

**APL-2021-00143**

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**COURT OF APPEALS**

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**STATE OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK,**

*Respondent,*

*-against-*

**LANCE RODRIGUEZ**

*Defendant-Appellant.*

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**BRIEF OF *AMICUS CURIAE*  
THE LEGAL AID SOCIETY  
IN SUPPORT OF DEFENDANT-APPELLANT**

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## **DISCLOSURE STATEMENT**

Pursuant to 22 N.Y.C.R.R Part 500.1(f), the Legal Aid Society discloses that it is a non-profit organization with no parent, subsidiaries, or affiliates.

## **INTEREST OF AMICUS CURIAE**

*Amicus curiae* The Legal Aid Society is the country's oldest and largest private non-profit legal services agency, dedicated since 1876 to providing quality legal representation to low-income families and individuals in New York City. It has served as the primary public defender in New York City since 1965 and, each year, represents thousands of people who are arrested and unable to afford private counsel. It also provides comprehensive legal assistance to low-income New Yorkers in a range of civil matters, including defending the workers' rights of food delivery workers.

Legal Aid is committed to promoting fairness within the legal system and defending the rights of low-income New Yorkers against unreasonable police intrusion. Legal Aid has represented thousands of low-income cyclists in criminal matters and hundreds of food delivery workers in city administrative proceedings contesting the police department's confiscation of their bicycles.

## **PRELIMINARY STATEMENT**

In New York City, nearly two million New Yorkers ride bicycles and city residents make more than half a million cycling trips on a typical day. Adult cyclists, who ride exclusively on the street, travel faster than cars in many neighborhoods. For some low-income city residents, particularly those whose low wages preclude owning a car, bicycle ridership is the most affordable and convenient mode of transportation available to them. Many of the city's delivery workers rely on bicycles to earn a living delivering food, often under pressure from companies and customers to deliver as quickly as possible. For these low-income New Yorkers, police orders to stop biking can lead to late deliveries, lost wages, and dangerous encounters.

Applying this Court's reasoning in *People v. De Bour*, 40 N.Y.2d 210 (1976) and its progeny, this Court should find that the stop of a moving bicycle on the road, like a stop of a moving automobile or motorcycle, constitutes a level three seizure requiring, at a minimum, reasonable suspicion of criminal activity. Establishing this clear rule would create a safer work environment for tens of thousands of delivery workers and protect tens of thousands of other low-income cyclists from unreasonable police intrusions.



## ARGUMENT

Under settled New York law, police “interference with a moving vehicle is a seizure requiring, at a minimum, reasonable suspicion [of criminal activity].” *See People v. Ocasio*, 85 N.Y.2d 982, 984 (1995); *People v. Hinshaw*, 35 N.Y.3d 427, 432 (2020) (holding that probable cause is necessary when police stop a moving vehicle for a traffic infraction). The rule stems from this Court’s recognition that “the obvious impact of stopping the progress of an automobile is more intrusive than the minimal intrusion involved in stopping a pedestrian.” *See People v. Spencer*, 84 N.Y.2d 749, 752 (1995) (quoting *People v. John BB.*, 56 N.Y.2d 482, 487 (1982)). As the U.S. Supreme Court explained, “the law of most States” prohibit drivers from ignoring an officer’s direction to stop or to drive away without permission once stopped. *Berkemer v. McCarty*, 468 U.S. 420, 436 (1984). Partly because of this, an automobile stop is a seizure as, in contrast to a level two pedestrian stop when people are free to leave, “few motorists would feel free to either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so.” *Id.* at 436.

The Court should extend this rule to bicycles, for at least two reasons. First, as the example of New York City demonstrates, a contrary rule would create an unsafe environment, particularly for the tens of thousands of low-income New

Yorkers who rely on bicycles to commute to carry out their work. Second, as New York’s Vehicle and Traffic Law (“V.T.L.”) demonstrates, bicycles and cars operate similarly and should be treated similarly as a matter of law.

**I. A RULE THAT POLICE CAN STOP A MOVING CYCLIST ONLY IF THEY HAVE REASONABLE SUSPICION OF CRIMINAL ACTIVITY CREATES SAFER STREETS, PARTICULARLY FOR LOW-INCOME CYCLISTS.**

With the widespread and growing popularity of biking in New York City, it would be dangerous to adopt a rule that encourages the city’s 36,000 uniformed police officers<sup>1</sup> to stop a cyclist based merely on “a founded suspicion that criminality is afoot” rather than on probable cause or reasonable suspicion of criminality. *See De Bour*, 40 N.Y.2d at 223. The lower court’s ruling would make cyclists responsible for distinguishing police commands to stop based on a founded suspicion, which can be ignored, from those based on reasonable suspicion, which cannot be ignored. It would also permit cyclists to ride away from the police and subsequently encourage the police to pursue those riders, a practice that can quickly escalate into dangerous situations. Such encounters would disproportionately impact low-income New Yorkers.

