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A Means to an End: A Way To Curb Bias-Based Policing in New York City

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A MEANS TO AN END: A WAY TO CURB BIAS-BASED POLICING IN NEW YORK CITY

Garanique Williams†

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† *Cardozo Law Review* (Vol. 43), B.A. Cornell University (2017). Garanique is proud of her intersectional approach to the law and is excited to be serving as a Krantz Fellow for DLA Piper. She remains appreciative to Professor David Rudenstine for his guidance as an advisor. She would also like to thank her loving partner who supported her throughout the writing process.

INTRODUCTION

Conversations about destructive policing, violence, and questionable law enforcement practices have been a focus in social media in recent years.¹ This may be for good reason since in 2020, Eyewitness News released evidence that racial disparities have grown larger in New York City over the past five years.² Take Earl Sampson (a Miami Gardens resident):

[E]arl Sampson, . . . has been stopped and questioned 258 times in four years, searched more than 100 times, and arrested and jailed 56 times . . . He has been arrested, sometimes several times in one week, for loitering or trespassing at his workplace. And the cops know who he is and that he works there, because it is often the same cops who conduct the arrests—over and over again.³

To help explain this bizarre, predatory behavior, one can look to the observations of academics. For example, intersectionality—a term developed by law professor and activist, Ms. Kimberlé Crenshaw, to explain how oppression can be amplified for a person with multiple marginalizable characteristics⁴—is a reason police continue to disproportionately target and harass people of color.⁵ In simple terms, intersectionality may play a huge role in racial profiling, and in the lives of similarly situated individuals like Sampson.

Racial profiling is defined as “[t]he targeting of individuals as suspicious based on a set of characteristics they believe to be associated with crime, rather than credible evidence or information linking a specific type of person to a specific criminal incident”⁶ In addition to

¹ Sean Illing, *Why the Policing Problem Isn't About "a Few Bad Apples,"* VOX (June 6, 2020, 8:01 AM), <https://www.vox.com/identities/2020/6/2/21276799/george-floyd-protest-criminal-justice-paul-butler> [https://perma.cc/8P5B-FYWL].

² Dan Krauth, *Racial Disparities in Policing Have Increased in New York City, Data Shows,* ABC7 (Sept. 8, 2020), <http://www.abc7ny.com/racial-profiling-disparities-in-policing-black-arrests/6414274> [https://perma.cc/XYD6-D4XJ].

³ Sarah Goodyear, *A Horrifying Story of 'Stop and Frisk' Taken to Its Logical Extreme,* BLOOMBERG (Nov. 22, 2013, 11:14 AM), <http://www.bloomberg.com/news/articles/2013-11-22/a-horrifying-story-of-stop-and-frisk-taken-to-its-logical-extreme> [https://perma.cc/32PF-NUXU].

⁴ Jane Coaston, *The Intersectionality Wars,* VOX (May 28, 2019, 9:09 AM), <http://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination> [https://perma.cc/B8RW-4DR8].

⁵ *Hired, Fired, or Stopped by Police: The Discriminatory Stew of Intersectionality and Stereotypes,* APS (Jan. 6, 2021), <http://www.psychologicalscience.org/observer/intersectional-stereotypes> [https://perma.cc/X44H-B5W9].

⁶ NAACP, *BORN SUSPECT: STOP-AND-FRISK ABUSES & THE CONTINUED FIGHT TO END RACIAL PROFILING IN AMERICA* 3 (2014).

Sampson, another example of this behavior was provided by New York's own NYPD in 2019, when NYPD officers filed suit against their supervisor for pressuring them to arrest more Black and "Hispanic" people.⁷ Other examples include the fact that drug sales are similar across racial groups, but communities of color bear the brunt of policing because individuals in those communities are more likely to be sentenced to serve longer prison or jail time.⁸ In fact, one news article suggests that Black people are "eight times more likely to be stopped and frisked [than] white people since 2015."⁹ Despite a sharp decline in some of the highest numbers of stop-and-frisks New York City has witnessed since Mayor Bloomberg left office at the end of 2013,¹⁰ racial disparities in who is targeted during those frisks reminds us that policing is not solely a numbers game.¹¹ Race, sex, and other social identifiers can have a real impact on the way law enforcement engages with the community. Thus, it is prudent to remember those factors as this conversation switches its focus to another highly policed group—which often includes many of the same vulnerable racial groups mentioned above—the residents of the New York City Housing Authority (NYCHA).

Housing status is often a neglected, yet important, protected category that should be considered in the conversations about the impact race, class, socioeconomic status, and other factors, have on policing. NYCHA, also known as project housing or the "projects," is a city-funded housing program that creates low-income and affordable housing options for over 350,000 New Yorkers in various boroughs, in addition

⁷ Joseph Goldstein & Ashley Southall, 'I Got Tired of Hunting Black and Hispanic People', N.Y. TIMES (Dec. 6, 2019), <http://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html> (last visited May 5, 2023) ("The commander, Constantin Tsachas, was in charge of more than 100 officers who patrolled a swath of the subway system in Brooklyn, his first major command. Since then, he has been promoted to the second-in-command of policing the subway system throughout Brooklyn. Along the way, more than half a dozen subordinates claim, he gave them explicit directives about whom to arrest based on race.").

⁸ MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 99 (2010).

⁹ See Krauth, *supra* note 2 (explaining that even though the stop-and-frisk rates have decreased, Black people are still extremely vulnerable to being stopped by the police, and once they are stopped, they are more likely to be frisked).

¹⁰ See NAACP, *supra* note 6, at 10–11 ("The Bloomberg administration and Police Commissioner Ray Kelly increased the quotas of stop, question, and frisks, falsely believing it would help reduce violence in targeted high-crime neighborhoods. The practice entailed officers stopping, questioning, and searching hundreds of thousands of pedestrians in hopes of finding weapons or other illegal contraband. In practice, stop-and-frisk tactics impacted an overwhelmingly large number of young people of color and other minority groups in New York City.").

¹¹ *Stop-and-Frisk in the de Blasio Era*, NYCLU (Mar. 14, 2019), <http://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019> [<https://perma.cc/KP9A-FJ8M>] ("Between 2014 and 2017, young black and Latino males between the ages of 14 and 24 account[ed] for only five percent of the city's population, compared with 38 percent of reported stops. Young black and Latino males were innocent 80 percent of the time.").

to providing Section 8 and PACT/RAD housing.¹² Currently, there are over 335 housing developments spread across New York,¹³ and NYCHA houses about one in every fifteen New Yorkers.¹⁴ Most of these New Yorkers are poor Black and Brown families.¹⁵ Unfortunately, NYCHA residents and their guests are frequently subjected to “voluntary” stops, frisks, and searches in their own “hallways, stairwells, courtyards, and other common spaces . . .”¹⁶ For example, in Buffalo, New York, a complaint was filed against the Buffalo Police Department Housing Unit for conducting trespass “sweeps” and setting up unconstitutional checkpoints that resulted in unconstitutional arrests of citizens.¹⁷ It should also be noted that the Buffalo Police Housing Unit issues about one-third of the entire department’s traffic tickets.¹⁸

The hysteria around policing these “projects” comes partially from failed attempts by major cities to develop safety and accountability programs for the residents of public housing.¹⁹ In the 1990s, after public housing authorities became more aggressive in their attempt to maintain order, President Clinton ordered the Department of Housing and Urban Development and the Justice Department to create a better way to maintain order.²⁰ Currently, the remnants of that attempt in New York is “hot spot policing,” where officers surveil and spend more time in small geographic areas like specific buildings or addresses of poor, marginalized groups.²¹ This work is done by a variety of different NYPD officers, but this note will focus on the impact of the officers in Police Service Areas or PSAs.²²

Police Service Areas function similarly to precincts, serving as a localized space for NYPD officers to carry out their duties, but with the

¹² *About NYCHA*, N.Y.C. HOUS. AUTH., <http://www.nyc.gov/site/nycha/about/about-nycha.page> [<https://perma.cc/F72U-RSVA>].

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE W. RESV. L. REV. 669, 673 (2019).

¹⁶ *Id.* at 671.

¹⁷ *Id.* at 686.

¹⁸ *Id.*

¹⁹ *Id.* at 681–82.

²⁰ *Id.* at 682.

²¹ *Id.* at 688.

²² *Id.* at 695 (“[A]ll manner of law enforcement personnel patrol public and patrolled housing, e.g., special departments, units, and regular patrols, including those tasked with enforcing hot spots strategies.”).

specific focus of surveilling NYCHA's public housing developments.²³ There are officially nine PSAs, but some PSAs have accompanying satellite offices.²⁴ The specific locations, whether inside or outside of a residential NYCHA building, varies by location.²⁵ For example, PSA 1, located in Brooklyn, New York, has two locations, one located outside of NYCHA property, and a satellite office located inside of a NYCHA building.²⁶ PSA 3, also located in Brooklyn, follows the same pattern.²⁷ In the Bronx, both PSA 8 branches, the main and satellite locations, are located within NYCHA buildings.²⁸ Queens mirrors the Bronx in that all three PSA offices are located on NYCHA development property.²⁹ Manhattan contains PSA 4, 5, and 6, none of which have accompanying satellite locations.³⁰ Finally, Staten Island is home to one PSA location which is located on NYCHA property.³¹ Focusing on the housing status of many poor Black and Brown New Yorkers, in the context of the intersections of their other identities, creates an opportunity for a deeper level of analysis of targeted policing.

In this Note, I will argue that since the NYPD has found alternate, less invasive means of accomplishing their objectives, NYPD officers who operate in PSAs, that are located on NYCHA property, are in violation of New York City Administrative Code Section 14-151 for targeting NYCHA residents, based on housing status, and therefore should be removed. Part I of this Note begins with some background

²³ *Housing*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/bureaus/transit-housing/housing.page> [<https://perma.cc/NJ9C-KZ5R>].

²⁴ *NYCHA PSA (Police Service Area)*, NYC: NYC OPEN DATA, <https://data.cityofnewyork.us/Housing-Development/NYCHA-PSA-Police-Service-Areas-/72wx-vdjr> [<https://perma.cc/8KU4-RUMD>] (showing the location of various PSAs and PSA satellite offices throughout the city).

