

# Twenty-Second Report of the Independent Monitor

## Underreporting of *Terry* Stops by the NYPD

Mylan Denerstein

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*Floyd, et al. v. City of New York, et al.*

*Ligon, et al. v. City of New York, et al.*

*Davis, et al. v. City of New York, et al.*



## **MONITOR TEAM**

Mylan Denerstein  
*Monitor*

Richard Jerome  
*Deputy Monitor*

Anthony Braga

Jennifer Eberhardt

Rudolph Hall

Demosthenes Long

John MacDonald

James McCabe

Jane Perlov

James Yates

[nypdmonitor.org](http://nypdmonitor.org)

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## I. Executive Summary

In 2013, the United States District Court for the Southern District of New York ruled that the New York City Police Department’s (“NYPD” or “Department”) stop-and-frisk practices violated the Fourth Amendment and the Fourteenth Amendment of the U.S. Constitution.<sup>1</sup> In its Remedial Order, the Court required that NYPD officers complete a stop report form for every *Terry* stop.<sup>2</sup>

The NYPD cannot achieve compliance with the court-ordered reforms relating to *Terry* stops unless stops made by its members are documented by the officer(s) conducting the stops. Officers’ failure to document their *Terry* stops in stop reports was a problem in 2022 and 2023, and it remains a problem today.

To assess the NYPD’s compliance with the Court’s reporting requirements, the Monitor team audited a sample of Body-Worn Camera (“BWC”) videos to identify potential *Terry* stops and assess whether a stop report was completed for encounters determined to be stops.<sup>3</sup> The Monitor team’s audit of BWC videos found that only 59% of identified *Terry* stops were documented with stop reports in 2023. This is an even lower compliance rate than revealed in the

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<sup>1</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013) (*Floyd* Liability Opinion).

<sup>2</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 668, 681–83 (S.D.N.Y. 2013) (*Floyd* Remedial Order). When a police officer detains a civilian such that the person is not free to leave, it is called a *Terry* stop, named after the U.S. Supreme Court case ruling that an officer must have at least reasonable suspicion of criminality before the officer can conduct a stop. *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>3</sup> This report focuses on BWC videos for which the officer labels the event as an “Investigative Encounter” in the BWC data system, Evidence.com. An “investigative encounter” is a police interaction with a member of the public for a law enforcement or investigative purpose. The Monitor team’s audit does not account for other encounters that might in fact be stops but for which officers categorize the video with a different label in Evidence.com. The audit also does not account for encounters that are not recorded by the officer(s) on their BWC(s). The Monitor team will be conducting a review of videos not labeled “Investigative Encounter” to determine whether there are other categories of videos that also might include undocumented stops. There is no practical method to assess the extent to which officers are not activating their BWCs during *Terry* stops.

Monitor team's 2022 audit, finding that 69% of identified stops were documented.<sup>4</sup> The NYPD appears to be headed in the wrong direction and must take immediate steps, including discipline when appropriate, to correct this failure to properly document *Terry* stops.

## II. Methodology for Assessing BWC Videos Categorized as Investigative Encounters

Currently, the NYPD uses several methods to identify undocumented *Terry* stops, including BWC audits, RAND audits, Police Initiated Enforcement (“PIE”) audits, and, beginning in January 2024, ComplianceStat meetings.<sup>5</sup> In recent years, the RAND and PIE audits have generally been ineffective at capturing unreported stops, and the ability of ComplianceStat to recognize such stops is not yet clear because it is relatively new. But regardless of identification efficacy, undocumented *Terry* stops remain problematic. Thus, to evaluate the Department's compliance with its reporting obligations, the Monitor team conducted audits of BWC videos categorized as “Investigative Encounters”<sup>6</sup> to ascertain encounters that appear to be *Terry* stops and determine whether a stop report was prepared for each encounter.

The Monitor team identified unreported stops by assessing 225 BWC videos categorized as investigative encounters for each quarter in 2022 and 2023. For investigative encounter videos

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<sup>4</sup> Twenty-First Report of the Independent Monitor, *Floyd v. City of New York*, No.1:08-cv-01034-AT (S.D.N.Y. Sept. 4, 2024), ECF No. 934-1, at [https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report\\_Stamped.pdf](https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report_Stamped.pdf).

