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October 12, 2021

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York*, 08-CV-1034 (AT),
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
Fourteenth Report of the Independent Monitor

Dear Judge Torres,

I am pleased to submit the Fourteenth Report of the Independent Monitor. This report examines the New York City Police Department's (NYPD) activities in enforcing social distancing rules between March 2020 and July 2020, whether those activities involved stops, frisks, searches, and trespass enforcement, and whether those activities complied with the requirements of the remedial orders in *Floyd v. New York City*, *Ligon v. New York City* and *Davis v. New York City*.

In March 2020, with the arrival of the COVID-19 pandemic, federal, state and government officials began taking measures to address the spread of the coronavirus. Governor Andrew M. Cuomo announced a stay-at-home order and Mayor Bill de Blasio

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declared a state of emergency in New York City. All individuals over the age of two were required to wear a mask when in public, and individuals were required to stay a distance of six feet away from persons other than their immediate family. Mayor de Blasio directed the New York City Police Department (NYPD) and other City agencies to enforce the public health COVID rules (COVID rules). The Police Department enforced the COVID Rules from March 2020 to July 2020, when the Mayor transferred the enforcement authority from the NYPD to the New York City Sheriff.

In May 2020, Plaintiffs' counsel in the *Floyd* litigation filed a motion and brief arguing that the NYPD's social distancing enforcement violated prior *Floyd* orders. Plaintiffs requested the Court to direct the Monitor to investigate the NYPD's social distancing enforcement and report to the Court, and sought an injunction against any further enforcement of the COVID Rules by NYPD until after the Court ruled on the Monitor's report.

This Court denied the Plaintiffs' motion. The Court determined that much of the police conduct that Plaintiffs alleged and complained of extended beyond the suspicionless and racially motivated stops and frisks addressed by the Court in *Floyd*. The Court did note, however, that some of the alleged police conduct could fall within the ambit of *Floyd*. The Court stated: "The Monitor's work is ongoing and encompasses all suspicionless and race-based stops, including those which may have taken place during the COVID-19 pandemic." Thus, the Court determined that the existing system of review, with the Monitor assessing and reporting on the NYPD's progress in complying with the Court's mandates, was sufficient. In making its ruling, the Court relied on my assurances that the

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Monitor Team would review information about enforcement of the COVID Rules, tailored to the *Floyd* remedial process. This report is the result of those efforts and reflects the Monitor Team's review and analysis of the data collected and the NYPD's enforcement of the COVID Rules.

Although the NYPD's social distancing enforcement garnered a significant amount of media attention and controversy, the NYPD did not extensively use its authority to arrest or issue summonses. There were only 141 arrests for social distancing violations and 520 summonses during those four months, an average of 1.8 arrests per precinct and 6.8 summonses per precinct per month. This compares to 1,629 911 calls for service (CFS) relating to the COVID Rules and 60,307 311 CFS relating to the COVID Rules. In general, the overall number of social distancing arrests and summons reported over the four-month period for a population as large as New York City with a department as large as the NYPD appears quite low, especially compared to the level of violations reported through 311 and 911.

The Monitor Team examined the racial distribution of NYPD social distancing enforcement. There was a significant correlation between the non-White population in a given precinct and the number of enforcement actions in those precincts. On closer examination, however, the correlation is likely due to the outsized influence of specific events in three precincts that generated multiple enforcement actions. In addition, precincts with high non-White population also had a higher volume of 911 and 311 calls. Based on the higher number of social distancing-related 911 and 311 calls, precincts with a higher non-White population had a higher probability of enforcement. NYPD's social distancing

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enforcement in the City's precincts closely mirrored the calls for service for social distancing in those precincts.

The Monitor Team's review of the BWC videos of social distancing enforcement revealed that the conduct by officers was overwhelmingly lawful. There was only one incident in which the Monitor Team determined that the video did not illustrate probable cause for the arrest or summons, and one video of summons enforcement incidents in which it appeared that officers made a stop without reasonable suspicion. In addition, officers enforcing social distancing orders from the City and State engaged in Level 3 *Terry* stops very rarely. In those situations in which a *Terry* stop did appear to occur, the video recording indicated the officers had reasonable suspicion for most of the stops, as well as reasonable suspicion for the frisks and a legal basis for the searches, if conducted. The NYPD's enforcement actions of the COVID Rules involved arrests and summonses, which require written documentation. Because there were so few Level 3 *Terry* stops, the issue of underreporting of Level 3 *Terry* stops does not arise in this analysis.

In conclusion, the Monitor's analysis supports the Court's determination that the majority (indeed, the vast majority) of NYPD's social distancing enforcement did not involve suspicionless and racially motivated stops and frisks, and thus fell beyond the ambit of the *Floyd* and *Davis* cases.

Respectfully submitted,

/s/ Peter L. Zimroth

Peter L. Zimroth

Monitor



Attachment: Fourteenth Report of the Independent Monitor

Fourteenth Report of the Independent Monitor

NYPD Social Distancing Enforcement, 2020

Peter L. Zimroth

October 12, 2021

Floyd, et al. v. City of New York
Ligon, et al. v. City of New York, et al.
Davis, et al. v. City of New York, et al.

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Fourteenth Report of the Independent Monitor
NYPD Social Distancing Enforcement, 2020

EXECUTIVE SUMMARY

In March 2020, with the arrival of the COVID-19 pandemic, federal, state and government officials began taking measures to address the spread of the coronavirus. Governor Andrew M. Cuomo announced a stay-at-home order and Mayor Bill de Blasio declared a state of emergency in New York City. All individuals over the age of two were required to wear a mask when in public, and individuals were required to stay a distance of six feet away from persons other than their immediate family. Mayor de Blasio directed the New York City Police Department (NYPD) and other City agencies to enforce the public health COVID rules (COVID rules). The Police Department enforced the COVID Rules from March 2020 to July 2020, when the Mayor transferred the enforcement authority from the NYPD to the New York City Sheriff.

This report examines the NYPD's activities in enforcing social distancing rules between March 2020 and July 2020, whether those activities involved stops, frisks, searches, and trespass enforcement, and whether those activities complied with the requirements of the remedial orders in *Floyd v. New York City*, *Ligon v. New York City* and *Davis v. New York City*.

Although the NYPD's social distancing enforcement garnered a significant amount of media attention and controversy, the NYPD did not extensively use its authority to arrest or issue summonses. There were only 141 arrests for social distancing violations and 520 summonses during those four months, an average of 1.8 arrests per precinct and 6.8 summonses per precinct per month. This compares to 1,629 911 calls for service (CFS) relating to the COVID Rules and 60,307 311 CFS relating to the COVID Rules. In general, the overall number of social distancing

arrests and summons reported over the four-month period for a population as large as New York City with a department as large as the NYPD appears quite low, especially compared to the level of violations reported through 311 and 911.

The Monitor Team examined the racial distribution of NYPD social distancing enforcement. There was a significant correlation between the non-White population in a given precinct and the number of enforcement actions in those precincts. On closer examination, however, the correlation is likely due to the outsized influence of specific events in three precincts that generated multiple enforcement actions. See pp. 12-13. In addition, precincts with high non-White population also had a higher volume of 911 and 311 calls. Based on the higher number of social distancing-related 911 and 311 calls, precincts with a higher non-White population had a higher probability of enforcement. NYPD's social distancing enforcement in the City's precincts closely mirrored the calls for service for social distancing in those precincts. See pp. 21-23.

The Monitor Team's review of the BWC videos of social distancing enforcement revealed that the conduct by officers was overwhelmingly lawful. There was only one incident in which the Monitor Team determined that the video did not illustrate probable cause for the arrest or summons, and one video of summons enforcement incidents in which it appeared that officers made a stop without reasonable suspicion. In addition, officers enforcing social distancing orders from the City and State engaged in Level 3 *Terry* stops very rarely. In those situations in which a *Terry* stop did appear to occur, the video recording indicated the officers had reasonable suspicion for most of the stops, as well as reasonable suspicion for the frisks and a legal basis for the searches, if conducted. The NYPD's enforcement actions of the COVID Rules involved arrests and summonses, which require written documentation. Because there were so few Level 3 *Terry* stops, the issue of underreporting of Level 3 *Terry* stops does not arise in this analysis.

In conclusion, the Monitor's analysis supports the Court's determination that the majority (indeed, the vast majority) of NYPD's social distancing enforcement did not involve suspicionless and racially motivated stops and frisks, and thus fell beyond the ambit of the *Floyd* and *Davis* case.

Fourteenth Report of the Independent Monitor
NYPD Social Distancing Enforcement, 2020

I. Introduction

This report examines the New York City Police Department’s (NYPD) activities in enforcing social distancing rules between March 2020 and July 2020, whether those activities involved stops, frisks, searches, and trespass enforcement, and whether those activities complied with the requirements of the remedial orders in *Floyd v. New York City*, *Ligon v. New York City* and *Davis v. New York City*.

