

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

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-
CHARLES DOUGLAS, JULIAN GILBERT, DEREK
BARON, and EMILY MARTIN, :

Plaintiffs, :

-against- :

THE CITY OF NEW YORK, POLICE OFFICER
STEVEN FERREIRA, POLICE OFFICER AARON
HUSBANDS, POLICE OFFICER PATRICK KING,
POLICE OFFICER EDWIN NIEVES, POLICE
OFFICER SAMUT GULU, POLICE OFFICER KEVIN
HERRERA, POLICE OFFICER CHRISTOP
MARTINEZ, and POLICE OFFICER ANTHONY
PEREZ, :

Defendants. :

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Index No. 153606/21
Hon. Carol Sharpe
IAS Part 52

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS’
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

MOTION SEQ. No. 7

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Dated: New York, New York
April 11, 2025

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PRELIMINARY STATEMENT

This motion asks the Court to decide a simple question: does the New York City Police Department (“NYPD”) requirement that its officers arrest people who, under state law, are exempt from arrest, violate those people’s rights? No genuine issue of fact exists between the parties. Criminal Procedure Law (“CPL”) 150.20 was amended in 2020 to mandate that police officers issue appearance tickets to individuals accused of committing violations, infractions, misdemeanors, and certain class E felonies (together, “low-level offenses”) instead of conducting an arrest. Despite this, the NYPD handcuffed or zip-tied, transported, and detained plaintiffs Charles Douglas, Julian Gilbert, Derek Baron, and Emily Martin for hours in a holding cell before ultimately giving them each a ticket for a low-level offense. As it did with plaintiffs, the NYPD brazenly defies the law by routinely arresting and detaining individuals accused of low-level offenses who are entitled to receive appearance tickets at the scene of the police encounter.

Pursuant to NYPD policies, before officers can issue an appearance ticket, they must handcuff, transport, and detain individuals at precincts or designated arrest facilities—conduct that courts have consistently deemed an arrest. Plaintiffs were all subject to this policy when, in May and June 2020, the NYPD arrested and detained them for hours at police facilities for low-level offenses that, under state law, instead required officers to issue appearance tickets at the scene. These undisputed facts establish that the NYPD violates the unambiguous command of CPL 150.20 not to arrest people eligible for appearance tickets. And in violating CPL 150.20, the NYPD subjects them to seizures that are longer and more intrusive than necessary to issue the tickets, violating their protections against unreasonable seizures under article I, Section 12 of the New York Constitution. Thus, this Court should grant plaintiffs’ motion for partial summary

judgment and find that plaintiffs are entitled to judgment as a matter of law on their statutory and constitutional claims.

STATEMENT OF FACTS

I. CPL 150.20's Appearance-Ticket Mandate and the NYPD's Noncompliant Arrest Policy

Before 2020, CPL 150.20 “authorized” police officers to issue “appearance tickets” instead of making warrantless arrests for a violation, infraction, misdemeanor, or class E felony (collectively referred to as “low-level offenses”), except for six enumerated class E felonies. (Rule 202.8(G) Statement of Undisputed Material Facts [“Facts”] ¶ 2). An “appearance ticket” is “a written notice issued and subscribed by a police officer . . . directing a designated person to appear in” court at a set day and time for the alleged offense. (CPL 150.10[1]; Facts ¶ 3). Under the original version of CPL 150.20 enacted in 1970, the Legislature afforded police officers the discretion to issue appearance tickets to prevent the “use of the ominous, humiliating and frequently expensive arrest procedure,” which is “both unnecessary and unfair” for “a relatively minor offense.” (Facts ¶ 12).

But in January 2020, as part of a broader criminal justice reform bill, the Legislature amended the statute to “*mandate* that police issue appearance tickets instead of making custodial arrests in low-level cases.” (Facts ¶ 14 [emphasis added]). The Legislature adopted the appearance-ticket mandate to “reduce unnecessary pretrial incarceration and improve equity and fairness in the criminal justice system.” (Facts ¶ 6). As part of the new mandate, CPL 150.20 specifically requires that “[w]henver a police officer is authorized pursuant to 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.” (CPL 150.20[1][a] [emphasis added]). CPL 150.20 requires that police officers issue appearance tickets in lieu of making arrests for low-level offenses unless specifically

enumerated exceptions apply, in which case, appearance tickets are “not required” but may still be issued. (CPL 150.20[1][b], [2][a]).