²⁵ Freedom of Information Law Request, N.Y. City Hous. Authority FOIL Log No. 1113556 (Feb. 8, 2022) (on file with author).

²⁶ *Id.* (PSA 1 is split into two branches, with the first branch appearing at 2860 West 23rd Street, Brooklyn, N.Y. 11224, and the second "located in Red Hook West Development (BLDG [building] #1.")).

²⁷ *Id.* (PSA 3 is also split into two branches, with the first branch appearing at 29 Central Ave, Brooklyn, N.Y. 11206, and the second "located in Whitman Development (BLDG [building] #15.")).

²⁸ *Id.* (PSA 8 maintains both of its locations inside of NYCHA buildings. One building is located in the Throggs Neck Development, 2794 Randall Ave, Bronx, N.Y. 10465, Building 19, while the satellite office sits nestled in the Edenwald Development, 1165 E 229th St, Bronx, N.Y. 10466, Building 17.).

²⁹ *Id.* (PSA 9 has three separate locations—one main branch and two satellite locations. All three of the branches are located in NYCHA buildings. The addresses are: Building #21 at 155-09 Jewel Avenue, Flushing, N.Y. 11367 (Pomonok Development); Building #8 at 34-41 21st Street, Long Island City, N.Y., 11106 (Ravenswood Development); and Building #5 at 349 Beach 54th St, Queens, N.Y. 11692 (Oceanside Development)).

³⁰ *Id.* (showing the varying addresses of the Manhattan PSAs).

³¹ *Id.* (showing the only PSA in Staten Island is located on NYCHA property at 154 Lamport Blvd, Staten Island, N.Y. 10305 in building #1 of the South Beach Development).

information, explaining the history and development of NYCHA housing and NYC's PSAs. Next, the problem is stated and supported using stop-and-frisk data from 2019 and 2020. Finally, Part I will discuss the protections offered to vulnerable populations, using Section 14-151 as a guide and contraposed against the United States Constitution and the New York State Constitution. Part II states why Section 14-151 of the New York City Administrative Code is the best way to frame a successful claim for bias-based profiling and suggests why some PSAs are currently in violation of Section 14-151. Part III proposes the removal of all PSAs from all NYCHA properties because of the unlikely success of a less invasive injunction and the heightened vulnerability of NYCHA residents due to their housing and economic status.

I. BACKGROUND

A. *Explaining the New York City Housing Authority (NYCHA)*

After the Civil War and New York's expansion, terrible living conditions for the poor within New York City started to bring about social disarray and disorder.³² With that, a new tenant's rights organization called the Citizen's Association of New York (CANY) was formed and tasked with improving the "sanitary conditions" of New York City.³³ CANY promptly created a subcommittee to gather specific data about the living conditions and the committee found that New York City (not including Brooklyn) had a population of 700,000.³⁴ Of that 700,000, 480,368 people were living in substandard conditions within 15,309 tenement houses—a building or space shared by more than three families living independently.³⁵ This revelation called for a change and eventually led to the passage of the Tenement Housing Act of 1867.³⁶ Unfortunately, the changes required by the act—like the insertion of modern day safety measures including fire escapes and the broadening of air shafts—provided minor relief for most poor residents.³⁷ As poor residents continued to suffer in terrible living conditions, others like Jacob Riis, an

³² RICHARD PLUNZ, A HISTORY OF HOUSING IN NEW YORK CITY 21 (Colum. Univ. Press rev. ed. 2016) (1990).

³³ *Id.*

³⁴ *Id.* at 21–22.

³⁵ *Id.* at 22.

³⁶ *Id.*

³⁷ Kyle Giller, *The Fight for NYCHA: Rad and the Erosion of Public Housing in New York*, 23 CUNY L. REV. 283, 289 (2020).

author whose book exposed the horrendous living conditions of some New Yorkers, continued to shed light on tenement housing which finally persuaded the city to meaningfully act.³⁸ The passage of the Tenement Housing Act of 1901, which is the foundation for modern building codes, came afterward.³⁹ Around this same time, philanthropists in the city started to craft plans to build “model tenements” with plenty of light, air, running water, and a full bathroom.⁴⁰ Working-class families could use these improved tenements as a stepping-stone on their way to single-family home ownership.⁴¹ The question of which families were deserving was answered by employing a strict set of rules, many of which originated from “upper-class notions of morality,” and are the foundation of the NYCHA rules governing today.⁴² Skipping forward about thirty years, NYCHA was officially created in 1934 through a bill which created all housing authorities.⁴³ In the period from the 1930s to the 1960s, NYCHA housing was predominantly populated by white, “upwardly mobile” working-class families.⁴⁴ However, the late 1960s through the 1990s was dominated by white flight from NYCHA housing when efforts by civil rights activists prevailed and racially diverse tenants were able to move in.⁴⁵ NYCHA, from the 1990s through the present, has seen severe budget cuts and a complete reversal in the racial composition of the families living within its borders—poor Black and Brown families now overwhelmingly inhabit these spaces.⁴⁶

B. *The Rise of Police Service Areas (PSAs)*

In an attempt to prevent crime and not solely respond to a bad act, the Housing Authority announced the creation of the Property Protection

³⁸ *Id.* at 290 (noting that Riis’ book published pictures of the gruesome living conditions alongside his written observations of residents’ daily lives); JACOB A. RIIS, HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENANTS OF NEW YORK 18 (1890); *id.* at 47 (“All nine lived in two rooms, one about ten feet square that served as parlor, bedroom, and eating-room, the other small hall-room made into a kitchen. . . . That day the mother had thrown herself out of the window, and was carried up from the street dead.”).

³⁹ Giller, *supra* note 37, at 290.

⁴⁰ *Id.*

⁴¹ *Id.* at 291.

⁴² *Id.*

⁴³ *Id.* at 295.

⁴⁴ *Id.* at 293.

⁴⁵ *Id.*; see also FRITZ UMBACH, THE LAST NEIGHBORHOOD COPS: THE RISE AND FALL OF COMMUNITY POLICING IN NEW YORK PUBLIC HOUSING 36 (2011) (explaining that NYCHA housing was often the only available housing options, outside of Black areas, for Black families. By 1960, more than 14,000 whites had already moved out of the NYCHA developments).

⁴⁶ Giller, *supra* note 37, at 293–94.

and Security Division (PPSD) in 1952.⁴⁷ The officers would only be assigned to “problem areas” while the remaining areas would be covered by other guard services.⁴⁸ At the time, NYCHA’s small budget made it reluctant to spend exorbitant amounts on security efforts, so the officers were sent to support building supervisors in the supervisor’s efforts to ensure safety.⁴⁹ By 1958, the officers wanted to have more autonomy over their policing and began to rebuke manager supervision.⁵⁰ Later that year, the Fort Greene Police Precinct experiment was enacted where officers were given more autonomy to “get tough on crime” and a precinct was created for the use of NYCHA patrol officers.⁵¹ At the end of the experiment, the force gained significant autonomy where the patrol officers’ services would no longer be rated by building managers but the chain in command structure, which was organized around specific NYCHA projects, would remain intact.⁵² Unfortunately, the experiment had also brought about worry that the officers were not protecting, but rather harassing residents.⁵³ The officers had taken over the issuance of NYCHA’s fine system, which NYCHA adopted to hold residents accountable for breaking rules, and the charges were added to the next month’s rent.⁵⁴ These fines were used to curb any residential behavior not thought to add to “decent project living.”⁵⁵ The fine amounts were discretionary and a lack of uniformity soon plagued the projects where the same offense would invoke a fine ranging from fifty cents to fifteen dollars.⁵⁶ Unsurprisingly, amidst white flight and desegregation of the housing projects, the 1960s and 1970s saw the patrol officers using their broad discretion to target Black, Brown, and poor white people living in

⁴⁷ UMBACH, *supra* note 45, at 44.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.* at 29–30 (“Chasing criminals, in contrast, constituted ‘a small part of the job.’ The chief housing officer . . . expected his officers to make arrests only ‘occasionally.’”).

⁵⁰ *Id.* at 30 (“Daily supervision by civilians did not sit well with the officers who were eager to establish the new force’s credibility . . . [T]hey began objecting that ‘nearly everybody’ in NYCHA’s management gave ‘them orders and instructions.’”).

⁵¹ *Id.* at 39–41.

⁵² *Id.* at 41.

⁵³ *Id.* at 39 (“[T]he ‘manner’ of the patrolmen had changed . . . She [the manager of one of the NYCHA projects surveilled by the Fort Greene Plan] complained that the . . . ‘get tough’ policy was ‘being over done.’”).

⁵⁴ *Id.* at 52–53 (describing how officers issued fines for breaking Authority rules like “shaking mops out of windows to shattering lightbulbs in hallways . . . By 1959, HAPD officers were reporting an average of two hundred breaches of Authority rules a month in the seventy projects they covered.”).

⁵⁵ *Id.* at 53.

⁵⁶ *Id.*

the complexes.⁵⁷ This behavior signaled to scholars, and the courts, that there had been a shift in policing goals from general order maintenance to a more sinister, discretionary goal—targeted policing.⁵⁸ These faults of the past cling to the present state of policing today.

C. *The Problem with PSAs*

The PSA officers are stopping and frisking New Yorkers at an alarming rate. Every year, the City releases compiled information about the stop-and-frisks conducted around New York City by a variety of officers, including general patrol officers, PSA officers, and traffic officers.⁵⁹ Under the New York City Administrative Code, “New York City” encompasses five boroughs: Manhattan, Queens, Brooklyn, Bronx, and Staten Island.⁶⁰ 2020 data shows that there were over 9,500 recorded stop-and-frisks around New York City for the year.⁶¹ When the data was separated by borough, across the board, general patrol officers conduct the majority of the stop-and-frisks throughout New York City.⁶² Unsurprisingly, the PSA officers conducted the second highest number of stop-and-frisks in every borough.⁶³ Transit officers in every borough conducted the fewest number of stop-and-frisks when compared against general patrol officers, PSA officers, and traffic officers.⁶⁴ When the number of stop-and-frisks made by officers in the housing units (PSAs) were compared against the number of stop-and-frisks conducted by general patrol throughout the city, there was a huge disparity.⁶⁵

⁵⁷ *Id.* at 56–57.