A. Promulgation of COVID Rules

In March 2020, with the arrival of the COVID-19 pandemic, federal, state and local government officials began taking measures to address the spread of the coronavirus. After declaring a statewide emergency on March 7, 2020, N.Y. Exec. Order No. 202 (Mar. 7, 2020), Governor Andrew M. Cuomo announced a stay-at-home order requiring non-essential businesses to “reduce the in-person workforce . . . by 100%” and banning all public gatherings. N.Y. Exec. Order No. 202.8 (Mar. 20, 2020). Mayor Bill de Blasio declared a state of emergency in New York City on March 12, 2020. N.Y.C. Emer. Exec. Order No. 98 (Mar. 12, 2020). The Governor ordered all individuals over the age of two to wear a mask when in public, so long as they could “medically tolerate” one. N.Y. Exec. Order No. 202.17 (Apr. 15, 2020). Mayor de Blasio adopted Governor Cuomo’s orders and directed the NYPD and other City agencies to enforce them. N.Y.C. Emer. Exec. Order No. 108 (Apr. 19, 2020). Appendix 1 lists a timeline of Social Distancing Executive Orders, Directives and NYPD Finest Messages.

On June 1, 2020, the Mayor imposed a City-wide curfew prohibiting all persons from being in public from 11:00 pm to 5:00 am except for police officers, firefighters, emergency medical

technicians and other essential workers. N.Y.C. Emer. Exec. Order No. 117 (June 1, 2020).¹ Also excluded were homeless people, and individuals seeking medical treatment or supplies. Mayor de Blasio stated that the curfew was necessary because large gatherings increased the potential for spread of the virus, and also because peaceful demonstrations in response to the death of George Floyd had been “escalated” by individuals accused of property damage and other crimes. The curfew began on June 1, 2020, and was set to expire on June 8, 2020. N.Y.C. Emer. Exec. Order No. 119 (June 2, 2020). The Mayor terminated the curfew one day early. N.Y.C. Emer. Exec. Order No. 122 (June 7, 2020). On July 17, 2020, the Mayor transferred the authority to enforce the COVID rules from the NYPD to the New York City Sheriff.

B. Plaintiffs’ Motion and Court’s Ruling

On May 26, 2020, Plaintiffs’ counsel in the *Floyd* litigation filed a motion and brief arguing that the City violated prior *Floyd* orders through NYPD officers’ enforcement of the state and local rules promulgated to contain the spread of the COVID-19 virus (COVID Rules), such as social-distancing, mask-wearing and shelter-in-place requirements. Plaintiffs’ Memorandum of Law in Support of Their Motion for Emergency Relief, ECF No. 760, at 1-2 (May 26, 2020) (*Floyd* Mem.). Plaintiffs argued that NYPD officers enforced the COVID Rules against Blacks and Hispanics in a discriminatory fashion. *Id.* at 1-2, 14. As a result, Plaintiffs argued, the City violated (1) the 2013 Liability Opinion in which the Court found that the NYPD’s stop-and-frisk program violated the Constitution; (2) the accompanying Remedial Order that formulated a process for remedying the City’s violations and prescribed certain reforms to NYPD policy; and (3) a subsequent order

¹ The curfew imposed by Executive Order 117 was for one day. Executive Order 118 extended the curfew for a second day and changed the hours of the curfew to 8:00 pm to 5:00 am, and Executive Order 119 extended the curfew to June 8, 2020. N.Y.C. Emer. Exec. Order No. 118 (June 1, 2020); N.Y.C. Emer. Exec. Order No. 19 (June 2, 2020).

approving a revision to the NYPD's policy against racial profiling that responded to the Remedial Order. (*Id.* at 1.) Plaintiffs requested the Court to direct the Monitor to investigate the NYPD's social distancing enforcement and report to the Court, and sought an injunction against any further enforcement of the COVID Rules by NYPD until after the Court ruled on the Monitor's report. Plaintiffs later expanded their request to include the NYPD's enforcement of Mayor de Blasio's June 2020 curfew orders. Plaintiffs' motions were opposed by both the City and the Monitor.

On July 8, 2020, the Court denied the Plaintiffs' motion. The Court determined that much of the police conduct that Plaintiffs alleged and complained of extended beyond the suspicionless and racially motivated stops and frisks addressed by the Court in *Floyd*. The Court also ruled that an injunction barring the NYPD from COVID-19 enforcement would interfere with a wide range of police conduct that is outside the bounds of this case, including lawful enforcement. However, the Court noted that some of the alleged police conduct would fall within the ambit of *Floyd*. For those actions, the Court stated that it was the Monitor's role to assess and report on the NYPD's progress in complying with the Court's mandates. As the Court stated: "The Monitor's work is ongoing and encompasses all suspicionless and race-based stops, including those which may have taken place during the COVID-19 pandemic." Thus, the Court determined that the existing system of review was sufficient.

In making its ruling, the Court relied on the Monitor's assurances that he would request information about enforcement of the COVID Rules, tailored to the *Floyd* remedial process, including requests for information necessary to evaluate stops, frisks, searches and trespass enforcement in the course of enforcing the COVID Rules. This report is the result of those efforts, and reflects the Monitor Team's review and analysis of the data collected and the NYPD's enforcement of the COVID Rules.

II. Quantitative Analysis

Data and information for this report were obtained from the NYPD, the New York State Attorney General’s Office and the Civilian Complaint Review Board. The NYPD provided five main sources of data containing potential social distancing encounters:²

- A list of 141 arrests involving social distancing
- A list of 520 summonses issued for involving social distancing (violation of Administrative Code Section 3-108 “Violation of Mayor’s Executive Order”)
- A list of 1,629 911 calls for service (CFS) relating to the COVID Rules
- A list of 60,307 311 CFS relating to the COVID Rules
- Six stop reports involving social distancing enforcement

In addition, the Monitor Team searched the Axon BWC system for videos tagged with the words “social distancing” during the period from March 10, 2020 to July 17, 2020, and identified 13 videos from eight distinct incidents.

Table 1 below shows that arrests for social distancing violations were rare and concentrated in a handful of precincts. On average, over the four-month period that NYPD enforced the COVID Rules, 1.8 arrests were made per precinct related to social distance violations. The 114 Precinct in Queens had the highest number of arrests with 17, followed by the 40 Precinct in the Bronx with 13. These were the only two precincts in double-digits for social distancing arrests, and 52 precincts (67.5%) had either no arrest or one arrest over the four months.

Table 1 – Summary Data of Social Distancing Enforcement by Precinct Ranked by Total Enforcement

PCT	Arrests	SD SUMM	NYCHA SD ARRESTS	NYCHA SD SUMM	TAP SD ARREST	TAP SD SUMM	Total Enforce Events
69	0	66	0	0	0	0	66
90	2	41	0	3	0	0	46

² The data below does not include curfew violations.

40	13	12	6	10	0	0	41
73	7	33	0	1	0	0	41
100	0	37	0	0	0	0	37
43	7	23	0	3	0	0	33
77	7	22	0	0	0	0	29
47	4	23	0	0	0	0	27
28	4	22	0	0	0	0	26
114	17	6	2	0	0	0	25
44	2	18	0	0	0	0	20
79	5	12	0	0	0	1	18
49	0	16	0	1	0	0	17
75	7	10	0	0	0	0	17
41	1	13	0	2	0	0	16
42	7	8	0	1	0	0	16
48	2	7	0	6	0	0	15
33	0	13	0	1	0	0	14
60	0	14	0	0	0	0	14
103	6	8	0	0	0	0	14
34	1	10	0	0	0	0	11
46	9	2	0	0	0	0	11
23	5	2	3	0	0	0	10
9	3	4	1	0	0	0	8
68	0	8	0	0	0	0	8
72	6	2	0	0	0	0	8
110	0	8	0	0	0	0	8
1	0	7	0	0	0	0	7
113	3	4	0	0	0	0	7
115	1	5	0	0	0	0	6
6	2	3	0	0	0	0	5
30	0	5	0	0	0	0	5
62	3	2	0	0	0	0	5
70	3	2	0	0	0	0	5
76	0	5	0	0	0	0	5
81	2	3	0	0	0	0	5
88	0	5	0	0	0	0	5
94	0	5	0	0	0	0	5
13	1	3	0	0	0	0	4
84	2	2	0	0	0	0	4
45	2	1	0	0	0	0	3
52	0	3	0	0	0	0	3
71	1	1	0	0	1	0	3
83	0	3	0	0	0	0	3
104	0	3	0	0	0	0	3

112	0	2	0	1	0	0	3
5	0	1	0	1	0	0	2
17	0	2	0	0	0	0	2
18	0	2	0	0	0	0	2
67	0	2	0	0	0	0	2
101	0	2	0	0	0	0	2
102	0	2	0	0	0	0	2
106	1	1	0	0	0	0	2
122	1	1	0	0	0	0	2
7	1	0	0	0	0	0	1
25	0	1	0	0	0	0	1
32	1	0	0	0	0	0	1
50	1	0	0	0	0	0	1
61	1	0	0	0	0	0	1
109	0	1	0	0	0	0	1
111	0	1	0	0	0	0	1
10	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0
CPP	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0
26	0	0	0	0	0	0	0
63	0	0	0	0	0	0	0
66	0	0	0	0	0	0	0
78	0	0	0	0	0	0	0
105	0	0	0	0	0	0	0
107	0	0	0	0	0	0	0
108	0	0	0	0	0	0	0
120	0	0	0	0	0	0	0
121	0	0	0	0	0	0	0
123	0	0	0	0	0	0	0
	141	520	12	30	1	1	705

*SD=Social Distancing; SUMM=Summonses

The frequency and prevalence of summonses for social distancing followed a similar pattern to arrests. There was an average of 6.75 summonses issued per precinct over the four-month period, or less than one every other week, and 28 precincts (36.4%) issued one summons or no summonses during this period. The 69 Precinct in Brooklyn had the highest number of

summonses issued, with 66. All of these summonses were issued during one event where an illegal bottle club was shut down.