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<sup>1</sup> *About NYPD*, <https://www.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page> (last visited Aug. 28, 2023).

In New York City, cycling is a common mode of transportation and continues to grow in popularity. The degree to which New York City residents, especially low-income New Yorkers, rely on bicycles for transportation and to earn a living has surged in recent years. Between 2008 and 2021, the number of New York City residents who cycle to work more than doubled.<sup>2</sup> Approximately 30 percent of adults in New York City (1.9 million people) now ride a bicycle at least once per year, and 800,000 adults cycle regularly.<sup>3</sup> In some areas of New York City, cycling has become even more popular than driving.<sup>4</sup> On a typical day, more than 550,000 cycling trips are made in the city.<sup>5</sup> Among those making daily trips, 55,000 city residents commute to and from work and tens of thousands more low-income delivery workers cycle throughout the city while on the job.<sup>6</sup>

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<sup>2</sup> *Bicyclists, Cycling in the City*, N.Y.C. DEP'T OF TRANSP. (2023), <https://www.nyc.gov/html/dot/html/bicyclists/cyclinginthecity.shtml> (last visited August 31, 2023).

<sup>3</sup> *See id.*

<sup>4</sup> Winnie Hu, *More New Yorkers Opting for Life in the Bike Lane*, N.Y. Times (July 30, 2017), <https://www.nytimes.com/2017/07/30/nyregion/new-yorkers-bike-lanes-commuting.html> (reporting that in downtown Brooklyn one evening, “442 bikes — compared with 331 cars — passed by in one hour, more than three times the 141 bikes counted in the same hour in 2011, according to city data. Two years ago, cars still dominated”).

<sup>5</sup> N.Y.C. DEP'T OF TRANSP., *supra* note 2.

<sup>6</sup> *Id.*; see Maria Figueroa, et al., *Essential But Unprotected: App-based Food Couriers in New York City*, WORKER'S JUSTICE PROJECT AND CORNELL INDUSTRIAL AND LABOR RELATIONS (Sep. 12, 2021), <https://search.issuelab.org/resource/essential-but-unprotected-app-basedfood-couriers-in-new-york-city.html>.

While bicycle ridership has increased across income levels, ridership among low-income city residents has grown at a record pace.<sup>7</sup> From 2021 to 2022, Citi Bike bikesharing among New York City Housing (NYCHA) residents and Supplemental Nutrition Assistance Program (SNAP) recipients grew 40%.<sup>8</sup> During just one week in May 2023, NYCHA and SNAP members took approximately 108,480 Citi Bike rides, 12.5% of all Citi Bike rides.<sup>9</sup> More low-income residents are opting to take a Citi Bike as a Citi Bike ride is cheaper than a car, a train, or even, in some instances, a bus ride.<sup>10</sup>

For many low-income city residents, cycling is a necessity for work and the only viable option for transportation. In New York City, more than 65,000 workers deliver food for app-based services such as DoorDash, Uber, and Grubhub.<sup>11</sup> Many of these app-based food delivery workers must rely on bicycles to deliver food.<sup>12</sup>

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<sup>7</sup> See Gersh Kuntzman, *Citi Bike Ridership Numbers Hit New Weekly Record*, STREETS BLOG (May 15, 2023), <https://nyc.streetsblog.org/2023/05/15/citi-bike-ridership-numbers-hit-new-weekly-record>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See CITI BIKE, *Reduced Fare Bike Share*, <https://citibikenyc.com/pricing/reducedfare> (last visited Aug. 28, 2023) (offering \$5 monthly Citi Bike membership to low-income residents); THE METROPOLITAN TRANSP. AUTHORITY (MTA) *Changes to MTA Fares and Tolls in 2023* (2023), <https://new.mta.info/transparency/mta-fares-tolls-2023> (last visited August 31, 2023) (offering \$66 monthly MTA pass to low-income residents).

<sup>11</sup> See Figueroa, et al., *supra* note 6.

<sup>12</sup> See *id.*; Madina Toure, *How NYC's Updated E-Bike Policy Could Still Harm Delivery Workers*, OBSERVER (Apr. 30, 2018), <https://observer.com/2018/04/new-york-immigrant-delivery-workers-ebikes/>.

App-based restaurant delivery workers generally earn about \$7 per hour without tips and about \$14 per hour with tips.<sup>13</sup> Car ownership for such workers is, in almost all cases, prohibitively expensive. To purchase a used car, the average monthly car payment is estimated to be over \$500.<sup>14</sup> Given their low wages and the high cost of car ownership, delivery workers depend on biking as the logical and affordable alternative to cars.

