



COMMITTEE ON CIVIL RIGHTS

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Hon. Bill de Blasio
Office of the Mayor
City Hall
New York, NY 10007

Dear Mayor de Blasio:

I write on behalf of the Civil Rights Committee of the New York City Bar Association. We believe it is vitally important for New York City's Mayor, in particular, to adopt a comprehensive agenda to ensure the full and adequate protection of the civil rights and civil liberties of all New Yorkers. While we recognize that you and your administration already have begun addressing many of our shared concerns, we take this opportunity to highlight the following key issues for your consideration:

- Continuing your commendable efforts to reform law enforcement practices that have unfairly burdened minority communities, including stop-and-frisk¹, the surveillance of Muslim communities, and the criminalization of school discipline;
- Working with the City Council or issuing regulations to address problems in the recent legislation regarding discrimination on the basis of unemployment status;
- Supporting and protecting immigrant communities by working with the City Council to protect New Yorkers from deportation; and
- Improving language access services in New York City.

As you continue to develop your agenda, the Civil Rights Committee would be honored to serve as a resource to you on these and other issues involving the civil rights and civil liberties of New Yorkers.

¹ See also, the Committee's Jan. 2, 2014 letter addressing the NYPD's stop-and-frisk policy:
<http://www2.nycbar.org/pdf/report/uploads/20072633-MemotodeBlasioonStopFriskReform.pdf>.

I. REFORM LAW ENFORCEMENT PRACTICES

A. Take Concrete Steps to Carry Out Intended Reform of the New York City Police Department's Surveillance and Recordkeeping Practices With Respect to the City's Muslim Communities

We applaud your recent decision to address this controversial practice and to disband the NYPD unit that focused on an aggressive and legally problematic intelligence-gathering program in the City's Muslim communities and beyond. As you are no doubt aware, these practices raise serious legal concerns. For example, some aspects of the NYPD's surveillance program appear to violate the longstanding *Handschu* guidelines. Those guidelines prohibit the NYPD from recording and maintaining information obtained from visits to public spaces and events unless the information relates to potential unlawful or terrorist activity² and expressly prohibit "maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States."³ Widespread surveillance and investigation based on religious practice, racial or ethnic identity or appearance, or national origin may also violate Section 14-151 of New York City's Administrative Code prohibiting racial or ethnic profiling,⁴ and run afoul of the First, Fourth, and Fourteenth Amendments to the United States Constitution.⁵

Given your laudable commitment to ending these practices, we urge you to ensure that the following reforms are carried out and maintained as a matter of policy going forward:

- **Disallow Any Religion-Based Surveillance:** In addition to ordering the immediate cessation of the use of surveillance or other law enforcement activities based solely or predominantly on the religious affiliation of the target individuals or institutions without any additional basis, we urge you to order the expungement of all existing records obtained in this manner.
- **Disallow Any Surveillance of Public Places in Contravention of the *Handschu* Guidelines:** We urge you to ensure that the NYPD does not record visits to public places where no information was obtained related to potential unlawful or terrorist activity, and to order the expungement of all existing records obtained in this manner.
- **Utilize the NYPD Inspector General to Review Surveillance Practices:** We encourage you to direct the NYPD Inspector General to recommend guidelines for

² Modified *Handschu* Guidelines §VIII(A)(2), 288 F.Supp. 2d 411 at 430 (S.D.N.Y. 2003).

³ Modified *Handschu* Guidelines §IX(A), 288 F.Supp. 2d 411 at 430 (S.D.N.Y. 2003).

⁴ N.Y.C. Admin. Code § 14-151.

⁵ See generally *United States vs. Meyer*, 490 F.3d 1129, 1138-39 (9th Cir. 2007), *amended and superceded on denial of rehearing*, 503 F.3d 740 (9th Cir. 2007) (discussing generally the First and Fourth Amendment implications of police surveillance of a group).

surveillance and data collection activities involving any religiously-affiliated communities going forward.