<sup>5</sup> RAND audits were designed for the NYPD by the RAND Corporation and rely on information transmitted over Department radio to identify possible stops. The Monitor has determined that the RAND audits are no longer an effective method for identifying underreporting. PIE audits are conducted by the NYPD's Quality Assurance Division (“QAD”) and involve auditing arrest reports in which the complainant is People of the State of New York, such as criminal possession of a controlled substance or weapon. QAD reviews the arrest and decides if a stop report was required. These audits are performed in addition to the command-based audits where supervisors review a sample of BWC videos each month to search for possible undocumented stops. ComplianceStat is a new procedure developed by the NYPD in 2024 to review the work of commands. It includes audits of officer BWC videos.

<sup>6</sup> When an officer engages in an investigative encounter, they are expected to label that encounter as such in the Evidence.com system and specify the level of the investigative encounter that was recorded. The four levels were established by the New York State Court of Appeals in *People v. DeBour*, 40 N.Y.2d 210 (1976). Level 1 encounters are known as “Requests for Information” and require an objective, credible reason to approach the person. A Level 2 encounter is known as a “Common Law Right of Inquiry” and requires a founded suspicion that criminality might be present. Level 1 and Level 2 encounters do not require a stop report, although officers are now required under the How Many Stops Act to report those encounters on different forms. Level 3 encounters are *Terry* stops and require

recorded in the first three quarters of 2022, the Monitor team relied on the metadata for all BWC videos from that period. The Monitor team then selected random samples of videos from different *DeBour* levels (Level 1, Level 2, and Level 3) each quarter. However, later quarters saw an increasingly large volume of BWC videos stored in Evidence.com, and downloading the metadata for all the videos in the system would have been quite burdensome for the NYPD. Instead, for the fourth quarter of 2022 and all of 2023, the Monitor team selected videos from a stratified sample of tours and days for each quarter. For example, there are three duty tours per day on average,<sup>7</sup> and in the first quarter of 2023, there were 90 days, for a total of 270 tours. The Monitor team selected a random sample of 10% of these tour/days and requested all the BWC metadata for any video categorized as an investigative encounter.<sup>8</sup>

The team then further stratified the BWC metadata from the 10% sample of investigative encounter videos by level of encounter. For each quarter, the Monitor team randomly selected 50 BWC videos categorized by officers as Level 1, 100 videos categorized as Level 2, 25 videos categorized as Level 3, and 50 videos that were not assigned a label (“NA” or “non-labeled” videos), for a total of 225 videos per quarter and 900 videos for each year under review. This stratified approach, sampling encounters from each level, was designed to explore the different levels of encounters to most effectively identify undocumented stops and to show whether proper documentation of stops is increasing or decreasing over time.

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reasonable suspicion that a crime is or might be occurring, and a stop report documenting these encounters must be prepared. Level 4 encounters are ones where the officer has probable cause for an arrest or a summons.

<sup>7</sup> The NYPD has three general patrol shifts. The First Platoon is scheduled from 11:30 p.m. to 8:05 a.m., the Second Platoon is scheduled from 7:05 a.m. to 3:40 p.m., and the Third Platoon is scheduled from 3:15 p.m. to 11:50 p.m. The times selected for the sampling frame approximate this three-platoon schedule.

<sup>8</sup> Selecting videos from a random sample of 10% of tours reduced the workload on the NYPD in downloading the metadata from Evidence.com without undermining the validity of the audit.

The methodology did not select a representative sample from the entire population of videos categorized as investigative encounters because the number of stops and likelihood of stop reports are not evenly distributed across levels. For example, simply selecting a random sample of all BWC videos categorized as investigative encounters would have resulted in review of disproportionately more Level 1 encounter videos because there were almost four million Level 1 encounters recorded in 2023, far more than for other levels. Because encounters that officers label as Level 1 are less likely to be misclassified, this approach would have been an inefficient way of identifying underreporting of stops. Similarly, the sample was designed to review only 25 Level 3 encounters per quarter because of an outsized stop rate: if an officer categorizes an encounter as a Level 3 *Terry* stop, there is a reasonable expectation that the officer is aware that a stop report is required. This assumption was supported by the finding that almost 100% of the BWC videos categorized as a Level 3 *Terry* stop also had a stop report on record documenting the encounter.

