the abuse of countless others. A commitment to transparency is key to any improvement in police and community relationships and sustainable reform.

JustLeadershipUSA

555 Lenox Avenue, Suite 4C, New York, New York 10037

JustLeadershipUSA (JLUSA) is a criminal justice advocacy organization committed to reducing the U.S. correctional population in half by 2030. JLUSA is also one of the co-founders of the #CLOSErikers campaign. Reducing the correctional population in the U.S., including the number of New Yorkers locked up at Rikers, requires accountable police departments that honor peoples' rights and do not improperly target communities.

Katal Center for Health, Equity, and Justice

201 Varick Street, Front 1, Box #11, New York, New York 10014

Katal is focused on ending mass criminalization, mass incarceration, and the war on drugs. We work with a broad constituency including those impacted by the criminal justice system and system actors. Katal believes that New Yorkers deserve to have a more transparent process around evaluating police practices and procedures in order to ensure the public safety of our communities.

LatinoJustice PRLDEF

99 Hudson Street, 14th Floor, New York, New York 10013

LATINOJUSTICE PRLDEF is a national not for profit civil rights organization that has defended the constitutional rights and equal protection of all Latinos under the law. Our continuing mission is to promote the civic participation of the greater pan-Latino community in the United States, to cultivate Latino community leaders, and to engage in and support law reform litigation across the country addressing criminal justice, education, employment, fair housing, immigrants' rights, language rights, redistricting & voting rights. During our 44-year history, LATINOJUSTICE has litigated numerous cases in both state and federal courts challenging multiple forms of discrimination including discriminatory policing and law enforcement practices. Most recently, we were co-counsel in *Ligon v. City of New York*, successfully challenging the NYPD's stop & frisk practices in residential apartment building areas. LATINOJUSTICE supports greater transparency and accountability of police officers who violate the civil rights of the constituents they are sworn to protect and serve. To expand NY Civil Rights Law §50-a's applicability to independent city agencies beyond the police department goes beyond the statute's express provisions, and would contravene the community's need for such information in order to determine necessary criminal justice reforms that are warranted to avoid further tragedies and unnecessary loss of life.

New York Civil Liberties Union

125 Broad Street, 19th Floor, New York, New York 10004

The New York Civil Liberties Union, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with 8 offices across the state and nearly 80,000 members and supporters. The NYCLU defends and protects civil rights and civil liberties, as embodied in the United States Constitution, New York State Constitution, and state and federal law. Among these rights is the public's right to obtain information about its government, to engage in valuable public debate, and to make informed decisions about the

direction of law and policy, all of which weigh in favor of disclosure of the records sought in this case.

The Public Science Project

The Graduate Center, City University of New York, 365 Fifth Avenue, 6th Floor
New York, New York 10016

The Public Science Project (PSP), based at The Graduate Center, City University of New York, is dedicated to conducting research for a just world. For nearly 20 years we have been collaborating with communities to design and implement participatory action research that investigates, speaks back to, and reimagines structural injustice. Freedom of information is cornerstone of a fair and just democracy. It is imperative for the court to release a summary of substantiated complaints made to the CCRB and the NYPD against NYPD Officer Daniel Pantaleo, so that New Yorkers can fully understand the context within which Eric Gardner was killed.

Urban Justice Center

40 Rector Street, 9th Floor, New York, New York 10006

The Urban Justice Center serves New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing. As many of UJC's clients are low-income and working-class people of color, immigrants, LGBTQI persons, and persons with disabilities, they are disproportionately impacted by illegal and abusive police practices. We believe that Judge Schlesinger's July 2015 decision should be upheld because our clients and their communities have a right to know the history of substantiated complaints made against NYPD police officers, especially when such findings reveal larger systemic failures by the City to address patterns of unlawful and oppressive police practices.

II. Directly-Affected Communities, Grassroots Organizations, and Faith-based Organizations

Alliance for Quality Education

94 Central Avenue, Albany, New York 12206

The Alliance for Quality Education is a coalition mobilizing communities across the state to keep New York true to its promise of ensuring a high-quality public school education to all students regardless of zip code. We see the effects of repeated legislative disdain for the outcries of constituents of communities of color in our education system and have seen this disdain across systems. All New Yorkers deserve transparency around the complaint records of any police officer actively serving their community, especially one whose policing has been a source of community concern.

