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VIA ECF ONLY

April 20, 2017

The Honorable Analisa Torres
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York, et al.*, 08-CV-1034 (AT)
***Ligon, et al. v. City of New York, et al.*, 12-CV-2274 (AT)**
***Davis, et al. v. City of New York, et al.*, 10-CV-0699 (AT)**

Your Honor:

I am member of Rankin & Taylor, PLLC and counsel to Communities United for Police Reform ("CPR"), proposed *amici curiae* in the above-referenced matters.

CPR is a non-partisan campaign with close to 70 formal members which are nonprofit and community-based organizations from across New York City. CPR is a named community stakeholder in the remedial process in *Floyd et al. v. City of New York*. In such capacity CPR has been engaged in the remedial process since its inception. In support of the Floyd plaintiffs' objections to the Monitor's April 11, 2017 Memorandum to the Court regarding the Approval of Body-Worn Camera Policies, they respectfully request permission to file the attached *amicus curiae* statement.

As Your Honor knows, "[f]ederal courts have discretion to permit participation of amici where such participation will not prejudice any party and may be of assistance to the court." *Strougo v. Scudder, Stevens & Clark, Inc.*, 96 Civ. 2136 (RWS), 1997 U.S. Dist. LEXIS 12243, *7 (S.D.N.Y. Aug. 18, 1997) (citing *Vulcan Society of New York City Fire Dep't, Inc. v. Civil Service Comm'n*, 490 F.2d 387, 391 (2d Cir. 1973)). The CPR respectfully submits the motion for leave to file the accompanying *amicus curiae* statement should be granted.

We thank the Court for its time and attention to this matter.

Very best regards,



David B. Rankin

Attachment:

COMMUNITIES UNITED FOR POLICE REFORM

April 20, 2017

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court Southern District of New York
500 Pearl Street New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York, et al.* 08-CV-1034 (AT)
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT)
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT)
Amicus Curiae Letter in Response to Peter L. Zimroth's Memorandum Regarding
Approval of Policies for NYPD Body-Worn Camera Pilot Program

Dear Judge Torres,

As a named community stakeholder in the remedial process in *Floyd et al v. City of New York*, Communities United for Police Reform ("CPR") respectfully submits this letter as *amicus curiae* in support of the *Floyd* Plaintiffs response¹ and objection to Monitor Peter Zimroth's Memorandum Regarding Approval of Policies for NYPD Body-Worn Camera Pilot Program filed April 11, 2017.² ("Zimroth Memo"). Over forty organizations have signed on to this letter to support the concerns and requests included.

CPR joins the *Floyd* Plaintiffs' filing in agreeing that this court has the obligation and authority to review the recommendations contained in the Zimroth Memo and the underlying New York Police Department ("NYPD") Body-Worn Camera ("BWC") proposed Draft Operations Order Draft 16 ("BWC Proposal"), particularly because the NYPD's BWC program was initiated in response to reforms directed in the *Floyd* remedial order. Additionally, CPR objects to material aspects of the BWC Proposal and requests this Court exercise its oversight power and require NYPD to make significant changes and clarifications to the BWC Proposal prior to its implementation.

About Communities United for Police Reform/Statement of Interest

CPR is a non-partisan campaign with close to 70 formal members, nonprofit and community-based organizations from across New York City³ (including many New Yorkers

¹ *Floyd* ECF No. 546, Letter Memorandum Regarding Approval of Body Worn Camera Policies

² *Floyd* ECF No. 545

³ See Full list of CPR Campaign Members available at <http://changethenypd.org/campaign/intro-members>

most directly impacted by unconstitutional stop-and-frisks and other discriminatory and abusive policing practices), and works with an additional 130+ organizations in various advocacy, education and community organizing efforts. This includes CPR's coordination and leadership of the Right To Know Act coalition of over 200 organizations from across New York City, advocating for police accountability legislation in the New York City Council. CPR emerged out of a multi-sector planning process among grassroots organizations, policy and legal advocates, researchers and others to address the growing crisis of discriminatory and unconstitutional stops and frisks, and related abusive policing practices. CPR's work is structured to ensure that communities directly affected by the NYPD's unlawful and discriminatory policing strategies have meaningful input and leadership in identification and implementation of CPR's strategies.