Table 2 below shows the number of 311 calls and 911 calls relating to social distancing in each precinct for the four-month period in which NYPD enforced the COVID Rules. Table 2 also shows the probability of enforcement – $P(\text{Enf}/\text{CFS})$ – for each precinct, comparing the number of enforcement events (combined summonses and arrests) relative to the number of calls for service (combined 311 and 911). The data shows total enforcement (arrest or summons) for social distancing was more likely relative to 311 or 911 calls for service that mention social distancing in precincts located in Brooklyn (69, 73, 77) Queens (100) and the Bronx (40, 43, 47).

Table 2: Rank of Social Distancing Enforcement Given 311 and 911 Calls for Service

PCT	311 SD	911 SD	Enforce Events	CFS	$P(\text{Enf}/\text{CFS})$
69	246	20	66	266	24.81%
100	297	9	37	306	12.09%
73	445	35	41	480	8.54%
40	780	31	41	811	5.06%
47	689	43	27	732	3.69%
77	783	29	29	812	3.57%
43	890	48	33	938	3.52%
28	720	27	26	747	3.48%
90	1558	37	46	1595	2.88%
49	653	21	17	674	2.52%
103	538	24	14	562	2.49%
41	622	28	16	650	2.46%
48	615	17	15	632	2.37%
60	584	16	14	600	2.33%
42	671	19	16	690	2.32%
23	484	19	10	503	1.99%
33	712	18	14	730	1.92%
79	985	39	18	1024	1.76%
75	1032	45	17	1077	1.58%
113	423	25	7	448	1.56%
76	323	8	5	331	1.51%

110	579	15	8	594	1.35%
44	1434	58	20	1492	1.34%
88	378	14	5	392	1.28%
46	900	27	11	927	1.19%
101	173	8	2	181	1.10%
81	473	19	5	492	1.02%
72	787	21	8	808	0.99%
114	2738	48	25	2786	0.90%
30	596	14	5	610	0.82%
68	997	28	8	1025	0.78%
1	932	11	7	943	0.74%
34	1531	34	11	1565	0.70%
9	1132	30	8	1162	0.69%
84	573	5	4	578	0.69%
62	757	17	5	774	0.65%
6	861	11	5	872	0.57%
115	1073	24	6	1097	0.55%
13	764	17	4	781	0.51%
94	975	12	5	987	0.51%
112	693	11	3	704	0.43%
5	490	6	2	496	0.40%
70	1241	42	5	1283	0.39%
17	527	4	2	531	0.38%
45	827	15	3	842	0.36%
122	670	7	2	677	0.30%
52	1002	34	3	1036	0.29%
67	649	36	2	685	0.29%
71	1013	20	3	1033	0.29%
83	1095	22	3	1117	0.27%
104	1175	19	3	1194	0.25%
106	780	18	2	798	0.25%
102	868	19	2	887	0.23%
7	451	11	1	462	0.22%
18	989	14	2	1003	0.20%
111	497	11	1	508	0.20%
25	512	20	1	532	0.19%
50	676	19	1	695	0.14%
32	797	26	1	823	0.12%
61	999	21	1	1020	0.10%
109	1126	22	1	1148	0.09%
10	481	15	0	496	0.00%
14	452	13	0	465	0.00%
19	1790	28	0	1818	0.00%

20	566	22	0	588	0.00%
CPP	208	0	0	208	0.00%
24	737	17	0	754	0.00%
26	284	2	0	286	0.00%
63	550	13	0	563	0.00%
66	1595	38	0	1633	0.00%
78	740	8	0	748	0.00%
105	517	13	0	530	0.00%
107	627	22	0	649	0.00%
108	1196	27	0	1223	0.00%
120	663	19	0	682	0.00%
121	645	14	0	659	0.00%
123	<u>468</u>	<u>10</u>	<u>0</u>	<u>478</u>	<u>0.00%</u>
	60,299	1,629	705	61,928	1.14%

A. Outlier Analysis

The probability of social distance enforcement relative to calls for service, P(Enf/CFS), were transformed into standardized Z-scores³ to examine enforcement outliers in the City. Any precinct that had a Z-score more than two standard deviations away from the mean was considered an outlier.

Three precincts, the 69 Precinct and 73 Precinct in Brooklyn, and the 100 Precinct in Queens, reported Z-scores of 7.17, 2.11, and 3.27, respectively. Closer inspection of the enforcement data indicates that a few key events occurred in each of these precincts that made them outliers of social distance enforcement. On April 18, 2020, at 8708 Avenue L, 66 summonses were issued for violation of social distancing orders related to an unlawful gathering at an illegal bottle club. This event accounted for 98 percent of all the summonses issued in the 69 Precinct

³ A Z-score, also known as a standardized score, describes the position of a raw score, in this case the probability of enforcement related to Social Distancing calls-for-service, in terms of its relative distance from the average, when measured in standard deviation units. Larger scores, both positive and negative, indicate that a particular score is farther away from the average in the population. Z-scores greater than +/- 2 are considered to be significantly different than expected given the population average and standard deviation.

related to social distancing. Similarly, on May 2, 2020, 15 summonses were issued at one intersection in the 73 Precinct. These represented 45.5 percent of the 33 summonses issued in the 73 Precinct during the study period. Lastly, in the 100 Precinct, all of the 37 summonses issued were related to one event on May 31, 2020. Shots were fired at an occupied RMP (police car) in the vicinity of a large gathering and participants at the gathering were issued summonses. The social distancing enforcement in these three precincts was driven by these isolated events; therefore, it can be concluded that there were no practical outliers in the City during the period under observation. The three events did impact the racial distribution of summons enforcement, as the review of the officer body-worn camera videos demonstrated that most of the individuals issued summonses were Black.

There were zero enforcement events recorded in the following Precincts: 10, 14, 19, 20, Central Park Pct, 24, 26, 63, 66, 78, 105, 107, 120, 12 and 123. Notably, the 66 Precinct in Borough Park, Brooklyn, was the location of several media stories about widespread abuse of social distancing orders. The Hasidic community in this precinct was highlighted in the media for several instances of violating the social distancing orders, but there were no arrests or summonses in this precinct.

Patrol Borough Staten Island as a whole appeared to avoid enforcement of social distancing orders. Only the 122 Precinct reported enforcement actions (one social distancing arrest and one social distancing summons).

In general, the overall number of social distancing arrests and summons reported over the four-month period for a population as large as New York City with a department as large as the NYPD seems quite low. In addition, precincts where enforcement was the highest seem to be

attributable to a few events that drove the social distancing enforcement probabilities higher than expected compared to other precincts.

In addition, the overall enforcement of social distancing by the NYPD appears to be low compared to the level of violations reported through 311 and 911. The ratio of CFS for social distancing to enforcement is 88 to one. Comparing 911 social distancing CFS to arrests illustrates the NYPD's relatively low level of enforcement in this area. For example, according to the FY20 Mayor's Management Report, the NYPD responded to 264,246 "Crime-in-Progress" CFS through 911 and made approximately 215,000 arrests in 2019. Understandably, arrests are made in more situations than crime CFS, but this presents a useful comparison with social distancing enforcement. The general ratio of crime CFS to arrests is about a 1.2 to one. During the four-month period of enforcing the COVID Rules, there were 1,629 911 CFS for social distancing and 140 arrests, or a ratio of CFS to arrests of 11.6 . This indicates that an arrest was 9.5⁴ times more likely for a call for a crime in progress than it was for a call for a social distancing violation.

B. Non-Enforcement NYPD Actions

In undertaking its responsibilities under the Mayor's Executive Orders, the NYPD engaged in other efforts that did not result in enforcement action. For example, an NYPD officer may have warned civilians to keep distance between them, or admonished them to wear a mask. However, there is no data on NYPD warnings or admonishments.⁵ There was no reporting mechanism for social distancing-related interactions and warnings that did not result in a stop, summons or arrest. For this reason, this report does not, and could not, assess whether there might be

⁴ $(1629/140)/(264246 / 215000)=9.46$

⁵ The members of the NYPD also distributed masks to members of the public. Over six million masks were provided to NYPD units to distribute to the public.

differences by race in how NYPD interacted with civilians in non-enforcement activities. Moreover, the task of the Monitor, as noted by the Court, was to evaluate NYPD social distancing enforcement (as opposed to non-enforcement) to see if it involved Level 3 stops and whether the enforcement was racially biased. In addition, although this report examines and evaluates social distancing arrests and summonses, the report does not examine and evaluate circumstances in which NYPD officers could have taken enforcement action (either summonses or arrests), but did not do so. That data, too, is not collected and thus not available to review.