Since the amendment to CPL 150.20 took effect in 2020, the policies and practices of the NYPD have not complied with its mandate. Contrary to the plain language and purpose of the amendment to CPL 150.20, (Facts ¶¶ 5–14), the policies and procedures that the NYPD implemented in response to the amendment instruct police officers to arrest individuals alleged to have engaged in low-level offenses and to consider whether they are eligible for appearance tickets only *after* they have been arrested and designated “prisoners.” (Facts ¶¶ 24–25, 27, 29). According to the NYPD Patrol Guide, officers must “[c]omply with appropriate arrest processing guidelines [and] remove [the] prisoner to [the] precinct of arrest/designated arrest facility” before issuing the “prisoner” an appearance ticket. (*id.*).

Under the NYPD’s arrest processing guidelines, officers must “handcuff [the] prisoner with [their] hands behind back,” transport the “prisoner to [the] precinct of arrest/designated arrest facility,” “make a thorough search of the prisoner,” “fingerprint and palmprint [the] prisoner,” photograph the prisoner, complete all “booking” paperwork for the “prisoner,” and place the “prisoner” in an arrest processing area. (Facts ¶¶ 39, 42, 43). The NYPD’s arrest procedures for individual arrests contain no exceptions or alternative procedures for people charged with low-level offenses. (Facts ¶¶ 34, 40). The NYPD’s procedures for large scale arrests provide additional steps that officers must follow in situations where the number of arrests exceeds 20 people and, like general arrest processing guidelines, contain no exceptions or alternatives for people charged with low-level offenses. (Facts ¶¶ 46, 50). No written NYPD policies, procedures, or training materials in effect between 2020 and present day even cite to CPL 150.20. (Facts ¶¶ 16–20).

The technology and information available to officers in the field enable NYPD officers to assess an individual's eligibility for and issue them an appearance ticket at the scene of an alleged low-level offense, making the NYPD's blanket arrest policy for low-level offenses unnecessary. All NYPD officers are issued NYPD smartphones that contain a mobile version of the NYPD's Domain Awareness System ("DAS"), which allows police officers to, among other things, establish an individual's identity, access an individual's history of arrests and prior convictions, and view information about past and active warrants. (Facts ¶¶ 52, 54, 58–60, 62, 65–67, 72). This information allows officers to determine whether certain exceptions apply under CPL 150.20 that would not require them to issue an appearance ticket. (*See* CPL 150.20[1][b][i-iii]; Facts ¶¶ 57–67). Officers can determine whether other exceptions to the appearance ticket mandate apply by making their own observations and judgments at the scene, including assessing whether there is reasonable cause to arrest an individual for an offense that is excluded from the appearance ticket mandate, (*see* CPL 150.20[1][b][iv, v, vii, ix-xi]), or whether an individual should be brought before a court for consideration of an order of protection (*see* CPL 150.20[1][b][vi]; Facts ¶¶ 68–80, 83-91).

II. Plaintiffs Were Arrested for Appearance Ticket-Eligible Offenses Pursuant to the NYPD's Arrest Policy

As a direct result of the City's failure to conform its policies and trainings with CPL 150.20, NYPD officers arrested plaintiffs, even though their arrests were explicitly prohibited. All Plaintiffs were eligible for appearance tickets at the scene in lieu of an arrest. Yet, each plaintiff was restrained at or near a protest during the summer of 2020, detained on the side of the road, forced into a police transport vehicle, brought to a police station, held for several hours in a holding cell before receiving an appearance ticket, and each plaintiff was released on charges of disorderly conduct or violating the mayor's curfew, both low-level offenses. There were no circumstances

applicable to any plaintiff that would have disqualified them from receiving an appearance ticket at the scene rather than at the police precinct. The arresting officers did not even ask plaintiffs any questions about their identities until at least 30 minutes after they were detained.

