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

N.C., A.T., and J.P., suing under pseudonyms, on behalf of themselves and all others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK and JESSICA S. TISCH, New York City Police Department Commissioner, in her official capacity, Defendants.	Index No. 156188/2024 (Frank, J.) Mot. Seq. No. 002 IAS Pt. 11

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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PRELIMINARY STATEMENT

Plaintiffs bring this action to end Defendants' unlawful practice of accessing, using, and disclosing sealed records in direct contravention of New York State Family Court Act ("FCA") Sections 375.1 and 375.2 (the "Youth Sealing Statutes").[1] On June 30, 2025, Plaintiffs moved for class certification under Article 9 of the New York Civil Practice Law and Rules ("CPLR") on behalf of "all persons whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes." NYSCEF Doc. No. 30. In their opposition to Plaintiffs' motion for class certification, Defendants do not challenge Plaintiffs' assertions with respect to numerosity, commonality, typicality, or adequacy. NYSCEF Doc. No. 41 ("Opposition" or "Opp'n"). Nor do Defendants assert any arguments regarding the factors under CPLR 902. Instead, Defendants' Opposition asserts only that a class action is not a superior vehicle for adjudicating all class members' claims due to the governmental operations doctrine.

This argument must fail, however, when applied to the facts of this action. The fundamental assumption underlying the governmental operations doctrine is that the government will follow the law, meaning that the principle of *stare decisis* should render class actions unnecessary against the government. Defendants, however, have been knowingly violating the unambiguous Youth Sealing Statutes for years and continue to do so, despite an order *from this very Court* finding their interpretation of a substantially similar statute to be without merit.[2] There is simply no basis to assume that Defendants will voluntarily comply with New York law.

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[1] Capitalized terms used but not defined herein shall have the meaning ascribed to them in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Class Certification. *See* NYSCEF Doc. No. 30.

[2] *See R.C. v. City of New York*, 100 N.Y.S.3d 824, 827 (Sup. Ct. N.Y. Cnty. 2019) (denying motion to dismiss) (NYSCEF Doc. No. 66).

Additionally, the governmental operations doctrine is not an appropriate bar to class action where, as here, future litigants may have difficulty bringing actions to protect their unambiguous rights.

Plaintiffs' arguments with respect to class certification are uncontested except for Defendants' assertion of the governmental operations doctrine, which misapprehends the scope and applicability of that doctrine. Accordingly, class certification should be granted.

ARGUMENT

I. THE GOVERNMENTAL OPERATIONS DOCTRINE DOES NOT PREVENT CLASS CERTIFICATION HERE.

Defendants' reliance on the governmental operations doctrine is misplaced as the predicates for the doctrine's application are not present here. As Defendants point out, the governmental operations doctrine weighs against class certification only "where governmental operations are involved, and where subsequent petitioners will be adequately protected under the principles of *stare decisis*." Opp'n at 3 (quoting *Martin v. Lavine*, 39 N.Y.2d 72, 75 (1976) (cleaned up)). However, Defendants have not and cannot show that *stare decisis* will protect future litigants, and, accordingly, the governmental operations doctrine does not apply.

Defendants' assertion that *stare decisis* will protect future litigants is belied by the fact that Defendants have been knowingly and continually violating New York law. "The governmental operations rule assumes that government officials will understand that they are bound by *stare decisis* and will follow precedent." *Ode v. Smith*, 461 N.Y.S.2d 684, 686 (Sup. Ct. Wyoming Cnty. 1983); *see also Jamie B. v. Hernandez,* 712 N.Y.S.2d 91, 93 (1st Dep't 2000) (governmental operations doctrine "presumes that the government will abide by court rulings in future cases involving similarly situated petitioners"). But this is a rebuttable presumption. *See, e.g.*, *New York City Coal. to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49, 51 (1st Dep't 1997) (declining to apply governmental operations doctrine because of two civil contempt findings as to certain

defendants); *Chalfin v. Sabol*, 669 N.Y.S.2d 45, 46–47 (1st Dep't 1998) (declining to apply governmental operations doctrine "in light of respondents' manifest reluctance to comply" with an order in related litigation); *Ode*, 461 N.Y.S.2d at 686 (finding that when "the basis for this assumption is found to be shaky, if not completely missing, then the hesitancy of the court to treat the matter as a class action begins to disappear").

