

Court of Appeals of the State of New York

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

– against –

LANCE RODRIGUEZ,

Defendant-Appellant.

ON APPEAL FROM THE APPELLATE DIVISION, SECOND DEPARTMENT
APL-2021-00143

**BRIEF OF AMICI CURIAE COLORED GIRLS BIKE TOO,
TRANSPORTATION ALTERNATIVES, EQUITABLE CITIES, GOBIKE
BUFFALO, AND NEW YORK CIVIL LIBERTIES UNION**

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Colored Girls Bike Too hereby discloses that it is a non-profit, 501(c)(3) organization with no parent, subsidiary, or affiliates. Transportation Alternatives hereby discloses that it is a non-profit, 501(c)(3) organization with no parent, subsidiary, or affiliates. Equitable Cities hereby discloses that it has no parents, subsidiaries, or affiliates. GObike Buffalo hereby discloses that it is a non-profit, 501(c)(3) organization that is registered as Green Options Buffalo, Inc. and has no parent, subsidiary, or affiliates. The New York Civil Liberties Union hereby discloses that it is a non-profit, 501(c)(4) organization, and is the New York State affiliate of the American Civil Liberties Union.

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PRELIMINARY STATEMENT

This Court has yet to determine the level of suspicion needed for police officers to pull over moving bicyclists. This determination will have serious ramifications for the millions of Black and Brown New Yorkers who already bear the brunt of stark racial disparities in the policing of bicyclists. *Amici curiae* Colored Girls Bike Too, Transportation Alternatives, Equitable Cities, GObike Buffalo, and the New York Civil Liberties Union write to highlight these racial inequities and to urge this Court to hold that stops of moving cyclists are seizures that require officers to have reasonable suspicion that the individuals stopped were engaged in unlawful activities.

Like stops of car drivers, which require reasonable suspicion, police stops of moving cyclists are highly intrusive and significantly interrupt cyclists' freedom of movement. If this Court rules that pulling over and stopping cyclists is more akin to stopping people walking on the street than to stopping people operating other moving vehicles, it will allow for a lower level of suspicion that increases officers' discretion to stop New Yorkers on bicycles. Nationwide data already show significant racial disparities in police interactions with cyclists, with cyclists of color being disproportionately stopped and searched. These racial disparities will only worsen in New York with a ruling from this Court giving officers more discretion to stop cyclists.

Ample evidence from police departments in New York demonstrate that more permissive and discretionary standards that do not require reasonable suspicion are accompanied by rampant racialized policing practices that target Black and Brown

communities. The New York City Police Department's stop-and-frisk program is a glaring example of how the lower standard for pedestrian stops does not provide enough protection for New Yorkers against racist, aggressive, and unconstitutional policing practices. Adopting a lower constitutional standard for police to pull over and stop people on bicycles will permit the police to disproportionately criminalize New Yorkers of color yet again and dissuade these communities from reaping the environmental and health benefits of cycling.

INTEREST OF AMICI CURIAE

Amicus curiae Colored Girls Bike Too is a Buffalo-based, Black women-led, radical cycling organization that uses the bicycle as a tool to advance racial equity and justice within transportation, urban landscapes, and our health care system. Colored Girls Bike Too advocates for mobility justice in communities of color by creating livable, safe, healthy, and walkable urban spaces that support the healing and liberation of Black, Brown, and Indigenous women (cis and trans), gender non-binary people, and all marginalized people of all abilities and all modes of transportation.

Transportation Alternatives is a not-for-profit organization dedicated to reclaiming New York City's streets from the automobile and advocating for better walking, biking, and public transit for all New Yorkers. Founded in 1972, Transportation Alternatives has been instrumental in the pedestrianization of Times Square and the construction of protected bike lanes and pedestrian plazas across New York City. Transportation Alternatives works with grassroots community organizers in five boroughs of New York City, runs local campaigns for new bike lanes, and pushes New York to be a national leader in transportation innovation.

Equitable Cities is committed to bringing community narratives, visions, and values into its research, planning, and policy recommendations through the local knowledge of the communities in which Equitable Cities operates. Equitable Cities connects with communities suffering from disinvestment through transportation planning and research that focuses on the way communities experiences their streets.