On the other hand, Level 2 stops were deliberately over-sampled. Encounters categorized by officers as a Level 2 Common Law Right of Inquiry are the most likely to be unreported Level 3 *Terry* stops. This misclassification could be the result of officers incorrectly believing that certain encounters are sufficiently innocuous such that the person encountered is free to go. It could also be that officers have mislabeled encounters as Level 2 to avoid completing stop reports.<sup>9</sup> As a result, the Monitor team over-sampled this category and reviewed 100 videos of encounters labeled as Level 2 per quarter.

For Level 1 and non-labeled encounters, the Monitor team reviewed 50 videos of each category per quarter, resulting in 200 Level 1 videos and 200 non-labeled videos reviewed per

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<sup>9</sup> Now that the How Many Stops Act requires officers to complete a report for Level 2 encounters (although not as detailed as a stop report), it is possible that the incentive to misclassify *Terry* stops as Level 2 encounters might be reduced. The effect of the Act remains to be evaluated.

year. This provided a large enough random sample—200 encounters of both levels for the entire year—to assess underreporting with confidence in the findings.<sup>10</sup> Confidence was also supported by the stable nature of the results, which consistently show similar rates of underreporting in Level 1 encounters and non-labeled encounters from year-to-year.

After the sample videos were selected, the Monitor team assessed each video to make a preliminary determination as to whether the encounter required the preparation of a stop report. In doing so, the Monitor team did not review any ICADs<sup>11</sup> or other reports that might have been prepared in connection with each investigative encounter. The team then sent the NYPD a list of the videos where a stop report may have been required. In turn, the Department's Professional Standards Bureau or Legal Bureau evaluated these encounters to identify undocumented stops, provide its assessment of each encounter and whether it believed a *Terry* stop occurred, and, if so, confirm whether a stop report was prepared to document the stop.<sup>12</sup> Finally, the Monitor team revisited its preliminary assessment and determined whether a *Terry* stop actually occurred and whether a stop report was prepared.

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<sup>10</sup> At a 95% confidence level, a random sample of 200 BWC videos within each level would produce a margin of error of less than 7%. A sample of 400 would result in a margin of error of less than 5%. Because more than 95% of Level 3 videos have a stop report prepared, the sample size for that level can be very small to provide an acceptable margin of error.

<sup>11</sup> Intergraph Computer Aided Dispatch (“ICAD”) reports are transcripts of 911 and 311 calls and radio communications between dispatchers and police officers.

<sup>12</sup> The Professional Standards Bureau reviewed the Monitor team's assessments in 2022 and the Legal Bureau reviewed the assessments in 2023. In 2022, the Professional Standards Bureau agreed with the Monitor team that the BWC video reviewed was a *Terry* stop in 84% of the incidents (102 out of 121). In 2023, the NYPD Legal Bureau agreed with the Monitor team that the BWC video reviewed was a *Terry* stop in 93% of the incidents (116 out of 125).



### III. Results from 2022 to 2023 Monitor BWC Audits

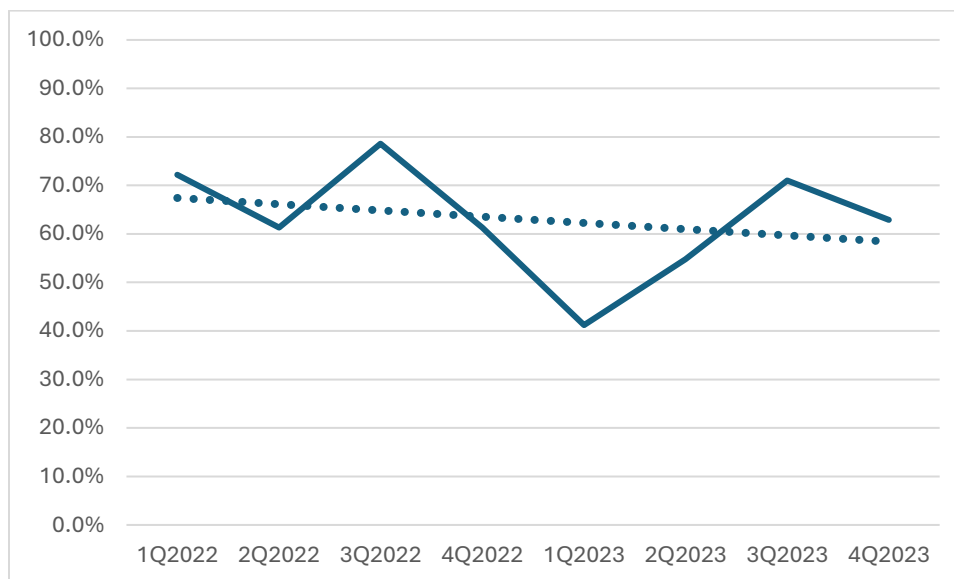
Table 1 shows the results of the Monitor team's BWC audits from the first quarter of 2022 through the fourth quarter of 2023. The results show a decrease in compliance with reporting requirements. The compliance rate was 68.6% in 2022. It declined to 59.2% in 2023.