Plaintiff Charles Douglas. Douglas was arrested on May 31, 2020 around 11:30 PM near Union Square in Manhattan while observing a protest. (Facts ¶¶ 92–93). Douglas tried to leave, but an officer shoved him in the back and five additional officers pushed him to the ground and piled on top of him. (Facts ¶¶ 94–96). Then, an officer placed Douglas in metal handcuffs, replaced the handcuffs with zip ties, and ordered Douglas to sit on the sidewalk, where he was detained for several hours. (Facts ¶¶ 97–101).

No NYPD officer asked Douglas to identify himself until approximately two hours after he was arrested, at which point Douglas provided his name, date of birth, and identification. (Facts ¶¶ 102–103). The NYPD placed Douglas in a police van and transported him to One Police Plaza, where he was detained in a holding cell with approximately 50 other people. (Facts ¶¶ 104–107). Douglas was issued an appearance ticket and released around 7:45AM, more than eight hours after he was initially handcuffed. (Facts ¶¶ 108–109). He was charged with disorderly conduct under Penal Law § 240.20, a noncriminal violation. (Facts ¶¶ 109–110). At the time of the arrest, Douglas had no open warrants and had never failed to appear for a court proceeding. (Facts ¶¶ 112–113).

Plaintiff Julian Gilbert. Gilbert was arrested on June 4, 2020 at approximately 8:00 PM while leaving a protest at McCarren Park in Brooklyn. (Facts ¶¶ 123–124). As he was getting on his bicycle to leave the park, officers hit Gilbert’s legs and the back wheel of his bicycle with their batons, yanked Gilbert from his bicycle, threw Gilbert face down onto the ground, spread Gilbert’s legs, and placed Gilbert in metal handcuffs. (Facts ¶¶ 125–130).

Afterwards, the officers walked Gilbert two blocks up the street, made him sit on the ground, searched him, and transported him to Brooklyn Central Booking. (Facts ¶¶ 131–134). No police officer asked Gilbert to identify himself until after he arrived at Brooklyn Central Booking. (Facts ¶¶ 135). He was then detained in a holding cell at Brooklyn Central Booking for several hours before being issued an appearance ticket at 2:00 AM, about six hours after he was arrested. (Facts ¶ 136). Gilbert was charged with violating the mayor’s curfew under NYC Administrative Code 3-108, a class B misdemeanor. (Facts ¶¶ 138–139). At the time of the arrest, Gilbert had no open warrants and had never failed to appear for a court proceeding. (Facts ¶¶ 141–142).

Plaintiff Derek Baron.¹ Baron was arrested shortly after 8:00 PM on June 4, 2020 at a protest in Mott Haven in the Bronx. (Facts ¶¶ 153, 159, 172). NYPD officers threw Baron to the ground. (Facts ¶ 165). While they were on the ground, one officer kneeled on Baron’s neck, a second officer hit Baron’s temple, and a third officer put zip ties on Baron’s wrists. (Facts ¶¶ 166–167). An officer then picked Baron up and made them stand in place for approximately 30 minutes. (Facts ¶¶ 168, 171). After forcing them to stand in place, the officers made Baron walk back and forth for approximately one hour, searched them, and ordered Baron onto an NYPD van, which transported them to the 41st Precinct in the Bronx and then to Queens Central Booking. (Facts ¶¶ 172, 175–178). Baron was detained in a holding cell at Queens Central Booking until after 2:00 AM. (Facts ¶¶ 182, 190).

An hour after arriving at Queens Central Booking, an NYPD officer asked Baron for identifying information for the first time, which Baron provided. (Facts ¶ 183). Baron was charged with violating the mayor’s curfew under NYC Administrative Code 3-108, a class B

¹ Derek Baron uses they/them pronouns.

misdemeanor. (Facts ¶¶ 187–189). At the time of the arrest, Baron had no open warrants and had never failed to appear for a court proceeding. (Facts ¶¶ 192–193).