B. Halt Using the Criminal Justice System as a Disciplinary Tool

Schools across the country have become increasingly dependent on law enforcement to address matters of school discipline, creating a “school to prison pipeline” that function to push students out of schools and into the juvenile and criminal justice systems.⁶ New York City has followed this national trend unnecessarily, and in doing so has drastically increased the deployment of law enforcement personnel to patrol its public schools. The NYPD School Safety Division – comprised of over 5,000 unarmed School Safety Officers and at least 191 armed precinct-based police officers – is the fifth largest police force in the country.⁷ The police force has grown by 73% since the New York City Department of Education transferred school safety responsibilities to the NYPD in 1998. This increase in police personnel occurred despite declining school crime in 1998,⁸ and a continued (37%) decrease in crime between 2001 and 2012.⁹

Accompanying the City’s increase of police personnel in its public schools has been the disproportionate use of suspensions, summonses and arrests among certain students. These practices mainly affect communities of color and raise equal protection concerns. In the 2011-2012 school year, while African American students only accounted for 28% enrollment, they accounted for 63% of school arrests, and 53% of school suspensions.¹⁰ Coupled with Latino

⁶ Sherillyn Ifill, *Stop Turning Kids Into Criminals*, POLITICO, Mar. 12, 2013, <http://www.politico.com/story/2013/03/stop-turning-kids-into-criminals-88753.html>. In 2010, the U.S. Department of Justice filed suit against law enforcement and juvenile justice officials in Meridian, Mississippi for fostering a school-to-prison pipeline by arresting and incarcerating children for minor infractions, including violating a school dress code and being tardy for class. See Complaint, *U.S. v. City of Meridian*, No. 12-cv-168 (S.D. Miss. filed Oct. 24, 2012), available at http://www.justice.gov/crt/about/spl/documents/meridian_complaint_10-24-12.pdf. Similarly, on February 20, 2013, the National Center for Youth Law, along with the NAACP Legal Defense Fund, filed a civil rights complaint with the U.S. Department of Education’s Office for Civil Rights that alleges that the Texas Bryan Independent School District’s use of law enforcement officers to ticket students for disciplinary issues unlawfully impacts African American students. See Complaint, *The Bryan Independent School District’s Ticketing Practice violates Title VI of the Civil Rights Act of 1964 and its Implementing Regulations*, No. 06131317 (U.S. Dep’t of Educ. filed Feb. 20, 2013), available at http://www.naacpldf.org/files/case_issue/Bryan%20ISD%20OCR%20Complaint.pdf (all links last visited April 18, 2014).

⁷ In 1998, the DOE voted to transfer school safety responsibilities to the NYPD. Under Chancellor’s Regulation A-412 and the NYPD and DOE Memorandum of Understanding (“MOU”), school safety agents and police officers assigned to schools have discretion to arrest students for misbehavior/incidents that occur at school. See Complaint at 3, *B.H. v. City of New York*, No. 10-cv-0210 (E.D.N.Y. filed Jun. 18, 2010), available at https://www.aclu.org/files/assets/Filed_Amended_Complaint_6_18_10.PDF (last visited April 18, 2014).

⁸ *Id.*

⁹ NEW YORK CITY SCHOOL-JUSTICE PARTNERSHIP TASK FORCE, KEEPING KIDS IN SCHOOL AND OUT OF COURT 2 (2013) [hereinafter KEEPING KIDS IN SCHOOL].

¹⁰ *Id.* at 8.

students, the group accounted for 95% of all arrests during the 2011-2012 year.¹¹ Students with special needs represented 12% of student enrollment, but accounted for 33% of suspensions.¹² During the same school year, authorities issued more than 1,600 summonses.¹³

Perhaps most disturbing have been widely publicized accounts of School Safety Officers and precinct-based officers seizing and arresting schoolchildren for typical adolescent misbehavior, and in many instances, using excessive force on students to ensure compliance with a directive. Of the 882 arrests during the 2011-2012 school year, one in every six students was arrested for “resisting arrest” or “obstructing governmental administration,” charges for which there is often no underlying criminal behavior, and are overwhelmingly the result of confrontations between officers and students.¹⁴ Moreover, in a number of incidents where school administrators intervened to object to officers’ conduct, those same teachers and principals were arrested.¹⁵