Equitable Cities is committed to an inclusive, fair, and just planning, policy development, and a community outreach and engagement process that centers and prioritizes lived experiences and evidence-based solutions within the creation and sustainability of safe, healthy, and livable communities.

GObike Buffalo, registered as Green Options Buffalo, Inc., is a not-for-profit focused on promoting active mobility options, trails and greenways, and complete streets in Western New York. GObike Buffalo works to build a thriving, dynamic and connected Buffalo by promoting biking, alternative transportation options, and improved streetscapes to create positive impacts on health, our environment, our streets and the overall quality of life for all residents.

The New York Civil Liberties Union (“NYCLU”), the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with more than 85,000 members and supporters. The NYCLU’s mission is to defend and promote civil rights and liberties as embodied in the United States Constitution, the New York State Constitution, and state and federal law. Defending New Yorkers’ rights to be free from government misconduct, and in particular police violence, is a core component of that mission. To that end, the NYCLU long has been involved in efforts to combat racially biased policing and has frequently litigated issues concerning the right to be free from unlawful police searches and seizures. (*See e.g. Ligon v City of New York*, 925 F Supp 2d 478 [SDNY 2013] (granting preliminary injunction in

challenge to widespread practice of unlawful stops and searches of individuals at private apartment buildings by police officers).)

ARGUMENT

I. **REQUIRING A LOWER CONSTITUTIONAL STANDARD FOR CYCLISTS WILL INCREASE RAMPANT RACIAL PROFILING OF BLACK AND BROWN CYCLISTS BY THE POLICE.**

The Second Department's erroneous application of a lower constitutional standard to bicycle stops grants officers increased discretion to initiate low-level encounters with New Yorkers. Extensive research shows that when police officers operate with such discretion and are not required to have reasonable suspicion of unlawful activity, they aggressively and disproportionately target communities of color. As a result, Black and Brown people are significantly more likely to be patrolled, stopped, searched, and funneled into the criminal legal system than white people. This type of racial profiling already exists nationwide for police interactions with cyclists and is likely to increase dramatically in New York if this Court does not require police to have reasonable suspicion to pull over and stop moving cyclists pursuant to the level three standards articulated in *People v De Bour*, 40 NY2d 210 [1976].

A. Racially Disparate Police Stops of Black and Latino Cyclists are Already Rampant Across the Country.

Bike stops nationwide are already marked by targeted and disproportionate policing of communities of color.

In Chicago, police data from 2017 showed that although Black, Latino, and white people make up roughly equal portions of the city, 56% of all bike tickets were issued in predominantly Black neighborhoods while only 18% were issued in white

neighborhoods.¹ Similarly, in 2018 and 2019, over half of the bike tickets issued by the Chicago police were issued in majority-Black neighborhoods.² Evidence suggests that these stark disparities are unrelated to areas that are dangerous for cyclists. Between 2017 and 2019, tickets for biking on the sidewalk were concentrated in majority-Black neighborhoods, despite a lack of a correlation between those neighborhoods and dangerous locations for cyclists.³

In Long Beach, California, data collected pursuant to the state’s Racial and Identity Profiling Act reveal that the vast majority of bike stops occur in communities of color.⁴ Black cyclists were 3.5 times more likely than white cyclists to be stopped for a suspected bike infraction in 2019.⁵ Despite making up approximately 13% of the population in Long Beach, Black cyclists accounted for approximately 30% of bike stops.⁶ And even though police officers find contraband on all races at a similar

¹ Mary Wisniewski, *Black Neighborhoods Still See Most Bike Tickets, Police Data Show*, Chicago Tribune [Feb. 12, 2018, 6:50 a.m.], <https://www.chicagotribune.com/business/ct-met-bike-tickets-getting-around-20180211-story.html>.

² Mary Wisniewski, *Bike tickets drop citywide — but most are still issued in majority black areas*, Chicago Tribune [Sept. 23, 2019, 6:20 a.m.], <https://www.chicagotribune.com/business/transportation/ct-biz-bike-tickets-drop-minority-neighborhoods-20190923-tpqe6wwyycyncn24ko4cgtm2q-story.html>.

³ Jesus M. Barajas, *Biking where Black: Connecting transportation planning and infrastructure to disproportionate policing*, Transportation Research Part D: Transport and Environment, vol 99 [Oct., 2021], <https://doi.org/10.1016/j.trd.2021.103027>.