The increase in bicycle ridership among low-income residents follows New York City's investment of resources into building bicycle lane infrastructure, part of an overall plan to move away from reliance on motor vehicles and toward cycling. The city already has over 1,525 miles of bike lanes and plans to build hundreds more miles have been approved.<sup>15</sup> The New York City Department of Transportation ("DOT") is set to install a record number of protected bike lanes in 2023 and "also

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<sup>13</sup> *A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC*, N.Y.C. DEP'T OF CONSUMER AND WORKER PROT. (Nov. 2022), <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Delivery-Worker-Study-November-2022.pdf>; see also Patricia Hurtado, *New Minimum Wage Rule for NYC Food Delivery Workers Temporarily Halted by Judge*, BLOOMBERG (July 7, 2023), <https://www.bloomberg.com/news/articles/2023-07-07/nyc-wage-rule-for-delivery-workers-temporarily-halted-by-judge?srnd=premium#xj4y7vzkg> (reporting that \$17.96 per hour minimum wage for app-based delivery workers has not been implemented due to litigation by Uber, DoorDash, and Grubhub).

<sup>14</sup> Shannon Bradley, *What's the Average Car Payment Per Month?* NERDWALLET (Aug. 15, 2012), <https://www.nerdwallet.com/article/loans/auto-loans/average-monthly-car-payment>.

<sup>15</sup> N.Y.C. DEP'T OF TRANSP., *supra* note 2; see Press Release, *NYC DOT Taking New Steps to Expand Bike Infrastructure and Encourage Safe Operation of E-bikes as Overall Bike Ridership Reaches All-time High*, N.Y.C. DEP'T OF TRANSP. (Apr. 24, 2023), <https://www.nyc.gov/html/dot/html/pr2023/dot-expand-bike-infrastructure.shtml>.

recently unveiled the city’s first wider bike lanes, with more to come this year.”<sup>16</sup> In 2019, DOT also launched a Commercial Cargo Bicycle Pilot program, incentivizing businesses like Amazon and UPS to make deliveries on bicycles.<sup>17</sup> A report by the DOT found that cargo bikes “reduces double parking, enhances traffic safety, and reduces greenhouse gas emissions.”<sup>18</sup> Last year, cargo bikes delivered over 5 million packages, and the city is looking to expand the program and increase the use of cargo bikes in the city.<sup>19</sup>

Against this backdrop of growing bicycle ridership and a future where bicycles increasingly supplant cars and other motor vehicles, a rule that treats car stops as *De Bour* level three seizures while treating bicycle stops as level two encounters appears irrational. It also threatens dangerous police encounters for low-income New Yorkers, many of whom have no alternative to biking on city streets. As the DOT commissioner recently remarked, “[d]elivery workers keep New York City fed. They are a vital part of the city’s economy and they deserve safe,

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<sup>16</sup> *Id.*

<sup>17</sup> See *Cycling in the City*, N.Y.C. DEP’T OF TRANSP. (September 2021), <https://www.nyc.gov/html/dot/downloads/pdf/cycling-in-the-city-2021.pdf>.

<sup>18</sup> *Commercial Cargo Bicycle Pilot, A New Mode for Last Mile Deliveries in NYC, Evaluation Report*, N.Y.C. DEP’T OF TRANSPORTATION (2021), <https://www.nyc.gov/html/dot/downloads/pdf/commercial-cargo-bicycle-pilot-evaluation-report.pdf>.

<sup>19</sup> Press Release, *NYC DOT Takes Action to Authorize the Use of Larger Pedal-Assist Cargo Bikes*, N.Y.C. DEP’T OF TRANSP. (Aug. 14, 2023) <https://www.nyc.gov/html/dot/html/pr2023/pedal-assist-cargo-bikes.shtml>.

welcoming work environments, just like any other workforce.”<sup>20</sup> For these essential workers, most of whom are immigrants and people of color, New York City streets are their workplace.<sup>21</sup> Each police encounter can lead to late deliveries and, in turn, lost tips and wages. And if delivery workers attempt to avoid late deliveries by ignoring unwarranted police commands to stop, any ensuing police chase could result in a dangerous encounter that could cost far more than lost wages. To ensure safe police encounters for low-income New Yorkers, cyclists on the road should be protected against unreasonable police intrusion in the same way as their generally more affluent counterparts who drive on those same roads.