CPR has been at the forefront of city, state and national policy advocacy around policing and criminal justice reforms since our founding, including coordinating a coalition of over 100 organizations to support the 2013 passage of the Community Safety Act by the New York City Council⁴, over-riding then Mayor Bloomberg's vetoes of the bills. The Community Safety Act created an enforceable ban on discriminatory profiling (including unlawful profiling in stop-and-frisks) by the New York City Police Department, and established an Inspector General of the NYPD. In 2015, CPR coordinated a campaign in partnership with families who have lost loved ones in police-involved incidents and other organizations that resulted in Governor Cuomo enacting an executive order to establish the NYS Attorney General as a special prosecutor for police-involved deaths. A CPR member served on President Obama's Task Force on 21st Century Policing, and multiple CPR members submitted testimony during the Task Force's national town hall meetings.

CPR members have been involved in *Floyd* from even prior to its filing,⁵ CPR was named as a key stakeholder in the *Floyd* Remedial Order⁶ and maintains a significant interest in the outcome of remedies in the *Floyd*, *Davis* and *Ligon* cases.

CPR's members and partners were previously granted *amicus* status by this Court in order to submit briefing in support of community involvement in the remedial process,⁷ and in support of Floyd Plaintiffs opposition to police unions' motion to intervene and overturn the Court's ruling in *Floyd*.⁸ CPR members were amongst the named plaintiffs and witnesses during the *Floyd* trial, and some CPR members were previously granted *amicus* status by this Court in support of class certification for Floyd plaintiffs.⁹ CPR also submitted comments to the NYPD and New York University Policing Project on the development of the BWC Operations Order during the public comments period. *See* Exhibit 1.

⁴ 2013 N.Y.C. Local Law No. 71

⁵ The interests and direct involvement of CPR members in the *Floyd* litigation has a long history over nearly the last two decades. Members of CPR were amongst the named plaintiffs and witnesses in *Floyd*, and CPR members such as the Malcolm X Grassroots Movement and Justice Committee (formerly National Congress for Puerto Rican Rights), were the initial plaintiffs in *Daniels et al v. City of New York*, Case No. 99 Civ. 1696 (S.D.N.Y.), a 1999 lawsuit that preceded *Floyd* after the killing of Amadou Diallo by NYPD in a hail of 41 bullets.

⁶ *Floyd* ECF No. 372

⁷ *Floyd* ECF No. 208

⁸ *Floyd* ECF No. 169

⁹ *Floyd* ECF No. 208

CPR and our members and partners have a critical and legally relevant vantage point to provide this court its objections to the BWC Proposal, as NYC's largest police accountability coalition representing many of the communities most directly impacted by stop-and-frisk abuses and directly impacted by the police practices set forth in the BWC Proposal, and due to its direct involvement in Floyd and related litigations.

As the Court previously stated in the *Floyd* Remedial Order, "The communities most affected by the NYPD's use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms. No amount of legal or policing expertise can replace a community's understanding of the likely practical consequences of reforms in terms of both liberty and safety." *Floyd* ECF No. 372, p 29. This observation by the Court is especially true in relation to the likely negative consequences of the NYPD's flawed BWC Proposal.

Objections

There were three reasons articulated in the *Floyd* Remedial Order for why body-worn camera recordings were useful to evaluating the constitutionality of individual stops: "*First*, they will provide a contemporaneous objective record of stops and frisks...*Second*, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. *Third*, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police, and that the authorities are more likely to believe the police." *Id.*, pp. 26-27.

Unfortunately, the NYPD's BWC Proposal undermines these three reasons, and also fails to advance the priorities of police transparency, accountability, and the necessary involvement of New York's most impacted communities.¹⁰ Major flaws in the BWC Proposal will, if implemented, undermine reform efforts and instead provide mechanisms to protect abusive officers rather than the public. New York City should not deploy BWC unless the significant flaws in this BWC Proposal are addressed and remedied.

Set forth is a summary of CPR's key concerns with the NYPD's BWC Proposal. While not a comprehensive listing of objections,¹¹ the following highlights some of the most egregious aspects of the NYPD BWC Proposal that will undermine police accountability and transparency, and fail to provide an accurate tool to assess continued unconstitutional stop and frisk practices.

¹⁰ As stated in CPR's August 2016 BWC Public Comments to the NYU Policing Project and NYPD (Exhibit A, p 2-3), NYPD reforms, including BWC policies should be designed to: "maximize NYPD transparency and accountability to the public – particularly accountability to communities and individuals who are most likely to be subject to abusive policing and therefore be potential subjects of footage; Eliminate potential for footage to be used to further criminalize communities or to be used for unwarranted surveillance of communities or individuals. As a result, the retention, use and release of BWC footage from the pilot program should be limited to instances that advance NYPD accountability and transparency." CPR's comments then and now should not be construed to suggest that we support the current or future expansion of an NYPD body worn camera program – particularly without meaningful and structured oversight by community and police accountability organizations representing communities most impacted by discriminatory and abusive policing.

