

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CHARLES DOUGLAS, JULIAN GILBERT, DEREK :
BARON, EMILY MARTIN, and NICHOLAS MOORE, : Index No. _____/21
: :
Plaintiffs, :
: JURY TRIAL DEMANDED
-against- :
: NYSCEF Case
THE CITY OF NEW YORK, THE NEW YORK CITY :
POLICE DEPARTMENT, POLICE OFFICERS JOHN :
DOE #1-24 (True Names Being Presently Unknown and :
Fictitious to Plaintiffs), POLICE OFFICER JANE DOE :
(True Name Being Presently Unknown and Fictitious to :
Plaintiffs), POLICE OFFICER KING (Full Name Being :
Presently Unknown to Plaintiffs), and POLICE OFFICER :
FERREIRA (Full Name Being Presently Unknown to :
Plaintiffs), :
: :
Defendants. :
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COMPLAINT

Plaintiffs Charles Douglas, Julian Gilbert, Derek Baron, Emily Martin, and Nicholas Moore (collectively, "Plaintiffs"), by their attorneys, The Legal Aid Society and Debevoise & Plimpton LLP, for their Complaint against Defendants The City of New York, the New York City Police Department, Police Officers John Doe #1-24 (True Names Being Presently Unknown and Fictitious to Plaintiffs), Police Officer Jane Doe (True Name Being Presently Unknown and Fictitious to Plaintiffs), Police Officer King (Full Name Being Presently Unknown to Plaintiffs), and Police Officer Ferreira (Full Name Being Presently Unknown to Plaintiffs) (collectively, "Defendants"), allege as follows:

Preliminary Statement

1. In January 2020, New York enacted bail reform legislation to minimize the amount of time that New Yorkers accused of crimes may be detained, eliminate the practice of jailing people simply because they are poor, and reduce an overcrowded detention system. Part of the legislation amended New York Criminal Procedure Law (“C.P.L.”) § 150.20 to mandate that, for violations, infractions, misdemeanors, and certain class E felonies (together, “low-level offenses”), police officers issue appearance tickets rather than arrest individuals suspected of committing such offenses. The New York City Police Department (the “NYPD”), however, has blatantly disregarded the law by arresting and taking into custody people alleged to have engaged in low-level offenses, rather than issuing appearance tickets. In addition, the NYPD has violated the constitutional rights of New Yorkers by unlawfully searching and arresting them in contravention of the law.

2. In May and June 2020, the NYPD arrested Plaintiffs in New York City, at or near demonstrations protesting the murder of George Floyd and police brutality, purportedly for violating the Mayor’s Executive Order No. 119 (the “Curfew”) or for Disorderly Conduct — both of which are low-level offenses (a class B misdemeanor and a violation, respectively) for which an appearance ticket is mandated. Though all charges against all of the Plaintiffs were dismissed, or were never even filed with a court, the police were required to issue an appearance ticket for those charges, rather than arrest the Plaintiffs.

3. Despite the law’s clear mandate to issue appearance tickets, the NYPD unlawfully arrested, handcuffed, and in some instances physically brutalized the Plaintiffs. The NYPD then transported and detained the Plaintiffs in overcrowded, filthy,

and overheated vehicles and held them in jail cells inside of police facilities for many hours, where little or no COVID-19 pandemic precautions were taken.

4. This lawsuit seeks to remedy the harm the NYPD inflicted through its past violations and to enjoin the NYPD from continuing to violate the law, in order to provide justice for New Yorkers.

The Parties

5. Plaintiff CHARLES DOUGLAS is a resident of New York County.

6. Plaintiff JULIAN GILBERT is a resident of New York County.

7. Plaintiff DEREK BARON is a resident of Kings County.

8. Plaintiff EMILY MARTIN is a resident of Kings County.

9. Plaintiff NICHOLAS MOORE is a resident of Queens County.

10. Defendant City of New York (“City”) is a municipal corporation organized and existing under the laws of the State of New York and maintains its principal office in the County of New York.