Plaintiff Emily Martin. Martin was arrested shortly after 8:00 PM on June 4, 2020 at a protest in Mott Haven in the Bronx. (Facts ¶¶ 155, 159). An NYPD officer struck Martin multiple times with a baton. (Facts ¶ 163). She then was pulled from the crowd by a second officer and passed to a third officer, who held her while the second officer zip-tied her hands. (Facts ¶¶ 207–208). An officer held Martin for approximately 30 minutes before ordering her to enter an unmarked van, where officers searched Martin’s person and backpack. (Facts ¶¶ 210–213). As she waited, Martin felt burning in her throat and lungs, which she believes was due to pepper spray used by the police. (Facts ¶ 161). Martin was taken to the 48th Precinct in the Bronx, and approximately two to three hours later she was transported to Brooklyn Central Booking, where she was detained in a holding cell. (Facts ¶¶ 214, 217). She was released approximately eight hours after being arrested. (Facts ¶ 218).

No police officer asked Martin for identification until she was ordered onto the van, at least 30 minutes after she was arrested. (Facts ¶¶ 210–212). Martin was charged with violating the mayor’s curfew under NYC Administrative Code 3-108, a class B misdemeanor. (Facts ¶¶ 220–222). At the time of the arrest, Martin had no open warrants and had never failed to appear for a court proceeding. (Facts ¶¶ 224–225).

ARGUMENT

Plaintiffs are entitled to judgment as a matter of law because the undisputed facts establish that the NYPD’s policy of making arrests for low-level offenses violated plaintiffs’ rights under Criminal Procedure Law 150.20 and, in the process, subjected them to unreasonable seizures in violation of article I, § 12 of the New York Constitution.

Summary judgement is proper when plaintiffs establish that there is no genuine issue of

material fact and that they are entitled to judgment as a matter of law. (See CPLR 3212[b]; see also *Zuckerman v City of New York, et al.*, 49 NY2d 557, 562 [1980]). Plaintiffs must show they are entitled to summary judgment “as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] [internal quotation marks omitted]). Once plaintiffs have made a *prima facie* showing, the burden shifts to defendants to produce sufficient evidence that a genuine issue of material fact exists. (See *Zuckerman*, 49 NY2d at 562). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” (*People ex rel. Spitzer v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 248 [1986]). Mere conclusory allegations and unsubstantiated assertions are insufficient to beat a summary judgment motion. (See *Zuckerman*, 49 NY2d at 563).

Drawing on undisputed facts, police officers followed the NYPD’s arrest and processing policies and arrested plaintiffs for appearance ticket-eligible offenses before issuing them tickets in violation of CPL 150.20 and, in the process, subjected them to unreasonable seizures in violation of article 1, § 12 of the New York Constitution.

I. The Undisputed Material Facts Demonstrate that Plaintiffs’ Arrests, Pursuant to NYPD’s Policy Of Making Arrests for Appearance-Ticket-Eligible Offenses Violated CPL 150.20

NYPD acted in violation of CPL 150.20 when it arrested plaintiffs in lieu of issuing them appearance tickets. Despite CPL 150.20, NYPD policy requires officers to arrest people for low-level offenses. Pursuant to such policies, officers arrested plaintiffs even though they all qualified under CPL 150.20 to receive mandatory appearance tickets at the scene instead of being arrested. NYPD policy provides that officers must “[c]omply with appropriate arrest processing guidelines [and] remove [the] prisoner to precinct of arrest/designated arrest facility” before issuing the “prisoner” an appearance ticket. (Facts ¶¶ 25, 29). And under the NYPD’s arrest processing

guidelines, NYPD officers must “handcuff [the] prisoner with [their] hands behind back,” transport the “prisoner to [the] precinct of arrest/designated arrest facility,” “make a thorough search of the prisoner,” “fingerprint and palmprint [the] prisoner,” photograph the prisoner, complete all “booking” paperwork for the prisoner, and place the prisoner in a holding cell. (Facts ¶¶ 39, 43).

