
New York Supreme Court

Appellate Division—First Department

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

Plaintiffs-Appellants,

**Appellate
Case No.:
2026-00725**

— 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-Respondents.

BRIEF FOR PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

In 2020, the Legislature amended Criminal Procedure Law § 150.20 to require police officers to issue appearance tickets “instead” of arresting people on most low-level offenses, unless an enumerated exception applies. The New York City Police Department (“NYPD”) has never adopted a policy requiring compliance with this mandate, and it continues to flout the plain statutory language. This appeal challenges the NYPD’s policy and practice of arresting people who are entitled to receive appearance tickets *instead* of being subject to arrest.

NYPD officers arrested appellants Charles Douglas, Julian Gilbert, Derek Baron, and Emily Martin on low-level charges that required an appearance ticket, despite the absence of any statutory exception permitting an arrest. After handcuffing or zip-tying their wrists behind their backs, officers transported appellants in police vehicles and detained them in holding cells at police precincts and central booking for hours with other arrestees before releasing them with appearance tickets. On cross-motions for partial summary judgment, the record established no genuine factual dispute that the NYPD’s actions reflect its official policies. Even where C.P.L. § 150.20 mandates an appearance ticket “instead” of an arrest, the NYPD *requires* officers to first handcuff, transport, and detain people at arrest processing facilities before they may issue and serve them with an appearance ticket and release them.

The court below erred in concluding appellants' C.P.L. § 150.20 and N.Y. Const. art. I, § 12 claims for declaratory and injunctive relief were barred as res judicata by a consent decree that resolved four cases challenging the NYPD's policies and practices related to the policing of protests. Although appellants were arrested at New York City protests following George Floyd's murder, they were not in privity with the New York State Attorney General, who could not have asserted their fundamentally personal claims in her *parens patriae* suit, where she only had standing to litigate commonly held public rights. Furthermore, appellants received no notice or opportunity to be heard before entry of the consent decree, which was only intended to release the City from the claims actually asserted.

Additionally, because the NYPD's policies and practices require officers to handcuff, transport, and detain people at arrest processing facilities who are entitled to appearance tickets, the court erred when it concluded that appellants' seizures did not constitute an "arrest" prohibited by C.P.L. § 150.20. Similarly, because this "arrest-first" policy requires officers to detain people for longer than reasonably necessary to determine their eligibility for appearance tickets and to issue and serve them, it violates New York's constitutional protection against unreasonable seizures, and the availability of a tort law damages remedy does not foreclose appellants' constitutional cause of action for declaratory and injunctive relief. The court's findings to the contrary have no support in the law or the summary judgment record.

QUESTIONS PRESENTED

1. Whether the court erred when it concluded that the consent decree in the Consolidated Cases¹ barred appellants' New York statutory and constitutional claims as res judicata where (A) appellants were not in privity with the Attorney General and (B) the consent decree only released the City from the claims actually asserted?
2. Whether the NYPD's policy and practice of arresting people for offenses that require appearance tickets, absent circumstances that authorize an arrest, violate section 150.20 of the Criminal Procedure Law and article I, section 12, of the New York Constitution?

STATEMENT OF FACTS²

The 2020 C.P.L. § 150.20 Appearance Ticket Mandate for Low-Level Offenses

Before 2020, C.P.L. § 150.20 authorized, but did not require, police officers to issue “appearance tickets” “instead” of making warrantless arrests for any

¹ See *In re New York City Policing During Summer 2020 Demonstrations*, No. 20-cv-08924 (S.D.N.Y. Apr. 14, 2024) (ECF No. 1167) (entering consent decree on *Payne v. de Blasio*, No. 20-cv-8924 (complaint filed Oct. 26, 2020); *People of the State of New York v. City of New York*, No. 21-cv-322 (hereinafter “*People v. City*”); *Gray v. City of New York*, No. 21-cv-6610 (complaint filed Aug. 5, 2021); and *Rolon v. City of New York*, No. 21-cv-2548 (complaint filed Mar. 24, 2021) (collectively, “the Consolidated Cases”).

² Appellants appeal from the decision and order of the Supreme Court, New York County, entered January 7, 2026 (R.7-22). Citations preceded by “R.” refer to the Record on Appeal submitted by appellants. The caption on the court’s decision and order mistakenly omits defendant-respondent Police Officer Samut Gulu, who is a party to this appeal, as reflected on the docket and in the Notice of Appeal (R.3). Because this appeal concerns the lower court’s grant of partial summary judgment for respondents and denial of partial summary judgment for appellants, the relevant facts presented here are those to which there is no genuine dispute.

“offense other than a class A, B, C or D felony” or one of six enumerated Class E felonies. C.P.L. § 150.20 (eff. until Dec. 31, 2019). But as part of broader criminal justice reforms, effective January 1, 2020, the Legislature amended C.P.L. § 150.20 to require that “[w]hen a police officer is authorized” pursuant to C.P.L. § 140.10 to “arrest a person without a warrant” for such an offense (hereinafter, “low-level offenses”), the officer “shall” “instead issue to and serve upon such person an appearance ticket,” unless one of eight enumerated exceptions where an appearance ticket’s issuance is “not required” applies. C.P.L. § 150.20(1)(a), (1)(b)(i)-(viii) (eff. Jan. 1, 2020, until May 8, 2022).³

The current version of C.P.L. § 150.20 includes three additional exceptions where an appearance ticket is “not required.” C.P.L. § 150.20(1)(b)(ix)-(xi). In sum, the statute only permits an arrest for low-level offenses if:

- the person has an outstanding criminal court or superior court warrant;
- the person has failed to appear for court in the preceding two years;
- reasonable efforts to verify the person’s identity and method of contact have been unsuccessful;

³ The present version of C.P.L. § 150.20(1)(a) differs from the 2020 version in several respects that have no bearing on the substance of appellants’ claims. *Compare* C.P.L. § 150.20 (eff. Jan. 1, 2020, until May 8, 2022) *with* C.P.L. § 150.20 (eff. Sept. 6, 2024). Unless otherwise noted, all citations here to C.P.L. § 150.20 are to the present version.

- “the person is charged with a crime between members of the same family or household, as defined in [C.P.L. § 530.11]”;
- the person is charged with a crime under article 130 of the Penal Law;
- “it reasonably appears the person should be brought before the court for consideration of issuance of a[] [C.P.L. § 530.13] order of protection” for a victim or designated witness of a non-family offense;
- the charges permit a court to suspend or revoke the person’s driver’s license;
- the person is exhibiting “a sign of distress to such a degree that” they “would face harm without immediate medical or mental health care,” and it would be in their “interest in addressing that need” to be brought “before the court”;
- the person is 18 or older and charged with criminal possession of a weapon on school grounds in violation of P.L. § 265.01-a;
- the person is 18 or older and charged with a hate crime as defined in P.L. § 485.05; or
- the offense is a “qualifying offense” under C.P.L. §§ 510.10(h), or 530.40(4)(t).

C.P.L. § 150.20(1)(b)(i)-(xi).

The NYPD's Noncompliant Arrest-First Policy

Since 2020, the NYPD has not changed its policies and practices to comply with C.P.L. § 150.20's appearance ticket mandate. No written NYPD policies, procedures, or training materials in effect since 2020 specifically cite C.P.L. § 150.20 (R.543-44, ¶¶ 16-20). Instead, the NYPD has implemented policies that instruct police officers to arrest people for low-level offenses first—regardless of whether the offense requires the issuance of an appearance ticket—and to only consider issuing an appearance ticket after they have already been arrested and designated “prisoners” (*see* R.544-48, ¶¶ 21-22, 24-25, 27-30; R.553-55, ¶¶ 44-49).

The NYPD's arrest processing guidelines for individual arrests do not include any exceptions or alternative procedures for people suspected of having committed low-level offenses for which an appearance ticket is mandatory (R.549-50, ¶ 34; R.552, ¶ 40). For individual arrests, NYPD Patrol Guide Procedure No. 208-27 states that 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 (R.545-47, ¶¶ 25-29). The NYPD's arrest processing guidelines require officers to “handcuff [the] prisoner with [their] hands behind [their] 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 (R.550-553, ¶¶ 36, 39, 42-43). Similarly, NYPD Patrol Guide Procedure No. 213-06 provides additional steps that officers must follow in situations where the number of arrests exceeds 20 people; like the general arrest processing guidelines, it contains no exceptions or alternatives for people charged with low-level offenses (R.554-56 ¶¶ 46, 50).

The NYPD’s Capability to Issue and Serve Appearance Tickets in the Field

Standard-issue NYPD technology enables officers to access information in the field that is sufficient to assess whether they are permitted to arrest someone or are instead required to issue and serve an appearance ticket. All officers carry NYPD smartphones that contain a mobile version of the NYPD’s Domain Awareness System (“DAS”), which allows police officers to establish a person’s identity, view their prior convictions, and access their history of NYPD arrests and warrants (R.556-60, ¶¶ 52, 54, 58-59, 62, 65-66; R.562, ¶ 72).

With near instantaneous access to this information, there is no genuine dispute that officers can determine whether certain C.P.L. § 150.20 exceptions apply that would permit an arrest instead of an appearance ticket (R.558-60, ¶¶ 57-66; R.565-66, ¶¶ 83-84, 86). The remaining exceptions do not require access to any specialized technology or records, and instead call for officers to make reasoned decisions based on their own observations and the information they have 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, or whether an individual should be brought before a court for consideration of an order of protection or to address an immediate medical or mental health care need (R.561-68, ¶¶ 68, 72-74, 76-83, 85-91).

Appellants' Arrests

Consistent with the City's policies, NYPD officers arrested appellants on low-level charges that required appearance tickets instead of arrests because none of the exceptions permitting an arrest under C.P.L. § 150.20(1)(b) were present.