¹¹ There are additional important concerns that should be addressed, including the importance of ensuring that BWC footage is owned, managed and controlled by an independent government agency or office outside of the NYPD. As stated in CPR's August 2016 BWC Public Comments to the NYU Policing Project and NYPD (Exhibit A), neither the NYPD nor a corporate entity should play this role.

Officer Discretion to Record and BWC Activation Procedures

The BWC Proposal does not require mandatory activation of recording for the types of common and unconstitutional police interactions that New Yorkers are regularly subjected to and that constituted the experiences of the classes in the *Floyd* litigation. Instead, BWC Proposal Paragraph 5 includes a list of limited instances mandated for recording – and confusing language – that is likely to lead to an under-recording of typical, and yet often abusive, police interactions.

The BWC Proposal, for example, mandates recording during “interactions with persons suspected of criminal activity,” *BWC Proposal Procedure 5(d)*; or during “a search of an individual and/or his/her belongings, except for strip searches,” *BWC Proposal Procedure 5(e)*. From our experience working with organizations that represent thousands of New Yorkers affected by the NYPD’s unlawful stop and frisk practices, we know that many people do **not** feel free to leave during what some officers might identify or misidentify as lower level encounters.

For example, an officer may ask a community member for identification during a Level 1 encounter. *See People v. Debour*, 40 N.Y.2d 210. In such instances, community members never feel free to leave – reasonably so – when an armed officer has asked for, or is in possession of, their identification. In fact, CPR members often express that when they have asked officers “Am I free to leave?” during an encounter they perceive as a stop, the interaction often escalates, with officers using threatening language and/or physical force. If an officer has his hand on his gun, uses threatening language, or tells a person to “get the [fuck] against the fence¹²” – as was the case with *Floyd* Plaintiff Leroy Downs – a reasonable person experiences this as a stop,¹³ regardless of whether an officer believes that this is a Level 1 or Level 2 encounter. In fact, without reasonable suspicion, this is an unconstitutional stop.

Not requiring explicit inclusion of Level 1 (and Level 2 encounters), as is the case in the BWC Proposal, guarantees that the Court will be unable to assess whether unconstitutional stops are continuing due to misunderstandings of the law or intentional misclassification of these encounters as Level 1 encounters.

Moreover, initial police inquiries (Level 1) often rapidly elevate to a Level 2, or even Level 3, interaction if an officer decides to initiate further investigation, search, or arrest. Though BWC Proposal 5(h) mandates recording during “public interactions that escalate and become adversarial,” it is unrealistic to assume officers will activate BWC in the midst of any rapidly evolving interaction. In fact, BWC Proposal Procedure 7 offers a significant loophole: “At no time should proper tactics be compromised to begin a recording.”

Under the NYPD BWC Proposal, a substantial amount of critical and common police interactions, arguably including many instances of unconstitutional stops, police brutality and abusive encounters (that too often escalate quickly), will undoubtedly **not** be recorded. One recent example occurred in Brooklyn where an officer threatened young people who were doing nothing but walking on the sidewalk near a school with a taser, taunting “Do you wanna ride the lightning?”¹⁴ Additionally, the incident resulting in the death of Eric Garner, in which witnesses

¹² *Floyd* ECF No. 373, p. 120

¹³ *Id.*, p. 122

¹⁴ Ross Keith, “NYPD cop pulls out Taser while shoos Brooklyn students from corner, asks ‘Do you wanna ride the lightning?’” NEW YORK DAILY NEWS, April 2, 2017

claimed started as a Level 1 street encounter¹⁵ and rapidly escalated into police using unjustifiable lethal force, would likely not have been recorded under the BWC Proposal at all. At best, police would only have begun recording at the point when force was initially used, which is roughly four and a half minutes after the encounter began. Removing the critical context that would demonstrate the ways in which officers initiated and escalated the encounter runs counter to the very purported purpose of the BWC policy to provide an “objective record of stops and frisks allowing for the review of officer conduct by supervisors and the courts.” *Floyd* ECF No. 372, p 26.

The Office of the Inspector General for the NYPD (“OIG-NYPD”) also recommended that BWC activation be mandatory during all street encounters or investigative contacts, recognizing that “[w]hile the ‘reasonable suspicion’ standard may be useful for legal clarity in oversight and internal investigations, it is potentially problematic for officers’ use on the street when they are subject to a variety of situations.”¹⁶

The Mandatory Recording Policy must be altered to include all police interactions with members of the public – at minimum including all investigatory encounters, explicitly inclusive of Level 1 & Level 2 encounters – subject to delineated exemptions. The current BWC Proposal that mandates recording only for a small selection of incidents undermines the *Floyd* Remedial Order’s goal of providing “a contemporaneous objective record of stops and frisks”¹⁷ and sets a dangerous precedent that will result in further erosion of public trust.