In glaring contrast, the CPL mandates police officers issue appearance tickets to eligible people at the scene of the police encounter rather than at the precinct after an arrest. Under CPL 150.20, “[w]henver a police officer is authorized . . . to arrest a person without a warrant [for a low-level offense] he *shall* . . . *instead* issue to and serve upon such person an appearance ticket.” (CPL 150.20[1][a] [emphasis added]). Unless one of the limited enumerated exceptions apply, police officers have no discretion to decide to make an arrest instead of issuing an appearance ticket at the scene. (*id.*)

Here, all plaintiffs were eligible for appearance tickets at the scene, and none of their circumstances met any of the limited exceptions to the appearance ticket mandate. (Facts ¶¶ 109–116, 137–146, 188–197, 220–229). Still, NYPD officers followed NYPD policy and restrained each plaintiff, detained them on the side of the road, forced them into a police transport vehicle, transported them to an arrest precinct/facility, held them for hours in a holding cell, and searched most of them before issuing them an appearance ticket and releasing them on charges of either disorderly conduct or violating the mayor’s curfew, both low-level offenses. (Facts ¶¶ 96–110, 127–139, 162–168, 171–190, 207–222).

When the legislature amends a statute to include “shall,” as they did here, (Facts, ¶ 8), “[t]he language of the statute is mandatory and not precatory, if the statutory requirements are met.” (*Rauh v De Blasio*, 161 AD3d 120, 127 [1st Dept 2018] [citation omitted]). Here, the statutory language is clear – the police “*shall*” issue an appearance ticket “*instead*” of arresting

the individual. (CPL 150.20[1][a] [emphasis added]; *see also People v Pabon*, 28 NY3d 147, 152 [2016] [“When the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used.”] [internal citations omitted]). Thus, the Legislature’s use of shall “evinces an unmistakable legislative intent” to make it mandatory for police to issue appearance tickets at the scene of the police encounter instead of making an arrest when the statutory requirements for a ticket are met. (*Rauh*, 161 AD3d at 127; CPL 150.20).

That appearance tickets must be issued to eligible persons at the scene of the police encounter rather than at the precinct following an arrest is consistent with the larger statutory scheme. When the exceptions for an otherwise appearance ticket-eligible offense apply, CPL 150.20(2)(a) authorizes officers to arrest the person and provides them discretion to issue an appearance ticket *after* the arrest instead of detaining the person until arraignment. (*See* CPL 150.20[2][a] [“Whenever . . . a police officer has arrested a person without a warrant for [a low-level offense] . . . , such police officer may, instead of bringing such person before a local criminal court . . . issue to and serve upon such person an appearance ticket”]). But the NYPD requires this procedure even in cases that meet the requirements for a mandatory appearance ticket. (Facts¶¶ 22-29). CPL 150.20’s appearance-ticket mandate cannot be read as merely requiring that officers issue tickets after an arrest at the arrest precinct/facility without making CPL 150.20(2)(a)’s procedure for discretionary tickets both duplicative and unnecessary. (*See Maine Community Health Options v United States*, 590 US 296, 314 [2020] [explaining that courts should hesitate “to adopt an interpretation of a [statute] which renders superfluous another portion of that same law.”] [internal quotation marks omitted]; *see also Matter of Marian T.*, 36 NY3d 44, 49 [2020] [“When the statutory language at issue is but one component in a larger statutory scheme,

it must be analyzed in context and in a manner that harmonizes the related provisions and renders them compatible”)).

Beyond the clear statutory text, and the required harmony of that text with related provisions, CPL 150.20’s legislative history also confirms that the appearance ticket mandate requires that officers issue tickets at the scene rather than at the precinct after an arrest. The Legislature amended the statute to “*mandate* that police issue appearance tickets instead of making custodial arrests in low-level cases,” and it adopted this mandate to “reduce unnecessary pretrial incarceration and improve equity and fairness in the criminal justice system.” (Facts ¶¶ 14, 6 [emphasis added]). Yet, plaintiff’s arrests pursuant to the NYPD’s policy subverts the Legislature’s intent and requires the custodial arrest and pretrial incarceration of persons eligible for an appearance ticket. (Facts ¶¶ 22-29, 36, 40).

There is no genuine dispute that the steps outlined in the NYPD’s arrest processing guidelines, to which NYPD officers subjected plaintiffs, constitutes an “arrest.” Under decades-old precedent, the Court of Appeals in *People v Hicks* set forth the standard for determining what an arrest is “as a matter of State law, including State constitutional law.” (68 NY2d 234, 239 n 2 [1986]). The Court of Appeals explained that courts should look to “what a reasonable man, innocent of any crime, would have thought had he been in the defendant’s position.” (*Hicks*, 68 NY2d at 240; *see also People v Robinson*, 282 AD2d 75, 79 [1st Dept 2001]).