⁵⁸ *Id.* at 57.

⁵⁹ *Stop, Question and Frisk Data*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page> [<https://perma.cc/3VUN-9DSD>] (last visited Jan. 7, 2022) (providing links or excel sheets to stop-and-frisk data for 2003 through 2020).

⁶⁰ N.Y.C. ADMIN. CODE § 2–202 (1937).

⁶¹ *See Stop, Question and Frisk Data*, *supra* note 59 (2020 Excel file).

⁶² *Id.*

⁶³ *Id.* It should be noted that some of the stop-and-frisk data does not indicate which officer conducted the stops. That information was excluded or replaced in the excel sheet with “null.” For the purposes of this Note, the total number of stop-and-frisks, even those conducted by unidentified or “null” officers, were included when referencing all stops conducted in 2020. However, when the data was organized by the type of officer who conducted the stop, the null officers were placed into their own category, and not included in the traffic, patrol, or housing groups.

⁶⁴ *Id.*

⁶⁵ *Id.*; *Bronx County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/cedsci/profile?g=05000000US36005> [<https://perma.cc/E3PX-PFG4>] (last visited Dec. 30, 2021); *Kings County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/cedsci/profile?g=06000000US3604710022> [<https://perma.cc/3737-RHN7>] (last visited Dec. 30, 2021); *New York City, New York*, UNITED STATES CENSUS BUREAU, https://data.census.gov/profile/New_York_County,...?g=050XX00US36061 [<https://perma.cc/RAD2-XRR6>] (last visited Apr. 24, 2023); *Queens County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/>

In 2020, starting with the Bronx, for every 100,000 people approximately 73 (73.5) people are stopped and frisked by a regular patrol officer.⁶⁶ By contrast, approximately 208 (208.27) people per 100,000 were stopped by officers in the housing units of the NYPD.⁶⁷ Thus, PSA officers in the Bronx are stopping and frisking New Yorkers at a rate that is 2.83 times higher than patrol officers do for the general public.⁶⁸

In Brooklyn, patrol officers were stopping and frisking approximately 55 (55.57) people per 100,000.⁶⁹ By contrast, PSA officers stopped approximately 217 (217.30) people per 100,000.⁷⁰ In Brooklyn, PSA officers stopped and frisked people at almost four times the rate (3.91) of the general patrol officers.⁷¹

In Manhattan, approximately 77 (77.76) people per every 100,000 were stopped and frisked by patrol officers.⁷² PSA officers in Manhattan stopped approximately 229 (229.47) people per 100,000.⁷³ PSA officers in Manhattan stopped and frisked almost three times (2.95) as many people as the regular patrol officers.⁷⁴

Queens and Staten Island had the lowest number of stop-and-frisks, respectively. Queens' patrol officers stopped and frisked approximately 38 (38.01) people per 100,000, while the PSA officers stopped and frisked approximately 152 (152.23) people per 100,000.⁷⁵ The PSA officers in Queens stopped 4 (4.01) times as many people as their general patrol counterparts.⁷⁶ Staten Island patrol officers stopped approximately

cedsci/profile?g=0500000US36081 [https://perma.cc/Q7C8-5E3K] (last visited Jan. 8, 2022); *Richmond County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/profile?g=050XX00US36085> [https://perma.cc/5CHP-FWQP] (last visited June 7, 2023); NEW YORK CITY HOUS. AUTH., NYCHA 2020 FACT SHEET (Mar. 2020), https://www.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2020_Final.pdf [https://perma.cc/DLZ9-D76K]; see Appendix Sections II.A–C (The calculations were performed by the author and are a combination of information pulled from 2020 Stop, Question and Frisk Data, the 2020 census data on borough population, and the 2020 NYCHA Fact Sheet. The stop-and-frisk data has been multiplied by 100,000 for the purposes of a per capita analysis).

⁶⁶ See sources cited *supra* note 65.

⁶⁷ See sources cited *supra* note 65.

⁶⁸ See sources cited *supra* note 65.

⁶⁹ See sources cited *supra* note 65.

⁷⁰ See sources cited *supra* note 65.

⁷¹ See sources cited *supra* note 65.

⁷² See sources cited *supra* note 65.

⁷³ See sources cited *supra* note 65.

⁷⁴ See sources cited *supra* note 65.

⁷⁵ See sources cited *supra* note 65.

⁷⁶ See sources cited *supra* note 65.

50 (50.41) people per 100,000.⁷⁷ Conversely, the PSA officers stopped approximately 134 (134.13) per 100,000 people, showing that PSA officers stopped and frisked at a rate about 2.66 times more often than regular patrol.⁷⁸

Similar patterns arose in 2019. In the Bronx, per 100,000 people, regular patrol officers were stopping approximately 84 (84.40) people, while PSA officers were stopping approximately 340 (340.81).⁷⁹ The data suggests that PSA officers were stopping and frisking almost 4 (4.04) times as many people.⁸⁰

In Brooklyn, patrol officers were stopping a similar number of people as their colleagues in the Bronx, with approximately 84 (84.07) stops per 100,000 people.⁸¹ By contrast, PSA officers stopped 309 (309.10) people per 100,000, which is approximately 3.6 (3.68) times as many people.⁸² In Manhattan, patrol officers stopped approximately 121 (121.90) people per 100,000, while their PSA counterparts stopped a whopping 406 (406.72) people per 100,000.⁸³ This suggests housing officers in Manhattan stopped approximately 3 (3.34) times as many people as their general patrol colleagues in the same borough.⁸⁴ In Queens, general patrol officers were stopping approximately 59 (59.22) people per 100,000.⁸⁵ Their PSA counterparts stopped 304 (304.86) people per 100,000.⁸⁶ This suggests a PSA officer stop-and-frisk rate that

⁷⁷ See sources cited *supra* note 65.

⁷⁸ See sources cited *supra* note 65.

⁷⁹ See *Stop, Question and Frisk Data*, *supra* note 59 (2019 Excel file); *Bronx County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/cedsci/profile?g=0500000US36005> [<https://perma.cc/E3PX-PFG4>] (last visited Dec. 30, 2021); *Kings County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/cedsci/profile?g=0600000US3604710022> [<https://perma.cc/3737-RHN7>] (last visited Dec. 30, 2021); *New York City, New York*, UNITED STATES CENSUS BUREAU, https://data.census.gov/profile/New_York_County,...?g=050XX00US36061 [<https://perma.cc/RAD2-XRR6>] (last visited Apr. 24, 2023); *Queens County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/cedsci/profile?g=0500000US36081> [<https://perma.cc/Q7C8-5E3K>] (last visited Jan. 8, 2022); *Richmond County, New York*, UNITED STATES CENSUS BUREAU, <https://data.census.gov/profile?g=050XX00US36085> [<https://perma.cc/5CHP-FWQP>] (last visited June 7, 2023); NEW YORK CITY HOUS. AUTH., NYCHA 2019 FACT SHEET (Mar. 2019), https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2019_08-01.pdf [<https://perma.cc/3FP8-3K2U>]; see Appendix Sections I.A–C (The calculations were performed by the author and are a combination of information pulled from 2019 Stop, Question and Frisk Data, the 2020 census data on borough population, and the 2019 NYCHA Fact Sheet. The stop and frisk data has been multiplied by 100,000 for the purposes of a per capita analysis).

⁸⁰ See sources cited *supra* note 79.

⁸¹ See sources cited *supra* note 79.

⁸² See sources cited *supra* note 79.

⁸³ See sources cited *supra* note 79.

⁸⁴ See sources cited *supra* note 79.

⁸⁵ See sources cited *supra* note 79.

⁸⁶ See sources cited *supra* note 79.

is 5 (5.15) times higher than the general patrol.⁸⁷ Lastly, Staten Island still followed a similar pattern showing approximately 78 (78.22) stops per 100,000 by general patrol.⁸⁸ By contrast, PSA officers stopped and frisked approximately 271 (271.27) people per 100,000.⁸⁹ Staten Island PSA officers stopped approximately 3.4 (3.47) times as many people per 100,000 than their general patrol counterparts.⁹⁰

Overall, the data suggests that PSA officers are stopping and frisking New Yorkers at widely higher rates than the general patrol officers. Because PSA officers are generally stationed in or around NYCHA properties, it is concerning to think of the impact proximity and housing type can have on one's chances of being stopped and frisked.

D. *Section 14-151 of the Administrative Code's Offered Protections to Bias-Based Profiling*

Firstly, it would be wise to cover some definitions. Under the New York City Administrative Code, Section 14-151(a)(1) defines bias-based profiling as:

an act of a member of the . . . police department . . . that relies on actual or perceived race, national origin, color, . . . or housing status as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior⁹¹

Law enforcement officers are defined as a peace or police officer, employed by New York City, or a patrol person appointed by the police commissioner.⁹² Section 14-151(a)(4) goes on to define housing status as “the character of an individual's residence or lack thereof, whether publicly or privately owned”⁹³ The aforementioned clause is what

⁸⁷ See sources cited *supra* note 79.

⁸⁸ See sources cited *supra* note 79.

⁸⁹ See sources cited *supra* note 79.

⁹⁰ See sources cited *supra* note 79.

⁹¹ N.Y.C. ADMIN. CODE § 14-151(a)(1) (2013) (“The code's full definition defines bias-based profiling as “an act of a member of the force of the police department or other law enforcement officer that relies on actual or perceived race, national origin, color, creed, age, immigration or citizenship status, gender, sexual orientation, disability, or housing status as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.”).

⁹² *Id.* § 14-151(a)(2).

⁹³ *Id.* § 14-151(a)(4) (defining housing status more fully as “the character of an individual's residence or lack thereof, whether publicly or privately owned, whether on a temporary or permanent basis, and shall include but not be limited to: (i) an individual's ownership status with

allows private and public housing residents, alike, to be protected by the code.