Officer Viewing of BWC Recordings Prior To Official Statements

The BWC Proposal provides officers blanket permission to view BWC recordings prior to their making a statement or submitting a report about such an encounter, including in routine arrests, where an officer is the subject of an investigation, and even in allegations of brutality and misconduct. BWC Proposal Procedures 17(c); 17(d). This incredible grant of access *expands* the potential for abuse – contradicting the purpose of the BWC program.

Many of our members who have experienced unconstitutional stops and/or police brutality, and family members of those unjustly killed by police, too often recount examples of officers lying about abusive incidents. As a CPR member organization wrote in an op-ed in reaction to the BWC Proposal, “[t]he purpose of the cameras is to help ensure officer accountability. Leaving open the possibility of adapting reports or statements to what appears in video undermines that goal.”¹⁸ The risk of officer abuse and taint in abusive or unconstitutional stops, as well as police misconduct and use of force cases, in particular, is overwhelming under Procedure 17 of the BWC Proposal. Independent policy researchers specifically criticized this procedure, writing “[i]n the worst cases, officers could easily fit their statements to how the video makes things look, rather than reporting what they really saw.”¹⁹ Even OIG-NYPD

¹⁵ Contrary to what many media outlets have reported, Eric Garner had just broken up a fight when he was approached by police. Police who approached him did not witness him unlawfully selling cigarettes. Video footage of the incident *available at* <https://www.youtube.com/watch?v=JpGxagKOkv8>

¹⁶ NYC Dept of Investigation, The Office of the Inspector General for the NYPD (OIG-NYPD) “Body Worn Cameras in NYC: An Assessment of NYPD’s Pilot Program and Recommendations to Promote Accountability,” July 2015, p. 40, *available at* <http://www.nyc.gov/html/oignypd/assets/downloads/pdf/nypd-body-camera-report.pdf>

¹⁷ *Floyd* ECF No. 37, pp 26 - 27

¹⁸ Craig Levine, “Bad idea for cops to review body-cam footage,” AM NEW YORK, April 14, 2017

¹⁹ Miranda Bogen & Harlan Yu, “Good cop cameras, bad rules,” NEW YORK DAILY NEWS, April 13, 2017

recommended that officers under investigation or are witnesses in misconduct investigations should not be able to view footage “until after the officer has provided a formal statement.”²⁰ Allowing officers who are the subject of investigations to view footage before making official statements will further erode accountability and trust.

Instead, NYPD policy should prohibit officers from reviewing BWC footage on any device or recording before official reports (including stop reports), written complaint, and/or arrest report has been submitted to the district attorney’s office or relevant agency. Pre-statement review by officers of BWC footage/recordings should be prohibited in all cases – including when an officer is the subject or witness related to internal or external investigations regarding officer misconduct -- until after an official statement has been provided by the officer(s). Following an official statement, officers should be prohibited from review of footage and recordings unless the subject of the footage (or their family or counsel) are also granted access to the footage.

Communities most affected by the NYPD’s discriminatory stop and frisk practice frequently report feeling that the system is stacked against them if they try to protest against police abuses. The BWC Proposal would allow officers to create a story to justify unconstitutional stops and abuse after the fact. Communities affected by unlawful stops will rationally view this policy as another way for the police to avoid accountability.

Obstructions to Public and Civilian-Subjects Access to BWC Recordings

The BWC Proposal contains no system by which members of the public who are the subjects of BWC recordings, including those who are victims of police abuse, may access that footage easily or consistently. Instead, under the “Legal Considerations” section, the NYPD states that “Requests by civilians to view a BWC recording that is not related to a criminal case must be declined and referred to the Legal Bureau’s Document Production Unit” to file a Freedom of Information Law request. When those who experience unconstitutional or abusive stops are not able to easily view their recorded encounters in a timely fashion (particularly when officers are allowed to do so immediately and without restriction), limiting access to recordings directly undermines the *Floyd* Remedial Order’s BWC mandate to “diminish the sense on the part of those who file complaints that it is their word against the police, and that the authorities are more likely to believe the police.” *Floyd* ECF No. 372, pp. 26 – 27.