III. Review of Stop Reports Prepared Related to Social Distancing

The NYPD was requested to provide the Monitor all of the stop reports prepared between March 10, 2020, and July 17, 2020, that were related to social distancing enforcement. There were six stop reports provided by the Department involving social distancing. All of the individuals identified on the stop reports were male. One was White Hispanic, two were Black Hispanic, two were Black and one was White. The stop reports, along with the related BWC recordings of the stops, were evaluated. Four of the persons stopped were arrested after the stop. Two were arrested for Criminal Possession of a Weapon, and two others for Criminal Possession of Stolen Property.

In four of the six stop reports, the Monitor Team determined that the stop report articulated a sufficient basis for the stop. In one incident, involving two stop reports, the officers stopped two Black Hispanic men late at night carrying large duffle bags in a burglary-prone location. This incident was also part of the Monitor Team's assessment of stop reports for the 2Q2020, conducted as part of the Monitor's assessment of compliance each quarter. Both the Monitor Team and the NYPD's Quality Assurance Division (QAD) determined that there was an insufficient legal basis for a Level 3 *Terry* stop. The body-worn camera (BWC) video supports this conclusion. During

this encounter, the two individuals stopped were also frisked. These frisks also lacked a sufficient legal basis. The crime investigated was Criminal Possession of Stolen Property and there was nothing in the stop report or BWC video providing reasonable suspicion that the individuals were armed and dangerous. Of the six stop reports, there were two other frisks, which did appear legally sufficient, and there were three searches reported in three different stops, each of which were legally justified.

Because there were only six stop reports that appeared to involve social distancing enforcement, the data is too limited to make any conclusions from these stop reports. However, as detailed below in Section V below, BWC samples were also evaluated to assess whether social distancing enforcement efforts involved Level 3 *Terry* stops.

IV. Analysis of Race and Social Distancing Enforcement

Data from the American Community Survey was used to explore the relationship between social distancing enforcement and race in NYPD precincts. Table 3 below illustrates the population and enforcement data for all precincts. Percentage of population that was non-White, probability of enforcement (the total number of summonses and arrests compared to the number of 311 and 911 calls), and number of enforcement events are listed in the table in both the direct measure and their rank in the City.

A simple correlation analysis shows a significant relationship between the probability of social distancing enforcement relative to calls for service (CFS) and the percentage of non-White residents in the population ($r=0.316$; $p=0.005$). This relationship also holds when the rank of the probability of social distancing enforcement is compared to the rank of the non-White population in a precinct ($r=0.479$; $p<0.001$). There is a significant relationship between the rank of precinct

in the absolute numbers of enforcement events and the percentage of non-White population in a precinct ($r=0.475$; $p<0.001$). Precincts with a high non-White population ranked high in the number of enforcement events (with the top rank being #1). Although the computed correlations indicate a significant relationship, there could be many other reasons that contribute to this relationship. This might suggest that more CFS about social distancing were made in precincts with a higher percentage of non-White populations (a non-racial explanation), or that CFS for social distancing in precincts with a higher White population led to a result other than an arrest or summons, while CFS in minority neighborhoods were more likely to result in an enforcement action (arrest or summons) (an indication of bias). Because there are other reasons for the correlation between the racial characteristics of a precinct and the number of enforcement actions and calls for service, additional analysis is required, as discussed below.

Table 3 – Rank of Social Distance Enforcement and Demographic of Populations

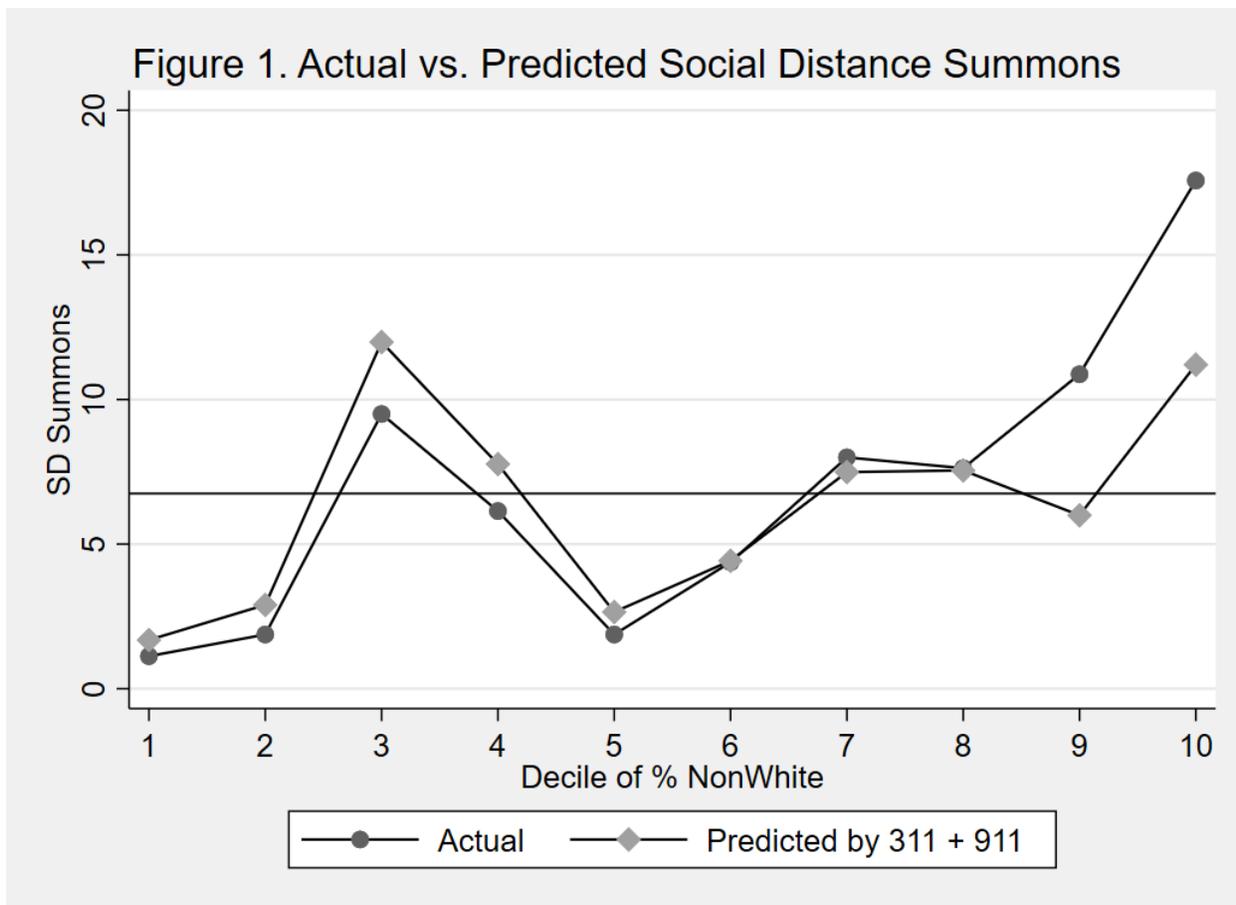
<u>Precinct</u>	<u>Pop.</u>	<u>% White</u>	<u>% Non-White</u>	<u>Rank Non-White</u>	<u>P(Enf/C FS)</u>	<u>Rank of P(Enf/C FS)</u>	<u>Total Enf</u>	<u>Rank Enf</u>
69	90376	5.11%	94.89%	3	24.81%	1	66	1
90	126894	62.12%	37.88%	58	2.88%	9	46	2
73	85165	7.51%	92.49%	5	8.54%	3	41	3
40	97449	16.17%	83.83%	14	5.06%	4	41	4
100	51162	55.09%	44.91%	53	12.09%	2	37	5
43	177488	28.70%	71.30%	24	3.52%	7	33	6
77	95949	24.39%	75.61%	19	3.57%	6	29	8
47	166775	14.38%	85.62%	10	3.69%	5	27	9
28	54390	27.02%	72.98%	22	3.48%	8	26	10
114	190465	46.42%	53.58%	44	0.90%	29	25	11
44	148409	13.21%	86.79%	9	1.34%	23	20	12
79	97468	35.06%	64.94%	34	1.76%	18	18	13
49	120812	36.29%	63.71%	35	2.52%	10	17	14
75	185754	15.04%	84.96%	12	1.58%	19	17	15
41	54575	11.00%	89.00%	8	2.46%	12	16	16
42	87090	8.78%	91.22%	6	2.32%	15	16	17
48	87773	23.72%	76.28%	18	2.37%	13	15	18
103	109558	7.14%	92.86%	4	2.49%	11	14	19