Section 14-151(b)(1) and Section 14-151(b)(2) are the parts of the code that specifically prohibit bias-based profiling from police officers, including other law enforcement officials⁹⁴ and the department.⁹⁵ Under Section 14-151(c)(1), a private right of action can be brought when an individual demonstrates that law enforcement officers, or a governmental body, has engaged in bias-based profiling.⁹⁶ More specifically, after being accused of biased-based profiling, if the department or officer(s) fails to prove their actions are a part of a narrowly-tailored plan, necessary to reach some government goal or interest, then the plaintiff has met their burden.⁹⁷ The plaintiff's burden may also be met when an officer or the department intentionally engages in bias-based profiling and fails to prove their actions were justifiable because of circumstances unrelated to bias or discrimination.⁹⁸

Lastly, a plaintiff can meet their burden of showing the occurrence of bias-based profiling when: (1) a policy or policies related to the "initiation of law enforcement action" creates a disparate impact, and has the effect of biased-based profiling on an individual, or group of individuals, observed to have one or more of the protected characteristics listed in Section 14-151(a)(1);⁹⁹ and (2) the defendant fails to prove the policy or policies do not create a disparate impact or fails to show the disparate impact was necessary to advance significant law enforcement goals.¹⁰⁰ However, the plaintiff is not required to show which specific policy or policies created the disparate impact.¹⁰¹ Most importantly, the policy or policies will be deemed unlawful if the plaintiff can produce "substantial evidence that an alternate policy or practice with a less disparate impact" exists and law enforcement fails to show why the alternate policy is insufficient for reaching their goals.¹⁰² It should also be noted that a plaintiff only showing a statistical demographic imbalance between the targets of law enforcement and the general population will not succeed in their claim unless the general population is the relevant group of comparison, the data shows a significant statistical imbalance,

regard to the individual's residence; (ii) the status of having or not having a fixed residence; (iii) an individual's use of publicly assisted housing; (iv) an individual's use of the shelter system; and an individual's actual or perceived homelessness.").

⁹⁴ *Id.* § 14-151(b)(1).

⁹⁵ *Id.* § 14-151(b)(2).

⁹⁶ *Id.* § 14-151(c)(1).

⁹⁷ *Id.* § 14-151(c)(1)(i).

⁹⁸ *Id.* § 14-151(c)(1)(ii).

⁹⁹ *Id.* § 14-151(c)(2)(i).

¹⁰⁰ *Id.* § 14-151(c)(2)(ii).

¹⁰¹ *Id.*

¹⁰² *Id.*

and there is an identifiable policy or practice supposedly causing the imbalance.¹⁰³ In sum, a person who suspects they have been the victim of bias-based profiling has three routes for showing the harm done to them was the result of law enforcement action. Though the remedy for a successful claim is limited to injunctive or declaratory relief,¹⁰⁴ complaints can be filed for current or past acts of bias-based profiling against an officer, the police department, or a government body that employs an officer who engages in this behavior.¹⁰⁵

E. *The Constitutional Protections to the Problem of Bias-Based Profiling*

1. The Fourth Amendment

The Fourth Amendment provides some equal forms of protection in favor of privacy,¹⁰⁶ but those protections are insufficient for the residents of public housing developments because they do not account for social identifiers, like race. The Fourth Amendment states: “[t]he right of the people to be secure in their persons, houses . . . against unreasonable searches and seizures, shall not be violated”¹⁰⁷ In other words, the Fourth Amendment protects one’s right to not be unreasonably searched and seized, and protects property and homes from the same fate without a warrant.¹⁰⁸

The Supreme Court has provided insight on how the Amendment should be applied in scenarios between law enforcement and laypersons in both *Terry v. Ohio* and *Whren v. United States*.¹⁰⁹ In *Terry*, the Petitioner was observed by an officer to be engaging in suspicious activity outside of a store. The Petitioner was approached, searched, and arrested when a .38-caliber revolver was found on his person.¹¹⁰ The Court held search and seizures of a person’s outer clothing constitutional,

¹⁰³ *Id.* § 14-151(c)(2)(iii).

¹⁰⁴ *Id.* § 14-151(d)(2).

¹⁰⁵ *Id.* § 14-151(d)(1).

¹⁰⁶ U.S. CONST. amend. IV.

¹⁰⁷ *Id.* (stating more fully, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

¹⁰⁸ *Id.*

¹⁰⁹ See generally *Terry v. Ohio*, 392 U.S. 1 (1968); *Whren v. United States*, 517 U.S. 806 (1996).

¹¹⁰ *Terry*, 392 U.S. at 4–7.

so long as an officer reasonably believes, throughout the entire interaction, that criminal activity is or was looming, persons interacting with that officer are armed and pose a threat, and the officer identifies themselves clearly.¹¹¹ Additionally, the Supreme Court has deemed it constitutional to ignore potential racial concerns in cases where a person's Fourth Amendment rights are violated.¹¹² In *Whren*, the Court held that two Black men were constitutionally stopped and properly charged with drug possession by two D.C. officers in plain clothes patrolling a "high drug area," because the stop was reasonably based on a traffic infraction.¹¹³ The Court found that the defendants' concern that race was a significant factor in the officers' reasoning for the stop was an Equal Protection Clause claim, and irrelevant to whether or not their Fourth Amendment rights were being violated.¹¹⁴ Search and seizure is permitted by the Constitution and the courts, and the restraints on that power are specific to the individual facts; and, more importantly, the Fourth Amendment says nothing about race, gender, religion, or any other protected characteristic.¹¹⁵

2. The Fourteenth Amendment

The Fourteenth Amendment provides better protection than the Fourth Amendment for the majority of the population living in New York public housing, but its protection pales in comparison to Section 14-151 because its "equal protections" are vaguely listed. Section One of the Fourteenth Amendment says, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."¹¹⁶ In fewer words, under the Fourteenth Amendment, each person is afforded "equal protection of the laws," which in turn "prohibits intentional discrimination based on race."¹¹⁷ Nevertheless, the Fourteenth Amendment proves to garner insufficient protections for those interacting with police in PSAs because municipalities are not "persons" who can be

¹¹¹ *Id.* at 30–31.

¹¹² *See Whren*, 517 U.S. at 813, 819.

¹¹³ *Id.* at 808–09.

¹¹⁴ *Id.* at 813.

¹¹⁵ U.S. CONST. amend. IV.

¹¹⁶ U.S. CONST. amend. XIV, § 1 (stating more fully, "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

¹¹⁷ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013).

found liable for the actions of their employees,¹¹⁸ unless *Monell* liability applies.¹¹⁹ The term *Monell* liability was coined in the groundbreaking case *Monell v. Department of Social Services of the City of New York*, where the Court held that a local body can be sued for implementing a policy that deprives another of their constitutional rights.¹²⁰ This liability is proven when the evidence shows that a municipality's decision makers purposefully neglected to provide adequate supervision, or failed to provide adequate training, to their employees who infringed on the constitutional rights of others.¹²¹ The Court has reiterated this common law rule in several opinions, including the beginning pages of the *Connick v. Thompson* opinion.¹²² By contrast, Section 14-151 allows for a private right of action when an individual officer or a government body engages in bias-based profiling,¹²³ making it the best choice for individuals wronged by specific officers of the NYPD.

3. The New York State Constitution

Sections Eleven and Twelve of the New York State Constitution provide some protections to residents of New York public housing because the state constitution protects all persons; however, New York's constitution fails to consider the protection of housing status.¹²⁴ Article One, Section Eleven provides:

[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.¹²⁵

Section Twelve reads:

¹¹⁸ See *Monroe v. Pape*, 365 U.S. 167, 188–92 (1961), *overruled in part by Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658 (1978).

¹¹⁹ See *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 690–94 (1978).

¹²⁰ *Id.*

¹²¹ *Connick v. Thompson*, 563 U.S. 51, 61–62 (2011).

¹²² The Supreme Court explained that Title 42 of the United States Code provides redress against a liable party for persons deprived of any privileges, rights, or immunities granted to them by the Constitution. The Supreme Court's decision also reiterated that a municipality may be held liable, under Title 42 of the Code, if that body is found responsible for the deprivation of rights, immunities, or privileges. However, a municipality may not be held automatically vicariously liable for its employees' actions. *Id.* at 60.

¹²³ N.Y.C. ADMIN. CODE § 14-151(c)(1) (2013).

¹²⁴ See N.Y. CONST. art. I, §§ 11–12.

¹²⁵ *Id.* § 11.

[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹²⁶

However, both of these sections are less specific than Section 14-151(a)(1) of the New York City Administrative Code, which expands the protected classes past race, religion, and creed.¹²⁷

F. *Case Law*

Case law has shown that even though few have successfully proven bias-based profiling under Section 14-151, factual evidence can raise a plausible presumption that discrimination has occurred, and the appropriate statistical support, coupled with testimony, can make for a successful claim.¹²⁸ The Supreme Court established in *International Brotherhood of Teamsters v. United States* that statistical data, coupled with testimony from the affected group, can be used to support a strong claim of a disparate impact.¹²⁹ Here, the Government claimed T.I.M.E.-D.C., Inc. and the Teamsters union were engaging in a pattern or practice of discrimination against Black and Latinx workers in the hiring process, by hiring them strictly for the low-paying positions and failing to promote them.¹³⁰ The question for the Supreme Court was whether the introduced evidence was sufficient to show that the company engaged in a pattern or practice of employment discrimination.¹³¹

Firstly, the Court made a point to expand the number of appropriate contexts where statistics can be a useful tool in proving that a disparate impact exists because previously, this issue had mostly appeared in jury selection.¹³² To be successful, the Government needed to prove that this practice was a widespread pattern and not multiple random events or one isolated event.¹³³ The Government was also responsible for showing, by a preponderance of the evidence, that the discriminatory effect was a consequence of the company's regular operation and that it was not a unique practice.¹³⁴ The Government supplied statistical evidence that showed a huge discrepancy between the number of Black and "Spanish-

¹²⁶ *Id.* § 12.

¹²⁷ N.Y.C. ADMIN. CODE § 14-151(a)(1) (2013).

¹²⁸ *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977).

¹²⁹ *Id.* at 339–40.

¹³⁰ *Id.* at 328–29.