⁴ Kevin Flores, *‘Our Version of Stop-and-Frisk’: Black Cyclists Most Likely to be Stopped and Searched by LBPD*, For the Org [Aug. 10, 2020], <https://forthe.org/journalism/black-cyclists-stopped/>.

⁵ *Id.*

⁶ *Id.*

frequency, once stopped, Black cyclists were about 4.5 times more likely to be searched than white cyclists.⁷

From 2017 to 2021 in Los Angeles County, where 51% of the population is Latino, 70% of the approximately 44,000 bike stops reported by the Sheriff's Department involved Latino cyclists.⁸ Cyclists in low-income communities of color were stopped and searched more frequently than cyclists from white, higher-income communities.⁹ Police did not find any illegal items in 92% of these searches, and they recovered weapons in less than half of one percent of all searches.¹⁰ Many of these cyclists of color report feeling humiliated, targeted, powerless, and angry at the repeated police stops and the assumption that cyclists of colors must be “some sort of criminal.”¹¹

In Tampa, from January 2014 to August 2015, 73.2% of over 9,100 bike stops involved Black cyclists, while just 25.9% involved white cyclists.¹² Yet Tampa is 26%

⁷ *Id.*

⁸ Ben Poston and Alene Tchekmedyian, *Sheriff's Department bike stops: How we reported the story*, Los Angeles Times [Nov. 4, 2021], <https://www.latimes.com/california/story/2021-11-04/how-we-reported-la-sheriffs-bike-stops>.

⁹ *Id.*

¹⁰ Alene Tchekmedyian et al., *L.A. sheriff's deputies use minor stops to search cyclists, with Latinos hit hardest*, Los Angeles Times [Nov. 4, 2021, 5:00 a.m.], <https://www.latimes.com/projects/la-county-sheriff-bike-stops-analysis/>.

¹¹ *Id.*

¹² Greg Ridgeway, et al., *An Examination of Racial Disparities in Bicycle Stops and Citations Made by the Tampa Police Department* at 20 [2016], <https://cops.usdoj.gov/RIC/Publications/cops-w0801-pub.pdf>.

Black and 63% white.¹³ Furthermore, the Tampa police were more likely to issue formal citations to the Black cyclists they stopped than the white cyclists.¹⁴ These disparities were not attributable to differences in bicycle ridership or manner of riding.¹⁵ For instance, white cyclists made up a larger proportion of bicycle crashes than did Black cyclists, yet were dramatically less likely to be stopped and issued citations than Black cyclists.¹⁶

The racial disparities of bike stops in New York mirror the rates of racial profiling nationwide. One New York bicyclist of color dubbed such encounters with police to be “a form of stop and frisk.”¹⁷ Black and Latino riders comprise roughly half of New York City cyclists,¹⁸ but during the first nine months of 2021, 75% of tickets for bike-related infractions issued by the New York City Police Department (“NYPD”) went to

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 22.

¹⁶ *Id.* at 3.

¹⁷ Julianne Cuba, *NYPD Harassment: Five Cyclists in Their Own Words*, STREETS BLOG NYC [Apr 25, 2019], <https://nyc.streetsblog.org/2019/04/25/nypd-harassment-five-cyclists-in-their-own-words/>.

¹⁸ The New York City Department of Transportation estimates that 20% of cyclists were Black non-Hispanic, 29% were Hispanic, and 40% were white non-Hispanic from 2010-14. *See Safer Cycling Bicycle Ridership and Safety in New York City*, New York City Department of Transportation at 59 [2017], <http://www.nyc.gov/html/dot/downloads/pdf/bike-safety-study-fullreport2017.pdf>. Additionally, in 2014, the New York City Department of Health and Mental Hygiene conducted a study on cycling trends throughout the five boroughs broken down by race, neighborhood, and sex. The study showed that 18.7% of white adults cycled once per month or more, while only 12.8% of Black and 17.4 percent of Latino adults did so. *See Epi Data Brief*, New York City Department of Health and Mental Hygiene, no 78 at 7 [Oct. 2016], <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief78.pdf>.