60	102872	62.79%	37.21%	59	2.33%	14	14	20
33	86987	28.73%	71.27%	25	1.92%	17	14	21
46	128352	9.59%	90.41%	7	1.19%	25	11	22
34	122061	31.94%	68.06%	28	0.70%	33	11	23
23	75851	34.76%	65.24%	33	1.99%	16	10	24
110	165484	16.39%	83.61%	15	1.35%	22	8	25
72	125603	36.80%	63.20%	36	0.99%	28	8	26
68	126326	56.48%	43.52%	54	0.78%	31	8	27
9	72565	61.96%	38.04%	57	0.69%	35	8	28
113	135199	1.77%	98.23%	1	1.56%	20	7	29
1	70883	59.34%	40.66%	56	0.74%	32	7	30
115	159317	28.26%	71.74%	23	0.55%	38	6	31
76	48985	66.42%	33.58%	62	1.51%	21	5	32
88	60642	47.83%	52.17%	46	1.28%	24	5	33
81	69343	16.12%	83.88%	13	1.02%	27	5	34
30	64291	28.82%	71.18%	26	0.82%	30	5	35
62	189501	46.54%	53.46%	45	0.65%	36	5	36
6	60479	85.34%	14.66%	76	0.57%	37	5	37
94	62724	70.07%	29.93%	66	0.51%	40	5	38
70	162747	50.84%	49.16%	48	0.39%	43	5	39
84	61574	65.64%	34.36%	61	0.69%	34	4	40
13	93932	74.38%	25.62%	72	0.51%	39	4	41
112	116408	52.22%	47.78%	50	0.43%	41	3	42
45	123678	51.77%	48.23%	49	0.36%	45	3	43
71	102008	26.93%	73.07%	21	0.29%	48	3	44
52	143781	17.95%	82.05%	17	0.29%	49	3	45
83	113432	33.26%	66.74%	29	0.27%	50	3	46
104	183790	70.24%	29.76%	67	0.25%	51	3	47
101	74734	36.86%	63.14%	37	1.10%	26	2	48
5	50123	33.51%	66.49%	31	0.40%	42	2	49
17	73399	71.75%	28.25%	70	0.38%	44	2	50
122	136900	80.96%	19.04%	74	0.30%	46	2	51
67	152070	3.48%	96.52%	2	0.29%	47	2	52
106	134954	44.21%	55.79%	42	0.25%	52	2	53
102	150351	31.25%	68.75%	27	0.23%	53	2	54
18	61160	68.92%	31.08%	65	0.20%	55	2	55
7	53191	37.20%	62.80%	38	0.22%	54	1	56
111	119741	52.99%	47.01%	51	0.20%	56	1	57
25	52555	25.86%	74.14%	20	0.19%	57	1	58
50	105218	43.06%	56.94%	41	0.14%	58	1	59
32	79313	14.97%	85.03%	11	0.12%	59	1	60
61	165222	70.30%	29.70%	68	0.10%	60	1	61
109	244525	40.75%	59.25%	40	0.09%	61	1	62
10	51936	68.16%	31.84%	63	0.00%	62	0	63

14	25082	57.20%	42.80%	55	0.00%	62	0	64
19	203307	84.67%	15.33%	75	0.00%	62	0	65
20	101551	79.63%	20.37%	73	0.00%	62	0	66
CPP	8	33.33%	66.67%	30	0.00%	62	0	67
24	106303	68.20%	31.80%	64	0.00%	62	0	68
26	48303	53.92%	46.08%	52	0.00%	62	0	69
63	117956	50.75%	49.25%	47	0.00%	62	0	70
66	184982	73.15%	26.85%	71	0.00%	62	0	70
78	75605	45.31%	54.69%	43	0.00%	62	0	71
105	200417	16.81%	83.19%	16	0.00%	62	0	72
107	160905	34.21%	65.79%	32	0.00%	62	0	73
108	120199	38.30%	61.70%	39	0.00%	62	0	74
120	109670	63.42%	36.58%	60	0.00%	62	0	75
121	124038	71.62%	28.38%	69	0.00%	62	0	76
123	103492	92.82%	7.18%	77	0.00%	62	0	77

To explore this relationship further, the next analysis looks at the relationship between social distancing enforcement and the percentage of non-White population in precincts. The dark line in Figure 1 below illustrates the average number of social distancing summonses compared to the non-White make up of precincts. The lighter line in Figure 1 is the predicted number of social distancing summonses that would be expected (from a Poisson regression model) if enforcement was based only upon the number of 311 and 911 calls in those precincts.⁶ Figure 1 shows that the actual enforcement closely mirrors that which one would predict based on 311 and 911 CFS.

⁶ A Poisson regression model was fit to the counts, as it provides a perfect approximation of the average counts per precinct before adding in control variables for 311 and 911 calls that mention social distancing violations.



The data in Figure 1 is shown in Table 4. Table 4 shows the results from the comparison of actual and predicted counts of social distance summonses in precincts by deciles of percent non-White. In the top 10 percent (90-100 percentile) non-White precincts, there were an average of 17.57 social distancing summonses. This compares to 11.2 predicted social distancing summonses based on 311 and 911 calls, from a Poisson regression model. The difference of 6.37 extra summonses is not statistically significant according to permutation inference (shuffling social distancing summonses at random 1,000 times to different combinations of precincts). An absolute difference equal to or greater than 6.37 would occur by chance 71 out of 1,000 times, or 7 percent of the time. Table 4 shows that precincts in the bottom 10 percent of the non-White precincts had -.56 fewer average actual (1.13) counts of social distancing summonses compared to predicted

(1.68) counts based on 311 and 911 calls. In comparing the top and bottom 10 percentiles, this suggests that there were approximately seven more summonses than predicted for social distancing in the top 10 percentile precincts relative to bottom 10 percentiles precincts.⁷ Figure 1 and Table 4 show that the actual enforcement follows what one would predict based on 311 and 911 CFS, thus suggesting that the racial composition of precincts is not a main factor in the issuance of social distance summonses.

Table 4 – Actual Social Distance Summonses vs. Predicted Summonses from 311 and 911 CFS

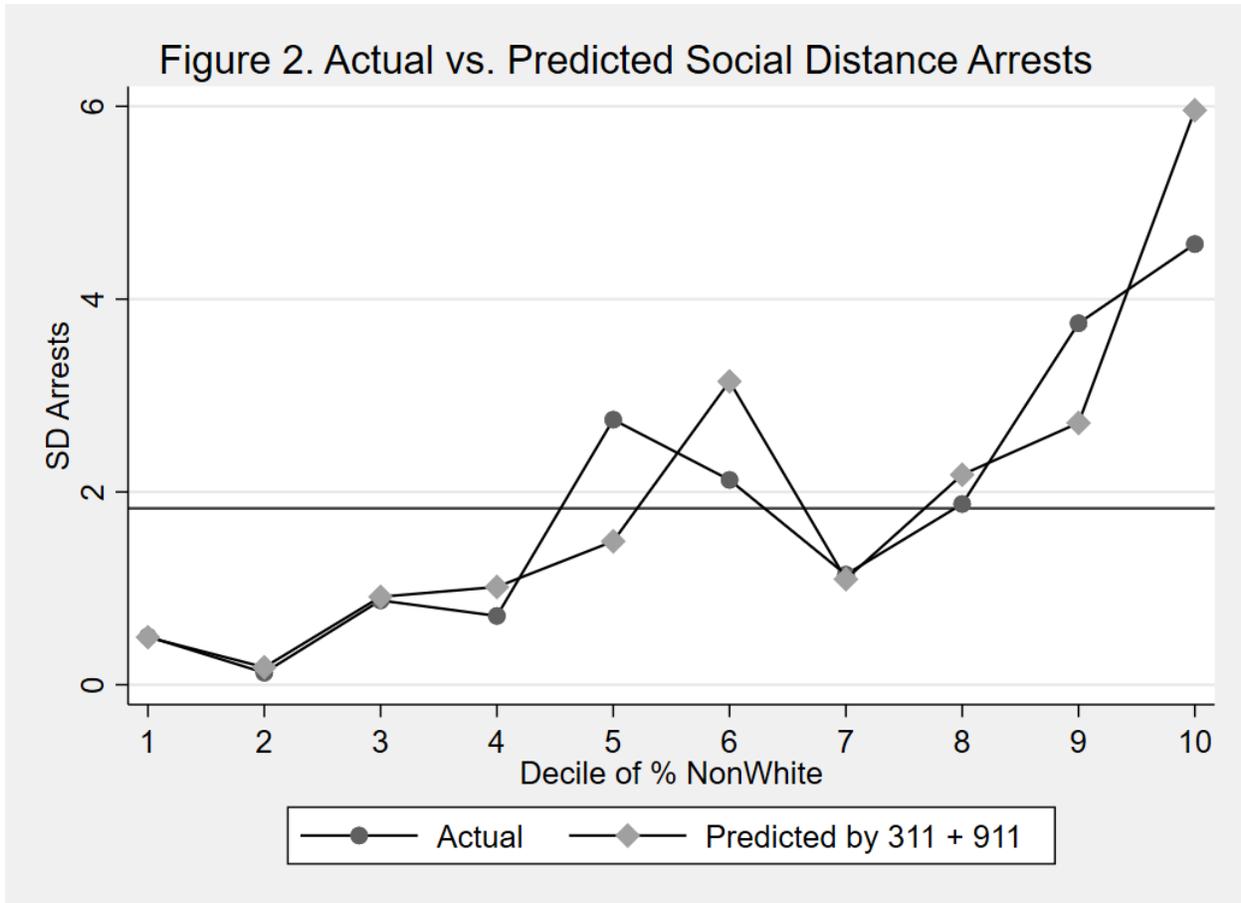
Decile	Precincts	N =	(Actual)	(Predicted)	c	n	p=c/n
			Average	Average			
1.	6, 13, 17, 19, 20, 66, 122, 123	8	1.125	1.685	--	--	--
2.	10, 18, 24, 61, 76, 94, 104, 121	8	1.875	2.899	569	1000	0.569
3.	1, 9, 14, 60, 68, 84, 90, 120	8	9.500	11.99	36	1000	0.026
4.	26, 45, 63, 70, 100, 111, 112	7	6.143	7.766	102	1000	0.102
5.	50, 62, 78, 88, 106, 108, 109, 114	8	1.875	2.652	626	1000	0.626
6.	5, 7, 23, 49, 72, 79, 101, 107	8	4.375	4.426	333	1000	0.333
7.	22, 30, 33, 34, 43, 83, 102	7	8.000	7.490	106	1000	0.106
8.	25, 28, 48, 52, 71, 77, 105, 115	8	7.625	7.549	116	1000	0.116
9.	32, 40, 41, 44, 47, 75, 81, 110	8	10.88	5.997	216	1000	0.216
10.	42, 46, 67, 69, 73, 103, 113	7	17.57	11.20	71	1000	0.071
N=		77	6.75				