¹³¹ *Id.* at 334–35.

¹³² *Id.* at 339 (“Statistics are equally competent in proving employment discrimination.”).

¹³³ *Id.* at 336.

¹³⁴ *Id.*

surnamed” employees who held the more coveted line driver position (a total of 0.7 percent or 13 out of 1,828 employees) and the white employees with the same line driver position.¹³⁵ The facts also showed that Black line drivers were strategically hired after the start of the litigation.¹³⁶ Additionally, the Government supplied evidence showing the company had a total of 571 Black and “Spanish-surnamed” employees.¹³⁷ The affected workers supplemented these statistics by testifying to over forty accounts of discrimination.¹³⁸ The Court held that statistical evidence,¹³⁹ coupled with contextual and testimonial clues, is a powerful tool when arguing in favor of a pattern or practice of discrimination.¹⁴⁰ This precedent is applicable to the cases that follow, even as they relate to claims under Section 14-151.

In *D.H. v. City of New York*, all plaintiffs were arrested per New York’s Penal Law Section 240.37(2), which prohibits loitering for the purpose of engaging in prostitution,¹⁴¹ but each claimed their arrest was not a consequence of engaging in illegal behavior, but based on law enforcement discrimination on the basis of a protected characteristic such as race, gender or sexuality.¹⁴² When the Plaintiffs brought a joint suit, New York City and the Defendant officers moved to dismiss, but the Court decided that Black, female Plaintiff N.H. had met her burden to seek injunctive relief under Section 14-151, while her co-plaintiffs did not because she supplied sufficient evidence and met standing requirements.¹⁴³ Per *Lujan v. Defenders of Wildlife*, to have standing in federal court, a plaintiff must show (1) injury in fact, whether actual or imminent, (2) that the harm is traceable back to the defendant’s actions, and (3) that the court is able to reasonably issue a remedy.¹⁴⁴ In *Shain v. Ellison*, the Second Circuit held that to successfully claim injunctive relief, the plaintiff is responsible for demonstrating future harm and a policy causing that harm.¹⁴⁵ Here, each plaintiff in *D.H. v. City of New York* described their interaction with the police, and the court conducted

¹³⁵ *Id.* at 337.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 338.

¹³⁹ *Id.* at 339 (citing *Mayor of Philadelphia v. Educ. Equal. League*, 415 U.S. 605, 620 (1974)).

¹⁴⁰ *Id.* at 339–40.

¹⁴¹ *D.H. v. City of New York*, 309 F. Supp. 3d 52, 63 (S.D.N.Y. 2018); N.Y. PENAL LAW § 240.37 (2016) (repealed 2021).

¹⁴² *D.H.*, 309 F. Supp. 3d at 66.

¹⁴³ *Id.* at 68, 82; Complaint and Demand for a Jury Trial at 75, *D.H. v. City of New York*, 309 F. Supp. 3d 52 (S.D.N.Y. 2018) (No. 16 Civ. 7698).

¹⁴⁴ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

¹⁴⁵ *Shain v. Ellison*, 356 F.3d 211, 216 (2d Cir. 2004).

an analysis as it applied to their claims for injunctive relief and monetary and punitive damages.¹⁴⁶ Plaintiff Grissom showed that it was probable that officers from the 52nd Precinct engaged in gender discrimination when they arrested her after she spoke with a man for about thirty to forty-five minutes, but neglected to arrest the man for the same conduct.¹⁴⁷ Grissom's allegations, along with the support of a supposed lack of probable cause and the apparent falsification of paperwork, informed the court's inference.¹⁴⁸ The court also discussed Plaintiff Bankston's plausible inference of intentional race or gender discrimination by NYPD officers when she was stopped while riding in a car with a man, presumed to be a prostitute and the man her pimp, was forcibly removed from the car, and was arrested.¹⁴⁹ During the arrest, the officers used racial slurs.¹⁵⁰ The man was not arrested.¹⁵¹ The court reasoned that Bankston's allegations, combined with the allegations of insufficient cause for the arrest, pointed to a positive inference that Bankston was discriminated against because of her gender or race.¹⁵² Lastly, Plaintiffs D.H., N.H., and K.H.'s allegations that they were arrested during a late-night sweep to pick up "girls like them," also allowed the court to make the plausible inference that they were all discriminated against because of their gender identity.¹⁵³ The court also considered the fact that after the arrests were made, allegedly without probable cause, Defendants lied about what had happened.¹⁵⁴ Plaintiff Martin could not convince the court that, because of her social identifiers, she was discriminated against because it was not until after the alleged unlawful arrest that an officer made a rude comment indicative of disdain toward one of Martin's characteristics.¹⁵⁵ The court reasoned that the facts do not support the presumption that she was targeted because of her social identifiers.¹⁵⁶ In other words, discriminatory intent must motivate the challenged conduct.¹⁵⁷

In an effort to prove this discriminatory intent, the Plaintiffs "rel[ie]d] on statistics, observing that women constitute eighty-one percent of arrestees under section 240.37 and that black and Hispanic individuals comprise eighty-five percent of arrestees"¹⁵⁸ The court held that

¹⁴⁶ See *D.H. v. City of New York*, 309 F. Supp. 3d 52 (S.D.N.Y. 2018).

¹⁴⁷ *Id.* at 74.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See *D.H.*, 309 F. Supp. 3d at 74.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 74–75.

¹⁵⁶ *Id.* at 75.

¹⁵⁷ *Id.* at 73.

¹⁵⁸ See *D.H.*, 309 F. Supp. 3d at 75.

their analysis lacked an appropriate comparison group.¹⁵⁹ Even though the Plaintiffs offered supplemental information about the demographics in New York City, the data provided was too broad to confirm whether any individual officer acted with intent to discriminate.¹⁶⁰ The presentation of a quote from a law enforcement officer, not a party to the case, stating that pressure from the department's arrest quotas causes officers to go after vulnerable populations—Black, Latinx, and LGBTQ New Yorkers—coupled with the allegations of falsified arrest paperwork and arrests without probable cause did not meet plaintiffs' burden.¹⁶¹ The court believed the sum of evidence presented equated to speculation.¹⁶²

Despite the plausible inferences made by the court, N.H. was the only plaintiff to succeed in her claim for injunctive relief because she met the standing requirements.¹⁶³ Most plaintiffs relied solely on past arrests to prove they were in imminent danger of being arrested in the future—the first prong of the *Lujan* analysis—but the court deemed that insufficient.¹⁶⁴ N.H. was able to show an injury in fact because the threat of arrest was imminent for her.¹⁶⁵ First, she showed that there was a threat from officers at the 52nd Precinct that “girls like her” (transgender women) were under threat of arrest after certain hours.¹⁶⁶ Second, the later arrest of other transgender women by officers in the 52nd Precinct showed that the threat was not an empty one.¹⁶⁷ Third, because of her arrest, N.H. rearranged her schedule to perform her errands in the daytime; however, she did not halt her activity altogether, therefore, the threat of arrest was still imminent.¹⁶⁸ It should also be noted that in the complaint, N.H. stated, from her holding cell, that she lived in the area.¹⁶⁹ Unless she moved, it would be difficult for N.H. to avoid commuting around her neighborhood, thus increasing the imminence of the threat.

N.H. was also able to establish a policy implemented by the 52nd Precinct that consistently violated her rights to meet the *Shain* standard.¹⁷⁰ In *Shain v. Ellison*, the Second Circuit held that to successfully claim

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 68, 82.

¹⁶⁴ *See D.H.*, 309 F. Supp. 3d at 66.

¹⁶⁵ *Id.* at 67.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Complaint and Demand for a Jury Trial, *supra* note 143, at 39.

¹⁷⁰ *Id.* at 68.

injunctive relief, the plaintiff is responsible for demonstrating future harm and a policy causing the harm.¹⁷¹ The threat made to her about arresting “girls like her” was sufficient to meet that standard.¹⁷² Next, the court explored traceability and held that N.H. was unable to establish a link between the imminent threat of future arrest and discrimination on the basis of gender or race, specifically.¹⁷³ However, N.H.’s claim on the basis of gender identity was not affected.¹⁷⁴ Finally, the court held that redressability was present, since part of what N.H. sought was injunctive or declaratory relief that would prevent officers from the 52nd Precinct from enforcing Section 240.37, preventing future harm.¹⁷⁵

Turning to *Dorceant v. Aquino*, the court partially denied Defendant Officer Aquino’s Motion for Summary Judgment, deciding that the disputed facts impacted whether the Officer had probable cause to arrest the Plaintiff and whether Plaintiff’s bias-based profiling claim could be dismissed.¹⁷⁶ The disputed facts show that Plaintiff Dorceant and Officer Aquino bumped into each other.¹⁷⁷ There was an exchange of words involving Officer Aquino calling Dorceant a “dike,” and a fight broke out.¹⁷⁸ Both Plaintiffs were arrested, but Plaintiff Allman was released after approximately thirty minutes to an hour.¹⁷⁹ Ultimately, Officer Aquino failed to prove that there was probable cause to arrest Plaintiff Dorceant and his Motion for Summary Judgment was denied.¹⁸⁰ Though not a direct victory for the Plaintiffs, *Dorceant v. Aquino* supports the idea that a lack of probable cause is an indication that there is an unrelated, underlying reason for an arrest, and the contextual and factual evidence surrounding an event is relevant in the court’s investigation of the underlying issue.

Lastly, *Snead v. City of New York* demonstrates an example of an insufficient claim of a Section 14-151 violation because it is substantiated only by a statement in the Plaintiff’s own complaint.¹⁸¹ Plaintiff Snead was arrested by police while walking down the street with what police believed to be an open container of alcohol.¹⁸² All criminal charges were dropped against Snead, but Snead later filed a claim against New York

¹⁷¹ *Shain v. Ellison*, 356 F.3d 211, 216 (2d Cir. 2004).

¹⁷² *D.H.*, 309 F. Supp. 3d at 67.

¹⁷³ *Id.* at 68.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 69.

¹⁷⁶ *Dorceant v. Aquino*, No. 15-CV-7103 (ARR)(LB), 2017 WL 3575245, at *1 (E.D.N.Y. Aug. 17, 2017).