11. Defendant NYPD is an agency of the City charged with law enforcement.

12. Defendants Police Officers John Doe #1-24 (True Names Being Presently Unknown and Fictitious to Plaintiffs), Police Officer Jane Doe (True Name Being Presently Unknown and Fictitious to Plaintiffs), Police Officer King (Full Name Being Presently Unknown to Plaintiffs), and Police Officer Ferreira (Full Name Being Presently Unknown to Plaintiffs) (collectively, the “Officer Defendants”) are officers of the NYPD who were personally involved in Plaintiffs’ unlawful arrests, as described more fully below. The names “John Doe” and “Jane Doe” are fictitious and refer to individual

officers involved in Plaintiffs' unlawful arrests, as detailed below, whose true identities are presently unknown to Plaintiffs.

Jurisdiction and Venue

13. This Court has personal jurisdiction over Defendants City and NYPD because they are incorporated and/or maintain their principal place of business in the State of New York. This Court has personal jurisdiction over the Officer Defendants because, on information and belief, they each reside in the State of New York. This Court further has personal jurisdiction over all Defendants because the events giving rise to this action occurred within the State of New York. *See* C.P.L.R. § 301.

14. Venue in New York County is proper as against Defendants City and the NYPD pursuant to C.P.L.R. § 504(3) and § 505(a) because Defendant NYPD maintains its principal office in this county. *See also* C.P.L.R. § 502. Venue in New York County is proper as against the Officer Defendants pursuant to C.P.L.R. § 502. Venue in New York County also is proper pursuant to C.P.L.R. § 503(a) because Plaintiffs Charles Douglas and Julian Gilbert are residents of this county.

Factual Allegations

Criminal Procedure Law § 150.20

15. Before C.P.L. § 150.20 was amended on January 1, 2020, police officers in New York were permitted, but were not required, to issue appearance tickets instead of effecting an arrest for any violation, infraction, misdemeanor, and class E felony, with the exception of six enumerated class E felonies (*i.e.*, low-level offenses, as defined above). The statute provided, in relevant part: "Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant . . . , he *may* . . . instead issue to and serve upon such person an appearance ticket." C.P.L. § 150.20(1) (emphasis added).

16. After the 2020 amendment, the statute *mandated* that police issue appearance tickets, rather than arrest individuals, for those same low-level offenses. The amended statute provides, in relevant part: “Whenever a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant . . . , he *shall* . . . instead issue to and serve upon such person an appearance ticket.”

C.P.L. § 150.20(1)(a) (emphasis added).

17. The legislative history makes clear that the amendments to C.P.L. § 150.20 were intended to require police officers to issue appearance tickets “instead of” or “in lieu of” making an arrest for low-level offenses. *See, e.g.*, FY 2020 New York State Executive Budget, Public Protection and General Government Article VII Legislation, Memorandum in Support,” at 39 (“This bill would . . . mandate that police issue appearance tickets instead of making custodial arrests in low-level cases”); “New York State Senate Democratic Majority, Staff Analysis of the 2019-20 Executive Budget,” at 64–65 (“Further, the proposal would require police to issue appearance tickets for all misdemeanors and Class E felonies, with some exceptions — meaning that most of these cases will not result in an automatic arrest.”); “New York State Assembly Ways and Means Committee, Yellow Book, Review and Analysis of the 2019-20 Executive Budget,” at 115 (“The Executive includes language to reform certain pre-trial criminal procedures to require police officers to issue an appearance ticket in lieu of arrest for certain lower level crimes subject to a variety of exclusions”).

18. The NYPD has ignored this clear legislative command. On information and belief, the NYPD has not provided any guidance instructing its officers about C.P.L.