Note: c=number of times the actual estimate is \leq or \geq than the value from 1,000 random shuffles; p=probability based on 1,000 shuffles (two-sided)⁸

⁷ Actual-expected in 90-100 relative to 0-10 percentiles was calculated as follows: $(17.57-11.20)-(1.125-1.68)=6.93$

⁸ Technical details on permutation (randomization) inference can be found in the following: Manly, Bryan FJ. "Randomization and regression methods for testing for associations with geographical, environmental and biological distances between populations." *Population Ecology* 28, no. 2 (1986): 201-218; Winkler, Anderson M., Gerard R. Ridgway, Matthew A. Webster, Stephen M. Smith, and Thomas E. Nichols. "Permutation inference for the general linear model." *Neuroimage* 92 (2014): 381-397.

Figure 2 below illustrates the relationship between actual and predicted social distancing arrests compared to the racial characteristics of the precinct, based upon 311 and 911 CFS.



The top 10% of non-White precincts have a higher number of predicted arrests for social distancing than actual arrests. The pattern observed with regard to arrests is similar to the pattern observed with summonses. The actual number of arrests appears to be in lockstep with the predicted levels based on 311 and 911 CFS.

The data in Figure 2 is shown in Table 5, which shows the results from the comparison of actual and predicted counts of social distance arrests by deciles of percent non-White. There was an average of 4.57 social distancing arrests in the top 10 percent (90-100 percentile) non-White precincts. This compares to 5.95 predicted social distancing arrests based on 311 and 911 calls

from a Poisson regression model. The difference of -1.38 fewer social distance arrests is not statistically significant, according to permutation inference (shuffling social distancing arrests at random 1,000 times to different combinations of precincts). An absolute difference equal to or greater than 1.38 would occur by chance 58 out of 1,000 times, or 5.8 percent of the time. There were 5.47 more predicted arrests for social distancing in the top 10 percent of non-White precincts relative to the bottom 10 percent (5.959-0.494), compared to a difference of 4.07 actually observed arrests between the top and bottom percentile precincts (4.571-0.500). Therefore, it appears that social distancing arrests are due to something other than the percentage of non-White residents in a precinct.

Table 5 – Actual Social Distance Arrests vs. Predicted Arrests from 311 and 911 CFS

Decile	Precincts	N =	(Actual)	(Predicted)	c	n	p=c/n
			Average	Average			
1.	6, 13, 17, 19, 20, 66, 122, 123	8	0.500	0.494	--	--	--
2.	10, 18, 24, 61, 76, 94, 104, 121	8	0.125	0.181	310	1000	0.310
3.	1, 9, 14, 60, 68, 84, 90, 120	8	0.875	0.912	536	1000	0.536
4.	26, 45, 63, 70, 100, 111, 112	7	0.714	1.015	499	1000	0.499
5.	50, 62, 78, 88, 106, 108, 109, 114	8	2.750	1.489	299	1000	0.299
6.	5, 7, 23, 49, 72, 79, 101, 107	8	2.125	3.147	86	1000	0.086
7.	22, 30, 33, 34, 43, 83, 102	7	1.143	1.096	452	1000	0.452
8.	25, 28, 48, 52, 71, 77, 105, 115	8	1.875	2.179	139	1000	0.139
9.	32, 40, 41, 44, 47, 75, 81, 110	8	3.750	2.716	144	1000	0.144
10.	42, 46, 67, 69, 73, 103, 113	7	4.571	5.959	58	1000	0.058
N=		77					

Note: c=number of times the actual estimate is \leq or \geq than the value from 1,000 independent shuffles; p=probability based on Permutation test of 1,000 shuffles (two-sided)

V. Analysis of Body-Worn Camera Video

The NYPD has a policy that requires the activation of an officer's body-worn camera (BWC) during certain encounters with the public. Arrests and summons are "mandatory

activation” events, so the likelihood of these encounters having related BWC video recordings was high.

Similarly, BWC activation is required for crimes in progress. There were more than 60,000 311 CFS for social distancing and 1,629 911 CFS, so it appears that the NYPD treated routine reports of social distancing violations as non-emergency and directed them through the 311 system. Therefore, a 911 CFS for social distancing likely included an emergency event or a crime in progress. These types of events are also “mandatory activation” under the NYPD policy and also likely to be recorded on officers’ BWCs.

These four groups of data (arrests, summonses, 911 calls and 311 calls) were examined for the Monitor Team to locate BWC video. Each group was subjected to a different sampling plan. Every arrest identified by the NYPD that was related to social distancing was searched in the Axon BWC system to locate the recording of the event. In numerous instances, more than one arrest was made at a specific location. After an arrest was identified and videos located and viewed, the additional arrests made at that time and location were excluded from the assessment (as the Monitor Team had already observed the encounter from the first arrest). Of the 140 arrests, 78 videos were sampled in the analysis.⁹

⁹A subsequent analysis performed by the NYPD was able to locate videos for most of the arrest encounters in question. In several instances, the arrest was made by another city agency and in others, the MOS who made the arrest was from a unit that had not yet been issued BWCs. In one instance, the failure to record was the result of a dead battery.

The Monitor Team was provided a list of all 520 summonses issued for social distancing. The Monitor Team located BWC video for a sample of 75 summonses. Duplicates were excluded.¹⁰

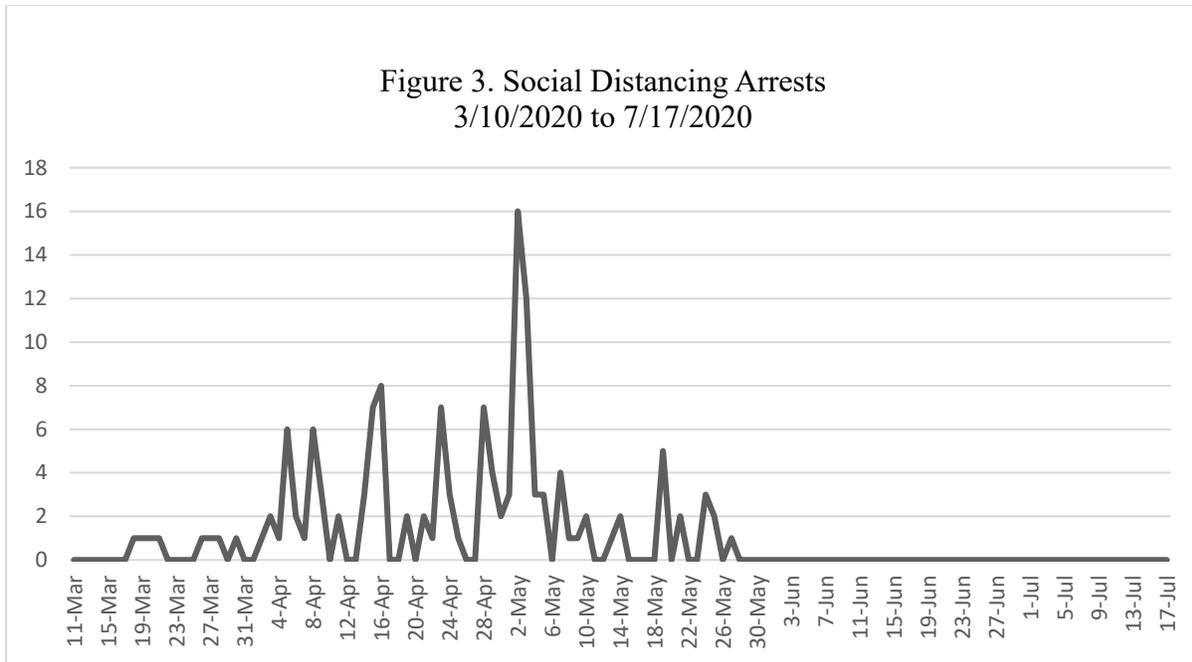
Since arrests and summonses might also appear in the CFS strata, those were assessed first. Any arrest or summons that originates from a CFS was excluded before sampling CFS videos.