Applying that standard here, when the NYPD handcuffs, detains, and transports people, like it did with plaintiffs and does with others eligible for a mandatory appearance ticket, then the NYPD has “arrested” them in violation of CPL 150.20. As the First Department explained, “[i]t has repeatedly been held that when an individual is handcuffed, searched and placed in a police car for transport, the conduct constitutes an arrest.” (*Robinson*, 282 AD2d at 79 [citing cases]).

Indeed, “[b]eing taken involuntarily, handcuffed and transported to a police station, and then held in a barred cell for over two hours, *requires* the conclusion that [the detention] developed into an arrest.” (*Robinson*, 282 AD2d at 80 [1st Dept 2001] [emphasis added]; *see also People v Baily*, 216 AD2d 1, 2 [1st Dept 1995] [holding that “the police turned a proper investigative detention into a full-blown arrest by placing defendant in a hold cell for approximately one hour before formally arresting her for the crime charged”]; *cf. Hicks*, 68 NY2d at 240 [holding that defendant’s detention was an investigatory stop and not an arrest because “Defendant was not handcuffed, there was no show of force, . . . he was not taken to the police station, the total time [less than a minute] and distance involved were very brief, [and] he was told the specific, limited purpose of the detention.”]).

Other appellate courts have similarly held that when the police handcuff, detain, and involuntarily transport someone, then those actions constitute an arrest. (*See, e.g., People v Brnja*, 50 NY2d 366, 372 [1980] [“At the very least, when handcuffed and placed in the police vehicle for transportation back to the robbery scene, defendant was under arrest”]; *People v Pittman*, 83 AD2d 870, 871–872 [2d Dept 1981] [holding that the defendant was arrested because he “was searched, handcuffed, and transported to police headquarters, thus suffering an intrusion upon his liberty which, no matter how denominated by the police, was indistinguishable from a traditional arrest and hence required probable cause.”] [citing *Dunaway v New York*, 442 US 200 [1979]]; *People v Quarles*, 187 AD2d 200, 203 [4th Dept. 1993] [“defendant was arrested when he was handcuffed and placed in the police vehicle and the enumerated items were taken from his person. No reasonable person in defendant’s situation would have believed that he was free to leave and not under arrest”]). Here, because the NYPD’s arrest policies clearly require the arrest of people

eligible for mandatory appearance tickets instead of arrest, this Court should enter judgment as a matter of law for plaintiffs that the NYPD's arrest policies violate CPL 150.20.

II. The Undisputed Material Facts Demonstrate that Defendants Unreasonably Seized Plaintiffs Pursuant to City Policy and Practice in Violation of Article § 12 of the New York Constitution

Plaintiffs' arrests were longer and more intrusive than necessary to complete CPL 150.20's underlying law enforcement purpose of issuing an appearance ticket for a low-level offense. Their arrests were therefore unreasonable seizures that violated article I, § 12 of the New York Constitution. The NYPD's arrest and processing policies, which required plaintiffs' arrests and requires the arrest of others for appearance ticket-eligible offenses, also violates article I, § 12's protections "against unreasonable searches and seizures."

i. Seizures That Are Longer and More Intrusive Than Necessary to Issue an Appearance Ticket Are Unreasonable Under Article I, § 12

New York "has adopted greater protections than [the Fourth Amendment] for pedestrian stops by the police." (*People v Hinshaw*, 35 NY3d 427, 431 [2020]). Article I, § 12's protections against unreasonable searches and seizures "is more protective [than the Federal constitution] of the rights of individuals 'to be free from aggressive governmental interference' . . . [and] is not contingent upon the interpretation that the Supreme Court gives the Fourth Amendment, because [it] is largely based upon considerations of reasonableness *and sound State policy*" (*id.* at 431-432 [emphasis added] [citing *People v De Bour*, 40 NY2d 210, 216 [1976]]; *People v Hollman*, 79 NY2d 181, 195 [1992])).

