

Index No. 153606/21

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

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

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**DEFENDANTS' REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF THEIR CROSS-
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

Defendants respectfully submit this reply memorandum of law in further support of their motion for partial summary judgment and in response to the opposition arguments set forth in Plaintiffs' Combined Memorandum of Law ("Pls' Opp. Br.," NYSCEF No. 224).

As discussed more fully below, Plaintiffs fail to show why they should not be bound by the court-endorsed settlement agreement reached in the federal actions consolidated as *In Re: New York City Policing During Summer 2020 Demonstrations*" (SDNY Case No. 20-cv-8924). Those cases involve the very same demonstrations in which Plaintiffs here participated and one of them alleges the same allegations with respect to the issuance of appearance tickets as raised here. Notably, among those consolidated case was an action brought by the New York State Attorney General under the *parens patriae* doctrine, which is brought on behalf of the broader community, including Plaintiffs here.

Even if Plaintiffs were not bound by that settlement agreement, they are unable to show that Defendants violated CPL §150.20(1)(a). In fact, Defendants complied with the mandates of CPL §150.20(1)(a) when they issued Plaintiffs appearance tickets instead of arresting them. Moreover, Plaintiffs' definition of "arrest" as used in that statute – having its roots in the common law meaning applicable to civil false imprisonment claims – makes compliance with the statute functionally impossible, but also is wholly inconsistent with the purpose of the amendment to the statute, as supported by the legislative history.

Finally, even if Plaintiffs can overcome these hurdles, they cannot demonstrate they are entitled to a declaratory judgment or the broad class-like injunction relief they seek, particularly given that the availability of compensatory damages and any future harm is speculative and remote.

Accordingly, Defendants are entitled to judgment as a matter of law on Counts One and Two and their cross-motion for partial summary judgment should be granted and these claims dismissed.

POINT I

PLAINTIFFS' CLAIMS ARE BARRED BY RES JUDICATA

Recognizing its dispositive and preclusive effect, Plaintiffs desperately try to avoid the consequences of the court-approved settlement in *Payne v. City of New York (In Re: New York City Policing During Summer 2020 Demonstrations)* (S.D.N.Y. Case No. 20-cv-8924) by contending that they somehow were not in privity with the hundreds of other individuals who attended the very same demonstrations at issue in *Payne*, and that *Payne* concerned different claims. Both these contentions are without merit.

Like the Plaintiffs here, the plaintiffs in *Payne* alleged that they participated in the demonstrations that took place in the City following the death of George Floyd, and were handcuffed and transported from the scene to Mass Arrest Processing Centers where they were issued appearance tickets for disorderly conduct and or curfew violations (Corrected Second Am. Cmpl., Dkt. No. 957, at ¶¶ 117, 141, 145, 164, 179, 205).¹ And, like Plaintiffs here, the plaintiffs in *Payne* alleged:

- “the NYPD had a policy not to issue appearance tickets that would ordinarily be issued on the street, instead instructing officers to detain those

¹ The Stipulated Order (the “Settlement”) consolidated the following cases for settlement: *Payne, et al. v. Mayor Bill de Blasio et al.*, (SDNY No. 20-cv-8924); *People of the State of New York v. City of New York et al.*, (SDNY No. 21-cv-322); *Gray et al. v. City of New York, et al.*, (SDNY 21-cv-6610); and *Rolon et al. v. City of New York, et al.*, (21-cv-2548).

individuals at MAPC for issuance of appearance tickets on protest-related offenses including but not limited to disorderly conduct. . . .” *Id.* ¶ 97.