Charles Douglas

On May 31, 2020 around 11:30 p.m., Charles Douglas was observing a protest near Union Square in Manhattan (R.568, ¶¶ 92-93). An NYPD officer told Douglas to "move along," and he complied by starting to walk away (R.568, ¶¶ 93-94). An officer then shoved Douglas in the back and five additional officers pushed him to the ground and piled on top of him (R.568-69, ¶¶ 95-96). An officer placed Douglas in metal handcuffs, subsequently replaced the handcuffs with zip ties, and ordered Douglas to sit on the sidewalk, where he was detained for hours (R.569-70, ¶¶ 97-101). No NYPD officer asked Douglas to identify himself until approximately two hours later, at which point Douglas provided his name, date of birth, and identification (R.570, ¶¶ 102-103). At the time of the arrest, Douglas had no open warrants and had never failed to appear for a court proceeding (R.571-72, ¶¶ 112-13). 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 (R.570-71, ¶¶ 104-107). It was not until approximately 7:45 a.m. that Douglas was issued an appearance ticket charging him with disorderly conduct [P.L. § 240.20], a noncriminal violation, and released—more than eight hours after he was initially handcuffed (R.571, ¶¶ 108–10).

Julian Gilbert

On the evening of June 4, 2020, Julian Gilbert was departing a protest that started at McCarren Park in Brooklyn (R.574, ¶ 124). As he was getting on his bicycle to leave, 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 (R.574-75, ¶¶ 125-30). At the time of the arrest, Gilbert had no open warrants and had never failed to appear for a court proceeding (R.577, ¶¶ 141-42). Officers then walked Gilbert two blocks up the street while still handcuffed, made him sit on the ground, searched him, and transported him to Brooklyn Central Booking (R.575-76, ¶¶ 131-34). No police officer asked Gilbert to identify himself until after he arrived at Brooklyn Central Booking (R.576, ¶ 135). Officers then detained Gilbert in a holding cell at Brooklyn Central Booking for several hours before issuing him an appearance ticket around 2:00 a.m., charging him with violating the mayor’s curfew under N.Y.C. Admin. Code § 3-108, a class B misdemeanor (R.576-77, ¶¶ 136-39).

Derek Baron⁴

On June 4, 2020, Derek Baron was participating in a peaceful protest in Mott Haven in the Bronx when NYPD officers surrounded the protest and began pushing in on Baron and the other protesters (R.579, ¶ 153; R.581, ¶ 158-59). NYPD officers threw Baron to the ground (R.583, ¶ 165). While Baron was 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 (R.583, ¶¶ 166-67). An officer then picked Baron up and made them stand in place for approximately 30 minutes (R.583-84, ¶¶ 168, 171). Officers then held Baron by the arm and made them walk around 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 (R.584-86, ¶¶ 172, 175-78). Baron was detained in a holding cell at Queens Central Booking (R.586, ¶ 182). An hour later, an officer asked Baron for identifying information for the first time, which Baron provided (R.586-87, ¶ 183). Baron had no open warrants and had never failed to appear for a court proceeding (R.588, ¶¶ 192-93). It was not until approximately 2:00 a.m. that police released Baron from Queens Central Booking with an appearance ticket charging them with violating the mayor's curfew under N.Y.C. Admin. Code § 3-108, a class B

⁴ Baron uses they/them pronouns.

misdemeanor—nearly 6 hours after they were initially arrested (R.587-88, ¶¶ 187-90).

Emily Martin

On June 4, 2020, Emily Martin was participating in the same protest in Mott Haven as Baron (R.580-81, ¶¶ 155, 159). An NYPD officer struck Martin multiple times with a baton (R.582, ¶ 163). A second officer then pulled her from the crowd and passed her to a third officer, who held her while the second officer zip-tied her hands (R.591, ¶¶ 207-08). An officer held Martin for approximately 30 minutes before ordering her to enter an unmarked van, where officers searched Martin’s person and backpack (R.591-92, ¶¶ 210-11, 213). No police officer asked Martin for identification until she was ordered onto the van (R.592, ¶ 212). At the time of the arrest, Martin had no open warrants and had never failed to appear for a court proceeding (R.594, ¶¶ 224-25).

Police took Martin to the 48th Precinct in the Bronx, and approximately two to three hours later, transported her to Brooklyn Central Booking, where she was detained in a holding cell (R.592-93, ¶¶ 214, 217). Around 4:23 a.m.—approximately 8 hours after police initially handcuffed her—officers released Martin with an appearance ticket charging her with violating the mayor’s curfew under N.Y.C. Admin. Code § 3-108, a class B misdemeanor (R.593, ¶¶ 218, 220-22).

Procedural Background

The Pleadings and the Dismissal Motion

On April 14, 2021, appellants commenced this action by filing their complaint, which they amended on June 13, 2022 (R.49; R.103). The amended complaint sought a declaration that C.P.L. § 150.20 prohibits officers from making warrantless arrests for low-level offenses unless an enumerated exception authorizes an arrest, and that the NYPD's policy requiring arrests in such situations violates C.P.L. § 150.20 and N.Y. Const. art. I, § 12, an order permanently enjoining respondents' unlawful policy, as well as compensatory and punitive damages for their false arrest, assault and battery, and excessive force claims (R.121-26). On June 30, 2021, respondents filed their answer, and on July 22, 2021, they filed their amended answer (R.72; R.87).

On April 6, 2023, the court denied respondents' motion to dismiss appellants' claims for declaratory and injunctive relief, and their false arrest damages claim. *See Douglas v. City of New York*, 79 Misc. 3d 496, 507-08 (Sup. Ct., N.Y. Co. 2023) (NYSCEF No. 91) (finding a justiciable controversy as to whether the sort of "custodial detention" that preceded the issuance of appearance tickets to appellants constituted an "arrest" prohibited by C.P.L. § 150.20). On September 13, 2024, appellants filed their second amended complaint (R.127).

The Cross Motions for Summary Judgment

On April 11, 2025, appellants moved for partial summary judgment on their C.P.L. § 150.20, and N.Y. Const. art. I, § 12, claims for declaratory and injunctive relief (R.149-534). In support of their June 13, 2025, combined opposition and cross motion for partial summary judgment, respondents asserted—for the first time—that appellants’ statutory and constitutional claims were barred as res judicata by the consent decree in the Consolidated Cases (R.1078-80). Incorrectly describing the Consolidated Cases as “class actions,” respondents claimed appellants were in privity with the individual plaintiffs there because they attended the same protests, and because The Legal Aid Society, which represents appellants, also represented the plaintiffs in one of the Consolidated Cases (R.1078-80; *see also* R.1020-66). On the merits, respondents claimed that the NYPD’s policy of handcuffing, transporting, and detaining people on low-level offenses before issuing appearance tickets and without any arrest-authorizing exception did not violate C.P.L. § 150.20 because an “arrest” requires “incarceration pending arraignment” (R.1081-88). Respondents additionally asserted procedural bars to appellants’ state constitutional claim and their right to declaratory or injunctive relief (R.1088-93).

In their July 25, 2025, combined reply and opposition, appellants contended respondents had failed to meet their burden of establishing the affirmative defense of res judicata because the Consolidated Cases were *not*, as the respondents’ claimed,

class actions, and therefore plaintiffs in the Consolidated Cases did not have privity with appellants here, and also because the consent decree did not reflect an intent to preclude appellants' state statutory and constitutional claims (R.1106-08). Additionally, appellants contended that the respondents' procedural arguments ignored well-established precedent that entitled appellants to bring their constitutional claim and obtain the declaratory and injunctive relief sought (R.1108-12).

In their September 5, 2025, reply, respondents claimed appellants were in privity with the New York Attorney General in the Consolidated Cases, and so were bound by the consent decree even though they were not parties to any of these cases (R.1121-24). Respondents additionally asserted that the relief sought would “entirely up-end” the consent decree, that the “arrest” that C.P.L. § 150.20 prohibits is being “detained pending arraignment and [the filing of] an accusatory instrument,” and that appellants were ineligible for injunctive and declaratory relief because the prospective injuries they faced were too speculative (R.1124-32).⁵

⁵ At oral argument, appellants contended that respondents had waived their affirmative defense of a lack of standing by not including it in their responsive pleadings or the motion to dismiss (R.32-33).

The Court's Decision

Following oral argument, on January 5, 2026, the court issued its decision granting respondents' motion for partial summary judgment and denying appellants' motion for partial summary judgment. The court found appellants were in privity with the New York State Attorney General, which brought one of the Consolidated Cases pursuant to section 63 of the Executive Law, which permits the State to act in its quasi-sovereign interest on behalf of the health and well-being of its people, in its *parens patriae* capacity (R.11-20).⁶ Of particular importance to the court's reasoning was the consent decree itself. The court highlighted the prefatory provision indicating that "the NYPD embraces an approach to policing that assures the rights of protesters and uses arrest and force only when necessary and in compliance with the Constitution of the United States, the Constitution and laws of the State of New York, and the New York City Charter and local laws," as well as those provisions requiring the establishment of "The Red Light / Green Light Policy and Mass Arrest Processing" policy requiring supervisory approval for arrests for

⁶ Although respondents did not submit any pleadings from the Consolidated Cases in support of their motion for partial summary judgment, the court's decision cites extensively to the Attorney General's complaint (mistakenly referring to it as her "First Amended Complaint"), and the first amended complaint (mistakenly referring to it as her "second amended complaint"). *See People v. City*, No. 21-cv-322 (S.D.N.Y.) (ECF Nos. 1, 51).

certain offenses at First Amendment Activities (R.17 (citing R.1026, ¶ 12; R.1028-30, ¶¶ 28-35)). Additionally, the court cited the following consent decree provision:

Where an individual other than a juvenile or adolescent is arrested for a violation or misdemeanor, that person's arrest processing time shall not exceed 7.5 hours. The processing time may exceed this limit if: (1) An arrestee requires emergency medical care involving emergency services or receives medical attention at a medical or hospital facility immediately following the arrest that prevents timely arrest processing; (2) there is an exception under CPL [§] 150.20 or an out-of-state warrant requiring the individual to be brought to an arraignment court; or (3) an arrestee is charged with a violation, misdemeanor, or felony not involving an FAA during their arrest processing (R.17-18 (citing R.1030, ¶ 35)).