§ 150.20's appearance ticket mandate. Although the NYPD has revised its Patrol Guide¹ multiple times since C.P.L. § 150.20 was amended on January 1, 2020, the NYPD has not updated the Patrol Guide to reflect C.P.L. § 150.20's requirement to issue appearance tickets in lieu of arrests. The NYPD, notably, has done the opposite: it has instructed its officers, as a matter of policy and practice, to continue to make unlawful arrests for low-level offenses. Pursuant to a written policy that the NYPD issued during the protests in New York City in May and June 2020 entitled, "Floyd Demo Quick Reference," for example, the NYPD ordered officers to arrest individuals for, among other things, low-level offenses such as traffic violations and class A misdemeanors (*e.g.*, writing, drawing, or painting on property).

19. As described in greater detail below, each Plaintiff was a victim of the NYPD's violation of the law.

Unlawful Arrests of Plaintiffs

Charles Douglas

20. On May 31, 2020, around 11:30 PM, after spending a day in the city, Plaintiff Charles Douglas and his three friends arrived in the Union Square area of Manhattan, where a group protesting police brutality in the wake of George Floyd's death had just departed.

21. Charles and his three friends stood on the street to observe, when superior Officer John Doe #1 (rank unknown to Plaintiffs at this time), wearing a white shirt, approached them. As Officer John Doe #1 walked, he told Charles and his friends to "go

¹ It is noteworthy that other law enforcement agencies, such as the Port Authority Police Department, also use the NYPD's Patrol Guide.

away.” Charles and his friends complied with the dispersal order, but, as Charles walked away, Officer John Doe #1 shoved him in the back. Charles said to Officer John Doe #1: “Please don’t shove me, sir.” Officer John Doe #1, who had pushed him, said: “Get this one.” Then, Officers John Doe #2-7 approached Charles, forced him to the ground, and piled on top of him. Officer John Doe #2 then placed Charles in metal handcuffs. None of the officers was wearing a mask.

22. Officer John Doe #2 walked Charles several blocks away and ordered him to sit on the sidewalk. Charles obeyed. Officers replaced Charles’s handcuffs with tight plastic zip ties and kept Charles (along with other individuals who had been arrested) detained on the sidewalk for several hours.

23. From the time he was arrested at around 11:30 PM, until approximately 2:10 AM, Charles remained seated on the sidewalk, as ordered by the NYPD. No NYPD officer asked Charles any questions until around 1:30 AM, when another group of officers arrived. Defendant Police Officer Ferreira then asked Charles for his name, date of birth, and for his identification. Charles provided all of the requested information.

24. After Charles provided his information to Police Officer Ferreira, the officers placed Charles and the others into a police van that was hot and without air conditioning. While in the van, Charles was in pain from being forced to sit on his hands because of the tight zip ties. After waiting for approximately 30 minutes, the van transported Charles and others to One Police Plaza in Manhattan, where they sat in the van for more than an hour.

25. After standing in line outside for approximately another hour, Charles was processed. He provided his name and other details, had his photo taken, placed items

such as his shoelaces and phone in his backpack, and had his zip ties removed. At that time, Defendant Officer Ferreira told Charles that normally the police kept people at the local precinct (rather than bringing them into One Police Plaza) for ten to fifteen minutes before letting them go, but that that protocol had been changed to deter protesters.

Charles told Officer Ferreira: "I wasn't protesting in the first place."

26. Officers then placed Charles in a holding cell with around fifty other people, many of whom were not wearing masks. There was no water, hand sanitizer, or space for social distancing. There was a sink, but someone was sitting on it. There was a toilet, but it was covered in vomit. The cell was hot and there was no air conditioner.

27. About two-and-a-half hours, later Charles was given an appearance ticket for Disorderly Conduct under Penal Law § 240.20, a violation-grade offense. He was not released from Central Booking until 7:45 AM, more than eight hours after he first was unlawfully arrested.

28. At the time of the arrest, Charles had no open warrants and had never failed to appear for a court proceeding. He provided his identification information when it was initially requested by Defendant Officer Ferreira while Charles was detained on a sidewalk in the vicinity of Union Square. There was no circumstance that disqualified Charles from receiving an appearance ticket pursuant to C.P.L. § 150.20.

29. Charles attended a vigil in honor of victims of police brutality one week after his arrest. He intends to attend peaceful protests against injustice in the future but is afraid of being arrested again.