While the majority of charges against students are dismissed,¹⁶ these dispositions do not remedy the stigma regularly associated with students who are arrested in front of their peers, the time spent away from school to sit in a precinct or appear in court, nor the psychological and/or physical injury afflicted on a student. When a student who is issued a summons fails to appear in court or pay a fine, very real criminal consequences can result, including the issuance of a bench warrant for that student’s arrest.¹⁷ Moreover, interactions with the criminal justice system can follow students into their adult lives where they may be required to report summonses and arrests on a college, military, or employment application.¹⁸

While school safety is critical to an environment where students can thrive and learn, the City must be vigilant in creating policies that are effective in improving school safety without unjustifiably criminalizing our youth. The Civil Rights Committee encourages you to review NYPD policy as it relates to school security, and with due consideration to the issues and recommendations raised in the current federal lawsuit challenging the practices of the NYPD School Safety Division, and the recent report by the New York City School-Justice Partnership Task Force, led by Former Chief Judge Judith Kaye. These recommendations include:

- **Convening and implementing a mayoral-led Leadership Team** with defined shared goals and a composition consisting of key City agencies, the courts, parents, youth, law

¹¹ NEW YORK CIVIL LIBERTIES UNION, SSA REPORTING ON ARRESTS AND SUMMONSES, (2012), <http://www.nyclu.org/files/releases/School%20Safety%20Fact%20Sheet%202011-2012.pdf> (last visited April 18, 2014).

¹² KEEPING KIDS IN SCHOOL, *supra* note 17, at 6.

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ Complaint, *supra* note 14, at 13-14.

¹⁶ *Id.* at 4. From January 2007 to November 2011, 63% of school arrests in Manhattan schools were dismissed. KEEPING KIDS IN SCHOOL, *supra* note 17, at 9.

¹⁷ KEEPING KIDS IN SCHOOL, *supra* note 17, at 1.

¹⁸ Ifill, *supra* note 14.

enforcement, the prosecutorial and defense communities, teachers' and principals' unions, and community-based organizations.

- Using the Leadership Team to **create a citywide graduated disciplinary protocol** that would decrease reliance on summonses and arrests in favor of school-based responses. The protocol should detail sanctioned responses to different levels of misbehavior as agreed upon between the Department of Education, the NYPD, prosecutorial agencies, probation and the courts. The protocol should also put into operation Chancellor's Regulation A-412, which absent exigent circumstances, requires consultation between school leadership and School Safety/police officers prior to issuing a summons or arresting a student.
- **Restructuring the NYPD School Safety Division's training program** to include instruction on the differences between the Penal Code and the New York City Department of Education's Citywide Standards of Discipline and Intervention Measures. Training should also address issues of adolescent development and behavior, and instruction in mediation and conflict resolution.

II. CORRECT PROBLEMS WITH LOCAL LAW 14 OF 2013 CONCERNING DISCRIMINATION ON THE BASIS OF UNEMPLOYMENT STATUS

Local Law 14 of 2013 reflects an effort by the City Council to prohibit discrimination based on an individual's unemployment. The City Bar shared the Council's concerns for the plight of job seekers who are unemployed, and supported a key component of the bill that might help to address that plight: a ban on job advertisements stating that current employment is a requirement for a job or that unemployed applicants will not be considered for a job. However, we are concerned that other provisions of the law do not provide sufficiently clear guidance to those who will be required to comply with, rely on, enforce, and adjudicate the law, thus increasing uncertainty and compliance costs without necessarily enhancing employment opportunities for the intended beneficiaries. We therefore urge you to work with the City Council to correct the problems created by this new law or issue clarifying regulations.

First, Sec. 8-107(21)(b)(1)(b) permits a prospective employer to "inquir[e] into the circumstances surrounding an applicant's separation from prior employment." Without some explicit limitation to inquiries not otherwise prohibited by law, this provision invites disability-related inquiries, such as reasonable accommodation issues.