911 and 311 CFS offer another potential source of data (1,629 and 60,307). However, 911 and 311 CFS do not necessarily require a mandatory recording of the incident. A random sample of 150 911 CFS and 50 311 CFS videos was selected to determine if they could be matched to a BWC video for assessment purposes.

A. Social Distancing Arrest BWC Analysis

The Monitor Team was provided with summary data of arrests related to social distancing enforcement. NYPD provided the arrest number, date, time, precinct, address and offense information. Below is an illustration of the daily incidence of arrests related to social distancing.

¹⁰ A subsequent analysis performed by the NYPD was able to locate videos for most of the summons encounters in question. In a couple of instances, the MOS who issued the summons was from a unit that had not yet been issued BWCs.



Because the Monitor Team did not have the arresting officer identification, several steps were needed to locate the video in Evidence.com, the Axon system that contains the BWC videos. To locate a video, the following steps were taken:

1. In the Evidence.com search fields, the day and precinct were entered. This returned all of the videos recorded on that day.
2. Using the arrest time, videos recorded one hour before and after were examined to locate possible videos.
3. BWC videos categorized “arrest” within the one-hour window were selected first to identify the incident. It is not known if the videos identified in the master spreadsheet supplied by the NYPD correspond to the arresting officer, but they do show the arrest that was made.
4. Using the street map feature in Google Maps, the videos were viewed and the location in the video was compared to the arrest address provided by the NYPD. When it was clear that the video being assessed was of the arrest in question, it was included in the sample.
5. If a video for an arrest could not be located, that arrest was excluded from the sample, and the next arrest from the sampling frame was used to locate video.
6. Multiple arrests from the same event were also excluded from the sample; therefore, every video corresponds to one enforcement event.

Tables 6 illustrate some key aspects of these encounters. Of the arrests, it appeared that 12 arrests involved a Level 3 *Terry* stop. In all of the Level 3 (L3) stops observed, it appeared that the officer had reasonable suspicion to detain the person stopped.

Table 6. Demographics of Social Distancing Arrests on BWC

Measure	N=	%
Female	10	13%
Male	68	87%
Race		
Asian	3	4%
Black	48	62%
Hispanic	19	24%
Middle East	1	1%
White	7	9%
Probable Cause		
Inconclusive	8	10%
No	1	1%
Yes	69	88%
Was the arrest related to a RS Stop?		
Inconclusive	4	5%
No	62	79%
Yes	12	15%
Was the Arrest Related to Police-Initiated Enforcement?		
No	25	32%
Yes	53	68%
Total	78	

In many cases, it was clear that social distancing enforcement was not the primary goal of the police and that it was only indirectly related. By viewing the videos, the Monitor Team was able to distinguish encounters that were complainant-initiated, where social distancing was only a small part of the encounter and the encounter was primarily related to something else. For example, one video shows the police response to an assault in a liquor store, and social distancing enforcement was involved because a patron refused to socially distance himself from others. The officers responded to a 911 CFS and made an arrest. Therefore, the officers were not primarily enforcing social distancing rules, but social distancing was an element in the assault encounter.

This was the case in 25 of the 78 arrests (32%). The other 53 arrests (68%) were officer-initiated and related to social distancing enforcement.

Out of the 78 arrests, there were 62 in which it was clear that there was no Level 3 encounter; in four arrests, it was inconclusive that the arrest involved a Level 3 encounter; and 12 arrests appeared to involve a Level 3 encounter. In six of those 12 Level 3 encounters, it appeared that the incident was complainant-initiated with social distancing only indirectly related to the encounter. In the other six, there appeared to be a direct connection between social distancing and the officer's enforcement. In two of these six cases, it appeared that the officers approached the defendant because of social distancing and then developed reasonable suspicion that the defendant was armed. In each of these cases, the charge was Criminal Possession of a Weapon. In the four other arrest situations, the officers were engaged in disrupting groups of people congregating, and the situation escalated to the point where the defendants were detained for an investigation before an arrest was made. In one incident, it was determined by the Monitor Team that the officer did not have probable cause to make the arrest. In two others, the person detained had outstanding warrants, and the fourth incident was a house party that escalated into an arrest situation.

In the Level 3 stops observed, the officers appeared to have sufficient legal authority to conduct the nine frisks and searches observed. There was no force used in any of the 12 Level 3 stops observed. In two of the 12 Level 3 stops observed, the officer gave notice that the encounter was being recorded on BWC.

There were four BWC videos of the 78 arrests where it was inconclusive that the encounter involved a stop. The recordings did not allow a conclusion to be drawn either because of the quality of the video (darkness, encounter not observable) or the timing of the recording (activated too late or turned off too early).

In general, there was only one encounter observed in which it appeared that the officer did not have probable cause to make the arrest. In that encounter, an Anti-crime unit stopped an individual they suspected of smoking marijuana, but could not locate the “roach” he allegedly threw in the trash. He was arrested for “Tampering with Evidence.”

Notice of the BWC recording was given in 12 of the 78 arrests and in 56 of the 78 arrests, the BWC recording captured the entire event.

B. Social Distancing Summons BWC Analysis

Similar to the arrest data, the Monitor Team was provided with the summons number, precinct of record, location, date and time of the summons. Figure 4 shows there were 520 summonses issued by the NYPD between March 10, 2020 and July 17, 2020 for social distancing (violation of Administrative Code Section 3-108).