Under this more protective standard, seizures that are longer and more intrusive than necessary to issue an appearance ticket, and which have no other valid investigative or administrative purpose, violate article I, § 12. (*See People v Milaski*, 62 NY2d 147, 156 [1984] [holding that in the context of a traffic-related arrest, "[o]nce defendant had explained his conduct,

produced his license, and identified the owner of the car, and such ownership had been confirmed by the radio check, the troopers had no justification to detain defendant longer.”]; *see also Illinois v Caballes*, 543 US 405, 407 [2005] [“A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission”]; *Rodriguez v United States*, 575 US 348, 350 [2015] [“We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures”]).

ii. The Legislature’s Intent and Taxonomy Under CPL 150.20 Indicates a Reduced Governmental Interest in Arrests for Eligible Offenses

Under article I, § 12, “whether or not a particular search or seizure is to be considered reasonable requires a weighing of the government’s interest against the encroachment involved with respect to an individual’s right to privacy and personal security.” (*De Bour*, 40 NY2d at 215). The determinations of New York’s Legislature directly inform the balancing of the interests involved when analyzing whether a seizure is unreasonable under article I, § 12. (*See Hinshaw*, 35 NY3d at 432 [looking to the Legislature’s classifications of traffic violations to determine that “[t]he required ‘balancing of the interests involved’ will differ, however, when the suspected illegality is a traffic violation . . . as reflected in the legislature’s taxonomy” and adjusting the constitutional analysis to “comport[] with the legislature’s directive that traffic infractions are not crimes and consequently their enforcement by means of a forcible stop . . . does not carry the same governmental interest”). This principle is reflected in cases holding that custodial arrests for traffic infractions are unreasonable because of the Legislature’s classification of those offenses and the availability of a summons for such offenses at the scene of a traffic stop. (*People v Howell*, 49 NY2d 778, 779 [1980] [finding custodial arrest and search unlawful given that a summons could have been issued for a misdemeanor for reckless driving, and “[a]n arrest in a situation such as

was presented in this case was neither called for nor the preferred procedure”]; *People v Barreras*, 253 AD2d 369, 373 [1st Dept 1998] [“Once defendant’s papers were all found to be in order, the officers, without more, were obligated to issue the stop-sign summons and allow defendant to resume his journey”]). Police officers “do *not*, absent some aggravating circumstance, have an unfettered discretion to make a full custodial arrest for a traffic offense and must instead merely issue the traffic summons and allow the motorist to leave.” (*Santiago v City of New York*, 2002 NY Slip Op 40036(U), * 11 [Sup Ct, Bronx County 2002] [citing *People v. Troiano*, 35 NY2d 476 [1974]]; *People v Weintraub*, 35 NY2d 351 [1974]; *People v Adams*, 32 NY2d 451 [1973]).

The legislative history of CPL 150.20 and its amendments reflect a “legislative taxonomy” that recognizes a reduced state governmental interest in arresting New Yorkers for eligible, low-level offenses, particularly when weighed against the harms of an arrest to the individual right to privacy and personal security. The Commission Staff Notes on the original version of CPL 150.20 emphasize that appearance tickets are a means of avoiding “the use of the ominous, humiliating and frequently expensive arrest procedure,” which is “both unnecessary and unfair” for “a relatively minor offense.” (Facts ¶ 12). The 2020 amendment, mandating the issuance of appearance tickets absent a statutory exception, only reemphasizes the Legislature’s directive that there is a reduced governmental interest in extended detentions for these low-level offenses. As noted in the Bill Memorandum in Support, “[t]his bill would . . . mandate that police issue appearance tickets *instead of* making custodial arrests in low-level cases[.]” ([emphasis added]; Facts ¶ 14). “[T]he 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.” (Facts ¶ 14).