30. Charles sought mental health care with a psychologist for the mental anguish he suffered during and in the aftermath of the arrest. For three to four weeks

following his arrest, Charles also experienced pain, numbness, and tingling in his wrists due to the tight zip ties.

31. The Disorderly Conduct charge against Charles was dismissed.

Julian Gilbert

32. Julian Gilbert attended a vigil at McCarren Park in Brooklyn on June 4, 2020. Following the vigil, Julian and others participated in a peaceful march.

33. Julian was standing away from the crowd of protesters when he noticed a police presence starting to form. He decided to go home.

34. While leaving, Julian saw police officers on bicycles begin to block off the end of the street and encircle the marchers. Julian attempted to leave from the back of the march to avoid the police presence and began walking up the block with his bicycle. As Julian was moving away from the march, some officers who were standing around ordered Julian to leave. He complied and continued to make his way down the street and away from the march.

35. Once Julian was a few blocks from where he initially observed the police officers on bicycles cut off the street, a group of additional officers turned onto the street. In response, some people ran in Julian's direction, but most of the fleeing crowd turned down an adjacent street.

36. Julian moved in the opposite direction towards the Williamsburg Bridge and was about to get on his bicycle to head home, but, before he could, four officers turned the corner onto the street Julian was on. An officer with a white shirt pointed at Julian and shouted, "Grab him." Before Julian could start pedaling his bicycle, he felt Officers John Doe #8 and #9 hitting his legs and the back wheel of his bicycle with their

batons. While the officers were hitting Julian, Officer John Doe #10 pulled him by the bag that was across Julian's body, yanked him from his bicycle, and threw him face down onto the ground. One of the officers threw Julian's bicycle, his only means of safe transportation during the pandemic, into a trash pile on the curb. When he hit the ground, Julian went limp, as Officers John Doe #8-10 spread his legs.

37. Officer John Doe #11 then placed Julian in metal handcuffs. The officers did not tell Julian why he was being arrested. Officers John Doe #12 and #13 escorted Julian two blocks up the street, where they sat him on the ground in the middle of the street behind a police van. Julian was then placed on an MTA bus with approximately one to two dozen other people, with no social distancing, and was transported to Brooklyn Central Booking. No officer asked for Julian's name and date of birth until he arrived at Central Booking.

38. Julian was held in Central Booking, where he was moved between multiple filthy, foul-smelling, and overcrowded cells. There was no room for social distancing. Julian was confined in Central Booking until approximately 2:00 AM, more than six hours after he was arrested, when he was issued an appearance ticket for violating the Curfew, a class B misdemeanor, and released.

39. At the time of the arrest, Julian had no open warrants and had never failed to appear for a court proceeding. Julian provided his identification information when requested, and there were no circumstances that disqualified him from receiving an appearance ticket pursuant to C.P.L. § 150.20.

40. Julian felt a pins and needles sensation in his hands and wrist for at least a week-and-a-half after his arrest.

41. Julian felt emotionally distressed after the experience. He suffered great anxiety about possibly being exposed to COVID-19 during the multiple hours he spent in NYPD custody. Prior to his arrest, Julian had attended multiple peaceful protests. After his arrest, Julian was fearful about attending other protests for approximately one week. Subsequently, Julian attended two or three more peaceful protests and plans to attend future peaceful protests.

42. Julian's charge never was docketed and no criminal action based upon this or any other charge was commenced in any court.