This presumption must be found to be rebutted here; if *stare decisis* effectively served to protect future litigants, Plaintiffs would not have had to bring this action. Nearly *forty years ago*, the Court of Appeals interpreted FCA § 375.1, one of the Youth Sealing Statutes at issue in this action, to be "unambiguous" in its mandate that sealed youth records shall not be "'made available to any person or public or private agency.'" *Alonzo M. v. New York City Dep't of Prob.*, 72 N.Y.2d 662, 665 (1988) (quoting FCA § 375.1). More recently, Defendants' actions with regard to similar sealing statutes pertaining to adults under the Criminal Procedure Law ("CPL") made clear that *stare decisis* will not protect future litigants here. Despite a preliminary injunction, Defendants have continued to disseminate sealed adult records. *See R.C. v. City of New York*, No. 153739/2018, 2023 WL 7929126, at *1 (Sup. Ct. N.Y. Cnty. Mar. 02, 2023) (finding violation of preliminary injunction). In fact, two years after this Court found Defendants to have violated its preliminary injunction, NYPD Commissioner Jessica Tisch admitted in a press conference on May 6, 2025, that Defendants had provided sealed arrest records to officials of the United States Immigration and Customs Enforcement. *See* Letter to Ct. at 2, *R.C. v. City of New York*, No. 153739/2018, 2023 WL 7929126 (Sup. Ct. N.Y. Cnty. Jun. 17, 2025) (NYSCEF Doc. No. 315). Accordingly, Defendants' course of conduct reveals that presumed compliance with existing law and court orders is insufficient to protect all class members.

Defendants' lawless conduct with respect to sealed adult records lays bare that *stare decisis* will not protect future litigants here. The text of the at-issue statutes is functionally identical,[3] and Plaintiffs filed this lawsuit *five years* after the *R.C.* Plaintiffs commenced their action putting sealing statutes at issue. Moreover, despite at least five years of actual notice that Defendants are violating New York law, Defendants' Opposition makes clear that Defendants have not yet implemented the changes necessary to end their illegal access, use, and disclosure of Sealed Youth Records. *See, e.g.*, Opp'n at 2 ("If Plaintiffs prevail (or this matter is settled), the NYPD will necessarily have to alter and amend its policies, procedures, and, most importantly, its technology to implement any changes that may ultimately be required.").[4] Accordingly, the circumstances necessary for the application of the governmental operations doctrine are absent here.

A. *A Class Action Is the Most Efficient Means of Resolving the Instant Dispute.*

Defendants' continuing violations give rise to another reason why class certification should be granted—a class action is the most efficient form of action to resolve the instant controversy. Even in the context of governmental operations, New York law favors the efficient resolution of disputes through class actions. *See Ammon v. Suffolk Cnty.*, 67 A.D.2d 959, 960 (2d Dep't 1979) (affirming class certification against government when "victory for the individual plaintiffs in the absence of class relief will only result in a plethora of actions being brought for identical relief, with the consequent delay and added expense associated with multiple actions").

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[3] *Compare* FCA § 375.1(1) ("Upon termination of a delinquency proceeding against a respondent in favor of such respondent, . . . unless the court has directed otherwise, that the records of such action or proceeding, other than those destroyed pursuant to section 354.1 of this act, shall be sealed."), *with* CPL § 160.50(1) ("Upon the termination of a criminal action or proceeding against a person in favor of such person . . . and unless the court has directed otherwise, that the record of such action or proceeding shall be sealed.").

[4] Indeed, Defendants' reliance on the Williams Affidavit, NYSCEF Doc. No. 42, does not refute or excuse the Defendants' continued violation of the law but only serves to suggest that remedying the violations will be technically difficult.

Class certification is particularly appropriate where, as here, Defendants' jurisdiction spans more than one appellate division, thus presenting the risk that individual actions would "give rise to the possibility of inconsistent rulings by various courts in the State." *Tindell v. Koch*, 164 A.D.2d 689, 695 (1st Dep't 1991) (affirming class certification with respect to governmental operations); *see also Colt Indus. S'holder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 195 (1991) ("When a class seeks to compel certain behavior on the part of an entity, whether it be a governmental agency or a private corporation, . . . there is an interest in consolidating the action in a single forum in order to avoid the possibility of conflicting judgments from different jurisdictions which would subject the defendants to varying and possibly inconsistent obligations.").

Defendants assert that a class action would be inefficient and unnecessary, contending "if relief is granted for one [Plaintiff], it will necessarily be granted for all due to the institutional changes required to give effect to any settlement or judgment in favor of one or more of the Plaintiffs." Opp'n at 5. As support for this point, Defendants submit a *four-year-old* affidavit asserting that compliance with applicable sealing statutes "cannot be done overnight, or even in a few months." NYSCEF Doc. No. 42 ¶ 18. Defendants cannot credibly claim that requiring individuals to identify and litigate individual violations is more efficient than class-wide relief given their failure to resolve their admitted, continuing noncompliance with the Youth Sealing Statutes. Notably, the affidavit submitted by Defendants in support of their Opposition fails to establish that relief as to one plaintiff would apply to all prospective plaintiffs, as Defendants could potentially remedy specific violations in connection with individual litigation by properly sealing that individual's Sealed Youth Records as opposed to implementing changes to Defendants'

systems at large. *See generally* NYSCEF Doc. No. 42. Accordingly, a class action is the most efficient means to resolve the instant dispute, and class certification should be granted.