- “The NYPD maintained a policy or practice instructing officers at protests to arrest protestors for offenses for which summonses should have been issued, which subjected protestors to mass arrests rather than releasing them from custody on to the street. This policy subjected protestors to unreasonable and punitive transport, processing, and detention at Mass Processing Centers or precincts across the City in unsanitary and hazardous conditions during the COVID-19 pandemic. *Id.* ¶ 222.
- NYPD as “enforced, promoted, authorized, and sanctioned the NYPD’s custom and practice of conducting mass arrests of protestors, rather than issuing them summonses and releasing them from custody, pursuant to mass arrest processing procedures, which subjected protestors to unreasonable and punitive transport, processing, and detention in unsanitary and hazardous conditions during the COVID-19 pandemic.” *Id.* ¶ 223.²

Thus, although explicitly mentioning CPL § 150.20, it is clear that this section is implicated by these allegations. And, like Plaintiffs here, the *Payne* plaintiffs allege that such conduct violated Article I, section 12 of the New York State Constitution. *Id.* ¶ 242.

² As recited in a “Whereas” clause in the Settlement, the parties summarized the claims in the Consolidated Cases as alleging “that the NYPD engaged in unconstitutional policing—using excessive force and arresting protestors, journalists, and legal observers without probable cause and in retaliation for their speech—at racial justice protests across New York City beginning in May 2020 in violation of the federal and state constitutions and state law.” Defs. Exh, C, NYSCEF No. 220, at 1.

Thus, Plaintiffs here do not have some remote or theoretical connection to the plaintiffs in *Payne*, but rather were subjected to, and indeed now complain of, the very practices at the same demonstrations at issue and resolved by the Settlement signed by their attorneys and endorsed by the court. Notably, that Settlement expressly authorizes the practices Plaintiffs here seek to eliminate. Indeed, Plaintiffs' assertions that they are not in privity with the plaintiffs in the Consolidated Cases resolved by the Settlement is wholly at odds with their demand for class-like injunctive relief.

It bears noting that the Settlement also resolved *People of the State of New York v. City of New York* (SDNY, No. 21-cv-322), in which the State brought suit pursuant to New York Executive Law § 63(1) and the *parens patriae* doctrine. As such, the State was acting in its “unique status as the representative of the greater public good” with a “concomitant mandate to secure wide-ranging relief that will inure to the direct and indirect benefit of the broader community.” *New York v. Utica City Sch. Dist.*, 177 F. Supp. 3d 739, 753–54 (N.D.N.Y. 2016); *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.” (internal citation omitted)). Thus, when the State settles or obtain a judgment in a *parens patriae* action, it does so on behalf of the public, and not any individual. *State by Abrams v. New York City Conciliation & Appeals Bd.*, 123 Misc. 2d 47, 49 (Sup Ct. N.Y. Cty. 1984) (“[W]hen the State does bring suit, it must be for redress of wrongs done to the interests of the people as a whole and not merely to vindicate the individual or private interests of certain citizens.”). As the Second Circuit has explained, “When a state litigates common public rights, the citizens of that state are represented in such litigation by the state and are bound by the judgment.” *Vacco v. Reebok Int’l*, 96 F.3d 44, 48 (2d Cir. 1996)

(quoting *Satsky v. Paramount Communications, Inc.*, 7 F.3d 1464, 1470 (10th Cir. 1993)). Under these circumstances, Plaintiffs are in privity with the plaintiffs in the State's action and are bound by the Settlement reached in that action.

Plaintiffs' attempt to weaken the impact of the Settlement is confusing and unpersuasive. As Defendants argued in their Moving Brief (NYSECF No. 222, Memorandum of Law In Opposition To Plaintiffs' Motion For Partial Summary Judgment and In Support of Defendants' Motion For Partial Summary Judgment), the Settlement expressly authorizes NYPD to transport offenders from the scene to other locations, and to detain such offenders for 7.5 hours or more, under specified circumstances. Nor is there anything in the Settlement that requires the police to issue appearance tickets at the scene of the offense, despite this being a significant claim in *Payne*. After review, Judge McMahon approved the Settlement (20 Civ. 8924, Dkt. No. 1167), thus satisfying Plaintiffs' concern that the court review a proposed consent decree to ensure that the settlement "does not put the court's sanction on and power behind a decree that violates the Constitution, statutes, or jurisprudence." (Pls' Opp. Br. at 8, quoting *Wilder v. Bernstein*, 645 F. Sup. 1292, 1308 (S.D.N.Y. 1986)).