Black and Latino New Yorkers.¹⁹ During these same months, only 10% of tickets were issued to white riders, even though white riders comprise approximately 40% of New York City cyclists.²⁰ This type of disparate enforcement was not unique to 2021. During the same period in 2020, 76% of bicycle-related tickets were issued to Black and Latino New Yorkers, while 20% were issued to white cyclists; and during that same period in 2019, 82% of tickets were issued to Black and Latino New Yorkers, while only nine percent were issued to white cyclists.²¹

The disproportionate rates of NYPD criminal summonses issued for bicycle riding on sidewalks highlight additional racial disparities in bicycle-related enforcement. Of the 15 neighborhoods in New York City with the highest number of criminal summonses for bicycle riding on sidewalks between 2008 and 2011, 12 were majority Black and Latino neighborhoods.²² And in 2018 and 2019, 86.4% of such summonses were issued to Black and Latino New Yorkers—with 51% issued to Black men.²³

¹⁹Julianne Cuba, *NYPD's Racial Bias in Ticketing Cyclists Continued Last Year*, STREETS BLOG NYC [Jan. 4, 2022], <https://nyc.streetsblog.org/2022/01/04/nypds-racial-bias-in-ticketing-cyclists-continued-last-year/>.

²⁰ *Id.*

²¹ *Id.*

²² Harry Levine and Loren Siegel, Presented at the public event: “Summons: The Next Stop and Frisk,” CUNY School of Law [Apr. 24, 2014], <http://marijuana-arrests.com/docs/Criminal-Court-Summonses-in-NYC--CUNY-Law-School-April-24-2014.pdf>.

²³ Julianne Cuba, *NYPD Targets Black and Brown Cyclists For Biking On The Sidewalk*, STREETS BLOG NYC [June 22, 2020], <https://nyc.streetsblog.org/2020/06/22/nypd-targets-black-and-brown-cyclists-for-biking-on-the-sidewalk/>.

Although this data is only available for New York City, there is no evidence these patterns do not also exist elsewhere in the state.

The data from New York and cities around the country show that the policing of bicycle-related activity falls disproportionately on communities of color. A ruling granting the police more discretion to pull over and stop cyclists without reasonable suspicion would exacerbate the glaring racial disparities that already exist in bicycle-related policing in New York.

B. Law Enforcement Agencies in New York Have A Long History of Engaging in Racially Disparate Low-Level Encounters with New Yorkers.

Police officer discretion has been a contributor to decades of aggressive and racialized law enforcement practices in New York. Black and Brown people have experienced disproportionately high contact with the criminal legal system, in part due to the aggressive enforcement of low-level offenses in communities of color. An example of such practices is the stop-and-frisk program in New York City, in which NYPD officers aggressively target Black and Brown people for enforcement.

Under New York's stop-and-frisk program, from 2004 to 2012 the NYPD made 4.4 million stops that resulted in people being frisked by police officers. *Floyd v City of New York*, 959 F Supp 2d 540, 556 [SDNY 2013]. Police officers patrolled neighborhoods based on where communities of color were located, as opposed to where there were indications of criminal activity. During every year of the program's administration, the vast majority of the people the police stopped were Black and

Latino.²⁴ Nearly 9 out of 10 New Yorkers who were stopped under the program were innocent.²⁵ In *Floyd*, the NYPD’s stop-and-frisk policies and practices were found to amount to intentional discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.²⁶ In the companion case *Ligon v. City of New York* the federal court explained that one structural problem masking the racially driven nature of the stops was that “[g]iven the nature of their work on patrol, officers may have a systematic tendency to see and report furtive movements where none objectively exist.” 925 F Supp 2d 478, 530 [SDNY 2013].

The large racial disparities in police stops are not limited to New York City. In Albany, between January 2012 and May 2015, one out of every eight Black residents were stopped by the police each year, in contrast to one out of every 20 white residents.²⁷ Similarly, in Buffalo, between 2011 and 2015, despite making up 37% of

²⁴ *Stop-and-Frisk Data: Annual Stop-and-Frisk Numbers*, The New York Civil Liberties Union, <https://www.nyclu.org/en/stop-and-frisk-data>.