June 4, 2020 Protest in Mott Haven

43. Three of the Plaintiffs — Derek Baron, Emily Martin, and Nicholas Moore — were arrested at about the same time during a peaceful protest in Mott Haven in the Bronx on June 4, 2020. The NYPD's abusive tactics during the Mott Haven protest have been well-documented.²

44. Before 8:00 PM, police officers surrounded the Mott Haven protest and "kettled" the group to prevent protesters and others from leaving the area. Kettling is an abusive police practice in which officers form a wall at the front of a protest to prevent

² See, e.g., Human Rights Watch, "*Kettling*" *Protesters in the Bronx* (Sept. 30, 2020), available at <https://www.hrw.org/node/376494/printable/print>. There were at least sixty-one cases of injuries to protesters, legal observers, and bystanders including lacerations, a broken nose, lost tooth, sprained shoulder, broken finger, split lip, black eyes and bruises, difficulty breathing and seeing because of pepper spray, and potential nerve damage due to the tightness of zip ties used. *Id.* There were twenty-one incidents of police beating protestors with batons; eleven incidents of police officers punching or kicking protesters; nineteen instances of police slamming, tackling, or dragging protesters, fourteen incidents of police firing pepper spray directly at participants' faces; four incidents of police throwing bikes against protesters; and two incidents where police restrained participants with a knee to the face or upper neck. *Id.*

protesters from moving forward while other officers simultaneously push the group from behind towards the wall of officers in the front, preventing anyone from leaving and trapping protesters into a tighter and tighter group.

Derek Baron³

45. Before 8:00 PM, as the officers pressed in, the pressure caused Derek to fall to the ground.

46. After Derek was able to stand up, Officer John Doe #14 grabbed Derek from behind and threw Derek onto the ground, face first.

47. Officer John Doe #15, an officer wearing a white shirt, put his knee on Derek's neck, while Officer John Doe #16 put zip ties on Derek's wrists. Derek did not move after being thrown to the ground.

48. Officer John Doe #17 hit Derek in the temple while Derek was lying motionless on the ground.

49. Officer John Doe #18 then picked Derek up by the armpit. There was a stream of blood coming from Derek's nose and Derek's glasses were gone. Officer John Doe #18 and Derek stood in place for approximately thirty minutes.

50. Then, Officer John Doe #18 ordered Derek to walk back and forth with Officer John Doe #18 for approximately one hour.

51. The zip ties on Derek's wrists were very tight and caused Derek significant pain. Derek told Officer John Doe #18 that the restraints were too tight, but Officer John Doe #18 did not respond or take any action.

³ Plaintiff Derek Baron prefers to use the personal pronouns they/them/theirs.

52. Officer John Doe #18 then led Derek to an NYPD van, where Officer John Doe #18 and Officer John Doe #19 searched Derek's pockets and backpack.

53. Officer John Doe #18 ordered Derek to get in the van. The van was hot; none of the officers or arrestees wore a mask. Approximately thirty minutes later, the van drove to the 41st Precinct in the Bronx and then to Queens Central Booking.

54. During the ride, Derek asked that the zip ties be removed because they were losing feeling in their hands. An officer told Derek that nothing could be done until they arrived at the precinct.

55. When the van arrived at Queens Central Booking, Officer John Doe #20 pulled Derek to the side to replace the zip ties around Derek's wrists with metal handcuffs, approximately three hours after they first were put on. Derek and other arrested protesters were then escorted into Queens Central Booking.

56. Derek was placed into a holding cell with fourteen other people. There was no sink or toilet, no social distancing was possible, and there was not enough room for everyone to sit. Derek did not have a face mask because it had come off during the arrest. No officer ever offered Derek or the other arrestees a new face mask or hand sanitizer, and most of the officers were not wearing face masks. At this point, Derek's hands were still restrained with handcuffs.

57. After approximately one hour, and for the first time, an officer asked for Derek's name, address, height, weight, and race, which Derek provided. The officer asked if Derek had a driver's license, and Derek told him that it was in the backpack that had been taken from Derek upon arrival at Central Booking.

58. Approximately forty minutes later, Derek was moved to a different cell, where Derek's handcuffs were removed. Derek remained in that cell for about forty-five minutes. An officer then gave Derek an appearance ticket, specifying the charge against Derek simply as violating "3108."

59. Derek finally was released at approximately 2:30 AM, more than six hours after first being arrested.

60. At the time of the arrest, Derek had no open warrants and had never failed to appear for a court proceeding. Derek provided identification information when requested, and there were no circumstances that disqualified Derek from receiving an appearance ticket pursuant to C.P.L. § 150.20.