B. *The Nature of the Harm Alleged Requires Systemic, Prospective Relief.*

Stare decisis is inherently unable to protect future litigants here given the nature of the harm alleged. First, Plaintiffs allege systemic deficiencies with respect to Defendants' access, use, and disclosure of Sealed Youth Records. Compl. ¶¶ 73–81. Systemic abuse requires systemic relief. *See Hurrell-Harring v. State*, 81 A.D.3d 69, 75 (3d Dep't 2011) (reversing denial of class certification in government context as "[f]inally, and in our view not insignificantly, our research has failed to identify a single case involving claims of systemic deficiencies which seek widespread, systematic reform that has not been maintained as a class action"). Second, the harm flowing from Defendants' unlawful access, use, and disclosure of Sealed Youth Records cannot be undone through after-the-fact injunctive relief. For example, Plaintiff N.C. was singled out for police harassment due to Defendants accessing Sealed Youth Records in violation of New York law. NYSCEF Doc. No. 39 ¶¶ 4–13. That bell cannot be unrung. Other prospective plaintiffs may not even be aware of Defendants' noncompliance with the Youth Sealing Statutes, when prosecutors have illegally relied upon Sealed Youth Records in remand, bail, and removal hearings—or in plea agreement negotiations. Compl. ¶ 158; NYSCEF Doc. No. 39 ¶¶ 9–11 (Defendants did not disclose their illegal use of Sealed Youth Records to Plaintiff N.C.); *see also* Richard Mendel, *Protect and Redirect: America's Growing Movement to Divert Youth Out of the Justice System,* THE SENTENCING PROJECT (Mar. 20, 2024), https://www.sentencingproject.org/reports/protect-and-redirect-americas-growing-movement-to-divert-youth-out-of-the-justice-system/ (showing roughly 40% of New York City juvenile cases are diverted). The *only* way to protect potential future litigants, including children, is a class-wide injunction which prevents this sort of harm from occurring in the first instance. If after-the-fact

litigation would be futile, then future plaintiffs are not protected by *stare decisis* and class certification should be granted. *See Ammon*, 67 A.D.2d at 960–61 (affirming class certification against government for damages class when *stare decisis* would not protect future litigants as low damages value made individual actions uneconomic).

At bottom, the governmental operations doctrine is not a bar to class certification generally and cannot be a bar to class certification here. Indeed, courts have repeatedly certified class actions against the NYPD and the City of New York in the past. *See, e.g.*, *Welch v. City of New York*, No. 153648/2021, 2023 WL 7493253, at *2 (Sup. Ct. N.Y. Cnty. Nov. 13, 2023) (finding that a class action was the superior method of adjudication where plaintiffs had alleged the NYPD acted in a way that caused injury to the entire class); *In re Agnew v. New York City Dept. of Corr.*, No. 813431-2021E, 2021 WL 6104121, at *2 (Sup. Ct. Bronx Cnty. Dec. 03, 2021) (certifying a class action against the New York City Department of Corrections where the petitioners alleged a denial of access to medical care for all current and future persons incarcerated in the correction facilities); *Onadia v. City of New York*, 44 N.Y.S.3d 882, 894 (Sup. Ct. Bronx Cnty. 2017) (certifying a class action against the City of New York where the class members would be "low-income and marginalized members of society who lack knowledge and familiarity with the court system"); *R.C. v. City of New York*, No. 153739/2018, 2019 WL 4239261, at *2 (Sup. Ct. N.Y. Cnty. Sep. 05, 2019) (granting class certification in action against the NYPD).

II. EVEN IF THE GOVERNMENTAL OPERATIONS DOCTRINE WERE APPLICABLE, SEVERAL EXCEPTIONS PREVENT ITS USE HERE.

The governmental operations doctrine does not apply, *inter alia*, "where the plaintiffs' ability to commence individual suits is highly compromised, due to indigency or otherwise;" "where the entity fails to propose any form of relief that purports to protect the plaintiffs;" or "where the condition sought to be remedied by the plaintiffs poses some immediate threat that

cannot await individual determinations." *Giuliani*, 245 A.D.2d at 51; *see also Brad H. v. City of New York*, 712 N.Y.S.2d 336, 340 (Sup. Ct. N.Y. Cnty. 2000), *aff'd*, 276 A.D.2d 440, (1st Dep't 2000); N.Y. Jurisprudence § 287 (2d ed. 1979) (collecting cases). Each of these exceptions makes the governmental operations doctrine inapplicable to this action.