Under these circumstances, it would be highly prejudicial, if not unconscionable, to allow Plaintiffs to pursue claims and obtain relief that would entirely up-end the extensively negotiated Settlement. Thus, the consequences of a finding of privity "strike a fair result," *People ex rel Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 122 (2008), and "provide finality in the resolution of disputes to assure that parties may not be vexed by further litigation." *Reilly v. Reid*, 45 N.Y.2d 24, 28 (1978).

POINT II**DEFENDANTS' CONDUCT DID NOT VIOLATE CPL §150.20**

The determination of whether Defendants violated CPL § 150.20(1)(a) depends entirely on the definition of the word “arrest” as used in that statute. While Plaintiffs argue that the “arrest” contemplated by the statute is a detention that would support a false arrest claim, Defendants argue that it must mean something more – *i.e.*, a custodial arrest where the individual is arraigned following the filing of an accusatory instrument. Notably, Plaintiffs do not address or seriously contest several of Defendants’ arguments:

First, Plaintiffs do not dispute that an individual being issued an appearance ticket, even at the scene of the alleged offense, is not at liberty to walk away, and thus is “arrested.” This leads to the absurd conclusion – and one that the statute was designed to foreclose -- that an individual cannot avoid being arrested if they are issued an appearance ticket.

Similarly, it is undisputed that each Plaintiff was issued an appearance ticket. Thus, Defendants complied with the requirements of CPL § 150.20(1)(a). However, CPL §150.20(1)(a), does not allow the possibility of an individual being both arrested *and* issued an appearance ticket, as it requires police officers to issue an appearance ticket “instead” of being arrested. Thus, the word “arrest” as used in CPL § 150.20(1)(a) must mean something other than what Plaintiffs experienced.

Plaintiffs try to dodge this conclusion by conveniently conceding – for the first time -- that a person can be detained while the police are performing the various tasks necessary to determine if the individual is eligible to receive an appearance ticket. Pls. Opp. Br. at 3, n. 1. However, Plaintiffs provide no basis in law or reason for this “concession,” other than it suits their self-serving argument.

Second, because the statute was amended to require the issuance of an appearance ticket when an arrest would otherwise be authorized by CPL § 140.10, the amendment was specifically designed to avoid the consequences of such an arrest, which include the arrested person being brought before a local criminal court with the filing of “an appropriate accusatory instrument charging him with the offense or offenses in question.” *See* CPL § 140.20. This supports Defendants’ construction that the “arrest” contemplated by CPL § 150(1)(a) is a full custodial arrest, whereby the individual is detained pending arraignment and an accusatory instrument filed. Although Plaintiffs argue that CPL § 140.10(1) concerns warrantless arrest procedures (Pls. Opp. Br. at 5, n. 3), they fail to explain how this refutes Defendants’ position regarding the consequences of such an arrest which the amendment seeks to prevent.

Although Plaintiffs are dismissive of the legislative history cited by Defendants – even characterizing a state assemblyman’s testimony as “misguided” (Pls. Opp. Br. at 5, n. 2) -- it is apparent that this history supports Defendants’ position. *See* Defs’ Moving Br. at 10-12; Justice Agenda, *The Time is Now* (Bill Jacket Supp., 2019 Ch. 59, Part JJJ, NYSCEF No. 18) at 35 (proposed amendment “will reduce pretrial detention before arraignment by mandating that police issue appearance tickets instead of making custodial arrests in lowlevel cases, with enumerated exceptions”); FY 2020 New York State Executive Budget, Memorandum in Support, *id.* at 48 (“This series of reforms will include a mandate that police issue appearance tickets instead of making arrests in low-level cases”); Senate Bill 1505, Assembly Bill 2005, Legislative Findings, *id.* at 54 (“First, the bill requires the police to issue appearance tickets in misdemeanor and class E felony cases, with enumerated exceptions, so that fewer people spend time in jail before arraignment”); Public Protection Fact Sheet, *id.* at 79-80 (“the proposal would require police to issue appearance tickets for all misdemeanors and Class E felonies, with some exceptions -