¹⁷⁷ *Id.* at *1–*2.

¹⁷⁸ *Id.* at *1.

¹⁷⁹ *Id.* at *2.

¹⁸⁰ *Id.* at *6.

¹⁸¹ *Snead v. City of New York*, 463 F. Supp. 3d 386, 402 (S.D.N.Y. 2020).

¹⁸² *Id.* at 390–91.

City and several individual officers, claiming bias-based profiling, among other things.¹⁸³ The Defendants filed a Motion for Summary Judgment,¹⁸⁴ which was granted in part.¹⁸⁵ Here, the court reasoned that the Plaintiff provided insufficient evidence that the stop was the consequence of her race, gender, or any other protected class since she relied solely on a statement in her complaint.¹⁸⁶ As such, plaintiffs alleging bias-based profiling must provide evidence, separate from facts listed in the complaint, to successfully assert their claims.

II. ANALYSIS

A. *Why Section 14-151 of the Administrative Code Is the Best Defense Against Bias-Based Profiling*

Section 14-151 of the New York City Administrative Code is the best regulation to analyze whether PSAs are encroaching on the rights of New Yorkers, because it affords broader protection against discrimination than stated by the United States Constitution and the New York State Constitution, while providing three separate routes for a plaintiff to bring a successful claim.¹⁸⁷

Starting with the Fourth Amendment of the Constitution, unfortunately, its enforcement has proven difficult on the property of public housing complexes because of a combination of state and local rules that criminalize certain behavior.¹⁸⁸

Since one's conduct is extremely regulated living in project housing, the threshold for conducting a stop for engaging in prohibited behavior is very low.¹⁸⁹ For example, a document titled "Highlights of House Rules, Lease Terms and Policy," created for NYCHA residents as a way to highlight important terms of their lease, lists prohibited behavior in hallways, stairwells, and corridors, such as: consumption of alcohol, possession of an open container of alcohol, lingering, and leaving an

¹⁸³ *Id.* at 391.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 390.

¹⁸⁶ *Id.* at 402 (“[i]n initiating law enforcement action against Ms. Snead based on her actual and/or perceived race and/or color rather than Ms. Snead’s behavior . . . the defendant officers engaged in bias-based profiling.”).

¹⁸⁷ See discussion *supra* Section I.D.

¹⁸⁸ Karteron, *supra* note 15, at 693.

¹⁸⁹ *Id.* at 695.

entrance door propped open or unlocked.¹⁹⁰ Additionally, “creating a nuisance or disturbance” is disallowed,¹⁹¹ and all people and residents are expected to cooperate with the police regarding their “presence or conduct” in any of the NYCHA buildings.¹⁹² It is not clear what counts as a nuisance or disturbance to any individual officer. Even “sound amplification devices” are prohibited in common areas, development grounds, and recreational areas without a NYPD permit.¹⁹³ What becomes of the family without the funds to celebrate their child’s birthday in another private facility and, therefore, sets up decorations and music in an area of the NYCHA playground? Many times, that is up to the police who patrol the area.¹⁹⁴ Although one may argue that all renters in New York agree to the terms and conditions of their respective leases, not all housing rules are created equal. In the case of NYCHA housing, a housing document requires the signature of all tenants and household members above the age of eighteen¹⁹⁵ to ensure residents are aware of important terms, but it warns readers that it does not include an exhaustive list of lease terms.¹⁹⁶ This warning implies a comprehensive list of lease terms that can be found in the true lease, a separate document, creating another valid basis for action when a resident is found to be in violation of those “house rules.” As such, it is important to consider what freedoms public housing residents give up to acquire their housing alongside the increased likelihood they will interact with the police (PSA officers) stationed in their hallways and common spaces, for any small or large infraction.

Secondly, because the Fourth Amendment’s requirement of reasonable suspicion is an ambiguous bar, there is plenty of room for law enforcement officers to use their best (or worst) judgment about when to stop and later search someone due to “suspicious activity.”¹⁹⁷ In other words, police discretion is a major factor that guides whether or not someone will be questioned, stopped, searched, or a combination of those things.¹⁹⁸

¹⁹⁰ N.Y.C. HOUS. AUTH. (NYCHA), HIGHLIGHTS OF HOUSE RULES, LEASE TERMS AND POLICY 2 (2010), <https://www1.nyc.gov/assets/nycha/downloads/pdf/Highlights%20of%20House%20Rules%20-%20English.pdf> [<https://perma.cc/27FG-SBNU>].

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* at 2.

¹⁹³ *Id.* at 3.

¹⁹⁴ ALEXANDER, *supra* note 8, at 121.

¹⁹⁵ See Highlights of House Rules, Lease Terms and Policy, *supra* note 190, at 4.

¹⁹⁶ *Id.* at 1.

¹⁹⁷ Karteron, *supra* note 15, at 696.

¹⁹⁸

Racially biased police discretion is key to understanding how the overwhelming majority of people who get swept into the criminal justice system in the War on Drugs turn out to be black or brown, even though the police adamantly deny that they engage in racial

Lastly, cases like *Whren v. United States* lend support to the idea that during pretextual stops, even when concerns arise that race played a role in the stop, those concerns are not a factor in whether a person's Fourth Amendment rights have been violated.¹⁹⁹ Despite this glaring concern, law enforcement officers still maintain a right to conduct lawful searches.²⁰⁰ Thus, a plaintiff concerned about bias-based profiling would be wise to look to other sources of authority.

In the same vein, the protections afforded by the Fourteenth Amendment for actions of law enforcement officers are predicated on whether *Monell* liability applies.²⁰¹ This protection is predicated on a plaintiff's ability to convince the court that the municipality purposely neglected its duties to train or supervise, which presents a massive hurdle in proving the varying motivations of those who comprise the local government.²⁰² By contrast, Section 14-151 allows for private action against specific officers, departments, and local governments alike.²⁰³

Like its respective counterparts stated in the United States Constitution, the New York State Constitution provides an insufficient number of more specific protections pertaining to search and seizure and equal protection or discrimination. Housing status remains unprotected under Section Eleven of the New York State Constitution.²⁰⁴ Housing status is a critical characteristic to protect since many of the people these protections were intended to cover²⁰⁵ fall into the low-income renter²⁰⁶ or undomiciled categories. Section Twelve provides similar protections to those listed in the Fourth Amendment of the Constitution and is also seemingly insufficient because it does not mention profiling or bias.²⁰⁷

profiling. In the drug war, police have discretion regarding whom to target (which individuals), as well as where to target (which neighborhoods or communities). As noted earlier, at least 10 percent of Americans violate drug laws every year, and people of all races engage in illegal drug activity at similar rates. With such an extraordinarily large population of offenders to choose from, decisions must be made regarding who should be targeted and where . . . war should be waged. From the outset, . . . war could have been waged primarily in overwhelmingly white suburbs or on college campuses.

ALEXANDER, *supra* note 8, at 121.

¹⁹⁹ *Whren v. United States*, 517 U.S. 806, 813 (1996).

²⁰⁰ *See generally id.*

²⁰¹ *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978).

²⁰² *See Connick v. Thompson*, 563 U.S. 51, 60–62 (2011).

²⁰³ *See* N.Y.C. ADMIN. CODE § 14-151(c) (2013).

²⁰⁴ *See* N.Y. CONST. art. I, § 11.

²⁰⁵ *14th Amendment, HISTORY* (June 23, 2022), <https://www.history.com/topics/black-history/fourteenth-amendment> [https://perma.cc/EY9X-PJKL].

²⁰⁶ NYU FURMAN CTR., *HOW NYCHA PRESERVES DIVERSITY IN NEW YORK'S CHANGING NEIGHBORHOODS* (2019) (Figure 1 and Figure 2).

²⁰⁷ *Compare* N.Y. CONST. art. I, § 12, *with* U.S. CONST. amend. IV.

B. *PSAs Are in Violation of Section 14-151 of the Administrative Code*

Though the United States Constitution and the New York State Constitution provide some relief for discrimination, proving a disparate impact under Section 14-151 is superior since the New York City Administrative Code has a built-in protection over housing status.²⁰⁸ This leaves less room for interpretation while providing three routes for a plaintiff to successfully prove the claim and be granted injunctive relief. Here, Section 14-151(c)(2)(i)–(iii) is the best route to prove bias-based profiling practices in the project developments. First, the existence of PSAs is the clearly identifiable policy or practice within the police department that has had a disparate impact on NYCHA residents, such that the policy has had the effect of bias-based profiling.²⁰⁹ The very purpose of the PSAs is to monitor and respond to crime within NYCHA developments.²¹⁰ Whether an individual officer realizes it or not, discriminatory intent based on housing status is baked into the very purpose of a PSA.²¹¹ In other words, were it not for NYCHA buildings, there would be no PSAs and thus, no concentrated group to surveil.

Second, though the NYPD may argue the importance of the housing bureau for meeting policing goals, there is an alternative method to satisfy Section 14-151(c)(2)(ii). Since the NYPD has demonstrated it can police NYCHA developments no matter where the PSA is located,²¹² PSAs need not be located on NYCHA property. Therefore, all PSAs can be removed from the development sites without affecting officers' ability to carry out their duties. Therefore, concerns that public safety will suffer should fall on deaf ears. This removal process could prompt a huge change where officers may not be prompted to look for a suspect or a target if they do not spend their entire day on the NYCHA development. For example, though illegal, the NYPD allegedly imposes quotas.²¹³ An officer who feels pressure to meet a department quota may apply a lower standard for conducting a stop-and-frisk and, as mentioned above, there is a lot of

²⁰⁸ N.Y.C. ADMIN. CODE § 14-151(a)(1) (2013).

²⁰⁹ N.Y.C. ADMIN. CODE § 14-151(c)(2)(i) (2013).

²¹⁰ *Housing*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/bureaus/transit-housing/housing.page> [<https://perma.cc/NJ9C-KZ5R>].

²¹¹ See discussion *supra* Section I.C.

²¹² See discussion *supra* Section I.C.