²⁵ *Id.*

²⁶ There are signs that the NYPD’s stop-and-frisk practices are not over. Soon after taking office, New York City Mayor Eric Adams announced plans to revamp a “version of the NYPD’s disbanded anti-crime unit that had a reputation for aggressive stop-and-frisk policing.” Sara Dorn, *Advocates raise concerns about NYPD’s enhanced use of pedestrian stops to tamp down on guns*, City & State New York [Sept. 19, 2022], <https://www.cityandstateny.com/policy/2022/09/advocates-raise-concerns-about-nypds-enhanced-use-pedestrian-stops-tamp-down-guns/377287/>. Already, stops and frisks have “increased dramatically” since Adams has taken office. *Id.* There were more recorded police frisks in the second quarter of 2022 than in any other three-month period since the end of 2015. *Id.* Again, the vast majority of people stopped are Black and Latino, and again, no guns were found in over 90% of the stops. *Id.*

²⁷ *Albany Police Department: Stops, Field Interviews, Search and Seizure*, The New York Civil Liberties Union, <https://www.nyclu.org/en/campaigns/new-york-police-transparency-database/albany-police-department/stops-field-interviews-search-and-seizure>.

the city's residents, Black people accounted for 63% of police enforcement actions for the low-level offenses of second degree harassment, unlawful possession of marijuana, and disorderly conduct.²⁸

The lower level of constitutional suspicion required for stop-and-frisk and the resulting unconstitutional race-based policing practices are indicative of what would occur if this Court adopts a lower constitutional standard for police stops of moving cyclists. While the reasonable suspicion standard does not eliminate all racially disparate policing, it does provide for greater protection from police contact that may happen under more relaxed standards given that reasonable suspicion “may not rest on equivocal or ‘innocuous behavior’ that is susceptible of an innocent as well as a culpable interpretation.” *People v Brannon*, 16 NY3d 596, 602 [2011].

Low-level encounters are ripe for racially disparate policing, and as we have seen in the context of pedestrian stops, police officers use their discretion to disproportionately target and criminalize Black and Brown communities. Permitting the police to stop cyclists without reasonable suspicion will add to the aggressive targeting and criminalization of Black and Brown New Yorkers.

²⁸ *Buffalo Police Department: Enforcement of Low-Level Offenses*, The New York Civil Liberties Union, <https://www.nyclu.org/en/campaigns/new-york-police-transparency-database/buffalo-police-department/enforcement-of-low-level-offenses>.

II. ALLOWING POLICE OFFICERS TO PULL OVER AND STOP CYCLISTS WITHOUT REASONABLE SUSPICION RISKS ALIENATING COMMUNITIES OF COLOR FROM PARTICIPATING IN BIKING.

Policymakers across the state are actively encouraging New Yorkers to take up biking. Governor Kathy Hochul announced an allocation \$178.8 million to cities across the state for projects promoting environmentally friendly modes of travel, including biking.²⁹ Albany Mayor Kathy Sheehan remarked that the city is experiencing “an incredible increase in cycling” with a “170% increase” in ridership on Albany’s bike share program from 2019 to 2021.³⁰ The city plans to add tens of miles of new bike lanes in order to increase cycling throughout the city.³¹ New York City Mayor Eric Adams announced an investment of over \$900 million over five years for street safety and public transportation infrastructure, which includes investments in bike lanes.³²

²⁹ *Governor Hochul Announces \$178.8 Million in Funding to Support Transportation Enhancements in 75 Communities Across New York*, New York State’s Governor’s Office [June 23, 2022], <https://www.governor.ny.gov/news/governor-hochul-announces-1788-million-funding-support-transportation-enhancements-75>.

³⁰ Dave Lucas, *Albany officials use annual bike to work day to promote city’s growing cycling infrastructure*, WAMC Northeast Public Radio [June 2, 2022, 11:37 a.m.], <https://www.wamc.org/capital-region-news/2022-06-02/albany-officials-use-annual-bike-to-work-day-to-promote-citys-growing-cycling-infrastructure>.

³¹ Dave Lucas, *Albany Releases Updated Bicycle And Pedestrian Master Plan*, WAMC Northeast Public Radio [May 21, 2021, 12:42 p.m.], <https://www.wamc.org/capital-region-news/2021-05-21/albany-releases-updated-bicycle-and-pedestrian-master-plan>.

³² *Mayor Adams Announces Historic Investment of More than \$900 Million in Traffic Safety to Turn the Tide on Traffic Violence Crisis*, New York City Office of the Mayor [Apr. 23, 2022], <https://www1.nyc.gov/office-of-the-mayor/news/243-22/mayor-adams-historic-investment-more-900-million-traffic-safety-turn-the#/0>.