Concluding that Paragraph 35 permitted “an individual detained for an appearance ticket-eligible offense” to “be held by the NYPD for up to 7.5 hours for processing,” the court found that “although the [consent decree] did not expressly address the broader purpose and scope of [C.P.L. § 150.20], the constitutionality of the NYPD’s procedures for issuing appearance tickets to protesters was squarely raised in the Consolidated Cases and resolved through the [consent decree]” (R.18). The court then held that the consent decree barred appellants’ New York statutory and constitutional claims for declaratory and injunctive relief because *res judicata* applies “not only to claims actually litigated but also to claims that could have been raised in the prior litigation,” and because the nature of the relief appellants seek is “fundamentally public” (R.18-20 (quoting *Silvar v. Comm’r of Lab. of State*, 175

A.D.3d 95, 104 (1st Dep’t 2019), and discussing *Fabiano v. Philip Morris Inc.*, 54 A.D.3d 146 (1st Dep’t 2008)).

The court also rejected appellants’ contention that *Taylor v. Sturgell*, 553 U.S. 880 (2008), precluded a finding of privity, finding due process was satisfied “because the Attorney General commenced *People v. City of New York* on behalf of all New Yorkers,” appellants’ “interests” were “aligned with the interests advanced in that action,” and “the District Court’s extensive review and approval of” the consent decree demonstrated it “took adequate measures to protect the interests” of “those whose interests aligned with” the Consolidated Plaintiffs’ (R.19-20 (citing *In re New York City Policing During Summer 2020 Demonstrations*, 2024 WL 476367, at *15-19 (S.D.N.Y. Feb. 7, 2024))).

Alternatively, the court found appellants were not entitled to declaratory relief because C.P.L. § 150.20 does not require that appearance tickets “be issued at the scene of the occurrence,” or within a certain “time limit” (R.20 (quoting *Welch v. City of New York*, 2021 WL 5742458, at *1 (Sup. Ct., N.Y. Co. Dec. 2, 2021))). The court additionally rejected the applicability of the reasonable person standard this Court applied in *People v. Robinson*, 282 A.D.2d 75, 79 (1st Dep’t 2001) (deeming an arrest to have taken place where “a reasonable person, innocent of any crime, would have believed he was arrested if he was in the defendant’s position”) to interpret what the Legislature meant to prohibit when it revised C.P.L. § 150.20 to

mandate the issuance of appearance tickets instead of an “arrest” (R.20). Stating this standard applies “to determine whether a cause of action for false arrest lies where the police detain an individual without probable cause,” the court then noted that “[C.P.L.] § 150.20 only applies” “where the officer has probable cause to make an arrest” (R.20 (internal citations and quotation marks omitted)).

Finally, citing *Brown v. State of New York*, 89 N.Y.2d 172, 186 (1996), and *Martinez v. City of Schenectady*, 97 N.Y.2d 78, 83-84 (2001), the court found that because appellants had an “alternate remedy to realize their individual constitutional rights,” namely, their damages causes of action for false arrest, assault and battery, and excessive force, their claims for declaratory and injunctive relief pursuant to article I, § 12 of the New York Constitution were barred because they were unnecessary to realize their individual constitutional rights (R.21). Accordingly, the court granted respondents’ motion for partial summary judgment as to appellants’ first and second causes of action, denied appellants’ motion for partial summary judgment on the same causes of action, and denied the parties’ remaining contentions in all other respects, before directing entry of judgments in respondents’ favor on the state statutory and constitutional claims.

STANDARD OF REVIEW

This Court reviews *de novo* the decision to grant or deny summary judgment as a matter of law. See *Duane Reade, Inc. v. Cardtronics, LP*, 54 A.D.3d 137, 140 (1st Dep’t 2008); *Rothouse v. Ass’n of Lake Mohegan Park Prop. Owners, Inc.*, 15 A.D.2d 739, 739 (1st Dep’t 1962). Summary judgment is proper when the moving party establishes that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. See C.P.L.R. 3212(b); *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 734 (2014). A defendant bears the burden of demonstrating the absence of genuine issues of material fact on any affirmative defense, including res judicata. See C.P.L.R. 3018(b); *Aimatop Rest., Inc. v. Liberty Mut. Fire Ins. Co.*, 74 A.D.2d 516, 516 (1st Dep’t 1980) (citing C.P.L.R. 3212(b)). “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 A.D.3d 535, 545 (1st Dep’t 2008) (quotation and citation omitted). Mere conclusory allegations and unsubstantiated assertions are insufficient to defeat a summary judgment motion. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 563 (1980).

ARGUMENT

I. THE COURT ERRED WHEN IT CONCLUDED THAT THE CONSENT DECREE IN THE CONSOLIDATED CASES BARRED APPELLANTS' NEW YORK STATUTORY AND CONSTITUTIONAL CLAIMS AS RES JUDICATA WHERE (A) APPELLANTS WERE NOT IN PRIVITY WITH THE ATTORNEY GENERAL AND (B) THE CONSENT DECREE ONLY RELEASED THE CITY FROM THE CLAIMS ACTUALLY ASSERTED.

The lower court held that the consent decree in the Consolidated Cases barred appellants' C.P.L. § 150.20 and N.Y. Const. art. I, § 12 claims for declaratory and injunctive relief on res judicata grounds. But the court misapplied the res judicata doctrine and violated well-established due process limitations that make the doctrine inapplicable here. “Under both New York law and federal law, the doctrine of res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Sikorsky v. City of Newburgh*, 136 F.4th 56, 62 (2d Cir. 2025) (cleaned up). Where the basis for res judicata rests on a prior federal-court judgment, the preclusive effect “on a subsequent state court action ‘is determined by federal common law.’” *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 N.Y.3d 64, 69 (2018) (quoting *Taylor*, 553 U.S. at 891; citing *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001)).⁷

⁷ Even where the prior federal judgment “encompassed both federal- and state-law claims,” the Court of Appeals has explained that state law preclusion analysis is “unnecessary” because “*federal* preclusion doctrine will supply the applicable rule of decision.” *Paramount Pictures Corp.*, 31 N.Y.3d at 69-70 (emphasis in original).

Under the federal common law, “preclusion is, of course, subject to due process limitations.” *Taylor*, 553 U.S. at 891 (citing *Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 797 (1996)). But the court’s res judicata determination violated those due process limitations in two fundamental ways. First, appellants were not in privity with the New York State Attorney General because the Attorney General could not have adequately represented appellants’ fundamentally personal claims in its *parens patriae* suit, and appellants received no notice or opportunity to be heard before the consent decree’s entry. Second, the court’s determination that the consent decree finally resolved appellants’ claims because the Attorney General could have raised them there overlooked the parties’ limited preclusive intent regarding the consent decree, which only releases the City from the claims the Attorney General *actually* asserted, not those she could have raised. These errors denied appellants’ rights to due process. U.S. Const. amends. V, XIV; N.Y. Const. art I, § 6; *Taylor*, 553 U.S. 880; *Greenberg v. Bd. of Governors of Fed. Rsrv. Sys.*, 968 F.2d 164 (2d Cir. 1992).

**A. Appellants Were Not in Privity with the Attorney General
Because They Were Not Adequately Represented and Received
No Notice or Opportunity to Be Heard.**

Because the Attorney General could not have raised appellants’ fundamentally personal claims through her *parens patriae* standing, and because appellants received no notice or opportunity to be heard before entry of the consent decree in the Consolidated Cases, appellants were not in privity with the Attorney General.

The court’s determination otherwise violated the well-established due process rule against nonparty preclusion. *Taylor*, 553 U.S. at 892 (“A person who was not a party to a suit generally has not had a ‘full and fair opportunity to litigate’ the claims and issues settled in that suit.”); *Richards*, 517 U.S. at 804 (applying “the traditional rule that an extreme application of state-law res judicata principles violates the Federal Constitution”).

The Supreme Court has recognized six circumstances “sufficient to establish [a prior party’s] privity” with a nonparty. *Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 509 (2d Cir. 2019) (citing *Taylor*, 553 U.S. at 894-96). The lower court’s decision that the Attorney General’s *parens patriae* suit in the Consolidated Cases bars appellants’ state statutory and constitutional claims implicates only one: “representative suits”⁸ (R.14 (quoting *Taylor*, 553 US at 901)). Representative suits may bind a nonparty “where the nonparty’s interest was adequately represented” in the prior suit “by a party with the same interests,” and include “class actions,” as

⁸ Any invocation of the remaining *Taylor* exceptions—either that appellants agreed to be bound by the determination of issues in the Consolidated Cases, had a pre-existing substantive legal relationship with any Consolidated Cases plaintiff, assumed control over the litigation in the Consolidated Cases, are litigating this action as a proxy or designated representative of any Consolidated Cases plaintiff, or that the Attorney General’s *parens patriae* suit was brought under a special statutory scheme that expressly forecloses successive litigation by nonlitigants and comports with due process, *see Taylor*, 553 U.S. at 893-96—would be unpreserved, and in any event, meritless.

well as “suits brought by trustees, guardians, and other fiduciaries” where “certain procedural protections” are satisfied. *Sacerdote*, 939 F.3d at 506 & n.36.

Under the due process clause, a “party’s representation of a nonparty” in a prior suit “is ‘adequate’ for preclusion purposes only if, at a minimum: (1) [t]he interests of the nonparty and her representative are aligned; and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty.” *Taylor*, 553 U.S. at 900 (citing *Richards*, 517 U.S. at 801-02). Further, “[a]dequate representation often also requires ‘(3) notice of the original suit to the persons alleged to have been represented.’” *Sacerdote*, 939 F.3d at 510 (quoting *Taylor*, 553 U.S. at 900). For example, “[i]n the class-action context, these limitations are implemented by the procedural safeguards contained in Federal Rule of Civil Procedure 23,” which require courts to give class members notice and an opportunity to object, and to hold a hearing before approving any settlement. *Taylor*, 553 U.S. at 900-01; *see also* Fed. R. Civ. P. 23(e).