Second, the new provisions do not fully address the ways in which unemployment may differ from other prohibited bases heretofore included in the City Human Rights Law ("CHRL") that may have unintended consequences. For example, Sec. 8-107(21)(a)(1) states that "an employer shall not base an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment." Under the CHRL before Local Law 14, discrimination on a prohibited basis could not play "any role" in a decision, meaning that an employer with "mixed motives"—including both lawful and unlawful ones—would violate the law, even if it would have made the same decision in the absence of any unlawful motives. Given this rule, the inclusion of unemployment as a prohibited basis may have

unintended consequences, as some differences in treatment related to unemployment may be appropriate, particularly in the setting of “the terms, conditions or privileges of employment.” An employer that offers enhanced compensation to lure a currently employed individual, for example, may be liable for discrimination if such an enhancement is not offered to otherwise similar, but currently unemployed, applicants.

Third, we anticipate substantial uncertainty to surround the definition of “unemployed” or “unemployment” in Administrative Code Sec. 8-102(27), which includes “not having a job.” Do people who are self-employed—including, for example, free-lance or contract workers, or those working in a series of very short term positions—qualify as “unemployed” under this definition? If so, are people who are self-employed covered only so long as they were not working on an assignment on the day the employer made its decision?

Those who are unemployed deserve protections, but the uncertainties listed above should be addressed more fully in correcting problems created by Local Law 14.

III. PROTECT NEW YORK CITY’S IMMIGRANT COMMUNITIES

New York City’s vibrant immigrant communities are one of its greatest strengths. We encourage you to work with the City Council to protect New Yorkers from the risk of deportation. We urge you to work to continue and expand city policies that protect New Yorkers and their families from deportation by limiting cooperation and information-sharing with federal immigration authorities. Honoring voluntary detainers issued by U.S. Immigration and Customs Enforcement (“ICE”) costs New York City millions of dollars and undermines basic principles of fairness, erodes community trust in the police, and raises concerns about racial profiling.¹⁹

New York has taken important steps to protect New Yorkers from deportation and keep families together, but more must be done. We urge you to continue Executive Order 41 and to support recent local laws, 2013/021 and 2013/022, that limit the NYC Department of Correction’s and the NYPD’s cooperation with ICE. We also urge you to oppose participation in the federal Secure Communities (S-Comm) program, in which fingerprints from individuals arrested or booked into custody are forwarded to ICE through the FBI.

IV. IMPROVE LANGUAGE ACCESS IN NEW YORK CITY

Finally, we encourage you to undertake measures to improve language access services so that all New Yorkers can access the resources of this city. A new executive order should be issued articulating the City of New York’s commitment to ensuring, in line with obligations found in federal law, that the City’s “communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.”²⁰

¹⁹ See Letter from New York City Bar Criminal Courts Committee et al. to Honorable Christine Quinn, Legislation on Persons Not to Be Detained With Respect to Collaboration with Immigration and Customs Enforcement (ICE) (Jan. 9, 2013), available at <http://www2.nycbar.org/pdf/report/uploads/20072375-PersonsNottoBeDetainedICECollaboration.pdf> (citing references) (last visited April 18, 2014).

²⁰ 28 CFR PART 35 §35-160.

The new executive order should set forth, as Executive Order No. 120 (July 22, 2008) does for residents with limited English proficiency, implementing guidelines and requirements for city agencies, drawing upon the U.S. Department of Justice's "Best Practices Tool Kit for State and Local Governments."²¹

The new administration should also ensure the compliance and transparency of all city agencies with Executive Order No. 120, including posting on the websites of all agencies their Limited English Proficiency Plans, as well as their procedures for securing effective communication and other accommodation for people with disabilities.

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On behalf of the Civil Rights Committee, I thank you and your staff for taking the time to read these recommendations, which address our primary concerns and which we feel require immediate attention. We look forward to working with you on these and other issues involving the civil rights and civil liberties of New Yorkers, and to a productive term.

Sincerely,



Sebastian Riccardi
Chair, Civil Rights Committee

Cc: Nisha Agarwal, Mayor's Office of Immigrant Affairs
William Bratton, Commissioner, New York City Police Department
Carmen Fariña, Chancellor, NYC Department of Education
Jon Paul Lupo, Director, Mayor's Office of City Legislative Affairs
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²¹ ADA Best Practices Tool Kit for State and Local Governments, Ch. 3, *available at* <http://www.ada.gov/pcatoolkit/chap3toolkit.htm> (last visited April 18, 2014).