CPR’s membership includes many grassroots organizations whose members have experienced a spectrum of abusive policing: from those subjected to disrespect, verbal threats, unconstitutional or abusive stops, physical injuries at the hands of police, to family members whose loved ones were unjustifiably killed in police-involved incidents. We hear too often from community members the difficulty in securing records from the NYPD, including through the FOIL process. A number of our legal organization constituents have noted that accessing NYPD records has gotten more onerous under the current administration, with the City and NYPD utilizing new (mis)interpretations of outdated laws such as N.Y. C.R.L. § 50-a(1) as a shield to hide information related to abusive officers from proper FOIL requests. For example, CPR recently filed a lawsuit with the family of Ramarley Graham and the Justice Committee for records that the NYPD has refused to release for over five years since 18 year old Ramarley was

²⁰ *Supra* Note 15 p. 43

killed.²¹ In addition, the NYPD routinely denies many FOIL requests and fails to follow court-ordered mandates for electronic FOIL responses, causing unnecessary burdens in some cases.²²

Forcing survivors or family members to go through a lengthy FOIL process without a guarantee that they will be able to view their own footage should not be public policy. It is obstructionist and also unnecessary, given that “[l]eading departments around the country — from Washington to Las Vegas — have established simple, streamlined processes that allow recorded individuals to view footage at district stations.”²³

Individuals who are subjects of BWC recordings should be able to easily access a copy of that footage within days of a request. Moreover, the BWC Proposal should include clear and transparent guidelines governing public access to BWC recordings (including a public timeline for NYPD response) and relevant redaction policies to respect the privacy rights of individuals.

Gaps in Disciplinary and Supervisory Process

Despite recommendations by the NYPD Inspector General’s office and several organizations, including CPR, the BWC Proposal fails to indicate disciplinary consequences officers may face for failing to comply with any part of the BWC policy.²⁴

OIG-NYPD, two years ago, specifically highlighted the importance of a future BWC policy including clear disciplinary guidance:

It “should emphasize that it is a violation of Department policy to willfully or negligently fail to record any portion of an incident absent an authorized exception, and that such a failure may result in disciplinary action. To enforce the policy once formalized, NYPD should identify measures that might be taken should the policy be violated. Describing potential consequences for violations increases accountability and promotes greater transparency and fairness, for officers and the public alike.”²⁵

Indeed, there have been numerous documented instances of police departments and individual officers across the country having altered or deleted footage, consistently not recording police brutality incidents, and engaged in other violations of their departments’ BWC or dashcam policies, including failing to hold officers responsible for violating policies.²⁶

²¹ Rick Rojas, “Suit Challenges Secrecy on New York Police Disciplinary Records” THE NEW YORK TIMES, December 6, 2016

²² The Village Voice Staff, “FOILed Again: Freedom of Information Laws Are Just That — Laws. So Why Does the NYPD Get to Keep Breaking Them?” The Village Voice, March 15, 2016.

²³ *Supra* Note 18

²⁴ *See, e.g.* CPR Public Comments August 2016 (attached as Exhibit A)

²⁵ *Supra* Note 15, p. 41

²⁶ *See e.g.* Radley Balko, “80 percent of Chicago PD dash-cam videos are missing audio due to ‘officer error’ or ‘intentional destruction’” WASHINGTON POST, January 29, 2016; Joel Rubin, “LAPD officers tampered with in-car recording equipment, records show” LOS ANGELES TIMES, APRIL 7, 2014 (revealing that antennas had been removed from more than half of the in-car video cameras for one of the patrol areas, and in spite of this, no individual officers were held accountable); Kelly Weill, “Did Albuquerque Police Delete Damning Body Camera Evidence?” THE

The historical lack of disciplinary actions taken by NYPD against abusive officers, and lack of transparency around disciplinary processes, have long been a specific point of emotional trauma and protest for New York's most impacted communities. NYPD BWC policy should therefore err on the side of being proactive and transparent regarding potential discipline or otherwise risk undermining transparency and further damaging police-community relations.

Community Involvement and Evaluation

Though NYPD elicited public comment on theoretical policy positions that were under consideration in the summer of 2016, no one in the public saw the actual NYPD BWC Proposal until last week, and the NYPD did not plan for any significant period between the announcement of the proposed policy and the rollout of the BWC pilot for the public to provide feedback. This does not provide sufficient time for community response. Unfortunately, the NYPD's flawed BWC Proposal and its plan to rollout the first cameras later this month without public input – particularly from those most impacted by abusive policing and most likely to be subjected to recording – demonstrates a disregard for crucial community involvement in policies that directly impact specific communities.

At minimum, as a named stakeholder in *Floyd*, CPR and our members' feedback should be received and considered before the BWC program is rolled out publicly. CPR submitted public comments to the NYPD and NYU Policing Project that raised this very issue last year:

There should be an opportunity for structured and meaningful community input *after* the NYU Policing Project has submitted its report to the NYPD and released it publicly, and *before* the NYPD finalizes policies for the pilot program. There should be public consultation, as well as consultation with law enforcement and policy advocates, on the purpose, nature, scope and policies governing BWC programs *before* BWC are deployed in the NYPD BWC Pilot II." *See Exhibit A (emphasis added).*

The NYPD should not launch the BWC pilot without addressing the concerns raised by the *Floyd* plaintiffs and CPR, and revising the NYPD BWC Proposal accordingly.