When the New York Attorney General invokes *parens patriae* standing, which requires the assertion of a “quasi-sovereign interest,” she brings litigation “on behalf of the public at large.” *See Taylor*, 553 U.S. at 895. “In modern *parens patriae* suits, a state ‘must articulate a ‘quasi-sovereign interest’ distinct ‘from the interests of particular private parties,’ such as an ‘interest in the health and well-being—both physical and economic—of its residents in general.’” *People of the State of New York*

v. Niagara-Wheatfield Cent. Sch. Dist., 119 F.4th 270, 273 (2d Cir. 2024) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982)); *see also US Bank Nat’l Ass’n v. Nelson*, 36 N.Y.3d 998, 1003 n.6 (2020) (Wilson, J., concurring) (“Public rights are those held collectively by the community, while private rights are those held by individuals.” (internal citation omitted)). These suits to vindicate public rights may preclude successive litigation from private individuals, but only if the suit is authorized under a “special statutory scheme” that “expressly forecloses successive litigation” and comports with due process. *See Taylor*, 553 U.S. at 895 (cleaned up).

But the Attorney General cannot invoke her general *parens patriae* standing to “pursue the [personal] interests of a private party.” *Snapp*, 458 U.S. at 602. Indeed, the Attorney General, through her *parens patriae* authority, “must seek to redress an injury to an interest that is separate from the interests of particular individuals” because she “cannot merely litigate as a volunteer the *personal* claims of [the state’s] competent citizens.” *People of State of N.Y. by Abrams v. Seneci*, 817 F.2d 1015, 1017 (2d Cir. 1987). For that reason, the Supreme Court has repeatedly held that prior litigation of commonly held public rights cannot preclude future litigation of fundamentally personal rights by private individuals who were not parties to the original litigation. *See Richards*, 517 U.S. at 802, & n.6 (deeming it unnecessary in a taxpayer suit to decide “whether public officials are always constitutionally

adequate representatives of all persons over whom they have jurisdiction” because “the underlying right” asserted there was “personal in nature”); *Lockport v. Citizens for Cmty. Action at Loc. Level, Inc.*, 430 U.S. 259, 263 n.7 (1977) (county voters’ equal protection suit to vindicate personal voting rights was not barred by county’s unsuccessful prior challenge to the same state law because individual voters were not parties to the county’s original litigation).

Here, appellants assert fundamentally personal rights that the Attorney General could not have asserted in her *parens patriae* suit, as she only had standing to assert commonly held public rights. *See* Amended Complaint, *People v. City*, No. 21-cv-322, ¶¶ 16-19 (S.D.N.Y. Apr. 28, 2021), ECF No. 51. Appellants seek to vindicate their rights not to be unlawfully arrested in the future by the NYPD in violation of C.P.L. § 150.20 and New York’s constitutional guarantee against unreasonable seizures under article I, § 12 (R.147, ¶ 109), which are quintessentially personal rights, rather than public ones. *See Steagald v. United States*, 451 U.S. 204, 219 (1981) (recognizing that under “common law,” and the modern jurisprudence, “rights such as those conferred by the Fourth Amendment are personal in nature”); *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978) (“Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.”); *United States v. Bohannon*, 824 F.3d 242, 250 (2d Cir. 2016) (same);

People v. Edelstein, 54 N.Y.2d 306, 309 (1981) (finding defendant “ha[d] no standing to assert the Fourth Amendment rights of another.”).

Although the Attorney General brought claims under the Fourth Amendment and article I, § 12 of the New York Constitution, she did not purport to do so on behalf of any private individual, nor could she. *See* Amended Complaint, *People v. City*, No. 21-cv-322, ¶¶ 16-19. Rather, her operative complaint made clear she was pursuing that action to vindicate the “quasi-sovereign interest” in the “health and well-being of the People of the State of New York as a whole.” *Id.* ¶¶ 17-18; *see also* *People ex rel. Cuomo v. Liberty Mut. Ins. Co.*, 52 A.D.3d 378, 379 (1st Dep’t 2008) (“The State has inherent authority to act in a *parens patriae* capacity when it suffers an injury to a quasi-sovereign interest apart from the interests of particular private parties.”). Such interest plainly extends to a state’s broad, and generally-applicable, “interest[] in the prevention of lawless exercises of the powers its laws confer upon police officers hired by its subdivisions.” *Com. of Pa. v. Porter*, 659 F.2d 306, 315 (3d Cir. 1981). Indeed, the district court concluded that the Attorney General properly invoked *parens patriae* standing to vindicate “precisely th[is] interest.” *In re New York City Policing During Summer 2020 Demonstrations*, 548 F. Supp. 3d 383, 398 (S.D.N.Y. 2021). Thus, the Attorney General could not have acted in a representative capacity of appellants’ fundamentally personal claims to prevent their future unlawful arrests under the NYPD’s illegal policy. Rather, her suit could only

have vindicated the generally applicable, and commonly held, public interest in the lawful exercise of police power. *See Porter*, 659 F.2d at 315; *see also In re New York City Policing During Summer 2020 Demonstrations*, 548 F. Supp. 3d 383 at 399 (noting “the relief sought by the State” in the Consolidated Cases was “far broader” than that sought by the individual plaintiffs, “cover[ing] not only protesters, but also journalists, legal observers, medics, and others”).

While the lower court likened the declaratory and injunctive relief that appellants seek to punitive damages in a personal injury suit (R.18-19 (finding that because the relief sought here “would affect the public at large,” appellants’ claims are “fundamentally public in nature” (citing *Fabiano*, 54 A.D.3d 146))), that comparison is inapt. Punitive damages are only available where the personal harm inflicted “reflect[s] pervasive and grave misconduct affecting the public generally,” and effectively “merge[s] with a serious public grievance” meriting a “punitive,” and “quasi-criminal sanction.” *Fabiano*, 54 A.D.3d at 150 (citations omitted). For this reason, private plaintiffs seeking punitive damages act, in effect, “in the State’s behalf, as private attorneys general.” *Id.* (cleaned up). In contrast, appellants here seek forward-looking equitable relief to remedy a uniquely personal harm: the risk that the NYPD will illegally arrest them again, instead of issuing an appearance ticket.

Implicit in the court's reasoning is the mistaken premise that because such relief would incidentally benefit nonparties, who may also have a personal interest in avoiding unlawful arrest by the NYPD, appellants seek to litigate commonly held public rights rather than personal rights (R.19). But the relief requested is necessary to protect appellants' fundamentally personal rights given the scope of respondents' illegal policies and practices. Because of the NYPD's admitted failure to verify whether any exception to C.P.L. § 150.20(1)(b) permitting an arrest exists before handcuffing, transporting, and detaining someone on a low-level offense (*see* R.545-47, ¶¶ 25, 29; R.550-51, ¶¶ 36, 39; R.555, ¶¶ 48-49), the court could not craft an injunction that would apply only to appellants. Accordingly, nothing short of an order enjoining the NYPD's unlawful policy would permit appellants to obtain the full measure of relief to which they are personally entitled.

Next, even if the Attorney General could litigate appellants' personal claims and believed she was doing so in the Consolidated Cases (which she could not), the adequate representation requirement cannot be satisfied because the summary judgment record fails to establish that the district court in the Consolidated Cases took special care to protect the interests of nonparties such as appellants. *See Taylor*, 553 U.S. at 900. Just the opposite, the consent decree in the Consolidated Cases was entered without "notice of the original suit to the [nonparties]" and an opportunity to be heard. *See Taylor*, 553 U.S. at 900. For starters, the district court's review of

the proposed consent decree was limited to the factors set forth in *U.S.S.E.C. v. Citigroup Glob. Markets, Inc.*, 752 F.3d 285 (2d Cir. 2014), which requires a court reviewing a consent decree in a case involving government enforcement actions to “determine ‘whether the proposed consent decree is fair and reasonable, with the additional requirement that the public interest would not be disserved.’” *In re New York City Policing During Summer 2020 Demonstrations*, 2024 WL 476367, at *14 (quoting *Citigroup*, 752 F.3d at 294). As the district court explained, the Consolidated Cases “were not class actions,” nor were they “subject to any statute empowering the court to ‘approve’ the Settlement.” *Id.* at *2-3. Under *Citigroup*, there is no “inquiry as to the ‘adequacy’ of a consent decree” as would be required for a class action settlement. *Id.* at *17 (quoting *Citigroup*, 752 F.3d at 294). And unlike a class action settlement, which “typically precludes future claims,” a consent decree in an enforcement action does not normally affect “potential plaintiffs with a private right of action,” who remain “free to bring their own claims.” *Citigroup*, 752 F.3d at 294.

Consistent with the *Citigroup* standard, the district court’s determination that the consent decree was fair and reasonable merely confirmed that the agreement “clearly resolve[d] the actual claims in the complaint.” *In re New York City Policing During Summer 2020 Demonstrations*, 2024 WL 476367, at *17. As to the requirement that the public interest would not be disserved, the court largely deferred

to the Attorney General's and the City's view that the consent decree was in the public interest. *Id.* at *18-19. The district court's opinion gives no indication that it considered whether appellants—whose private claims against the City were pending in state court at the time the consent decree was entered—would be barred from pursuing their claims by virtue of the consent decree. *See id.*

The lack of *any* suggestion that the court considered the consent decree's preclusive effect on private parties is telling. As the Second Circuit noted in *Citigroup*, “a consent decree may disserve the public interest if it bar[s] private litigants from pursuing their own claims independent of the relief obtained under the consent decree.” 752 F.3d at 297. Had there been any suggestion that the consent decree would have a preclusive effect on private parties, then the district court would have been required to address this consideration in its public interest analysis. Its silence further demonstrates that the district court understood that the Attorney General was litigating commonly held public rights in *parens patriae*, and for that reason, the consent decree would not bar private parties from pursuing their claims for relief independent of the agreement.