The Legislature clearly had in mind the harms that a full custodial arrest can cause to New Yorkers' rights to personal security, and it clearly sought to prevent those harms in most cases where someone is charged with what the Legislature has deemed to be a low-level offense. (*See People ex rel. Maxian on Behalf of Roundtree v Brown*, 77 NY2d 422, 426–27 [1991]) [“[T]he deprivation entailed by prearrest detention is very great with the potential to cause serious and lasting personal and economic harm to the detainee. ... [T]his deprivation is one as to which no predicate is established in advance and, indeed, which may ultimately be found to have been unwarranted.”] [citation and internal quotation marks omitted]). Of course, CPL 150.20[1][b] contains exceptions allowing for arrests which may render a custodial arrest reasonable for a ticket-eligible offense. But where no constitutional exception exists, and where no statutory exception otherwise applies, an arrest in violation of CPL 150.20 is an unreasonable seizure under article I, § 12.

iii. Plaintiffs' Arrests, and the NYPD Policies Pursuant to Which They Were Arrested, Violate Article I, § 12

Plaintiffs' arrests, which were conducted pursuant to the NYPD's arrest and processing policies, went far beyond the scope of what was necessary for officers to issue them appearance tickets for the low-level offenses with which they were charged. NYPD officers had available to them in the field the information and resources they needed to assess whether each plaintiff was entitled to receive an appearance ticket. (Facts ¶¶ 51–91). Officers are issued smartphones by the NYPD that have access to a mobile version of the Domain Awareness System (“DAS”). (Facts ¶ 54). DAS allows officers to establish an individual's age and identity, check for active and past warrants, view prior convictions and arrests, and determine whether an individual has failed to appear in court proceedings in the last two years. (Facts ¶¶ 58-63, 65-67, 72, 84). Officers are otherwise able to assess whether other exceptions under CPL 150.20 apply by exercising their own

judgment in the field. (Facts ¶¶ 57–91). Each plaintiff complied with the NYPD’s orders and provided identifying information to the NYPD. (*See, e.g.*, Facts ¶¶ 102-103, 106, 135, 183-185, 212). No plaintiffs fell under any of the exceptions to CPL 150.20’s appearance ticket mandate. (Facts ¶¶ 112–116, 141–146, 192–197, 224–229). The “time reasonably required to complete [the] mission . . . of issuing an [appearance ticket]” which was the sole justification for the seizure of each plaintiff, should then have been a relatively short amount of time. (*See Caballes*, 543 US at 407).

But instead of a brief seizure to complete the minimal, necessary administrative steps to issue an appearance ticket, NYPD officers subjected each plaintiff to a detention that exceeded its justification. Douglas, Gilbert, Baron, and Martin were all handcuffed or zip tied, detained in handcuffs or zip ties for between 30 minutes and over two hours, then transported to an NYPD precinct, detained again in holding cells for hours, and most were searched, solely for the purpose of being issued an appearance ticket. (Facts ¶¶ 96-110, 127-139, 162-190, 207-222). And these arrests were not aberrations—they occurred pursuant to the NYPD’s policy and practice of handcuffing, transporting, and detaining individuals at a police precinct or designated arrest processing center before issuing them appearance tickets. (Facts ¶¶ 21-30, 35-40). This arrest and processing policy, and its application to each individual plaintiff, is far more intrusive than necessary to complete the appropriate law enforcement task of issuing an appearance ticket. The policy contradicts the Legislature’s clear intent, that in low-level cases, which involve no statutory exception under CPL 150.20 and no exigent circumstances, a person should not be subjected to automatic arrest. Plaintiffs’ arrests, and the NYPD’s arrest and processing policies, thus violate article I, § 12’s prohibition against unreasonable seizures.

CONCLUSION

Plaintiffs respectfully request that this Court grant their motion for partial summary judgment and a) declare that CPL 150.20 prohibits arrests for eligible low-level offenses, b) declare that NYPD's arrest and processing policies and practices for appearance ticket-eligible offenses violate CPL 150.20 and article I, § 12 of the New York Constitution, and c) enter an order permanently enjoining defendants from violating CPL 150.20 and article I, § 12 and ordering any further measures needed to effectuate this injunction.

Dated: New York, New York
April 11, 2025

Respectfully submitted,

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CERTIFICATION PURSUANT TO RULE § 202.8-b

I, Brandon Fetzer, certify that the foregoing memorandum conforms with the length requirements of Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court. I further certify that, excluding the caption and signature block, the foregoing memorandum contains 5,621 words according to the word-count tool of the word-processing software that was used to prepare the memorandum.

Dated: New York, New York
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