61. Derek subsequently received medical treatment at City MD in Bushwick, Brooklyn, for his physical injuries, during which Derek was treated for a broken nose, handcuff palsy, and costochondritis. To date, Derek continues to suffer pain due to the injuries sustained during the arrest. Derek has also been more hesitant to participate in protests due to their fear of being arrested again.

62. Derek attended several peaceful protests after their arrest, including at least one at which police officers arrested other protesters. Derek plans to attend more peaceful protests in the future.

Emily Martin

63. On June 4, 2020, plaintiff Emily Martin participated in the same protest in Mott Haven in the Bronx with Plaintiffs Derek Baron and Nicholas Moore.

64. When the NYPD officers surrounded the protest, the pressure from the crowd caused Emily to fall. She was lying on the ground on top of Derek Baron, with

four or five people on top of her. While Emily was on the ground she felt a burning sensation in her throat and lungs that she believed was pepper spray or tear gas.

65. After officers pulled the people on top of Emily away, Emily saw Officer Jane Doe with a baton approaching her. Without provocation, Officer Jane Doe struck Emily in the torso with the baton multiple times.

66. After Emily managed to stand up, Officer John Doe #21, who was wearing a white uniform, grabbed Emily by the arm and passed Emily to a third officer, Officer John Doe #22. Officer John Doe #22 then held Emily while Officer John Doe #21 used zip ties to restrain Emily's hands behind her back. After Officer John Doe #21 finished restraining Emily, Officer Jon Doe #22 passed her to Defendant Officer King. The zip ties were very tight, causing Emily pain and resulting in bruising on her wrists.

67. Officer King held Emily by the arm for approximately thirty minutes. Several times, when Emily tried to adjust her arms to lessen the pain the zip ties were causing her, Officer King manipulated the angle of her arms, causing Emily further pain.

68. While Emily waited, she saw white powder on the clothes of protesters that appeared to be pepper spray or tear gas. Officer King then ordered Emily to enter an unmarked van. At no point before the officers restrained Emily or ordered her into the van did they ask for her name, identification, or any other information. Once inside the van, Officer John Doe #23 asked for Emily's name and date of birth, which she provided.

69. Emily was taken to the 48th Precinct in the Bronx, and approximately two to three hours later she was transported to Brooklyn Central Booking. There, for the first time, Emily was offered a mask. At no point did any officers offer her hand sanitizer, food, or water.

70. On information and belief, Emily was written an appearance ticket shortly before midnight on June 4, 2020, but it was not given to her when it was written.

71. Emily was held in the Brooklyn cell for several hours; it was so cold it caused her teeth to chatter. During that time, she heard someone within the facility screaming in pain. On June 5, 2020, she finally was given an appearance ticket, dated June 4, 2020, and released approximately eight hours after having been arrested in Mott Haven, the Bronx. The appearance ticket specified the charge against Emily as “violating the Curfew,” a class B misdemeanor.

72. At the time of the arrest, Emily had no open warrants and had never failed to appear for a court proceeding. She provided her identification information when requested, and there were no circumstances that disqualified Emily from receiving an appearance ticket pursuant to C.P.L. § 150.20.

73. Emily still experiences stress when she thinks about her arrest, causing tightness in her chest and tenseness in her whole body. Emily continues to feel fear when she sees a police officer, and is afraid of being arrested at a protest again.

74. Emily attended several peaceful protests after her arrest, including at least one at which police officers arrested other protesters. Emily plans to attend future peaceful protests.

Nicholas Moore

75. On June 4, 2020, Nicholas Moore met Plaintiffs Derek Baron and Emily Martin to join the Mott Haven protest. Nicholas and the other marchers went down a street, where a line of police in riot gear, but no face masks, blocked their path with bicycles. A line of similarly clad officers also blocked the rear of the group of protestors.