Permitting police officers to pull over and stop moving bicycles without reasonable suspicion opens the door to disparate treatment of cyclists of color, which will interfere with attempts to increase bike ridership across the state. Already, many potential cyclists of color are dissuaded from biking due to police discrimination; permitting bike stops without reasonable suspicion risks further alienating these communities. In a nationwide study, Black and Latino cyclists reported being questioned and feeling unsafe during police interactions while biking.³³ In New Jersey, Black cyclists have reported being stopped and questioned by police officers who incorrectly assumed that the riders stole their bicycles because they were Black and their bicycles looked expensive.³⁴ Some cyclists of color avoid biking in some municipalities altogether due to fears of being stopped and harassed by the police because of their race.³⁵

In New York, cyclists of color report feeling frequently targeted and harassed by the police. One cyclist of color reported being stopped “two or three days out of the week” by the NYPD for minor infractions.³⁶

³³Charles Brown, et al., *Where Do We Go From Here? Breaking Down Barriers to Bicycling in the U.S.*, PeopleforBikes at 38 [2021], accessible from [https://www.peopleforbikes.org/reports/where-do-we-go-from-here-breaking-down-barriers-to- .](https://www.peopleforbikes.org/reports/where-do-we-go-from-here-breaking-down-barriers-to-)

³⁴ Charles Brown, et al., *Understanding Barriers to Bicycle Access & Use in Black and Hispanic Communities in New Jersey*, Rutgers Edward J. Bloustein School of Planning and Public Policy at 25-27, http://njbikeped.org/wp-content/uploads/Minority-Report-Draft_FINAL.pdf.

³⁵ *Id.*

³⁶ Julianne Cuba, *NYPD Harassment: Five Cyclists in Their Own Words*, STREETSBLOG NYC [Apr. 25, 2019], <https://nyc.streetsblog.org/2019/04/25/nypd-harassment-five-cyclists-in-their-own-words/>.

Fear of police harassment while biking may be of particular concern to young people of color, who are often disproportionately targeted by racialized police programs and practices. In Washington D.C., Black cyclists under the age of 18 were stopped more than twice as often as white cyclists of all ages.³⁷ In Tampa, during a twelve-year period, at least 142 bike tickets were issued to children aged 15 and under, including children as young as three years old.³⁸ All but nine of these children were Black or Latino.³⁹ As one cyclist of color lamented: “even when our kids are on bikes, they get hassled by the cops.”⁴⁰ The disproportionate targeting of young cyclists of color by the police would very likely occur in New York, where youth have already borne much of the brunt of racialized policing.⁴¹

The alienation of communities of color from biking is alarming given both the health benefits of bicycling and the health harms associated with police contact. Biking is associated with lower risks of cardiovascular disease, lower rates of cancer mortality

³⁷ Dan Roe, *Black Cyclists Are Stopped More Often Than Whites, Police Data Shows*, BICYCLING [July 27, 2020], <https://www.bicycling.com/culture/a33383540/cycling-while-black-police/>.

³⁸ Nusrat Choudhury, *If You're Black or Brown and Ride a Bike in Tampa, Watch Out: Police Find That Suspicious* [May 14, 2015, 5:00 p.m.], <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/if-youre-black-or-brown-and-ride-bike-tampa-watch-out>.

³⁹ *Id.*

⁴⁰ Charles Brown et al., *Where Do We Go From Here? Breaking Down Barriers to Bicycling in the U.S.*, PeopleforBikes at 37 [2021], accessible from <https://www.peopleforbikes.org/reports/where-do-we-go-from-here-breaking-down-barriers-to>.

⁴¹ For example, between 2004 and 2012, of more than 4 million police stops of pedestrians in New York City, more than half were of people under age 25. Joshua Legewie and Jeffrey A. Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, *American Sociological Review*, vol 84 at 1 [2018], accessible at https://scholarship.law.columbia.edu/faculty_scholarship/2315..

and morbidity, and decreased obesity morbidity.⁴² Biking is also a safer choice than other forms of aerobic exercise for older adults or others who may have joint issues. On the other hand, police contact can be detrimental to individual health. For example, young men who experience police contact display trauma and anxiety associated with that contact.⁴³ Indeed, such stops are “a demeaning and humiliating experience” for New Yorkers of color who are overwhelmingly “singled out” by the police. *Floyd*, 959 F Supp 2d at 557. Further alienation of communities of color from biking that is sure to result from a more permissive standard for police bike stops will prevent these communities from reaping the various health benefits that biking is known to provide while perpetuating the harms associated with police contact.