**Table 1. Investigative Encounters Reviewed on BWC, 2022 to 2023**

| Quarter           | Total IE Videos* | BWC Sample | Monitor Possible Stops | NYPD Confirmed Stops | Monitor Confirmed Stops | Stop Reports Completed | Compliance Rate |
|-------------------|------------------|------------|------------------------|----------------------|-------------------------|------------------------|-----------------|
| <b>1Q2022</b>     | 833,065          | 225        | 34                     | 25                   | 31                      | 23                     | 74.2%           |
| <b>2Q2022</b>     | 1,039,525        | 225        | 37                     | 28                   | 31                      | 19                     | 61.3%           |
| <b>3Q2022</b>     | 1,124,692        | 225        | 38                     | 24                   | 28                      | 22                     | 78.6%           |
| <b>4Q2022</b>     | 1,138,119        | 225        | 48                     | 25                   | 31                      | 19                     | 61.3%           |
| <b>Total 2022</b> | <b>4,135,401</b> | <b>900</b> | <b>157</b>             | <b>102</b>           | <b>121</b>              | <b>83</b>              | <b>68.6%</b>    |
| <b>1Q2023</b>     | 1,138,860        | 225        | 25                     | 16                   | 17                      | 7                      | 41.2%           |
| <b>2Q2023</b>     | 1,237,882        | 225        | 51                     | 38                   | 42                      | 23                     | 54.8%           |
| <b>3Q2023</b>     | 1,187,707        | 225        | 39                     | 25                   | 31                      | 22                     | 71.0%           |
| <b>4Q2023</b>     | 1,163,187        | 225        | 44                     | 35                   | 35                      | 22                     | 62.9%           |
| <b>Total 2023</b> | <b>4,727,636</b> | <b>900</b> | <b>159</b>             | <b>114</b>           | <b>125</b>              | <b>74</b>              | <b>59.2%</b>    |

\*Investigative Encounter videos.

Figure 1, below, shows all eight quarters from 2022 and 2023 along with the stop report preparation compliance rate for each quarter. The same sampling methodology was used for each of these eight quarters. Compliance ranged from a high of 78.6% in the third quarter of 2022 to a low of 41.2% in first quarter of 2023. The figure also includes a trend line, which illustrates that overall compliance is trending down.

**Figure 1. Stop Report Compliance 2022 to 2023****A. Underreporting by Level of Encounter**

The results of the Investigative Encounter BWC video assessments show a substantial difference in rates of reported stops by NYPD officers across the various labeled encounter levels. For example, stop report compliance was substantially lower for videos that officers originally labeled as Level 2 but that were later determined by the Monitor team to be Level 3 *Terry* stops, as compared to compliance for encounters labeled as Level 3 from the start. In 2022, 20.5% of encounters labeled by officers as Level 2 had stop reports (out of 39 confirmed *Terry* stops reviewed). In 2023, that number dropped to 17.3% (out of 52 reviewed stops). But for both 2022 and 2023, approximately 97% of videos originally labeled Level 3 had a stop report on file.