76. Before 8:00 PM, with nowhere to go, the officers trapped Nicholas and the other marchers along the protest route.

77. The officers pushed the crowd, causing Nicholas to fall to the ground.

78. As he tried to get back up, Officer John Doe #24 forcefully pushed Nicholas back down.

79. Officer John Doe #24 immediately grabbed Nicholas's hands and put them tightly in zip ties behind his back.

80. Officer John Doe #24, whom Nicholas could not see, since he was on the ground for most of the encounter, did not tell Nicholas what was happening or where he would be taken. Officer John Doe #24 did not ask for Nicholas's name or for identification.

81. Officer John Doe #24 made Nicholas stand up and handed him off to another officer, Defendant Officer King.

82. Nicholas and the other protesters were then transported from Mott Haven to the 48th Precinct in the Bronx.

83. Once there, the officers placed Nicholas in a line with others who had been arrested. During that time, officers confiscated Nicholas's belongings.

84. Officers then put Nicholas into a small cell with three other people — two of whom were unmasked, and one of whom was coughing.

85. Around two hours later, Nicholas and other protesters were lined up again, put into another van, and driven to Brooklyn Central Booking.

86. Nicholas was confined in a series of cells within Central Booking until around 5:00 AM, at which time he was issued an appearance ticket and released.

87. At the time of his arrest, Nicholas had no open warrants and had never failed to appear for a court proceeding. Nicholas provided his identification information when requested and there were no circumstances that disqualified Nicholas from receiving an appearance ticket pursuant to C.P.L. § 150.20.

88. Nicholas experienced significant pain and tingling in parts of his hands while he was handcuffed. The tingling persisted and parts of his hands remained numb for months following his arrest.

89. Nicholas's arrest has shaken him, and he has decreased his participation in peaceful protests from what it would have otherwise been.

Count One

(Statutory Construction – Declaratory Judgment)

90. Plaintiffs repeat and reallege the allegations set forth above.

91. The NYPD arrested Plaintiffs, who at the time were engaged in lawful activity, and charged each with a low-level offense for which C.P.L. § 150.20(1) mandates an appearance ticket rather than arrest.

92. The NYPD unlawfully detained Plaintiffs for many hours, from the time they were arrested until they were issued appearance tickets and released.

93. C.P.L. § 150.20(1)(a) does not command or authorize the transport of individuals charged with a low-level offense to court or anywhere else, such as a jail. The only action C.P.L. § 150.20(1)(a) authorizes for low-level offenses is to issue and serve an appearance ticket.

94. None of the statutory exceptions under C.P.L. § 150.20(1)(a) that relieve an officer from the requirement of issuing an appearance ticket applied.

95. Plaintiffs' arrests for minor offenses, for which C.P.L. § 150.20(1)(a) mandates the issuance of appearance tickets instead of arrest, were unlawful.

96. Plaintiffs each intend to participate in peaceful protests in the future in New York City and face the real threat of similar unlawful arrests by the NYPD.

97. Accordingly, Plaintiffs are entitled to a declaration that C.P.L. § 150.20 prohibits officers from making warrantless arrests for low-level offenses covered by C.P.L. § 150.20.

Count Two

(Violations of the New York State Constitution Article I, § 12)

98. Plaintiffs repeat and reallege the allegations set forth above.

99. Article I, § 12 of the New York State Constitution protects the right to be free from "unreasonable searches and seizures." The illegal arrest practices described above constitute unreasonable seizures prohibited by the New York Constitution.

100. By adopting and implementing the arrest practices in this manner, the City has enforced, promoted, encouraged and sanctioned a policy, practice and/or custom of arresting Plaintiffs for minor offenses, without probable cause to establish that a criminal offense for which an arrest is statutorily permitted has been or is being committed as required by the Constitution and laws of New York.

101. By sanctioning and enforcing policing practices in this manner, the City intentionally and under color of state law has seized, questioned, searched, arrested, transported, and detained Plaintiffs without the requisite probable cause that a crime for which an arrest is statutorily permitted has been committed in violation of the Constitution and laws of the State of New York.