The reasons to encourage, not discourage, communities to ride bicycles extend beyond health. Biking is increasingly seen as an important form of transportation, lauded for being “environmentally, socially and economically sustainable.”⁴⁴ People

⁴² Carlos Celis-Morales et al., *Association between active commuting and incident cardiovascular disease, cancer, and mortality: prospective cohort study*, BMJ [Apr. 19. 2017], <http://dx.doi.org/10.1136/bmj.j1456>; Pekka Oja, et al., *Health benefits of cycling: a systematic review*, Scandinavian Journal of Medicine & Science in Sports, 21: 496-509 [Apr. 18, 2011], <https://onlinelibrary.wiley.com/doi/10.1111/j.1600-0838.2011.01299.x>.

⁴³ Amanda Geller, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, American Journal of Public Health 104 at 2324 [2014], <https://doi.org/10.2105/AJPH.2014.302046>.

⁴⁴ John Pucher and Ralph Buehler, *Cycling towards a more sustainable transport future*, Transport Reviews, 37:6 [2017], 689-694, 689, <https://doi.org/10.1080/01441647.2017.1340234>.

who bike often have lower lifetime emissions of carbon dioxide as compared to non-cyclists.⁴⁵ Bicycling has also been shown to reduce air pollution and traffic accidents.⁴⁶

The history of pedestrian stops teaches that adopting a lower constitutional standard for police to pull over and stop cyclists will lead to multiple negative consequences that will disproportionately accrue to communities of color in New York. This Court should not ignore the realities of racialized policing across this state, nor should it ignore the benefits that would arise from preventing the continued alienation and criminalization of New York's bike riders.

III. POLICE STOPS OF MOVING BICYCLES SIGNIFICANTLY INTERFERE WITH CYCLISTS' FREEDOM OF MOVEMENT AND THEREFORE CONSTITUTE SEIZURES REQUIRING REASONABLE SUSPICION.

The Fourth Amendment to the United States Constitution is intended to protect against intrusive street encounters between individuals and police officers without sufficient justification. For decades, this Court has recognized that because of the mobile nature of automobile transportation, stopping a moving vehicle is a very intrusive act constituting a seizure, and therefore, officers must have reasonable suspicion that the person stopped is engaged in criminal activity. *See People v Sobotker*, 43 NY2d 559, 563 [1978] (“our repeated decisions make abundantly clear that, absent at

⁴⁵Christian Brand, et al., *The climate change mitigation effects of daily active travel in cities*, Transportation Research Part D: Transport and Environment, vol 93, [Apr. 2021], <https://doi.org/10.1016/j.trd.2021.102764>.

⁴⁶Jeroen Johan de Hartog, et al., *Do the health benefits of cycling outweigh the risks?*, Environ Health Perspectives, vol 118, No 8 [Aug. 2010], <https://doi.org/10.1289/ehp.0901747>.

least a reasonable suspicion that its occupants had been, are then, or are about to be, engaged in conduct in violation of law, the stopping of an automobile by the police constitutes an impermissible seizure”). Stopping a moving bicyclist is no different. Restricting the movement of cyclists is extremely intrusive and must require the same level of suspicion as automobile stops.

Under Fourth Amendment caselaw, this Court has “defined a seizure of the person for constitutional purposes to be a significant interruption with an individual’s liberty of movement.” *De Bour*, 40 NY2d at 216. Accordingly, police stops of automobiles are “seizure[s] implicating constitutional limitations” under “the settled law of New York” because they involve a far greater infringement on an individual’s freedom of movement than merely stopping a pedestrian walking on the sidewalk. *People v Hinshaw*, 35 NY3d 427, 430 [2020]; *see also People v Spencer*, 84 NY2d 749, 752-53 [1995] (“the obvious impact of stopping the progress of an automobile is more intrusive than the minimal intrusion involved in stopping a pedestrian”).