²¹³ *Matthews v. City of New York (Challenging Punitive Quota System in 42nd NYPD Precinct)*, NYCLU, <https://www.nyclu.org/en/cases/matthews-v-city-new-york-challenging-punitive-quota-system-42nd-nypd-precinct> [<https://perma.cc/5NZ8-CTCM>] (showing that the illegal quota system is still in effect); Nathaniel Bronstein, *Police Management and Quotas: Governance in the Comp Stat Era*, 48 COLUM. J.L. & SOC. PROBS. 543, 545 (2015) (showing officers outside of general patrol also have quotas).

discretion going into an individual officer's decision to make a stop.²¹⁴ However, if officers are not stationed in the PSA office around the clock, and therefore would be required to travel when responding to unrest, their actions are less likely to be the result of bias. Officers are more likely to be called to a scene for a serious offense as opposed to surveilling the NYCHA residents and employing their discretion about whether any infraction, no matter how slight, has been committed. In simpler terms, an increase in distance between the NYCHA residents and police officers does not necessarily imply less safety. Instead, it implies less scrupulous policing. With this increased separation between the NYPD and NYCHA residents, future police interactions would be more easily justifiable as a necessary intervention.

Third, the statistical imbalance between the number of arrests made by general patrol officers as compared against PSA officers is the appropriate group comparison to make in satisfaction of Section 14-151(c)(2)(iii) and *International Brotherhood of Teamsters v. United States*. Much like the employment discrimination context, statistical data seems particularly relevant to discussing disparities in police and civilian interactions and, therefore, should be allowed as evidence in support of a claim.²¹⁵ The plaintiffs' success in *International Brotherhood of Teamsters* was in part based on an ability to show that a bad practice was part of a widespread pattern rather than an isolated event.²¹⁶ Here, the aforementioned data shows that across all boroughs, there is a pattern of high rates of stop-and-frisk conducted by PSA officers.²¹⁷ The data shows that officers in the housing bureau conduct the second highest number of stop-and-frisks, right under general patrol.²¹⁸ Additionally, after conducting a per capita analysis, it has been shown that PSA officers stop-and-frisk three to four times as many people as general patrol officers.²¹⁹ 2019 data presents a similar pattern where officers in the housing bureau conducted stop-and-frisks on three to five times as many people as general patrol officers.²²⁰ Thus, yearly and borough-wide patterns can be detected.

²¹⁴ ALEXANDER, *supra* note 8, at 100.

²¹⁵ *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977) ("Statistics are equally competent in proving employment discrimination.").

²¹⁶ *Id.* at 336.

²¹⁷ *See* discussion *supra* Section I.C.

²¹⁸ *See id.*

²¹⁹ *See id.*

²²⁰ *See id.*

Additionally, the party must show that the discriminatory effect is the consequence of regular operations, not a unique practice.²²¹ The NYPD is divided into various bureaus, and one is created specifically for housing.²²² A focused patrol of housing projects has existed since 1953,²²³ and as of 2013, it had about two thousand officers assigned to it.²²⁴ The NYPD currently has about thirty-six thousand officers.²²⁵ Thus, a small fraction of the police force is making a huge impact on the residents in public housing by stopping and frisking at exponential rates.

Lastly, the data would only be bolstered by testimony provided by any plaintiffs who chose to share their stop-and-frisk experiences. Like the facts presented in *D.H. v. City of New York*, assuming that plaintiffs could supply testimony about any derogatory phrases, inconsistencies in policing, or threats about the types of people stopped, the claim would only be strengthened.²²⁶ For example, a plaintiff who can present evidence that officers routinely stop-and-frisk most residents living in public housing would have the necessary pieces to argue bias-based profiling. Additionally, a NYCHA resident who can present evidence that officers have said or suggested tenants of project housing are less trustworthy would also have sufficient evidence to show bias-based profiling, albeit separate from the disparate impact prong. Both types of personal and specific testimony would be a stronger indicator of bias than a quote supplied by an officer uninvolved with the case.²²⁷

Unlike the data presented in *D.H. v. City of New York*, the aforementioned data is more demonstrative of the statistically significant disparities in stop-and-frisks because it takes an in-depth look at policing by borough.²²⁸ Breaking down the evidence by borough is important because it allows for an additional layer of analysis and reveals a pattern not present in *D.H. v. City of New York*. All things created equal, concerning a skill in which all officers are trained, the number of stop-and-frisks made by any type of officer should be proportional to the total number of officers in that unit. For example, if there are a total of one

²²¹ *Int'l Bhd. of Teamsters*, 431 U.S. at 336.

²²² *Bureaus*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/bureaus/bureaus.page> [<https://perma.cc/5YBA-ME75>].

²²³ Christopher S. Wren, *Rivalry in Blue: Housing Police vs. City Police*, N.Y. TIMES (Feb. 15, 1973), <https://www.nytimes.com/1973/02/15/archives/rivalry-in-blue-housing-police-vs-city-police-lack-of-understanding.html> (last visited Jan. 9, 2022).

²²⁴ Mireya Navarro & Joseph Goldstein, *Policing the Projects of New York City, at a Hefty Price*, N.Y. TIMES (Dec. 27, 2013), <https://www.nytimes.com/2013/12/27/nyregion/policing-the-projects-of-new-york-city-at-a-hefty-price.html> (last visited Feb. 9, 2023).

²²⁵ *About NYPD*, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page> [<https://perma.cc/AM2U-KD87>].

²²⁶ *See generally* *D.H. v. City of New York*, 309 F. Supp. 3d 52 (S.D.N.Y. 2018).

²²⁷ *Id.* at 75.

²²⁸ *See supra* notes 65–89.

hundred officers in a county and those officers are divided into general patrol (50%), housing (25%), and traffic (25%), one should expect them to employ the general stop-and-frisk strategy in their jurisdictions roughly equally. Here, the housing bureau is completing up to eighteen more stop-and-frisks per one conducted by general patrol, even though the housing bureau has substantially fewer officers.²²⁹ This reveals the same pattern in each borough of New York City, and this pattern has existed for at least two years.²³⁰ Thus, we can come to a more accurate conclusion about what is happening in New York City overall. By contrast, the plaintiffs in *D.H. v. City of New York* missed an opportunity to spot smaller patterns within their larger claim, giving it the structural support needed to sway the court. It is also unclear what demographic data about New York City was supplied to the court.

III. PROPOSAL

A. *Remove PSAs from All NYCHA Properties*

PSAs should be removed from all NYCHA properties because it is a necessary step in protecting public housing residents where a less severe measure, like an injunction, simply forbidding the NYPD from engaging in bias-based profiling, will not work. Though the Southern District, in the landmark case *Floyd v. City of New York*, has made it clear that “race-based suspicion” is against the law,²³¹ and even granted injunctive relief to forbid the NYPD from engaging in harmful practices,²³² the data suggests the NYPD has not learned its lesson.²³³ More specifically, since 2013, the injunctive relief included a variety of remedies such as: (1) immediate discontinuation of trespass stops outside of Trespass Affidavit Program (TAP) buildings without reasonable suspicion; (2) adoption of a formal written policy specifying the limits of a permissible stop; (3) increased supervision of Bronx officers; and (4) a revision of police training materials and programs.²³⁴ But NYCLU has been tracking stop-

²²⁹ See *supra* Section I.C.

²³⁰ See *supra* notes 59–89.

²³¹ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 603 (S.D.N.Y. 2013).

²³² *Id.* at 667.

²³³ *Stop-and-Frisk in the de Blasio Era*, *supra* note 11; *Stop-And-Frisk-Data*, NYCLU, <https://www.nyclu.org/en/stop-and-frisk-data> [<https://perma.cc/TGM6-XY24>].

²³⁴ *Ligon v. City of New York*, 925 F. Supp. 2d 478, 542–45 (S.D.N.Y. 2013).

and-frisk data since 2002,²³⁵ and though the data shows a near-perfect (excluding 2019) decrease in the number of stop-and-frisks, there is one constant—the two racial groups stopped the most were Black and Latinx individuals.²³⁶ Similarly, history has shown that the Court has tried to address racial discrimination in the educational context using injunctions with delayed results. In *Brown I*, the Court held separate but equal schools to be unconstitutional,²³⁷ and in *Brown II*, the Court mandated the school board implement strategies to desegregate schools actively and “with all deliberate speed.”²³⁸ Decades later, despite efforts to increase the number of racially diverse students in educational institutions, the Court was still grappling with racial issues in schooling in *Grutter v. Bollinger*.²³⁹ Thus, it becomes clear the problem is too complex to be solved with even a variety of complex injunctions. Instead, this issue requires courts to take a further step—remove the PSAs from NYCHA property altogether so that the same vulnerable groups can be better insulated from the over-policing of the NYPD.

PSAs should be removed from NYCHA developments because protecting NYCHA residents from bias-based profiling is not only important in principle, but, without special attention to this matter, it can also leave thousands of New Yorkers in extremely vulnerable positions as the result of the intersection between their race, economic status, housing status, and any other marginalizing characteristics. It has been argued that policing is necessary to manage crime rates, but according to the NYPD, the overall crime rate has decreased over the last decade.²⁴⁰ Even though housing crime rates have increased, the increase is slight and unworthy of significant mention.²⁴¹ These numbers do not justify the extreme rates of stop-and-frisks by PSA officers. Logically, lowering

²³⁵ *Stop-And-Frisk-Data*, *supra* note 233 (showing a disproportionately high number of those subjected to stop-and-frisk are Black and Latinx).

²³⁶ *Id.*

²³⁷ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding “[w]e conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”).

²³⁸ *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

²³⁹ *Grutter v. Bollinger*, 539 U.S. 306, 346 (2003) (Ginsburg, J., concurring) (“However strong the public’s desire for improved education systems may be . . . it remains the current reality that many minority students encounter markedly inadequate and unequal educational opportunities . . . From today’s vantage point, one may hope, but not firmly forecast, that over the next generation’s span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action.”).

²⁴⁰ *NYPD Announces November Crime Statistics*, N.Y.C. POLICE DEP’T (Dec 8, 2021), <http://www1.nyc.gov/site/nypd/news/pr1208/nypd-november-crime-statistics> [<https://perma.cc/8GMJ-L8VN>].