In addition, CPR requests that the Court order a formal role for CPR and directly affected New Yorkers in the evaluation of the NYPD BWC pilot. Should the NYPD BWC Proposal move forward with the significant flaws that currently exist, it is imperative that directly affected community members have a structured and prioritized role to participate in the formal evaluation of the 1-year pilot, particularly related to the question raised in the *Floyd* remedial order of "whether the program should be terminated or expanded." *Floyd* ECF No. 373, p. 27. Continuation and expansion of the BWC program should not be considered a given, as the NYPD and Mayor have indicated in public statements.²⁷ Instead, as this Court specifically

DAILY BEAST, November 20, 2016, *available at* <http://www.thedailybeast.com/articles/2016/11/20/did-albuquerque-police-delete-damning-body-camera-evidence.html>

²⁷ *See e.g.* "Mayor de Blasio and Patrolmen's Benevolent Association Reach Tentative Five-Year Agreement, Bringing Entire Uniformed Union Workforce Under Contract" Office of the Mayor, January 31, 2017 (announcing that "All patrol officers will be outfitted with cameras by the end of 2019") *available at* <http://www1.nyc.gov/office-of-the-mayor/news/059-17/mayor-de-blasio-patrolmen-s-benevolent-association-reach-tentative-five-year-agreement-#/0>; Colleen Long, "NYPD Plans to Put Body Cameras on All 23,000 Patrol Officers by 2019" NBC

indicated, "At the end of the year, the Monitor will work with the parties to determine whether the benefits of the cameras outweigh their financial, administrative and other costs, and whether the program should be terminated or expanded" *Floyd* ECF No. 372, p. 26. CPR and our directly affected members and partners should be part of this formal evaluation process.

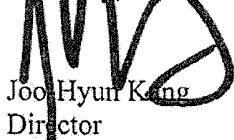
Conclusion

The NYPD BWC Proposal, if implemented as is, will systematically prioritize the interests of abusive officers over the interests of public safety and well-being. Rather than serve as a tool for advancing NYPD transparency and accountability, the NYPD's BWC program and expected expansion will be a tool for further criminalization and surveillance of communities of color – including those most impacted by the NYPD's decades-long stop-and-frisk abuses that the *Floyd*, *Davis* and *Ligon* litigation aim to address.

Having presented the serious concerns of impacted New Yorkers to the BWC Proposal, CPR respectfully requests that the court 1) reject the sections of the NYPD BWC Proposal CPR has objected to in this letter; 2) temporarily stay the court-ordered BWC pilot until the relevant provisions of the BWC Proposal are meaningfully addressed; and 3) order the inclusion of CPR in the formal evaluation process of the court-ordered BWC pilot program.

CPR stands ready to continue working with all stakeholders on policy that promotes safety and constitutional policing practices, respects the dignity and rights of New Yorkers, and promotes police transparency and accountability.

Sincerely,



Joo Hyun Kang
Director

Communities United for Police Reform (CPR)

The following CPR members and partners are signing on below in support of the objections and requests made in this document

5 Boro Defenders
Arab American Association of New York
Association of Legal Aid Attorneys/UAW Local 2325
Astraea Lesbian Foundation for Justice
Audre Lorde Project
Brooklyn Movement Center
Brooklyn NAACP
Brotherhood/SisterSol
BYP100
Center for Law and Social Justice at Medgar Evers College, City University of New York
Center for Popular Democracy

NEW YORK, February 11, 2017 (quoting NYPD Commissioner James O'Neill, "In the long run [BWC are] going to have a very positive effect on how we go about our business").

ColorOfChange
Community Voices Heard
Churches United for Fair Housing
Defending Rights & Dissent
DRUM
Faith In New York
FIERCE
Girls for Gender Equity
Global Action Project
Housing Works
Immigrant Defense Project
Jews for Racial & Economic Justice
Justice Committee
Justice League NYC
JustLeadershipUSA
Katal Center for Health, Equity & Justice
Make the Road New York
Malcolm X Grassroots Movement
MomsRising
Muslim Community Network
New York Communities for Change
NYC Gay & Lesbian Anti-Violence Project
Picture The Homeless
Public Science Project
Rockaway Youth Task Force
Showing Up for Racial Justice - NYC
South Asian Fund for Education, Scholarship and Training
T'ruah: The Rabbinic Call for Human Rights
Urban Youth Collaborative
UPROSE
VOCAL-NY