One factor indicating a “significant interruption” of liberty of movement is if a person submits to “the authority of the badge.” *People v Bora*, 83 NY2d 531, 534–35 [1994] (citing *People v Cantor*, 36 NY2d 106, 111 [1975]); *see California v Hodari D.*, 499 US 621, 626 [1991] (“submission to the assertion of authority” is a seizure). For vehicle stops, because police detain the driver and all passengers after diverting them from their paths, these stops communicate to any “sensible person” that they are not free to “terminate the encounter” and leave—another hallmark of a seizure. *Brendlin v California*,

551 US 249, 255 [2007]; see *Berkemer v McCarty*, 468 US 420, 436 [1984] (“[F]ew motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so.”). Due to the level of intrusion present in police stops of vehicles, this Court has assessed them under Level 3 of the *De Bour* analysis, which requires reasonable suspicion. See *De Bour*, 40 NY2d 210 [1976].

Police stops of cyclists in transit invoke the same considerations as stops of automobiles in transit. Cyclists on roadways can move at average speeds of 12 to 16 miles per hour, and some cyclists can reach 25 miles per hour,⁴⁷ which is the speed limit on most New York City streets for cars.⁴⁸ Bicycles travel approximately four times faster than the average walking speed.⁴⁹ At these speeds, cyclists pulled over by police would have to expend significant energy to safely stop. Depending on the duration of the stop, cyclists could have to get off of their bicycles while engaging with officers and move

⁴⁷ *What is the Average Speed for Urban Cycling?*, Sustainability Info, <https://sustainabilityinfo.com/transportation/what-is-the-average-speed-for-urban-cycling/>; Robert Gibbons, *Average Cycling Speed By Age: A Detailed Analysis*, Decline Magazine, <https://www.declinemagazine.com/mtb/average-cycling-speed-by-age/>; *What's the average speed of a beginner cyclist?*, Road Bike Rider, <https://www.roadbikerider.com/whats-the-average-speed-of-a-beginner-cyclist/>.

⁴⁸ *Mayor de Blasio Signs New Law Lowering New York City's Default Speed Limit to 25 MPH*, [Oct. 27, 2014], <https://www1.nyc.gov/office-of-the-mayor/news/493-14/mayor-de-blasio-signs-new-law-lowering-new-york-city-s-default-speed-limit-25-mph#/0>. Many municipalities around New York are considering reducing their speed limits to 25 miles per hours after Governor Kathy Hochul signed a law allowing them to do so. See Nick Reisman, *Local governments in New York could lower speed limit to 25 mph under new law*, Spectrum News1 [Aug. 12, 2022, 3:25 p.m.], <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/08/12/local-governments-in-new-york-could-lower-speed-limit-to-25-mph.h>

⁴⁹ Emily Cronkleton, *What Is the Average Walking Speed of an Adult?*, Healthline [Mar. 14, 2019], <https://www.healthline.com/health/exercise-fitness/average-walking-speed#takeaway>.

out of the path of traffic, limiting their ability to freely disengage from them. Given that cyclists are diverted from their paths and the effort and inconveniences needed to safely stop a moving bicycle in traffic, it is unlikely that a reasonable bicyclist likely would feel free to terminate the interaction after being compelled to stop by police officers.

In sum, cyclists can move roughly at the same speeds that cars are allowed to move in municipalities, which is far faster than foot traffic. Police stops of cyclists traveling at these speeds creates a significant diversion and intrusion on cyclists' freedom of movement. Given the clear similarities between bicycle stops and stops of other vehicles, police stops of moving cyclists should fall under Level 3 of the *De Bour* analysis.

CONCLUSION

For the foregoing reasons, we ask this Court to hold that police stops of moving bicycles are Level 3 encounters requiring reasonable suspicion under *De Bour*.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to the State of New York, Court of Appeals Rules of Practice, 22 NYCRR Part 500.1 §§ (j)(l) and Part 500.13 §§ (c)(1) and (c)(1)(3), I certify that the foregoing brief was prepared on a word processor, using 14-point Garamond 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 disclosure statement, table of contents, table of citations, certificate of compliance, and affidavit of service is 4,731.

Dated: October 14, 2022
 New York, New York

A handwritten signature in black ink, appearing to read 'Daniel R. Lambright', written over a horizontal line.

Daniel R. Lambright
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