Arab American Association of New York

7111 5th Avenue, Brooklyn, New York 11209

The Arab American Association is a multi-service and advocacy agency dedicated to empowering Arab immigrants and Arab Americans located in Bay Ridge, Brooklyn, home to the largest Arab American community in New York State. The vast majority of the people we serve are members of low-income families and recent arrivals to New York City. We serve 4,000 individuals per year through direct services and client advocacy. We support the effort of the Legal Aid Society and urge the to Court to ensure that their request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo should be granted. As an agency that serves a multiracial and majority Muslim community, one third of whom identify as Black, our constituents have been targeted for surveillance and discrimination under the NYPD. We believe this effort will ensure more transparency of police practices on communities of color and provide a mechanism for communities to evaluate police disciplinary systems in order to create a healthy relationship of critique and reform between community organizations and the police department.

Bill of Rights Defense Committee/Defending Dissent Foundation

1100 G Street NW, Suite 500, Washington, DC 20005

The Bill of Rights Defense Committee/Defending Dissent Foundation is a national grassroots advocacy organization with over 27,000 supporters nationwide and 1,500 in New York City, that works to hold government accountable to *We the People* and create a nation where police and

intelligence agencies cannot be used as tools of repression or to silence dissent. The decision in this case is important to BORDC/DDF because our mission of transparency and accountability supports a strong FOIL and an independent Civil Complaint Review Board. The decision is important to BORDC/DDF's mission of transparency and accountability, as the NYPD is arguing for an overly broad exemption to state FOIL laws that essentially prevent the public from ever knowing anything about police misconduct, unless the NYPD elects to share it with them. It also runs the risk of undermining the independence of the Civilian Complaint Review Board, as the exemption in question only applies to records in custody of the NYPD and the CCRB was deliberately made independent from the NYPD in 1993. The New York Supreme Court correctly ruled that complaints substantiated by CCRB are subject to FOIL.

The Black Institute

39 Broadway, Suite 1740, New York, New York 10006

The Black Institute is an “action” think tank whose mission is to shape intellectual discourse and dialogue and impact public policy uniquely from a Black perspective in the U.S. and for people of color throughout the Diaspora. Representing the perspectives of Latino and Black New Yorkers who are amongst those most subject to violence by abusive NYPD officers, The Black Institute believes that transparency of substantiated CCRB complaints against officers should be a guaranteed right in a democratic society. Without such transparency, steps to address the systemic problems of lack of accountability for NYPD officers who unjustly kill or brutalize Black New Yorkers cannot be successful.

Brooklyn Movement Center

375 Stuyvesant Avenue, Brooklyn, New York 11233

Brooklyn Movement Center (BMC) is a Black-led community organizing group building power among the low- and moderate-income residents of Bedford Stuyvesant, Crown Heights, and the surrounding Central Brooklyn area. BMC maintains a vision of community safety in which residents and police officers alike engage in a culture of mutual respect, accountability, and equitable justice. The public release of substantiated CCRB complaints against Officer Daniel Pantaleo would uphold that vision and ensure that any police misconduct and civil rights violations are made subject to public scrutiny and discipline.

CAAAY Organizing Asian Communities

55 Hester Street, New York, New York 10002

CAAAY Organizing Asian Communities organizes low-income Asian immigrants to fight for systemic and institutional change towards racial, gender, and economic justice. With 450 members and a supporter base of 3,800, we organize low-income Asian and South Asian tenants and youth in Chinatown and New York City Housing Authority's Queensbridge Development. The court should grant Legal Aid Society's request for disclosure of CCRB complaints against NYPD Officer Daniel Pantaleo because our constituent base and our organization believe in and have always pushed for public information that improves the community and conditions for those most impacted by City policies and those who commit themselves to public service. Reviewing complaints made against Officer Daniel Pantaleo is critical to improving policing policies that have long physically hurt Black and Latino New Yorkers and communities.

Citizen Action of New York NYC Chapter

40 Worth Street, Suite 802, New York, New York 10013

Citizen Action of New York NYC Chapter is a members based organization that fights for Economic, Environmental, Social, and Racial Justice. We use our power in Albany to push progressive legislation in New York State. The Court should ensure that Legal Aid Society's request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo should be granted. Citizen Action has long stood for transparency and justice for all. Our communities and constituents need honesty and openness, not secretive operations. We deserve transparency regarding past and future actions.

Equality for Flatbush

237 Flatbush Avenue, #193, Brooklyn, New York 11217

Equality for Flatbush (E4F) is a people of color-led, multi-national grassroots organization that does anti-police repression, affordable housing and anti-gentrification organizing in the Flatbush and East Flatbush communities of Brooklyn, New York. Roughly 500 -1000 people support our campaigns. East Flatbush communities have 3 open police murder cases (Shantel Davis, Kimani Gray, and Kyam Livingston) from 2012-2013 involving police officers who had prior complaints against them of violence use of excessive force against community members.