Above all, the district court could not have taken special care to protect the interest of nonparties like appellants because it entered the consent decree in the Consolidated Cases without notice and an opportunity to be heard. *See Taylor*, 553 U.S. at 900. The Consolidated Cases “were not class actions,” nor were they “subject

to any statute empowering the court to ‘approve’ the Settlement.” 2024 WL 476367, at *2-3. At no point before finally approving the consent decree did the district court order that notice be provided to nonparties whose rights could potentially be affected. *See id.* Nor did the district court provide an opportunity for nonparties to object in writing, or at a fairness hearing, to the proposed consent decree. *See id.* Because the due process “right to be heard . . . ‘has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest,’” *Richards*, 517 U.S. at 799 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)), the court below also erred in concluding that the district court took “adequate measures” to protect appellants’ interests (R.20).

The court’s determination that appellants were in privity with the Attorney General thus was erroneous and should be reversed.

B. The Consent Decree Was Only Intended to Release the City from the Claims Actually Asserted, and Not Those that Might Have Been.

The court further erred in its application of res judicata because the consent decree in the Consolidated Cases did not constitute a final resolution on the merits of the same claims. “The preclusive effect of a settlement is measured by the intent of the parties to the settlement.” *Greenberg*, 968 F.2d at 168. Accordingly, for the consent decree to preclude subsequent claims that might have been litigated in the

Consolidated Cases, it would have to reflect the parties' clearly-expressed intent to do so. It does not.

First, the consent decree's prefatory section includes a "whereas" clause stating that the settling parties "desir[e] to resolve the claims for injunctive relief, including those *parens patriae* claims brought by the New York State Office of the Attorney General, raised in this litigation" (R.1024). But there is no indication the parties intended to resolve or release claims that might have been, but were not, "raised" (*see id.*). *Cf. Fabiano*, 54 A.D.3d at 148-49 (holding private litigant's punitive damages claims precluded under tobacco Master Settlement Agreement that specifically released claims "in any way related" to described conduct, including for "unaccrued" "punitive damages," brought by nonparties who "sought relief on behalf of or generally applicable to the general public"). Had the parties here intended to resolve any pending or unasserted claims or prevent them from being raised in the future, then they would have said so. *See U.S. ex rel. May v. Purdue Pharma L.P.*, 737 F.3d 908, 914 (4th Cir. 2013) ("[T]he preclusive effect of a judgment enforcing a settlement agreement is determined by the intent of the parties as reflected by the terms of that agreement."). Apart from the prefatory "whereas" clause, which references only the claims "raised in this litigation," the consent decree releases no claims, and does not purport to bind any nonparties in any fashion (R.1023-60). The absence of any release provision that would expressly affect

appellants’ ability to pursue their claims in this case—which had been pending in state court for nearly *three years* when the district court entered the consent decree—demonstrates the parties intended no preclusive effect.

Second, the court’s conclusion that “the constitutionality of the NYPD’s procedures for issuing appearance tickets to protesters was squarely raised in the Consolidated Cases and resolved through the settlement agreement” (R.18), misinterprets the agreement’s Paragraph 35. That paragraph states that “[w]here an individual other than a juvenile or adolescent is arrested for a violation or misdemeanor, that person’s arrest processing time shall not exceed 7.5 hours” (R.1030). The court concluded that this “necessarily contemplates that an individual detained for an appearance-ticket eligible offense may be held by the NYPD for up to 7.5 hours for processing” (R.18). But by its plain terms, Paragraph 35 applies only where a person is “arrested” for a violation or misdemeanor (R.1030), not detained. It does not address the permissible duration of a nonarrest detention for appearance ticket-*mandated* offenses, for which an arrest is *not* authorized under C.P.L. § 150.20; it only limits the amount of time the NYPD has to process a valid arrest at an arrest processing facility for a misdemeanor or violation involving First Amendment Activity. An arrest for a misdemeanor or violation is only authorized where a C.P.L. § 150.20(1)(b) exception applies, rendering an appearance ticket “not required.”

Where an arrest is permitted, C.P.L. § 150.20(2) allows the NYPD to issue and serve an appearance ticket on someone who has already been “arrested.” Accordingly, Paragraph 35 merely requires that, when policing First Amendment Activities, the NYPD must exercise its discretion and release anyone it has validly “arrested” with an appearance ticket, rather than hold them as prisoners, if they cannot be brought before an arraignment judge within 7.5 hours (R.1030). That provision does not apply where one of the limited number of C.P.L. § 150.20(1)(b) exceptions is present that requires the individual to be brought to an arraignment court, *see* C.P.L. § 150.20(1)(b)(vi) (reasonably appears person should be brought to court for consideration of issuance of order of protection), (viii) (reasonably appears bringing person to court would be in person’s interest to address need immediately jeopardizing medical or mental health).

Nothing in Paragraph 35 or any other paragraph in the settlement agreement authorizes the NYPD to handcuff, transport, and detain at an arrest processing facility individuals who are *required* to receive an appearance ticket under C.P.L. § 150.20(1)(a) instead of being subject to arrest, where no exceptions apply under the statute that permit their arrest. To find otherwise would interpret the settlement agreement in a way that is contrary to state law. *See* Point II(A), *infra*; *Alexander v. Bahou*, 512 F. Supp. 3d 363, 374 (N.D.N.Y. 2021) (“[T]he Court cannot enforce a consent decree in such a way as to allow the city to violate the law.”). The court

below thus erred in concluding that the consent decree in the Consolidated Cases precluded appellants' state statutory and constitutional claims for injunctive and declaratory relief.

II. THE NYPD'S POLICY AND PRACTICE OF ARRESTING PEOPLE FOR OFFENSES THAT REQUIRE APPEARANCE TICKETS, ABSENT CIRCUMSTANCES THAT AUTHORIZE AN ARREST, VIOLATE SECTION 150.20 OF THE CRIMINAL PROCEDURE LAW AND ARTICLE I, SECTION 12 OF THE NEW YORK CONSTITUTION.

Appellants' partial summary judgment motion on their statutory and constitutional claims presents a straightforward legal question: does the word "arrest" in C.P.L. § 150.20 mean the same thing it does in every other context of the criminal law in New York? The statute's plain text, structure, and legislative history confirm that it does. But in its decision denying appellants' motion, the court rejected the notion that C.P.L. § 150.20 incorporates the familiar reasonable person standard that New York courts apply to determine whether a seizure constitutes an arrest. *See People v. Hicks*, 68 N.Y.2d 234, 238-39 (1986).

Because C.P.L. § 150.20 does not permit the NYPD to arrest people on qualifying low-level offenses unless an enumerated exception applies, appellants' arrests under the NYPD's arrest-first policy violated their statutory right to an appearance ticket. C.P.L. § 150.20. Additionally, because the NYPD seized and forcibly detained them for longer than reasonably necessary to determine their eligibility for and issue appearance tickets, their arrests also violated appellants' state

constitutional right to be free from unreasonable seizures. N.Y. Const. art. I, § 12. Finally, because there are no barriers to appellants' requested relief, this Court should order summary judgment in appellants' favor on their C.P.L. § 150.20 and N.Y. Const. art. I, § 12 claims.

A. Appellants' Arrests Under the NYPD's Undisputed Arrest-First Policy and Practice Violated C.P.L. § 150.20.

The lower court concluded that C.P.L. § 150.20 permits the NYPD to place people charged with low-level offenses for which an appearance ticket is required in handcuffs, transport them to police precincts for custodial arrest processing, and detain them there as prisoners for hours before determining whether an arrest-authorizing exception applies (R.20-21). But in doing so, the court failed to give the word "arrest" its precise and well-settled legal meaning, and to accord proper weight to the statute's plain text, structure, and legislative history. C.P.L. § 150.20 unambiguously prohibits arrests where appearance tickets are required, and the undisputed material facts establish that appellants were unlawfully arrested under the NYPD's arrest-first policy and practice.

i. C.P.L. § 150.20 Mandates Appearance Tickets Instead of Arrests.

Because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to [its] plain meaning." *People v. Pabon*, 28 N.Y.3d 147, 152 (2016) (cleaned

up). Words that “have a distinct and well-defined meaning in the jurisprudence of the State” “must be deemed to have the same meaning when used in the statutes.” *Skeels v. Paul Smith’s Hotel Co.*, 195 A.D. 39, 42 (3d Dep’t 1921); *see also Moran Towing & Transp. Co. v. N.Y.S. Tax Comm’n*, 72 N.Y.2d 166, 173 (1988) (according statutory phrase its “precise and well settled legal meaning in the jurisprudence of the state” (citing McKinney’s Statutes § 233)). “Further, all parts of a statute must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every part and word thereof.” *Pabon*, 28 N.Y.3d at 152 (cleaned up).

As revised, C.P.L. § 150.20(1)(a) provides that whenever a police officer is “authorized” pursuant to C.P.L. § 140.10 to “arrest a person without a warrant” for a low-level offense, the officer “shall” “instead issue to and serve upon such person an appearance ticket,” unless a C.P.L. § 150.20(1)(b)-enumerated exception, for which an appearance ticket is “not required,” applies. Initially, the court found that C.P.L. § 150.20 permits a full-blown custodial arrest, rather than a limited nonarrest detention, before issuance of an appearance ticket, absent any arrest-authorizing exception (*see* R.21 (“In some, if not all, circumstances,” determining whether an arrest-authorizing exception “necessitate[s] a level of interaction that exceeds” a “brief detention” to “quickly confirm[] or dispel[] an officer’s suspicion.”)). But that finding failed to give the word “arrest” its precise and well-settled legal meaning in

New York jurisprudence. *See Moran Towing & Transp. Co.*, 72 N.Y.2d at 173; *Skeels*, 195 A.D. at 42. Specifically, to determine whether a seizure constitutes a “de facto arrest,” “as a matter of State law, including State constitutional law,” New York courts look to ““what a reasonable man, innocent of any crime, would have thought had he been in the defendant’s position.”” *Hicks*, 68 N.Y.2d at 239 & n.2, 240 (quoting *People v. Yukl*, 25 N.Y.2d 585, 589 (1969)).