²⁴¹ *NYPD Announces Citywide Crime Statistics for October 2021*, N.Y.C. POLICE DEP’T, <http://www1.nyc.gov/site/nypd/news/pr1103/nypd-citywide-crime-statistics-october-2021> [<https://perma.cc/2DN9-NFA4>].

crime rates do not justify heavier policing. When law enforcement engages in targeted policing habits, their motive becomes less clearly associated with safety and instead becomes more questionable. Thus, the perfect storm is created when vulnerable groups are at the whim of law enforcement. As stated, law enforcement officers make choices about when to enforce the law on vulnerable groups,²⁴² like the Black and Latinx minorities living in NYCHA housing.²⁴³ When considering the fact that Black and Latinx people are the most frequently targeted by the police, and this fact is not significantly altered by the age of the target,²⁴⁴ one should consider other factors that exacerbate the issue, like income.

Lastly, the economic status of most NYCHA residents should be considered as it relates to their ability to move into different housing. In addition to housing thousands of New Yorkers, NYCHA is home to extreme cases of rodent infestations, mold, and other pests.²⁴⁵ Residents wait months for repairs.²⁴⁶ For many, their economic status does not allow them to move into different housing.²⁴⁷ Thus, the poor are placed on waiting lists that are years long,²⁴⁸ with the hope of being accepted into an unmaintained housing complex. With nowhere else to go, Black and Latinx residents are confined to specific areas around New York City, making them easily accessible to the NYPD. The only difficult decision

²⁴² See generally ALEXANDER, *supra* note 8, at 100.

²⁴³ See *id.* at 122–23; see also Nicholas Dagen Bloom, *Building Justice: Racial Stereotypes Shape Perceptions of New York’s Public Housing*, CITY LIMITS (Oct. 17, 2016), <https://citylimits.org/2016/10/17/building-justice-racial-stereotypes-shape-perceptions-of-new-yorks-public-housing> [<https://perma.cc/M37M-DZY9>].

²⁴⁴ Abbie Vansickle & Weihua Li, *Police Hurt Thousands of Teens Every Year. A Striking Number Are Black Girls.*, MARSHALL PROJECT (Nov. 11, 2021, 5:00 AM), <https://www.themarshallproject.org/2021/11/02/police-hurt-thousands-of-teens-every-year-a-striking-number-are-black-girls> [<https://perma.cc/UFJ3-3GLY>] (“Black youths make up the majority of kids on the receiving end of police violence—and a striking number of them are girls, an investigation by The Marshall Project found.”).

²⁴⁵ *New York’s Public Housing Isn’t Getting Better*, N.Y. TIMES (July 30, 2019), <https://www.nytimes.com/2019/07/30/opinion/new-yorks-public-housing-nycha.html> (last visited Jan. 12, 2022).

²⁴⁶ *Id.*

²⁴⁷ Mihir Zaveri, *As Thousands Fall Behind on Rent, Public Housing Faces ‘Disaster’*, N.Y. TIMES (Jan. 23, 2023), <https://www.nytimes.com/2023/01/23/nyregion/rent-crisis-public-housing.html> (last visited Feb. 23, 2023) (“NYCHA residents . . . applied for at least \$130 million worth of aid—but they received none . . . That means for tens of thousands of NYCHA residents who are already dealing with the effects of deteriorating buildings, owed back rent is now a new source of constant anxiety.”).

²⁴⁸ Rachel Holliday Smith, *What Is NYCHA? Your Questions Answered About New York City Public Housing*, THE CITY (Feb. 22, 2021, 8:55 PM), <https://www.thecity.nyc/2021/2/22/22296354/what-is-nycha-your-questions-answered-about-new-york-city-public-housing> [<https://perma.cc/47SS-NGLP>].

left for law enforcement is when to police their perfectly corralled target group.

CONCLUSION

The usage of PSAs is likely creating a disparate impact on the residents of NYCHA housing, based on housing status, and thus allowing for officers to engage in bias-based profiling in violation of Section 14-151. Data suggests that PSA officers are over-policing New Yorkers, no matter the location of the PSAs, and are, therefore, able to conduct their duties sufficiently off of NYCHA property. More specifically, the data shows that PSA officers assigned to posts off of NYCHA property are still stopping and frisking New Yorkers at alarming rates. If the work of law enforcement is unaffected by the location of its PSAs, then the scale should tip in favor of protecting some of the most vulnerable groups of New Yorkers.

History has shown that less invasive injunctions do not sufficiently curb unwanted behavior related to racial inequity. In fact, Black and Latinx New Yorkers are still being stopped and frisked at much higher rates than their white counterparts.²⁴⁹ Thus, it is time for the courts to order a more nuclear option.²⁵⁰ By removing the PSAs from NYCHA property, law enforcement can continue to meet their safety goals while the new adjustment creates a buffer between some of New York City's most vulnerable populations and one of the most powerful organizations in the country. This can help remove skepticism about whether, in any given police encounter, bias-based profiling is controlling the interaction because of the proximity between PSAs and the residents they surveil. Instead of watching and waiting for a NYCHA resident to commit the smallest infraction, police officers will be more inclined to arrive when absolutely necessary and, therefore, can devote their time to more important work. Thus, PSAs should be removed from all NYCHA properties and placed in locations that suggest a compromise between public safety and "good faith" policing.

²⁴⁹ See discussion *supra* Section I.C; Karteron, *supra* note 15, at 693.

²⁵⁰ How the courts issue a plan to remove PSAs is certainly up for debate and is a question not explored by this Note.

APPENDIX

I. 2019 DATA

A. To determine the stop-and-frisk rate of non-PSA housing residents by patrol officers (per 100,000): $\text{Patrol officer stop-and-frisk} \div \text{non-NYCHA residents} * 100,000$

County	Patrol Officer Stop-and-Frisk	Non-NYCHA Residents	Rate of Stop-and-Frisk of Non-PSA Housing Residents by Patrol Officers (per 100,000)
Bronx	1,163	1,377,881	84.40
Brooklyn	2,190	2,605,050	84.07
Manhattan	1,928	1,581,644	121.90
Queens	1,405	2,372,662	59.22
Staten Island	380	485,794	78.22

This formula is applied in footnotes: 79–89.

B. To determine the stop-and-frisk rate of PSA housing residents by housing officers (per 100,000): $\text{stop-and-frisk interactions by housing officers} \div \text{NYCHA residents} * 100,000$

County	Stop-and-frisk Interactions by Housing Officers	NYCHA Residents	Rate of Stop-and-Frisk of PSA Housing Residents by Housing Officers (per 100,000)
Bronx	323	94,773	340.81
Brooklyn	405	131,024	309.10
Manhattan	458	112,607	406.72
Queens	100	32,802	304.86
Staten Island	27	9,953	271.28

This formula is applied in footnotes: 79–89.

- C. To determine the ratio of stop-and-frisk interactions between PSA and Regular Patrol Officers:** Rate of stop-and-frisk of PSA housing residents by housing officers (per 100,000) ÷ rate of stop-and-frisk of non-PSA housing residents by patrol officers (per 100,000)

County	Rate of Stop-and-Frisk of PSA Housing Residents by Housing Officers (per 100,000)	Rate of Stop-and-Frisk of Non-PSA Housing Residents by Patrol Officers (per 100,000)	Ratio of Stop-and-Frisk Interactions (PSA/Regular Patrol)
Bronx	340.81	84.40	4.04
Brooklyn	309.10	84.07	3.68
Manhattan	406.72	121.90	3.34
Queens	304.86	59.22	5.15
Staten Island	271.27	78.22	3.47

This formula is applied in footnotes: 79–89.

II. 2020 DATA

- A. To determine the stop-and-frisk rate of non-PSA housing residents by patrol officers (per 100,000):** Patrol officer stop-and-frisk ÷ non-NYCHA residents * 100, 000

County	Patrol Officer Stop-and-Frisk	Non-NYCHA Residents	Rate of Stop-and-Frisk of Non-PSA Housing Residents by Patrol Officers (per 100,000)
Bronx	1,014	1,379,506	73.50
Brooklyn	1,454	2,616,423	55.57
Manhattan	1,231	1,583,124	77.76
Queens	902	2,373,276	38.01
Staten Island	245	486,055	50.41

This formula is applied in footnotes: 65–78

B. To determine the stop-and-frisk rate of PSA housing residents by housing officers (per 100,000): Stop-and-frisk Interactions by Housing Officers ÷ NYCHA residents * 100, 000

County	Stop and frisk Interactions by Housing Officers	NYCHA Residents	Rate of Stop and Frisk of PSA Housing Residents by Housing Officers (per 100,000)
Bronx	194	93,148	208.27
Brooklyn	260	119,651	217.30
Manhattan	255	111,127	229.47
Queens	49	32,188	152.23
Staten Island	13	9,692	134.13

This formula is applied in footnotes: 65–78.

C. To determine the ratio of stop-and-frisk interactions between PSA and regular patrol Officers: rate of stop-and-frisk of PSA housing residents by housing officers (per 100,000) ÷ rate of stop-and-frisk of non-PSA housing residents by patrol officers (per 100,000)

County	Rate of Stop-and-Frisk of PSA Housing Residents by Housing Officers (per 100,000)	Rate of Stop-and-Frisk of Non-PSA Housing Residents by Patrol Officers (per 100,000)	Ratio of Stop-and-Frisk Interactions (PSA/Regular Patrol)
Bronx	208.27	73.50	2.83
Brooklyn	217.30	55.57	3.91
Manhattan	229.47	77.76	2.95
Queens	152.23	38.01	4.01
Staten Island	134.13	50.41	2.66

This formula is applied in footnotes: 65–78.

Stop-and-frisk statistics from 2019 can be found at this link:

<https://docs.google.com/spreadsheets/d/1K3kjmeBAcbyh9EJHzSVO9Z6D2tgwx0aBVwSLL4vpd8I/edit?usp=sharing>

Stop-and-frisk statistics from 2020 can be found at this link.

https://docs.google.com/spreadsheets/d/1GTiCvA4-iLg2XagxM2sqdvUW1r_xC6godo-5iXTL1bo/edit?usp=sharing