FIERCE

225 West 34th Street, New York, New York 10122

FIERCE is a membership-based organization that builds the leadership and power of lesbian, gay, bisexual, transgender, and queer (LGBTQ) youth of color in New York City and supports them to lead social justice campaigns to dismantle the everyday systemic oppression they face. We believe that the FOIL request submitted by the Legal Aid Society is a part of a larger movement demanding transparency and accountability for police officers. The release of this information is vital to ending the police practice of providing officers with a slap on the wrist (i.e. training and desk duty) when a community member is unjustly killed by them.

Filipino American Democratic Club of NY

604 Riverside Drive, New York, New York 10031

Filipino American Democratic Club of NY (FADCNY) is a political club that organizes, educates, and leads the Filipino American electorate in New York City and New York State. We stand with Communities United for Police Reform in asking for transparency and accountability in the NYPD. To improve faith in our government agencies and move forward as a city, Filipino Americans and all our communities should have the right to access records of CCRB complaints in law enforcement.

The Gathering for Justice / Justice League NYC

310 West 43rd Street, 14th floor, New York, New York 10014

The Gathering for Justice is a non-profit social justice organization founded by Harry Belafonte in 2005 and led by Executive Director Carmen Perez since 2010. The Gathering for Justice's mission is to end child incarceration while working to eliminate the racial inequities in the criminal justice system that enlivens mass incarceration. Justice League NYC is an all-volunteer urgent response task force under the umbrella of The Gathering, which focuses on the front end of the system, especially in regards to police accountability. The Gathering operates with a full time staff of 2 people and a very small Board of Directors. Justice League NYC has 15 members, and we are in the process of building Justice League CA, which will launch this fall. In the wake of the non-indictment of Daniel Pantaleo, Justice League NYC released a set of 10 demands, the first being the immediate firing of Officer Pantaleo. The Legal Aid Society's request - we believe - is absolutely essential to providing additional evidence to support his dismissal AND regardless of whether or not such evidence of past bad acts exists, transparency must always be the aspiration.

Girls for Gender Equity

30 3rd Avenue, Suite 104, Brooklyn, New York 11217

Girls for Gender Equity (GGE) is an intergenerational grassroots organization committed to the physical, psychological, social, and economic development of girls and women. Through education, organizing and advocacy GGE works with 150 young people and the broader community to achieve racial, gender, and economic justice. Young people of color and in particular, cis and trans* girls of color and gender nonconforming young people are repeatedly stopped, harassed, and targeted by NYPD officers. Beyond this, many young girls of color in New York City are members in communities that are over-policed and impacted by the multiple traumas directly related to interactions with NYPD officers, including times of police misconduct. Legal Aid Society's request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo sets an important precedent and will arch towards a reestablishment of the CCRB's intended mission of NYPD transparency and accountability.

Jews for Racial & Economic Justice

330 7th Avenue, Suite 1901, New York, New York 10001

Jews for Racial & Economic Justice (1800 members, New York Jewish Communities, including Jewish youth, Jewish elders, Rabbis, Jews of Color, Mizrahi, Sephardi, and Ashkenazi Jews). For 25 years, Jews For Racial & Economic Justice (JFREJ) has pursued racial and economic justice in New York City by advancing systemic changes that result in concrete improvements in people's everyday lives. We are inspired by Jewish tradition to fight for a sustainable world with an equitable distribution of economic and cultural resources and political power. JFREJ's constituency values transparency and accountability. Our members want to see an end to police killings, and a transparent mechanism to systemically evaluate police disciplinary systems would be a meaningful step in that direction.

Justice Committee

666 Broadway, Suite 500, New York, New York 10012

The Justice Committee (JC) is a grassroots organization dedicated to building a movement against police violence and systemic racism in New York City. Our membership of just over 100 is multi-racial, but majority Latino/a, and includes families who have lost loved ones to the police as well as other members of impacted communities. Due to our experience working with families who have lost loved ones to the police and survivors of police violence, we are keenly aware of the fact that officers who kill and brutalize are often repeat offenders, although there is

no transparency around this. Families of victims as well as the generally public are given little to no background information about the NYPD officers who perpetrate the worst violence in our communities.

Make the Road New York

301 Grove Street, Brooklyn, New York 11237

Make the Road New York (MRNY) builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. We have 19,000+ members and operate five community centers in Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; and Brentwood, Long Island. As a city, we have empowered the CCRB to both receive and investigate complaints against New York City police officers who may have abused their power. To create an agency to monitor police abuse, then suppress that agency from being able to share data publicly is problematic. Transparency is a good thing, and nationally, both community groups and law enforcement organizations have underscored the need to be transparent for the sake of establishing collaborative relationships.