EXHIBIT 1

COMMUNITIES UNITED FOR POLICE REFORM

SUBMISSION OF COMMENTS To NYPD & NYU Policing Project

Re NYPD Body Worn Camera (BWC) Pilot Program II & Policies August 7, 2016

About Communities United for Police Reform (CPR)

Communities United for Police Reform (CPR) is a multi-strategy and multi-sector campaign to end discriminatory and abusive policing in New York. We aim to build a lasting movement that promotes public safety and policing practices based on respect and accountability to communities – not discriminatory targeting and harassment. The members, supporters and partners in this campaign come from all 5 boroughs, from all walks of life and include many of those most unfairly targeted by the NYPD.

CPR publicly launched in February 2012, bringing together grassroots community organizing groups, policy organizations, legal organizations, research projects and others – all united to develop and implement a unified campaign to end discriminatory and abusive NYPD practices. CPR is rooted in an historical understanding and experience that truly addressing abusive NYPD policies and practices requires the prioritization of the perspectives and leadership of those most impacted by abusive policing, as well as long-term coordination of major efforts, across and within sectors throughout NYC.

Context for comments

The systemic lack of accountability for police abuse of authority, excessive force and unjustified killings of civilians is now widely recognized as a crisis in New York City and across the nation. While some have pointed to the possibility that body worn cameras might increase police accountability, we understand this to be conditional on key aspects of a body worn camera program – specifically, whether the structure, policies and practices related to the program expressly serve the primary goal of police accountability and transparency. In fact, there has been increased scrutiny and attention to the fact that body worn camera programs of most departments across the country (including that of the NYPD's draft policies) fail to centralize concerns related to accountability and transparency¹.

There are also serious concerns that should be discussed publicly regarding the cost of body worn cameras and related technology, and whether such costs are justified when compared to budgets for social goods, public infrastructure and social services.

¹ See Scientific American, "Police Body Camera Use: Not a Pretty Picture", August 4, 2016

These comments are submitted regarding the NYPD's upcoming body worn camera pilot program that was mandated as part of the Floyd federal stop-and-frisk litigation² and should not be read to suggest that we support the current or any future potential expansion or extension of an NYPD body worn camera program – particularly without meaningful and structured oversight by community and police accountability organizations representing communities most impacted by discriminatory and abusive policing.

Communities most impacted by NYPD discriminatory and abusive policing such as stop-and-frisk abuses and other “broken windows” policing abuses include low-income communities of color, particularly those who are: youth; immigrants; people who are homeless; public housing residents; women; LGBT and gender non-conforming people; perceived to be Muslim; and people with cognitive or psychiatric disabilities. The perspectives of these communities must be considered in any meaningful evaluation of the pilot program, and should be centered in the development/finalization of any policies.

Comments on the NYPD Draft Policy for Body Worn Cameras (BWC)

It is impossible to meaningfully discuss policies for the upcoming court-ordered BWC policy without contextualizing and commenting on the prospect of an overall NYPD BWC program. The NYPD's Pilot Police Body-Worn Camera (BWC) program should be used to reduce discriminatory and abusive NYPD practices and the constitutional violations found by the Court in *Floyd, Davis and Ligon* – particularly since the BWC pilot program was initiated as a result of the Floyd court order.

The following relate to the overall program and draft policy, and our strong recommendations (& objections) to what is currently planned:

1. Principles that should guide the NYPD's BWC Pilot

NYPD's policies and practice related to the use of BWCs should promote implementation that will:

- Maximize NYPD transparency and accountability to the public – particularly

² Communities United for Police Reform (CPR) was named as a key stakeholder in the Floyd court ruling and maintain a significant interest in the outcome of remedies in the Floyd, Davis and Ligon cases. CPR's members and partners submitted an amicus brief as part of the Floyd litigation, and CPR members were also amongst the named plaintiffs and witnesses in Floyd. In fact, *Floyd v. NYC*, litigated by the Center for Constitutional Rights, was possible because of the work of activists/organizations who had worked with CCR to bring the *Daniels v NYC* lawsuit (the pre-cursor to Floyd). CPR members such as the Justice Committee (formerly known as the National Congress for Puerto Rican Rights' Justice Committee) and Malcolm X Grassroots Movement served as the initial plaintiffs for Daniels after the 1999 killing of Amadou Diallo in a hail of 41 bullets. MXGM members and other CPR members were amongst the named plaintiffs and witnesses in the Floyd litigation and trial.

accountability to communities and individuals who are most likely to be subject to abusive policing and therefore be potential subjects of footage.

