

*For Immediate Release*

## FEDERAL APPEALS COURT ISSUES STAY, RENDERING LOWER COURT RULING INOPERATIVE IN "STOP, QUESTION & FRISK" CASES

***APPEALS COURT ALSO REMOVES JUDGE FROM THE CASES,  
STATING SHE "RAN AFOUL OF THE CODE OF CONDUCT"***

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, [kahlers@law.nyc.gov](mailto:kahlers@law.nyc.gov)

New York, N.Y., October 31, 2013 – In a unanimous (3-0) ruling, the U.S. Court of Appeals for the Second Circuit has "stayed" a ruling by U.S. District Court Judge Shira Scheindlin in the *Floyd* and *Ligon* "stop, question and frisk" cases until the City's appeal is decided. The stay renders the lower court's ruling of violations of the 4th and 14th Amendment inoperative until the appeal is ruled on by another judge and halts implementation of any remedies ordered by the lower court.

In reaching its conclusion, the Court of Appeals determined that Judge Scheindlin "ran afoul of the Code of Conduct for United States Judges" by taking the *Floyd* and *Ligon* cases as "related" to a previous case, *Daniels*, that was before her. It also noted that the judge had given a series of media interviews and public statements while the *Floyd* trial was ongoing. The panel found that the judge's "appearance of impartiality might reasonably be questioned" by the manner in which she conducted herself. Any further proceedings in the trial court, the appellate court found, should be before a different federal judge. The court set a schedule directing that the appeal should be argued some time after March 14.

"We could not be more pleased with the Court's findings," noted Corporation Counsel Michael A. Cardozo. "This ruling not only ensures that the remedies ordered by the District Court -- which we believe were unjustified and deeply problematic -- will be put on hold during our appeal, but it stays the liability decision on the Police Department's compliance with the Constitution. In short, the ruling of unconstitutional practices is no longer operative, and that question will now receive a fresh and independent look both by the appeals court and then, if necessary, by a different trial court judge."

The District Court's decision, which came down Aug. 12th, held that the Police Department's practice violates the Fourth Amendment's prohibition against unreasonable searches and seizures and the Fourteenth Amendment's equal protection clause.

The class-action bench trial, which ran over nine weeks starting in March, challenged the Department's stop practices. The judge heard from various high-ranking police officials about the NYPD's comprehensive stop, question and frisk training, supervision, monitoring and discipline, as well as plaintiff witnesses and experts. The plaintiffs alleged that their experiences with street stops were racially motivated. The City disputed those allegations, noting that stops are based upon reasonable suspicion.

In the decision, Judge Scheindlin issued a permanent injunction against unconstitutional encounters, ordered reforms of NYPD policies and practices, and appointed Arnold & Porter Partner Peter Zimroth as an independent monitor. The judge's order applied to both *Floyd* and the *Ligon* case (also known as

"Clean Halls"), which involves trespass enforcement policies in and around private buildings where landlords had given the NYPD permission to enforce the law.

These were the three major stop, question and frisk cases that were before Judge Scheindlin:

- *Ligon* is the case challenging Clean Halls, i.e. private buildings when landlords opt into the program.
- *Floyd* is the class action alleging suspicionless stops.
- *Davis* is the case challenging stop-and-frisk on NYCHA (New York City Housing Authority) properties.

Executive Assistant Corporation Counsel for Public Safety Celeste Koeleveld argued the stay motion this past Tuesday (Oct. 29th) before the Second Circuit. Deborah Brenner, Fay Ng, Kathy Chang and Larry Sonnenshein of the Law Department's Appeals Division are also working on the case. Special Federal Litigation Deputy Chief Heidi Grossman oversaw the two-and-half-month lower court case, along with Linda Donahue, Brenda Cooke, Suzanna Mettham, Morgan Kunz, Judson Vickers, Joseph Marutollo, Lisa Richardson, Mark Zuckerman, and Richard Weingarten.

The New York City Law Department is one of the oldest, largest, and most dynamic law offices in the world. Tracing its roots back to the 1600's, the Department has an active caseload of 80,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 650 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit [nyc.gov/law](http://nyc.gov/law).

###