Malcolm X Grassroots Movement

PO Box 471711, Brooklyn, New York 11247

The Malcolm X Grassroots Movement is an organization of Africans in America whose mission is to defend the human rights of our people and promote self-determination in our community. As co-residents and organizers of communities directly impacted by police violence, we believe that transparency and accountability is essential to building public safety. Ruling in favor of Legal Aid Society's request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo is a crucial and necessary step in creating public safety and ending discriminatory and deadly practices perpetuated by NYPD.

NAACP New York State Conference

114 West 41st Street, 7th Floor, New York, New York 10036

We are a civil rights organization with 501c3 Status, with a membership base, with branches throughout New York State which include the fifteen branches located in the five boroughs. The membership is eighty thousand. We believe in transparency.

New York City Gay and Lesbian Anti-Violence Project

116 Nassau Street, 3rd Floor, New York, New York 10038

The New York City Gay and Lesbian Anti-Violence Project is the largest LGBTQ specific anti-violence organizations providing free and confidential clinical and legal services to LGBTQ survivor of all types of violence (hate, sexual, domestic, institution and police violence) as well as robust city, state, and national policy advocacy and educational efforts. We support Legal Aid Society's request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo because we know this information often times goes unshared yet misconduct at the hands of officers remains an issue for all New Yorkers, especially LGBTQ New Yorkers. We have worked closely with non-LGBTQ New Yorkers over the past several years to ensure greater accountability of officers.

New York Communities for Change

Metrotech Center North, 11th Floor, Brooklyn, New York 11201

New York Communities for Change (NYCC) is a coalition of working families in low and moderate income communities fighting for social and economic justice throughout the State. There has been no accountability following the murder of Eric Garner, we need an NYPD that is transparent to ensure justice for the family of Eric Garner and for the communities that we represent.

The Peace Poets

133 West 70th Street, New York, New York 10023

The Peace Poets are a collective of artists, educators and organizers that celebrate, examine and advocate for life through music and poetry. We work in schools, streets, and community centers with thousands of young people from across the United States to build circles of creative expression where everyone is guaranteed love, respect, and affirmation. The Peace Poets and our constituents urgently and passionately demand that Legal Aid Society's request be granted (for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo) because this officer killed an innocent man. It is excruciatingly obvious that increasing accountability and transparency in the police force is imperative to our dignity and survival, and the dignity and survival of all people who live in criminalized and over-policed communities.

Picture the Homeless

104 East 126th Street, #1B, New York, New York 10035

Picture the Homeless is the only grass roots organization in NYC that organizes homeless (street homeless and those residing in shelters) New Yorkers to end discriminatory policing and for housing rights. Picture the Homeless urges the court to ensure that the Legal Aid Society's request for a summary of substantiated CCRB complaints against NYPD Officer Daniel Pantaleo be granted because for homeless New Yorkers, the majority of whom are people of color, the NYPD is too often not accountable for behaviors that if conducted by non-police, would constitute crimes. Police officers have a lot of discretion, which unfortunately too often leads to discrimination.

Queens Neighborhoods United

35-09 93rd Street, Jackson Heights, New York 11372

Queens Neighborhoods United builds power to fight criminalization and displacement at all the intersections of our communities. We are volunteers from all over Queens, but specifically building in Jackson Heights, Corona, and Elmhurst. We have about 20 active member-leaders and about 100 members including street vendors, business owners, undocumented folks, young people, and across all races. Broken Windows Policing made space for the death of Eric Garner at the hands of Daniel Pantaleo, and this is exactly the type of policing undocumented folks, street vendors, and young people of color experience every day in Queens. There are many more Pantaleos out there and we want to make sure there is a transparent system in place that will help our community protect itself.

T'ruah: The Rabbinic Call for Human Rights

226 West 37th Street, Suite 803, New York, New York 10018

T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, we call upon Jews to assert Jewish values by raising our voices and taking concrete steps to protect and expand human rights in North America, Israel, and the occupied Palestinian territories. Transparency is a hallmark of human rights, the actualization in law that all human beings are created in the image of God. In order to ensure greater police accountability, we as the public need to have access to information related to misconduct.

UPROSE

166A 22nd Street, Brooklyn, New York 11232

Based in Sunset Park, Brooklyn, UPROSE is a grassroots intergenerational community based organization dedicated to environmental and social justice. Our constituency is predominantly Latinx, Asian, and Middle Eastern - all most likely to be vulnerable to police abuse, an issue that UPROSE has organized against throughout the years in Sunset Park and as part of citywide efforts. A majority of the asthma discharges live along the Gowanus Expressway. We are joining this amicus because the combination of the health profile of our community, the demographics and the lack of safeguards against illegal chokeholds puts our community at a high level of risk.