- Eliminate potential for footage to be used to further criminalize communities or to be used for unwarranted surveillance of communities or individuals. As a result, the retention, use and release of BWC footage from the pilot program should be limited to instances that advance NYPD accountability and transparency.

Consistent with the Court's remedial opinion and order in Floyd, the primary focus of the NYPD BWC pilot program should be to increase transparency and accountability during "stop and frisk" and other police interactions.

In order to ensure that the program achieves the goal of ensuring that police interactions comply with the mandates of the Constitution, BWC should not serve as or be perceived to be an additional tool of surveillance or evidence gathering for criminal prosecutions. While the experience of Eric Garner and countless other New Yorkers whose abuse at the hands of police was caught on videotape makes it clear that the presence of video footage or BWCs will not guarantee improved outcomes during law enforcement interactions, that should be their primary purpose.

2. Ownership, management and control of footage from police body-worn cameras

A third party government agency should be responsible for ownership, management and control of footage – not the NYPD or a corporate entity.

3. Structured and meaningful community input prior to finalizing the policies – There should be an opportunity for structured and meaningful community input after the NYU Policing Project has submitted its report to the NYPD and released it publicly, and before the NYPD finalizes policies for the pilot program. There should be public consultation, as well as consultation with law enforcement and policy advocates, on the purpose, nature, scope and policies governing BWC programs *before* BWC are deployed in the NYPD BWC Pilot II.

4. Full transparency related to the budget for the pilot BWC program – including equipment/software cost, storage, personnel to manage the footage, training, etc. These costs must be made transparent and public to enable the public to determine whether the financial costs of the BWC program are justified, when compared to critical public infrastructure, goods and services that are under-resourced.

The BWC pilot program should not divert resources away from programs meeting the needs of communities directly impacted by stop-and-frisk and other policing abuses.

5. There should be a reliable, evidence-based **evaluation** – that is independent of the

NYPD and overseen by an agency other than the NYPD - of the effectiveness of the BWC pilot program in capturing and addressing police misconduct **by members of the communities subject to surveillance, advocates**, incorporating feedback from communities directly impacted by discriminatory policing practices.³ If the evaluation does not prove the program to be effective in reducing civil rights violations it should be discontinued.

6. Full transparency re deployment, prior to deployment - The Commissioner should make a public announcement regarding which officers, precincts, or squads will be assigned BWCs and under what circumstances.⁴

Officers at precincts and central booking facilities should be amongst those who are outfitted with body worn cameras in the pilot program, in order to document and prevent abuses.

7. BWC utilized by the NYPD should have no infrared/x-ray capabilities, biometric capabilities or automated analytics capacities.
8. There should be a clear and public process to file complaints around mis-use of BWC. This complaint process should include whistleblower protections, and enable anonymous complaints.
9. NYPD written BWC policy should clearly state the consequences for officers who fail to comply with any part of the BWC policy, and there should be disciplinary consequences.
10. Retention of footage – Footage should not be retained indefinitely. Footage with no evidentiary value should be deleted within less than 3 months – however this should be overseen and managed by an agency that is independent of the NYPD. Footage with evidentiary value should be kept no longer than required for complaints and claims to be filed and for video to be turned over to those filing complaints and claims (including litigation, CCRB complaints, Commission on Human Rights complaints, etc.).
11. Access to footage
 - NYPD policy should prohibit officers from reviewing BWC footage on any device or recording, before a written complaint and/or arrest report has been submitted to

³ PERF. PERF suggests that statistics be maintained on the use and outcomes of BWC use in criminal prosecutions and internal affairs and periodically released to the public.

⁴ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, D.C.: Office of Community Oriented Policing Services (hereinafter "PERF").

the district attorney's office or relevant outside office independent of the NYPD. Pre-statement review by officers of BWC footage/recordings should be prohibited in all cases – including when an officer is the subject or witness related to internal or external investigations regarding officer misconduct -- until after an official statement has been provided by the officer(s). Following an official statement, officers should be prohibited from review of footage unless the subject of the footage (or their family or counsel) are granted access to the footage.

12. Officer discretion regarding when cameras are turned on. There should not be officer discretion or ability of individual officers to turn BWC on/off while they are on duty – with the exception of if a civilian who is part of being recorded requests that it be turned off. In such cases, the civilian's request should be recorded and if the civilian changes their mind, the camera should be immediately turned on.
13. Civilians should always be informed that they are being recorded. This should happen immediately.
14. Officers should not be permitted to use privately-owned BWC.⁵

Questions related to this public comment submission can be sent to justice@changethenypd.org. Thank you in advance for consideration of this submission.

⁵ PERF.