meaning that most of these cases will not result in an automatic arrest”); Testimony of Exec. Dep. Comm’r Green, *id.* at 127 (“We will be much better off in those instances doing what a number of jurisdictions do already, and that is giving people appearance tickets, having them show up for court, having judges set conditions for their release or ROR them, and avoid that one night in jail”);

Indeed, even the legislative history cited by Plaintiffs (*id.* at 4), which describes a series of events following an arrest and culminating in the individual being taken to the criminal courthouse for arraignment, actually supports Defendants. Thus, Plaintiffs correctly state that it is this arrest procedure that the legislature sought to eliminate for individuals receiving appearance tickets. Moreover, Plaintiffs have not provided any support in the legislative history supporting their view that individuals who are not being arraigned are arrested for purposes of CPL § 150.20(1)(a).³

Plaintiffs argue that Defendants’ position would deprive the courts of the ability to determine when an arrest is made, “empower NYPD to unilaterally” make that determination and allow an officer to detain someone in a precinct cell for 24 hours, but shielded from judicial review by issuing an appearance ticket.” (Pls. Opp. Br. at 5-6). Such argument should be summarily rejected as unreasoned hyperbole. Under Defendants’ position, a person will be arrested if brought to the courthouse and arraigned. All other detentions remain subject to judicial scrutiny under common law principles to determine if an arrest has been effectuated. Thus, in Plaintiffs’ hypothetical, the police officer would not be immunized; rather, the individual held for 24 hours and then issued an appearance may still have a claim against the officer for false imprisonment.

³ Or course, individuals who are transported to a precinct and detained may still be “arrested” under the common law. *See People v. Yukl*, 25 N.Y.2d 585, 588-589 (1969), *cert. den.*, 400 U.S. 851 (1970) (under the common law, an arrest occurs when an individual “is taken into custody or otherwise deprived of his freedom”).

See Murray v City of New York, 74 A.D.3d 550, 550 (1st Dep’t 2010); *Dishman v City of New York*, 36 Misc. 3d 1216(A), 2012 N.Y. Misc. LEXIS 3486 (Sup. Ct. N.Y. Cty. July 12, 2012).

Plaintiffs’ cite to CPL § 150.20(2) as being inconsistent with Defendants’ position. It is not. That section provides that whenever a police officer has arrested a person without a warrant, the officer may, “instead of bringing such person before a local criminal court and promptly filing or causing the arresting peace officer or arresting person to file a local criminal court accusatory instrument therewith, issue to and serve upon such person an appearance ticket.”

Under these circumstances, it is clear that the “arrested” individual is being held pending arraignment but that it was subsequently determined – perhaps after consultation with the district attorney’s office – to reduce the charges or that an appearance ticket is more suitable.⁴ And, because the individual has not yet been issued an appearance ticket, this provision supports Defendants’ view that CPL § 150.20 does not allow the possibility of an individual being both arrested *and* issued an appearance ticket.

Finally, Plaintiffs do not seriously address Defendants’ concern that given the size of the mass and mobile demonstrations, it would have been impractical, if not unsafe, for police officers to attempt to issue appearance tickets at the scene. Although Plaintiffs assert that there were over 100 officers at the Mott Haven protest attended by Plaintiffs Martin and Barron, they fail to acknowledge the size of the crowds at these protests, and also the large number of individuals taken into custody. *See, e.g., People v. City of New York* (SDNY 21-322) Dkt. No. 51, ¶ 58 (alleging over 250 people were detained or arrested at the Mott Haven protest).