102. These constitutional abuses and violations were, and are, directly and proximately caused by policies, practices and/or customs devised, implemented, enforced, promoted, encouraged and sanctioned by the City, including, but not limited to:

- (a) the failure to adequately and properly screen, train, and supervise NYPD officers;
- (b) the failure to properly and adequately monitor and discipline NYPD officers; and
- (c) the overt and tacit encouragement and sanctioning of, and the failure to rectify, the NYPD's unlawful arrest practices.

103. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs have been deprived of their rights under the Constitution and laws of the State of New York.

104. Accordingly, Plaintiffs are entitled to damages, in an amount to be proven at trial, and injunctive relief.

Count Three

(False Arrest)

105. Plaintiffs repeat and reallege the allegations set forth above.

106. The Officer Defendants unlawfully, unjustifiably, and intentionally arrested, transported, detained, deprived Plaintiffs of their liberty against their will, and imprisoned Plaintiffs.

107. The unjustifiable, unlawful, and intentional arrests, transportation, and imprisonments were carried out without a warrant.

108. At all times mentioned, the unlawful false arrests and imprisonments of the Plaintiffs were without probable cause that Plaintiffs committed an offense for which C.P.L. § 150.20 permits an arrest, were forcible, and were against Plaintiffs' will.

Because C.P.L. § 150.20 required the Officer Defendants to issue appearance tickets to Plaintiffs instead of arresting them, the Officer Defendants were without lawful authority to arrest Plaintiffs.

109. All of the foregoing occurred without any fault on the part of Plaintiffs.

110. At all relevant times, Plaintiffs were aware of their confinement.

111. None of the statutory exceptions under C.P.L. § 150.20(1)(a) that relieve an officer from the requirement of issuing an appearance ticket applied.

112. At all relevant times, the Officer Defendants were employees of the NYPD, and thus the City, and were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

113. Consequently, the City and the NYPD are liable under the doctrine of *respondeat superior* for the tortious actions of the Officer Defendants.

114. Accordingly, Plaintiffs are entitled to damages as requested in this Complaint.

Count Four

(Assault and Battery)

115. Plaintiffs repeat and reallege the allegations set forth above.

116. During the course of unlawfully arresting Plaintiffs, the Officer Defendants touched Plaintiffs without Plaintiffs' consent and caused Plaintiffs bodily harm.

117. At all relevant times, the Officer Defendants were employees of the NYPD, and thus the City, and were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

118. Consequently, the City and NYPD are liable under the doctrine of *respondeat superior* for the tortious actions of the Officer Defendants.

119. Accordingly, Plaintiffs are entitled to damages as requested in this Complaint.

Count Five

(Excessive Force)

120. Plaintiffs repeat and reallege the allegations set forth above.

121. During the course of unlawfully arresting each of the Plaintiffs, the Officer Defendants used more force than necessary to detain Plaintiffs.

122. During the course of unlawfully arresting Plaintiffs, the Officer Defendants used an unreasonable amount of force and caused Plaintiffs unnecessary physical injuries.

123. At all relevant times, the Officer Defendants were employees of the NYPD, and thus the City, and were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

124. Consequently, the City and NYPD are liable under the doctrine of *respondeat superior* for the tortious actions of the Officer Defendants.

125. Accordingly, Plaintiffs are entitled to damages as requested in this Complaint.

REQUESTED RELIEF

126. Plaintiffs respectfully request the following relief:

- a. A declaration that Criminal Procedure Law § 150.20 prohibits arrests for low-level offenses covered by C.P.L. § 150.20;

- b. A declaration that the NYPD's policy of making arrests for low-level offenses violates Article I, § 12 of the New York State Constitution and Criminal Procedure Law § 150.20;
- c. An order permanently enjoining the Defendants, their agents, employees, representatives, and all those acting in concert with them from violating Criminal Procedure Law § 150.20 and ordering any such further measures as deemed necessary to effectuate that injunction;
- d. Compensatory damages;
- e. Punitive damages;
- f. Costs of suit, including, but not limited to, attorneys' fees; and
- g. Such further relief as the Court deems just and proper.

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