**Table 2. 2022 to 2023 Investigative Encounter Assessment by Level of Encounter**

| Level       | Total IE Videos  | Sample Size | Confirmed Stops from Sample of Possible Stops | % Stops Per Sample | Stop Reports Prepared | Compliance Rate |
|-------------|------------------|-------------|---|--------------------|-----------------------|-----------------|
| NA*         | 1,079,904        | 200         | 6   | 3.0%               | 4                     | 66.7%           |
| L1          | 3,083,786        | 200         | 3   | 1.5%               | 0                     | 0.0%            |
| L2          | 31,089           | 400         | 39  | 9.8%               | 8                     | 20.5%           |
| L3          | 30,794           | 100         | 73  | 73.0%              | 71                    | 97.3%           |
| <b>2022</b> | <b>4,225,573</b> | <b>900</b>  | <b>121</b>                                    | <b>13.4%</b>       | <b>83</b>             | <b>68.6%</b>    |
| NA          | 756,328          | 200         | 7   | 3.5%               | 2                     | 28.6%           |
| L1          | 3,923,556        | 200         | 2   | 1.0%               | 1                     | 50.0%           |
| L2          | 19,767           | 400         | 52  | 13.0%              | 9                     | 17.3%           |
| L3          | 27,985           | 100         | 64  | 64.0%              | 62                    | 96.9%           |
| <b>2023</b> | <b>4,727,636</b> | <b>900</b>  | <b>125</b>                                    | <b>13.9%</b>       | <b>74</b>             | <b>59.2%</b>    |

\*Videos with no level reported.

The undocumented stops associated with Level 1 and non-labeled encounters are worth highlighting. The results of the Monitor team's BWC audits in 2022 and 2023 showed that 3.0% to 3.5% of non-labeled investigative encounters and 1.0% to 1.5% of encounters labeled as Level 1 were *Terry* stops. While the numbers of identified undocumented stops in the Monitor team's audit are low for these levels, the magnitude of underreporting is large. For example, in 2023, there were almost 4 million Level 1 investigative encounter videos recorded by the NYPD. If 1% of these videos were associated with a *Terry* stop, this would translate into approximately 40,000 videos of *Terry* stops. Similarly, if 3.5% of the more than 750,000 non-labeled investigative encounter videos were actually *Terry* stops, there would be another 26,000 videos of stops. Importantly, however, there tends to be more than one officer, and thus more than one video, at the scene of an investigative encounter. Therefore, each video does not necessarily correspond to a unique encounter.<sup>13</sup>

<sup>13</sup> If, for example, we assume that there are on average five officers associated with each investigative encounter that is categorized as a Level 1 encounter or that is not labeled, there would be approximately an additional 13,141 stops

## B. Underreporting by Type of Stop and Officer Assignment

The Monitor team also examined which types of stops are more likely to be undocumented and which NYPD units have a higher percentage of underreporting. Fifteen of the 125 *Terry* stops identified in the Monitor’s 2023 BWC sample were conducted by officers in Neighborhood Safety Team (“NST”) units. Of the 15 *Terry* stops, 7 had a stop report, equaling a compliance rate of 46.7%. Officers in Public Safety Team (“PST”) units conducted 34 of the 125 *Terry* stops in the 2023 BWC sample. Of those 34 stops, only 18 were documented with a stop report, for a compliance rate of 47.1%. Patrol officers had a higher compliance rate, with 50 of their 76 (65.8%) *Terry* stops from the sample documented with a stop report.

In addition, the Monitor team’s recent review of stop reports prepared by officers in the NST and PST units showed that more than 70% of their stops were self-initiated, where officers make stops based on their observations, rather than stops based on radio runs, where officers are responding to a 911 or 311 call for service. This reflects the significant shift in the type of *Terry* stops that occurred from 2021 to 2023, with self-initiated stops making up an increasing share of all stops across the NYPD.<sup>14</sup> As such, the Department’s efforts to address underreporting should focus on self-initiated encounters, particularly those of the NST and PST units.

## IV. Conclusion

Without accurate recording of *Terry* stops by the NYPD, it is impossible for the Monitor to assess the NYPD’s compliance with the Court’s mandates. When a *Terry* encounter is not accompanied by a stop report providing the officer’s stated reasons for the stop, neither the Department nor the Monitor can assess the lawfulness of the stop. And, when a large percentage

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in 2023, the vast majority of which are undocumented.  $((3,923,556 \text{ [Level 1 videos]} * 0.01 \text{ [Level 1 stop rate]}) + (756,328 \text{ [NA videos]} * .035 \text{ [NA stop rate]})) / 5 = 13,141$ .

<sup>14</sup> Twenty-First Report of the Independent Monitor, *supra* note 3, at 9.

of stops lack completed stop reports, the Monitor's assessment of reported stops cannot paint a full picture of the NYPD's compliance. The NYPD has the necessary training and tools to record *Terry* stops properly. It must hold officers and supervisors accountable for failing to record *Terry* stops as required.