Under this definition, it is well-established that the combination of handcuffing, involuntary transport, and hours-long detention in a stationhouse or holding cell with other prisoners is an “arrest.” *See Robinson*, 282 A.D.2d at 79-80 (“Being taken involuntarily, handcuffed and transported to a police station, then held in a barred cell for over two hours, requires the conclusion that [the detention] developed into an arrest.”); *People v. Brnja*, 50 N.Y.2d 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.”); *see also People v. Quarles*, 187 A.D.2d 200, 203 (4th Dep’t. 1993) (“[D]efendant 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.”); *People v. Pittman*, 83 A.D.2d 870, 871–872 (2d Dep’t 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”) (citing *Dunaway v. New York*, 442 U.S. 200 (1979)). Thus, the court failed to give the word “arrest” in C.P.L. § 150.20 the same meaning it carries in every other area of New York law.

The statute’s plain text, structure, and history confirm that when the Legislature revised C.P.L. § 150.20 in 2020, it meant precisely what it said. The statute’s plain text provides that “[w]henever a police officer is authorized . . . to arrest a person without a warrant [for specified low-level offenses],” the officer “*shall . . . instead* issue to and serve upon such person an appearance ticket,” unless an exception for which an appearance ticket is “not required” applies. C.P.L. § 150.20(1)(a), (1)(b). There is no mistaking what this means: absent an exception under the statute, the police cannot arrest people for qualifying low-level offenses and must instead issue them an appearance ticket. By ignoring the statutory mandate that an appearance ticket be issued and served “instead” of an “arrest,” absent an arrest-authorizing exception, the court failed to give effect to its plain meaning, thereby violating the first rule of statutory interpretation. *See Pabon*, 28 N.Y.3d at 152.

This straightforward understanding of the statute’s plain meaning is also confirmed by its structure. Where an appearance ticket is not required because an exception applies under C.P.L. § 150.20(1)(b), the Legislature nonetheless specified

that officers retain the discretion to issue an appearance ticket after the officer “has arrested” the person for an otherwise appearance ticket-eligible offense, “instead of bringing [the] person before a local criminal court” to be arraigned. C.P.L. § 150.20(2)(a). If, as the court found, C.P.L. § 150.20(1)(a) permits the NYPD to arrest someone on a low-level offense for which an appearance ticket is required to ascertain whether any exception permitting an arrest applies, so long as the NYPD ultimately issues an appearance ticket (*see* R.20-21), then C.P.L. § 150.20(2)(a) would be entirely superfluous. The court’s decision thereby failed to give meaning to every part and word of the statute and impermissibly adopted a construction that would render C.P.L. § 150.20(2)(a) meaningless. *See Avella v. City of New York*, 29 N.Y.3d 425, 434 (2017) (explaining that “a statutory construction which renders one part meaningless should be avoided.”); *Pabon*, 28 N.Y.3d at 152 (same).

Appellants’ construction of the statute is also consistent with the legislative history, which confirms the Legislature intended to prevent the practice of handcuffing, transporting, and detaining individuals on low-level, appearance ticket-eligible charges by prohibiting “arrests” as that word is precisely understood in New York’s criminal jurisprudence, except in carefully delineated circumstances. The original Commission Staff Notes describe the ability to issue appearance tickets “instead of making arrests” as a “major innovation in New York procedure” and explain that, without the appearance-ticket device, the typical processing procedure

requires an officer to “arrest the defendant,” “take him to the station house to book him, and then take him to a local criminal court” for arraignment (R.244); *see also* *People ex rel. Maxian on Behalf of Roundtree v. Brown*, 77 N.Y.2d 422, 425 (1991) (explaining that New York City arrest procedure includes taking the arrestee to a precinct, reviewing their case, fingerprinting them, and taking them to Central Booking, before they are taken to the courthouse for arraignment). The Notes add that issuing an appearance ticket helps to avoid this “ominous, humiliating and frequently expensive arrest procedure,” which is “both unnecessary and unfair” for “a relatively minor offense” (R.244).

The three reasons the court gave do not compel a different conclusion. *First*, the court’s rejection of the *Hicks* definition of “arrest” that this Court applied in *Robinson* as inapposite—purportedly because C.P.L. § 150.20 “only applies where a police officer is *already authorized* to arrest the subject individual pursuant to” C.P.L. § 140.10, “i.e. where the officer has probable cause to make an arrest” (R.20 (emphasis in original, internal citations omitted))—was clearly erroneous. Whether there was probable cause and whether an arrest (i.e., a seizure requiring probable cause) occurred are separate inquiries. Probable cause is necessary to establish that a warrantless arrest was lawful. *See* C.P.L. §§ 70.10(2), 140.10; *People v. Maldonado*, 86 N.Y.2d 631, 635-36 (1995). But its presence is insufficient to establish the

lawfulness of an arrest for a low-level offense where an arrest is prohibited by C.P.L. § 150.20(1)(a). Thus, the court’s reasoning fails on its own terms.

Second, the court’s conclusion that the absence of any express requirement in the Criminal Procedure Law that an appearance ticket has to be served “at the scene of the encounter” or that there is a “time limit on [an] arrest” misapprehends the nature of appellant’s C.P.L. § 150.20 claim (R.20 (first citing C.P.L. § 150.40(3)-(4), then quoting *Welch*, 2021 WL 5742458, at *1)). Appellants merely seek “a declaration that C.P.L. § 150.20 prohibits arrests for low-level offenses” that qualify for a mandatory appearance ticket, absent an arrest-authorizing exception (R.147, ¶ 109). The time, place, and manner in which the NYPD issues and serves appearance tickets only informs whether a prohibited, de facto arrest has occurred. Finally, the court’s reliance on *Welch*, which did not acknowledge, let alone grapple with, the *Hicks* standard for a de facto arrest, was clearly misplaced.

Third, although the court concluded that the steps required to determine whether an arrest for an offense that otherwise requires an appearance ticket may require more than a brief detention (*see* R.21), the undisputed facts establish the contrary. NYPD officers have field tools to assess appearance ticket eligibility. Respondents admit that all officers are issued smartphones with access to mobile databases that contain information about individuals’ NYPD arrest and warrant history, summonses, addresses, dates of birth, arrest photographs, physical

descriptions, and prior convictions (R.556-60, ¶¶ 52, 54, 58, 62, 65-66; R.562, ¶ 72). The court thus erred in concluding that C.P.L. § 150.20 contemplates anything beyond a limited, nonarrest detention for the purposes of ascertaining whether a C.P.L. § 150.20(1)(b) exception applies.

The Legislature intended to prevent appearance-ticket eligible individuals from being subject to the typical arrest procedure—handcuffing, custodial transport, and detention as a prisoner in a police facility—and not, as respondents suggested below, merely prevent them from “being taken to the criminal courthouse for arraignment” (R.1127). The court thus erred when it concluded C.P.L. § 150.20 permits the NYPD to arrest people first and determine whether they are required to issue them an appearance ticket later.

ii. Respondents’ Arrest-First Policy and Practice Violates the C.P.L. § 150.20 Appearance-Ticket Mandate.

Despite the statute’s unambiguous appearance ticket mandate, the undisputed facts establish that the NYPD maintains an illegal arrest-first policy and practice. In response to appellants’ partial summary judgment motion, respondents admit that the NYPD requires officers in all cases to handcuff, transport, and detain individuals at NYPD precincts or other arrest processing facilities before they may issue an appearance ticket (R.545, ¶ 25; R.547, ¶ 29; R.550-53, ¶¶ 36, 39, 42, 43). And they admit that NYPD Patrol Guide Procedure No. 208-27 specifically states that 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 (R.547, ¶ 29).

As the NYPD’s undisputed arrest processing guidelines make clear, before issuing an appearance ticket 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 (R.551-53, ¶¶ 39, 42, 43). And for large-scale policing events where the total number of arrests exceeds twenty people, NYPD Patrol Guide Procedure No. 213-06 provides additional steps that officers must follow and, like general arrest processing guidelines, contains no exceptions or alternatives for people charged with low-level offenses (R.554-56, ¶¶ 46, 50). By any measure, these procedures mandate “arrests” before the issuance of an appearance ticket. *See Hicks*, 68 N.Y.2d at 239-40; *Dunaway*, 442 U.S. at 212; *Brnja*, 50 N.Y.2d at 372; *Robinson*, 282 A.D.2d at 79-80; *Quarles*, 187 A.D.2d at 203; *Pittman*, 83 A.D.2d at 871-72.

Because NYPD’s policies require an officer to arrest a person believed to have committed a low-level offense normally requiring an appearance ticket first, before determining whether an arrest-authorizing C.P.L. § 150.20(1)(b) exception is

satisfied, the undisputed facts establish that the NYPD's policy and practice violate C.P.L. § 150.20.

iii. The NYPD Arrested Appellants Under Its Arrest-First Policy and Practice Even Though C.P.L. § 150.20 Mandated Appearance Tickets.

It is equally clear from the summary judgment record that the NYPD arrested appellants pursuant to its illegal arrest-first policy, despite their eligibility for appearance tickets.