First, Plaintiffs' proposed class includes individuals who are (i) likely to lack the resources to maintain individual actions (particularly if they are only seeking injunctive relief, where legal representation for a contingency fee would not be possible); (ii) likely to face challenges in enforcing their rights; (iii) unlikely to know that their unambiguous rights are being violated; and (iv) for whom the harm flowing from Defendants' violations of the Youth Sealing Statutes is likely irreparable, *see supra* § I.B. Where, as here, individual actions would be "oppressively burdensome" on those potential plaintiffs, class certification is appropriate. *Lamboy v. Gross*, 126 A.D.2d 265, 274 (1st Dep't 1987); *see also Tindell*, 164 A.D.2d at 695 (finding class certification in government context appropriate when putative class consisted of "indigent elderly individuals").

Second, the NYPD has "fail[ed] to propose any form of relief that purports to protect the plaintiffs." *Giuliani*, 245 A.D.2d at 51 (citing *Seittelman v. Sabol*, 217 A.D.2d 523, 526 (1st Dep't 1995)). Defendants have made no effort to propose any relief which would protect all plaintiffs—instead, Defendants filed an affidavit in support of their Opposition which asserts that such relief is not possible. NYSCEF Doc. No. 42 ¶ 18 ("An order granting Plaintiff's motion for preliminary injunction prohibiting the NYPD from using sealed arrest information inputted into the data fields of an arrest report without a court order, is an insurmountable demand."). Defendants have likewise offered no assurance that the NYPD will properly remove the thousands of sealed records in its numerous databases, let alone provided any assurance that the NYPD will take the steps

necessary to prevent the frequent disclosures within and outside the NYPD that have continued unabated since the filing of this lawsuit.

Third, the putative class includes members facing immediate harm who cannot wait for individual adjudications. Defendants have not shown that piecemeal litigation would ensure proper treatment of more than a handful of records at a time (which would likely never address all the sealed records now in the NYPD's databases). In the meantime, thousands of NYPD personnel would continue to have instant and unlawful access to Sealed Youth Records. As discussed, the NYPD's actions pose an immediate threat and cannot await this type of individual determination. *See supra* § I.B.

III. DEFENDANTS' ARGUMENTS WITH RESPECT TO NEW YORK POLICY ARE ILLOGICAL AND IRRELEVANT.

Defendants attribute great weight to the Governor's veto messages with respect to proposed bills to functionally eliminate the governmental operations doctrine and assert that these veto messages evidence a policy of the State of New York to deny class certification in the governmental operations context. Opp'n at 6. Contrary to this assertion, public policy is derived from the intent of the *Legislature*, not the Executive. But even if Defendants were correct, their arguments are irrelevant, as Plaintiffs assert only that the governmental operations doctrine as it currently exists does not apply to the case at bar.

It is well settled that public policy is expressed by the Legislature in statutory text. *See, e.g.*, *Haag v. Barnes*, 11 A.D.2d 430, 432 (1st Dep't 1960) ("Public policy is necessarily variable. It changes with changing conditions. It is evidenced by the expression of the will of the Legislature contained in statutory enactments.") (internal citations and quotation marks omitted), *aff'd*, 9 N.Y.2d 554 (1961). A veto statement is not statutory text and does not come from the Legislature. The public policy of New York with respect to class actions is set forth in the text of Article 9 of

the CPLR, and Plaintiffs ask only for a straightforward application of those statutes. Moreover, public policy as to whether the governmental operations doctrine should exist *at all* has no bearing on the instant dispute, where Plaintiffs argue that the governmental operations doctrine *as it currently exists* does not apply. *See supra* §§ I., II.

CONCLUSION

Because the governmental operations doctrine is inapplicable here and Defendants do not contest Plaintiffs' assertions establishing the factors set forth in CPLR 902, the Court should enter an order: (i) certifying this action, pursuant to Article 9 of the CPLR, as a class action on behalf of "all persons whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes"; (ii) appointing N.C., A.T., and J.P. as class representatives; (iii) appointing The Legal Aid Society and Milbank LLP to serve as co-class counsel in this action; and (iv) granting such further relief as this Court deems just and proper.

Dated: New York, New York
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WORD COUNT CERTIFICATION

I certify that this memorandum of law complies with the word limit of Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court because it contains 3,097 words, excluding the parts of the memorandum of law exempted by Rule 202.8-b. In preparing this certification, I have relied on the word count of the word processing software used to prepare this memorandum of law.

Dated: August 6, 2025
New York, New York

/s/ *Melanie Westover Yanez*
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