⁴ Absent this authority, the police would be faced with the Hobson’s choice of either completing the arraignment process for individuals arrested without a warrant or releasing them with no charges.

POINT III

**PLAINTIFFS ARE NOT ENTITLED TO
INJUNCTIVE RELIEF**

Plaintiffs incorrectly assert that Defendants argument that Plaintiffs' claims for injunctive relief are moot. Nowhere, however, do Defendants argue that Plaintiffs have received relief or that Defendants have ceased the alleged violative conduct, such as to make Plaintiffs' claims moot. *See City of New York v Maul*, 14 N.Y.3d 499, 507 (2010)(cleaned up) ("As a general principle, courts are precluded from considering questions which, although once live, have become moot by passage of time or change in circumstances"). Rather, Defendants argued that plaintiffs are not entitled to injunctive relief because they cannot demonstrate "the violation of a right presently occurring, or threatened and imminent." Defs' Moving Br. at 19. Thus, Plaintiffs' attempts to demonstrate that their claims are not moot – by arguing that other members of the public may be subject to the alleged violative conduct, or that the claims are likely to recur yet evade review -- are entirely inapposite.

Rather, the correct analysis focuses on whether a violation is currently occurring, or whether it is threatened or imminent. At best, Plaintiff argue that they continue to attend protests and "face the threat of unlawful arrest absent an injunction," which they argue is somehow guaranteed to occur. Pls' Op Br. at 10-11. This argument is unavailing.

In *City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983), the plaintiff, who was placed in a chokehold during a minor traffic stop, lacked standing to seek prospective injunctive relief barring police officers from using chokeholds, even though his past injury might provide a basis for compensatory damages. The Supreme Court held that the plaintiff lacked standing because there was insufficient "likelihood that he will again be wronged in a similar way." *Id.* at 111. *See also MacIssac v. Town of Poughkeepsie*, 770 F. Supp. 2d 587, 601 (S.D.N.Y. 2011)

(finding no standing “given how speculative it is that MacIssac will be stopped, arrested, and subjected to the use of a Taser stun gun yet again”).

Plaintiffs fail to recognize that any “threat of unlawful arrest” is only allegedly “guaranteed” if they choose to engage in conduct that violates the law or that a police officer believes is violating the law. As in *Lyons* and *MacIssac*, however, such an occurrence is entirely speculative. In fact, despite Plaintiffs’ alleged continued engagement in demonstrations and protest activity since the events five years ago (in May and June, 2020) underlying this action, none of them has been subjected to the same alleged violative conduct. Thus, Plaintiffs’ claims are simply “too speculative and conjectural to supply a predicate for prospective injunctive relief.” *Shain v. Ellison*, 356 F.3d 211, 216 (2d Cir. 2004).

Plaintiffs also are not entitled to injunctive relief because compensatory damages provides them an adequate alternative remedy. Indeed, in Count Two of their Second Amended Complaint, Plaintiffs expressly seek “damages, in an amount to be proven at trial.” (NYSECF No. 131, at ¶ 87). Plaintiffs’ assertion that the availability of such damages for their State constitutional tort claim may be “narrow” (Pls’ Op. Br. at 12) does not mean that they are not available at all or are not an adequate alternative remedy. *Cf. SportsChannel Am. Assoc. v. National Hockey League*, 186 A.D.2d 417, 418 (1st Dep’t 1992) (“Damages compensable in money and capable of calculation, albeit with some difficulty, are not irreparable.”)

Finally, although Plaintiffs did not bring this case as a class action, they nonetheless seek broad, class-like relief, requesting “An order permanently enjoining the Defendants, their agents, employees, representatives, and all those acting in concert with them from violating Criminal Procedure Law § 150.20 and ordering any such further measures as deemed necessary to effectuate that injunction.” Second Amended Complaint, ¶ 109(c). However, even if the Court

were to find Plaintiffs entitled to injunctive relief, that relief should be narrowly drawn and be issued with respect only to Plaintiffs.