To start, it is undisputed that officers zip-tied or handcuffed appellants' wrists, detained them on the street, forced them into police vehicles, transported them to arrest processing facilities, and detained them for hours in holding cells before they were finally released with appearance tickets for either disorderly conduct or violating the mayor's temporary curfew (R.569-71, ¶¶ 97-109; R.574-76, ¶¶ 125-37; R.583-87, ¶¶ 166-87; R.591-93, ¶¶ 207-18). Specifically, Douglas was handcuffed, zip-tied, transported to One Police Plaza, held in a cell with approximately fifty other people, and released around 7:45 a.m. after receiving an appearance ticket (R.569-71, ¶¶ 97, 100, 102-10). Gilbert was handcuffed, transported by MTA bus to Brooklyn Central Booking, detained until approximately 2:00 a.m., and then issued an appearance ticket (R.575-77, ¶¶ 130, 134-39). Baron was zip-tied, transported to the 41st Precinct and then Queens Central Booking, placed in a holding cell, and released after 2:00 a.m. with an appearance ticket (R.583, ¶ 166; R.585-88, ¶¶ 176-

90.) And Martin was zip-tied, ordered into an unmarked van, transported to the 48th Precinct and then Brooklyn Central Booking, detained in a cell, and issued an appearance ticket at 4:23 a.m. (R.591-93, ¶¶ 208-22).

No reasonable person, innocent or guilty of any crime, subjected to these restraints on their freedom would have believed they were not under arrest. *See Brnja*, 50 N.Y.2d at 372; *Robinson*, 282 A.D.2d at 79-80; *Quarles*, 187 A.D.2d at 203; *Pittman*, 83 A.D.2d at 871-72. Nor is it possible to conclude that they were subjected to a permissible nonarrest detention for the purposes of determining whether an arrest-authorizing exception applied. *Compare Hicks*, 68 N.Y.2d at 240 (finding a permissible nonarrest detention where, despite being transported to crime scene for show-up, “[d]efendant was not handcuffed, there was no show of force, he was permitted to park the car nearby before accompanying the police, he was not taken to the police station, [and] the total time and distance involved were very brief”).

It is also undisputed that appellants were entitled to receive appearance tickets for these low-level charges under C.P.L. § 150.20, and that no exceptions applied that would have allowed the NYPD to arrest appellants instead (R.571 ¶¶ 109-11, 112-15; R.576-78, ¶¶ 137-39, 141-46; R.587-89, ¶¶ 187-89, 192-97; R.593-95, ¶¶ 218-22, 224-29). Despite this, appellants were not issued appearance tickets until they had been handcuffed or zip-tied, transported, and detained for several hours in

police processing facilities (R.569-71, ¶¶ 97, 104-05, 108-09; R.575-76, ¶¶ 130, 134, 136-37; R.583, ¶ 166; R.585-87, ¶¶ 176-78; R.591-93, ¶¶ 208, 214-19). Thus, although the lower court did not evaluate whether these seizures were de facto arrests, this Court should find that the undisputed material facts establish that appellants' arrests under the NYPD's arrest-first policy violated C.P.L. § 150.20.

B. Appellants' Arrests Under the NYPD's Undisputed Arrest-First Policy and Practice Violated N.Y. Const. art. I, § 12.

Although the court did not reach the merits of appellants' constitutional claims, the undisputed material facts likewise demonstrate that by handcuffing, transporting, and detaining appellants for hours before issuing them the appearance tickets mandated by C.P.L. § 150.20, respondents subjected them to longer and more intrusive seizures than reasonably necessary to determine their eligibility for and issue them appearance tickets in violation of article I, § 12 of the State Constitution.

The Court of Appeals has interpreted article I, § 12's protection against unreasonable searches and seizures to be "more protective [than the Federal Constitution] of the rights of individuals 'to be free from aggressive governmental interference.'" *People v. Hinshaw*, 35 N.Y.3d 427, 431-32 (2020) (citing *People v. De Bour*, 40 N.Y.2d 210, 216 (1976); *see also People v. Hollman*, 79 N.Y.2d 181, 195 (1992)). Accordingly, the Court's article I, § 12 jurisprudence "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.” *Hinshaw*, 35 N.Y.3d at 431-32.

The reasonableness of a search or seizure under article I, § 12, “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 N.Y.2d at 215. The Legislature’s classification of an offense informs this analysis, as the government’s interest in a particular seizure is necessarily diminished by a legislative determination that the offense justifying it is a noncriminal violation. Thus, in *Hinshaw*, the Court of Appeals recognized that “[t]he required ‘balancing of the interests involved’ will differ,” “when the suspected illegality is a traffic violation” under “the [L]egislature’s taxonomy.” 35 N.Y.3d at 432. Accordingly, accounting for 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” as a stop based on a suspected crime, the Court held that unless there is reasonable suspicion of a crime, forcible automobile stops require probable cause of a traffic infraction. *Id.*

For similar reasons, the availability of a procedure to issue summonses for low-level offenses—which obviates the need for a custodial arrest—signals a diminished governmental interest in such seizures. For this reason, in *People v. Howell*, 49 N.Y.2d 778 (1980), the Court found it was error to conclude “merely

because reckless driving is a misdemeanor rather than a traffic violation,” that an “arrest was inevitable.” 49 N.Y.2d at 779. Because a summons could have been issued, an arrest “was neither called for nor the preferred procedure.” *Id.* at 779 (citing the Practice Commentary to C.P.L. § 150.20 (eff. until Dec. 31, 2019)). Accordingly, “[f]or a traffic stop to pass constitutional muster,” it “must be justified at its inception and the seizure must be reasonably related in scope, including its length, to the circumstances which justified the detention in the first instance.” *People v. Barreras*, 253 A.D.2d 369, 372-73 (1st Dept 1998) (citations omitted). As this Court recognized in that context, such seizures are unreasonable if police prolong them beyond the period necessary to issue a summons. *Id.* at 373 (“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.”).

The Legislature’s revision of C.P.L. § 150.20 in 2020 to mandate appearance tickets where no arrest-authorizing exception is present clearly reflects a reduced state governmental interest in such seizures. This legislative determination accounts for the diminished seriousness of the conduct at issue, as well as the enormous personal harms that flow from custodial arrests. As discussed, the Commission Staff Notes on the originally-enacted version of C.P.L. § 150.20 emphasize that issuing appearance tickets is 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” (R.541, ¶ 12). And as noted in the Bill Memorandum in Support, “mandat[ing] that police issue appearance tickets instead of making custodial arrests in low-level cases . . . 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” (R.542, ¶ 14). Consequently, the Legislature’s adoption of a procedure mandating appearance tickets for low-level offenses in most situations signals a further lessening of the government’s already-diminished interest in seizures for low-level offenses. *See Howell*, 49 N.Y.2d at 779.

Given the well-recognized harms that flow from full-blown custodial arrests, *see, e.g., Roundtree*, 77 N.Y.2d at 427 (“[T]he deprivation entailed by prearrest detention is very great with the potential to cause serious and lasting personal and economic harm,” requires no pre-deprivation process, and “may ultimately be found to have been unwarranted.” (quotation marks and citation omitted)), the required state constitutional balancing of the governmental interests in such seizures for low-level offenses for which C.P.L. § 150.20(1)(a) normally requires an appearance ticket against an individual’s rights to privacy and personal security compels a clear conclusion. Absent pre-existing probable cause that a C.P.L. § 150.20(1)(b) arrest-authorizing exception is satisfied, seizures that are longer or

more intrusive than reasonably necessary to determine a person's eligibility for, issue and serve an appearance ticket violates New York's constitutional guarantee against unreasonable seizures. N.Y. Const. art. I, § 12.

Here, respondents failed to meaningfully dispute that the NYPD's arrest-first policy requires officers to detain people on low-level offenses normally requiring an appearance ticket longer than reasonably necessary to determine if a C.P.L. § 150.20(1)(b) arrest-authorizing exception applies, and if not, to issue and serve them with an appearance ticket. As discussed above, the NYPD's policies for issuing appearance tickets require a full-blown custodial arrest before officers can even consider whether to issue an appearance ticket. *See* Point II(A)(ii), *supra*.

Nor did respondents establish a genuine dispute that standard-issue technology—including smartphones with access to the Domain Awareness System—enables officers to access the information in the field necessary to determine whether an arrest-authorizing exception exists, and if not, to issue and serve an appearance ticket in the field (*see* R.556-68, ¶¶ 52-91). Such tools enable officers to run routine checks, and permit an officer to search an individual's name, date of birth, addresses, and physical descriptions to determine any prior NYPD arrests, convictions, and past and active warrants, as well as photographs from past arrests and any failures to appear in court proceedings in the last two years (*see* R.558-60, ¶¶ 58-60, 62-63, 65-66). *See* C.P.L. § 150.20(1)(b)(i)-(iii). Where certain

arrest-authorizing exceptions call for officers to make observations and investigate the circumstances of the alleged offense, including assessing whether there is probable cause to arrest for any of the offenses listed among the exceptions, *see* C.P.L. § 150.20(1)(b)(iv)-(v), (vii), (ix)-(xi), whether the individual should be brought before a court for consideration of an order of protection, C.P.L. § 150.20(1)(b)(vi), or whether the individual would face harm without immediate health care and bringing the person before a court would be in their interest, C.P.L. § 150.20(1)(b)(viii), there is nothing in the record indicating that the individual must be arrested in order to ascertain these facts (*see* R.561-68, ¶¶ 68, 73-91). Therefore, contrary to the court’s conclusion that determining whether an arrest is authorized under C.P.L. § 150.20(1)(a)-(b) often “necessitate[s] a level of interaction that exceeds [a] brief detention” (R.21), the record in fact establishes the opposite.