## **II. NEW YORK’S VEHICLE AND TRAFFIC LAW SUPPORTS A RULE THAT POLICE MAY ONLY CONDUCT BICYCLE STOPS ON THE ROADWAY IF THEY HAVE REASONABLE SUSPICION.**

New York’s Vehicle and Traffic Law (“V.T.L.”) supports a rule that bicycle stops are *De Bour* level three seizures that require police officers to have, at a minimum, reasonable suspicion of criminal activity. First, stopping a bicycle in the roadway “significantly curtails” the cyclist’s freedom in the same manner a stop of

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<sup>20</sup> *Mayor Adams, Majority Leader Schumer Announce First-in-Nation Street Deliveristas Hubs to Serve NYC’s Food Delivery Workers*, N.Y.C. OFFICE OF THE MAYOR (October 3, 2022), <https://www.nyc.gov/office-of-the-mayor/news/715-22/mayor-adams-majority-leader-schumer-first-in-nation-street-deliveristas-hubs-serve#/0>.

<sup>21</sup> *See* Lauren Aratani *‘It’s persecution’: New York City delivery workers fight electric bike ban*, THE GUARDIAN (Feb 16, 2019), <https://www.theguardian.com/us-news/2019/feb/15/new-york-city-delivery-workers-electric-bike-ban>.

a motor vehicle affects a driver's freedom. *Berkemer*, 468 U.S. at 436. Under the V.T.L., cyclists are subject to the same duty as motor vehicle drivers to comply with the lawful orders or directions of a police officer. V.T.L. § 1231 (“Every person riding a bicycle . . . upon a roadway . . . shall be subject to all of the duties applicable to the driver of a vehicle”); *see also* V.T.L. § 1102 (“No person shall fail or refuse to comply with any lawful order or direction of any police officer”). By prohibiting cyclists from disregarding a police officer's direction, the V.T.L. makes it illogical to imagine cyclists would ever “feel free . . . to disobey a directive to pull over” and stop biking. *Berkemer*, 468 U.S. at 437.

Second, the V.T.L. regulates the use of bicycles and cars in similarly significant ways, reflecting the analogous safety concerns involved in the operation of both vehicles and underscoring why the Court should also treat them similarly as a matter of constitutional law. As with motor vehicles, the V.T.L. carefully regulates bicycles to prevent dangers to pedestrians, vehicle drivers, and cyclists themselves. Cyclists must ride “astride a permanent and regular seat attached” to the bicycle and they must not use the bicycle “to carry more persons at one time than the number for which it is designed and equipped.” V.T.L. § 1232. When used at night, bicycles must have a lamp on the front that emits a white light and one on the back that emits a red light, and both lights must be visible for at least 200 feet. V.T.L. § 1236(a).



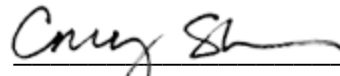
Bicycles must have reflective tires or reflectors mounted on the spokes of each wheel. V.T.L. § 1236(d). They must have “a bell or other [audible] device” that can be heard for at least one hundred feet. V.T.L. § 1236(b). Cyclists must wear a helmet when using an electronic bike (“e-bike) and, when using a normal bicycle, must ensure that any passengers younger than fourteen wears a helmet. V.T.L. § 1238(5), (5-c). Cyclists must give hand and arm signals to warn others about their upcoming turns or an upcoming stop or decrease of speed. V.T.L. § 1237. Cyclists on e-bikes are not allowed on the sidewalk, *see* V.T.L. § 1242(5)(a), and local laws in some places, like New York City, do not allow biking of any kind on the sidewalk. *See* N.Y.C. Administrative Code § 19-176; *see also* City of Rochester Code § 34-2 (outlawing bicycles on the sidewalk in Center City District).

The V.T.L.’s extensive bicycle-specific regulations make it clear that the legislature considers bicycle traffic and car traffic to present similar dynamics in terms of public safety and convenience. It also makes it expressly clear that cyclists are not free to disobey an officer’s direction to stop. This Court should therefore recognize that a stop of a cyclist is an equivalent intrusion to a stop of a driver and afford cyclists the same constitutional protections by requiring that police officers have, at a minimum, reasonable suspicion of criminality before stopping bicycles on the roadway.

## CONCLUSION

For these reasons, this Court should hold that a police stop of a moving bicycle on the roadway is a *De Bour* level three seizure requiring, at minimum, reasonable suspicion of criminality.

Respectfully submitted,



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# COURT OF APPEALS

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STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent,*

*-against-*

LANCE RODRIGUEZ,

*Defendant-Appellant.*

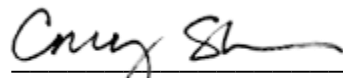
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## CERTIFICATE OF COMPLIANCE

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Pursuant to Part 500.13(c)(1) of the Rules of Practice of the Court of Appeals, State of New York, the undersigned attorney for Amicus Curiae hereby certifies that this Brief was prepared on a computer; that Times New Roman, a 14-point proportionally spaced typeface, was used; that the body of the brief is double-spaced, with 12-point single spaced footnotes; and that, according to the Microsoft Word Processing System used, the total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the Table of Contents, the Table of Authorities, Disclosure Statement, proof of service, and certificate of compliance is 2,627.

Dated: August 31, 2023



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