Plaintiffs also take inconsistent positions in opposing Defendants' motion. In seeking to avoid the preclusive effect of the Settlement, Plaintiffs argue that they are not in privity with any of the other hundreds of participants in the demonstrations they attended, and, therefore are not bound by its terms. Nonetheless, however, they seek broad, class-like relief. But Plaintiffs can't have it both ways. If they wish to obtain class-like relief, they must be in privity with the other participants. In that case, however, their claims are barred by *res judicata* (see Point I, *supra*).⁵ If, on the other hand, they are not in privity with these other participants (as they argue), then they can obtain injunctive relief only as it pertains to them individually (which, as argued above, they cannot do, as any future alleged violation of their rights is speculative and entirely dependent on their committing future violations of the law).

Although Plaintiffs cavalierly argue that a permanent injunction "would require only minimal administrative changes from NYPD," (Pls' Op. Br. at 12), there is no evidence of this. To the contrary; given what Plaintiffs argue is the widespread and required NYPD practice of transporting individuals from the scene of the offense before issuing appearance tickets, it can reasonably be expected that a change in this practice would be quite disruptive, expensive and burdensome to NYPD's operations. Thus, the negative impact on NYPD far exceeds any potential benefits the four Plaintiffs' might obtain by the issuance of an injunction in their favor. Under these circumstances, the equities are not balanced in Plaintiffs' favor.

⁵ It bears repeating here that the State, through its *parens patriae* action, already has obtained relief on behalf of the broader community in the Settlement, which authorizes prolonged detentions and does not preclude the police from transporting individuals from the scene of the offense. *See* Point I, *supra*.

Accordingly, Plaintiffs have not established their entitlement to the extraordinary relief they seek.

POINT IV

PLAINTIFFS ARE NOT ENTITLED TO A DECLARATORY JUDGMENT

As Defendants' explained in their Moving Brief, a declaratory judgment is unnecessary and discouraged when there is an existing remedy at law. "A cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action. . . ." *Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50, 54 (1st Dep't 1988), *quoted in Wesco Ins. Co. v. Sunfund Reinsurance, Ltd.*, 2025 N.Y. Misc. LEXIS 6763 (Sup. Ct. N.Y. Cty. July 23, 2025) (citing cases). Here, as discussed below, Plaintiffs' Count Two of their Second Amended Complaint expressly seeks compensatory damages. Plaintiffs also seek compensatory damages in their Count Three, which asserts a claim for false arrest based in part on Defendants' alleged violation of CPL § 150.20.⁶

Additionally, as Defendants argued, Plaintiffs' claim for a declaratory judgment does not present a justiciable controversy because there is no present dispute. Rather, Plaintiffs' claim is entirely based upon future events that are hypothetical, contingent or remote. *See Zwarycz v. Marnia Constr., Inc.*, 102 A.D.3d 774, 776 (2d Dep't 2013). Given that the happening of such a future occurrence is entirely dependent on Plaintiffs' own conduct and compliance with the law, any declaration would be entirely advisory and, therefore, inappropriate.

⁶ The availability of these alternative remedies also deprives them of a private right of action under Article 1, Section 12 of the State Constitution. *See* Defs' Moving Br. at Point III.

CONCLUSION

For the foregoing reasons and those in their moving papers, Defendants respectfully request that this Court deny Plaintiffs' motion for summary judgment and grant Defendants' cross-motion for summary judgment dismiss Counts One and Two of the Amended Complaint in their entirety and denying the relief sought therein, and granting Defendants such other and further relief as the Court may deem just and proper.

Dated: New York, New York
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CERTIFICATE UNDER UNIFORM CIVIL RULE § 202.8-b

According to Microsoft Word 2010, the portion of the foregoing memorandum of law that must be included in the word count contains 4,054 words, and complies with Uniform Civil Rule § 202.8-b.

Dated: New York, New York
September 5, 2025

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