In any event, in light of the low-level charges they faced, there is also no genuine dispute that appellants’ seizures exceeded the brief and limited detention authorized to ascertain the information necessary to determine whether an arrest was authorized under C.P.L. § 150.20(1)(b): an individual’s name, date of birth, addresses, and physical descriptions to determine any prior NYPD arrests, convictions, and past and active warrants, as well as photographs from past arrests, and any failures to appear in court proceedings in the last two years (*see* R.556-68, ¶¶ 52-91). They were each all handcuffed or zip-tied, detained on the street for

between 30 minutes to over two hours, transported to NYPD arrest processing facilities, detained again for hours in holding cells, and most were searched before they were finally released with appearance tickets for the low-level charges of disorderly conduct or violating the mayor's temporary curfew (R.569-71, ¶¶ 96-110; R.574-77, ¶¶ 127-39; R.582-88, ¶¶ 162-90; R.591-93, ¶¶ 207-22). Each complied with the NYPD's orders while in police custody and provided identifying information when requested (R.570, ¶¶ 102-03, 106; R.576, ¶ 135; R.586-87, ¶¶ 183-85; R.592, ¶ 212). For Douglas, Baron, and Gilbert, the NYPD did not even ask for their names until after they had been detained in handcuffs for hours (R.570, ¶ 102; R.576, ¶ 135; R.586, ¶ 183). It is therefore clear that appellants were subjected to seizures that were far longer and more intrusive than necessary to complete the tasks necessary to determine their eligibility for, and issue, an appearance ticket, and that the NYPD's official policies condone such unreasonable seizures.

For these reasons, there is no genuine dispute that appellants' seizures, and the NYPD's undisputed policy, also violate the New York constitutional guarantee against unreasonable seizures. N.Y. Const. art. I, § 12.

C. Appellants' Tort Claims Do Not Bar Their Constitutional Cause of Action.

The court's decision to grant summary judgment in respondents' favor on appellant's constitutional cause of action based on its finding that their false arrest, assault and battery, and excessive force claims "provide an alternate remedy to realize

their individual constitutional rights,” deprived appellants of their right to demand alternative forms of relief, and misapplied inapposite case law (R.21 (citing *Martinez*, 97 N.Y.2d at 83-84; *Brown*, 89 N.Y.2d at 186; *Berrio v. City of New York*, 212 A.D.3d 569, 569-70 (1st Dep’t 2023); *Lyles v. State*, 2 A.D.3d 694, 695 (2d Dep’t 2003))).

Initially, as the Court of Appeals has long recognized, “[t]he mere existence of other adequate remedies . . . does not require dismissal” of a declaratory judgment action. *Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 148 (1983) (citing *Woollard v. Schaffer Stores Co.*, 272 N.Y. 304, 311-12 (1936)); *see also* C.P.L.R. 3001 (“The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.”); *Cnty. of Monroe v. Clough Harbour & Assocs., LLP*, 154 A.D.3d 1281, 1282 (3d Dept 2017) (rejecting “contention that the [declaratory judgment] action should be dismissed because plaintiffs have other adequate alternative remedies available”). Claims for declaratory relief on constitutional grounds are properly brought in the Supreme Court. *See Cass v. State*, 58 N.Y.2d 460, 463 (1983); *Shields v. Katz*, 143 A.D.2d 743, 744 (2d Dep’t 1988). Accordingly, even if appellants had an adequate tort law remedy to fully vindicate the rights protected by article I, § 12, that would not foreclose the availability of declaratory relief on a related, but distinct, state constitutional claim.

Furthermore, the court’s analysis fundamentally misconstrues New York’s implied private right of action jurisprudence for state constitutional torts. *Brown*, *Martinez*, and the Appellate Division cases cited are wholly inapposite, as they say nothing about the availability of declaratory or injunctive relief in such circumstances, and instead address only whether the plaintiffs have an implied right of action for *damages* on their constitutional claims. *See Brown*, 89 N.Y.2d at 176, 188-92 (implying a damages remedy for an article I, section 12 violation because damages were “necessary and appropriate to ensure the full realization of the [plaintiffs’ state constitutional] rights” where injunctive relief, declaratory relief, and suppression were unavailable under the circumstances); *Martinez*, 97 N.Y.2d at 83-84 (declining to extend *Brown*’s implied constitutional damages remedy to a civil plaintiff who had previously been granted suppression in a criminal case, thereby availing herself of an adequate alternative remedy for the harms related to her prosecution); *Berrio*, 212 A.D.3d at 569-70 (“Plaintiff has no private right of action to recover damages for violations of the New York Constitution, as the alleged wrongs could be redressed by her common-law claim for false imprisonment.”); *Lyles*, 2 A.D.3d at 695 (rejecting implied damages remedy for constitutional search and seizure violation where “timely” common-law tort claims would have provided adequate relief). These cases thus present no bar to the declaratory and injunctive

relief appellants seek under the state constitution, which is necessary to prevent their future arrests under the NYPD's undisputed arrest-first policy.

Accordingly, the court erred when it held that appellants' tort claims⁹ precluded their causes of action under article I, § 12.

* * *

Appellants have demonstrated that they are entitled to judgment as a matter of law on their causes of action under C.P.L. § 150.20 and article I, § 12 of the New York Constitution, and on the affirmative defense of res judicata. *See* Points I-II, *supra*. They are thus entitled to a permanent injunction of the NYPD's unlawful arrest-first policy.¹⁰ Because appellants continue to engage in First Amendment-

⁹ The court was also incorrect that a false arrest claim for prolonged pre-arraignment "detention" or post-arrest conduct that was not legally justifiable would duplicate appellants' constitutional claim (R.21 (citing *Murray v. City of New York*, 74 A.D.3d 550, 550 (1st Dep't 2010))). For the reasons discussed, *see* Point II(A), *supra*, the state constitutional guarantee prohibits seizures for low-level offenses that are longer than reasonably necessary to determine whether an arrest is authorized and to issue an appearance ticket, which is likely long before a delayed arraignment claim would accrue, let alone the 24-hour period that would have to elapse for it to be presumptively unreasonable. *See Roundtree*, 77 N.Y.2d at 426-27 (1991).

¹⁰ To the extent respondents argued appellants lack standing for injunctive relief for the first time in their reply (*see* R.1129-30), because they "failed to raise standing in their answer[] or in pre-answer motions as required by [C.P.L.R.] 3211(e)," respondents "waived" the defense (*see* R.32-33, 1129-30). *Nelson*, 36 N.Y.3d at 999. Regardless, there is little doubt that appellants satisfy New York's prudential standing requirements because they seek to enforce personal, rather than public, rights, *see id.*, 36 N.Y.3d at 1003 ("Standing comes into play when parties aim to enforce public—as opposed to private—rights.") (Wilson, J., concurring), and

protected protest activity and face the threat of unlawful arrest under the NYPD's illegal policy (R.573, ¶¶ 120-21; R.579, ¶¶ 150-51; R.590, ¶¶ 204-05; R.595, ¶¶ 232-33), tort damages will not remedy this threat. Unlawful arrest in violation of their state statutory and constitutional rights will cause "irreparable harm," *see generally Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."), and the balance of equities weighs in appellants' favor, *see Floyd v. City of New York*, 959 F.Supp.2d 668, 672 (S.D.N.Y. 2013) ("[T]he burden on the plaintiff class of continued unconstitutional stops and frisks far outweighs the administrative hardships that NYPD will face in correcting its unconstitutional practices."). *Rockefeller v. Leon*, 233 A.D.3d 904, 907-08 (2d Dep't 2024). Appellants are also entitled to a declaration of their rights. *P360 Spaces LLC v. Orlando*, 160 A.D.3d 561, 562 (1st Dep't 2018) (finding that issuance of a declaration is the "proper course" where court determined that plaintiff was entitled

which, in any event, fall squarely within the zone of interests protected by C.P.L. § 150.20 and article I, § 12, *see Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 773 (1991).

Contrary to respondents' further suggestion that any injunction must be limited to restraining the NYPD's conduct against appellants themselves (*see* R.1130-31)) given the NYPD's admitted failure to verify whether any arrest-authorizing exception exists before arresting people on low-level offenses (R.545-47 ¶¶ 25-29; R.549-56, ¶¶ 34, 36, 39, 40, 42-43, 46, 50), an injunction applying only to appellants would fail to afford them complete relief.

to summary judgment on defendant's counterclaim for declaratory relief) (citing *Lanza v. Wagner*, 11 N.Y.2d 317, 334 (1962)).

CONCLUSION

For the foregoing reasons, this Court should reverse the decision granting respondents' partial summary judgment motion and denying appellants' partial summary judgment motion and enter partial summary judgment in appellants' favor on their first and second causes of action. Specifically, the Court should declare respondents' policies requiring officers to arrest individuals entitled to appearance tickets unlawful and permanently enjoin their continued use.

Dated: August 6, 2026
New York, N.Y.

Respectfully submitted,

/s/ Karina Tefft

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PRINTING SPECIFICATION STATEMENT

I hereby certify pursuant to 22 N.Y.C.R.R. § 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word using 14-point Times New Roman proportionally spaced typeface, double-spaced, with 12-point single-spaced footnotes and 14-point single-spaced block quotations. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, tables of citations, this Statement, and the Statement Pursuant to C.P.L.R. 5531, is 13,818.

Dated: August 6, 2026

/s/ Brandon Fetzer
Brandon Fetzer

Attorney for Plaintiffs-Appellants

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court
Appellate Division—First Department

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

Plaintiffs-Appellants,

— 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-Respondents.

1. The index number of the case in the court below is 153606/21.

2. The full names of the original parties were as follows:

Plaintiffs: CHARLES DOUGLAS, JULIAN GILBERT,
DEREK BARON, EMILY MARTIN, and NICHOLAS
MOORE.

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).

By Stipulation, so-ordered by the Hon. Jeanine R. Johnson, the caption was amended as reflected above.

3. The action was commenced in Supreme Court, New York County.
4. The action was commenced on or about April 14, 2021 by filing of a Summons and Complaint. Issue was joined on or about June 30, 2021 by service of an Answer on behalf of Defendant The City of New York.
5. The nature and objects of the action are statutory construction, violations of the New York constitution, and torts (false arrest, assault and battery, and excessive force).
6. This appeal is from the Decision and Order of the Hon. Hasa A. Kingo, entered January 7, 2026.
7. This appeal is on the full reproduced record.