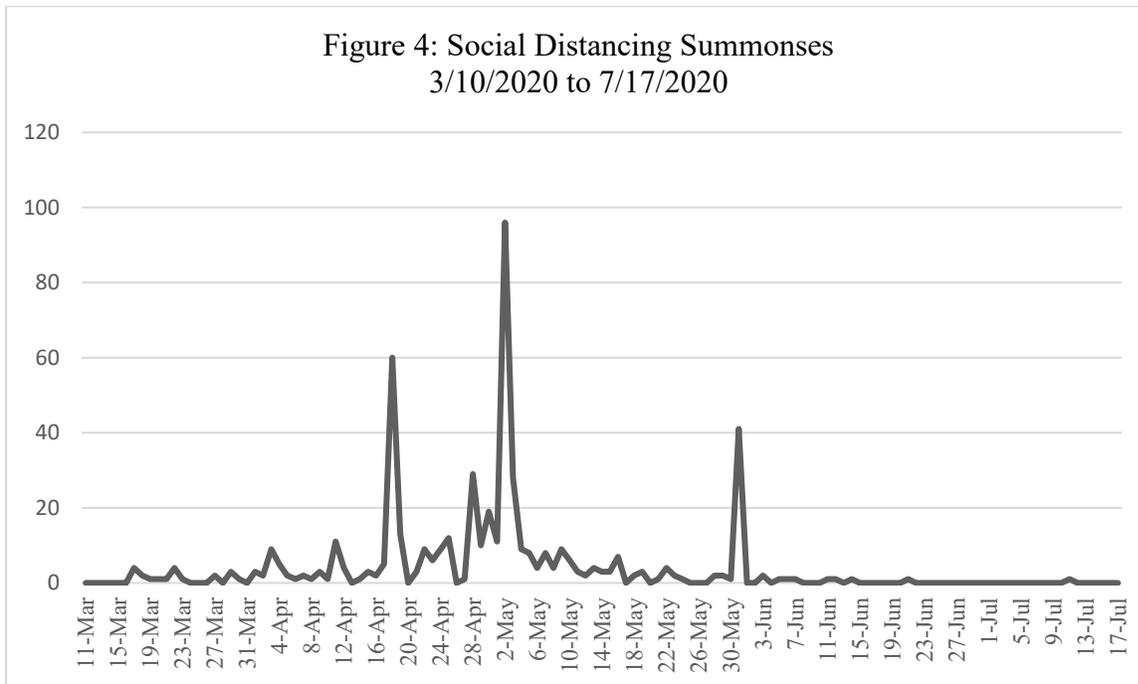
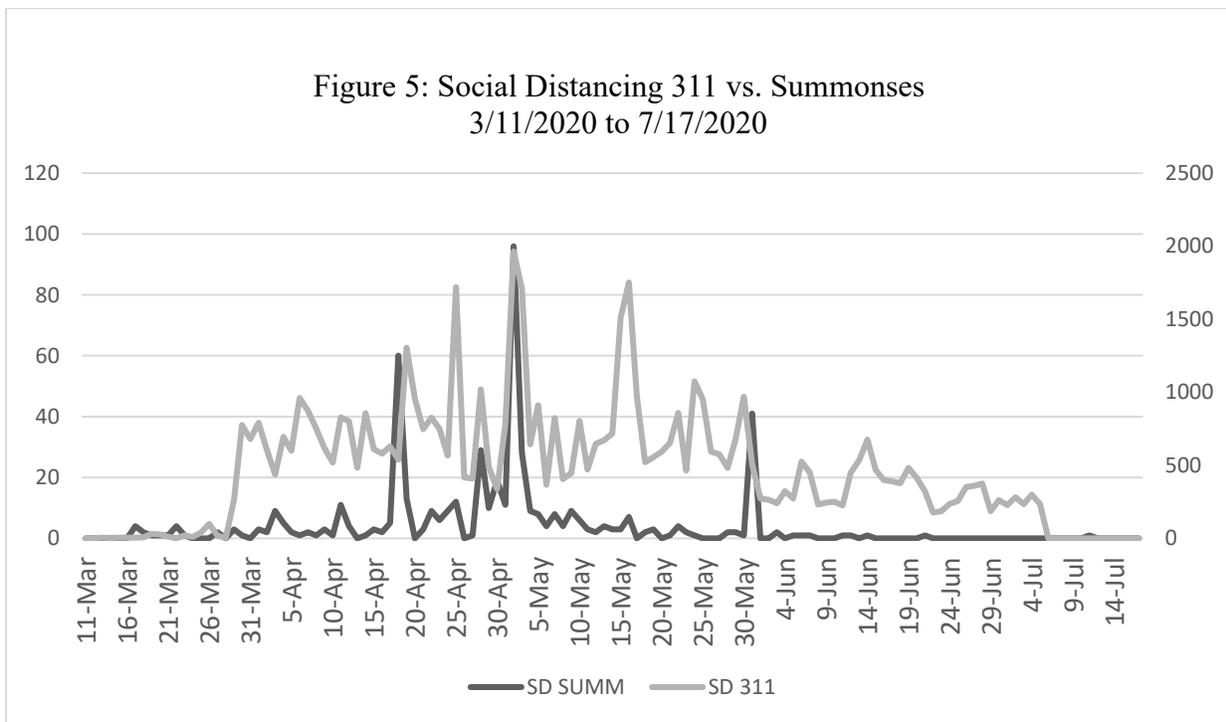


Figure 5 compares the number of social distancing CFS from 311 with the number of summonses issued for violating social distancing orders. Officers were instructed that they may,

but were not required to, issue summonses for violation of NYC Administrative Code Section 3-108, which prohibits the violation of any emergency order established by the Mayor. The right axis reports the number of 311 CFS received, and the left axis reports the number of summonses issued. It appears that enforcement activity was closely related to CFS volume in the second and fourth week of April and the last week of May. Summons activity apparently fell to zero after June 1, 2020.



From the list of 520 summonses, a random sample of 75 summons videos were selected. The Monitor Team followed the same process described above for arrests to locate the video associated with each summons. Any summonses that were duplicates or where a video could not be found were excluded from the analysis. In total, 170 summonses were searched for related video, without

duplicate summonses, to identify a sample of 75 videos for assessment.¹¹ Table 7 shows some key demographics and aspects of these encounters.

Table 7. Demographics of Social Distance Summons on BWC

Measure	N=	%
Female	10	13%
Male	60	80%
Multiple (Males and Females)	4	5%
Inconclusive	1	1%
Race		
Asian	3	4%
Black	24	32%
Hispanic	22	29%
White	21	28%
Multiple	4	5%
Inconclusive	1	1%
Probable Cause		
Inconclusive	17	23%
No	0	0%
Yes	58	77%
Stop Involved?		
Inconclusive	8	11%
No	64	85%
Yes	2	3%
Total	75	

There were only two summonses in which it appeared that a Level 3 *Terry* stop was involved:

- 73 Precinct, May 3, 2020 –A group of persons were on the sidewalk and when the officers approached, the officers smelled marijuana. Since there were multiple people, the smell of marijuana did not provide probable cause for the summonses, so the officers stopped the individuals to investigate. The video shows several people were frisked and searched. A summons was issued for disorderly conduct after a melee ensued.

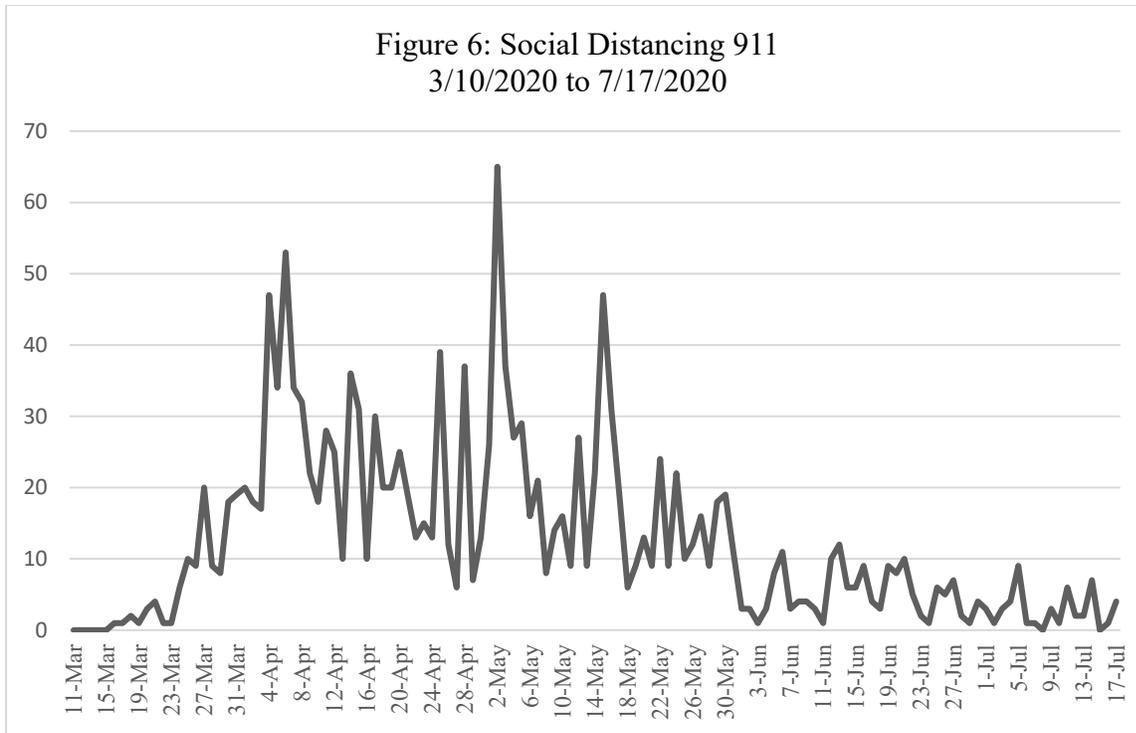
¹¹ See footnote 7.

- 34 Precinct, April 23, 2020 – Officers were checking on a location that had been the subject of social distancing complaints. As the officers approached the location, they observed the subject closing the security gate and locking the front door. The officers detained him and requested that he open the front door so they could inspect inside. He refused and was detained and handcuffed, and his keys were used to open the door. The officers did not appear to have reasonable suspicion for the stop.

In 56 of the 73 videos that had conclusive information, notice was given that the encounter was being recorded. In 44 of the 75 videos, the entire encounter was recorded.

C. 911 CFS for Social Distancing, BWC Analysis

Between March 10, 2020, and July 17, 2020, 1,629 CFS involving social distancing were placed through 911. Figure 6 below shows the frequency of these calls across the study period. There were several spikes in 911 CFS volume: One was between April 14 and 15, another between May 2 and 3, and the last between May 15 and 16. After May 30, 911 CFS seem to have leveled off at low levels.



A sampling frame of these CFS was created. In order to assess if any Level 3 encounters occurred during 911 CFS, 150 events were selected at random from the sample frame. The Monitor Team was provided with the date, time, precinct, address and incident description for each of the CFS. A similar process was used to match each CFS with a video as was used in the arrests and summonses analysis. For the 911 assessment, all videos recorded 60 minutes after the time of the 911 CFS were viewed to determine if they were related to the call. Again, using Google Maps, the location of the call could be matched with the video.

Of the 150 911 CFS selected, 26 events were identified on video. Table 8 illustrate some key aspects of the encounters.

Table 8. 911 Social Distance Calls for Service Sample from BWC

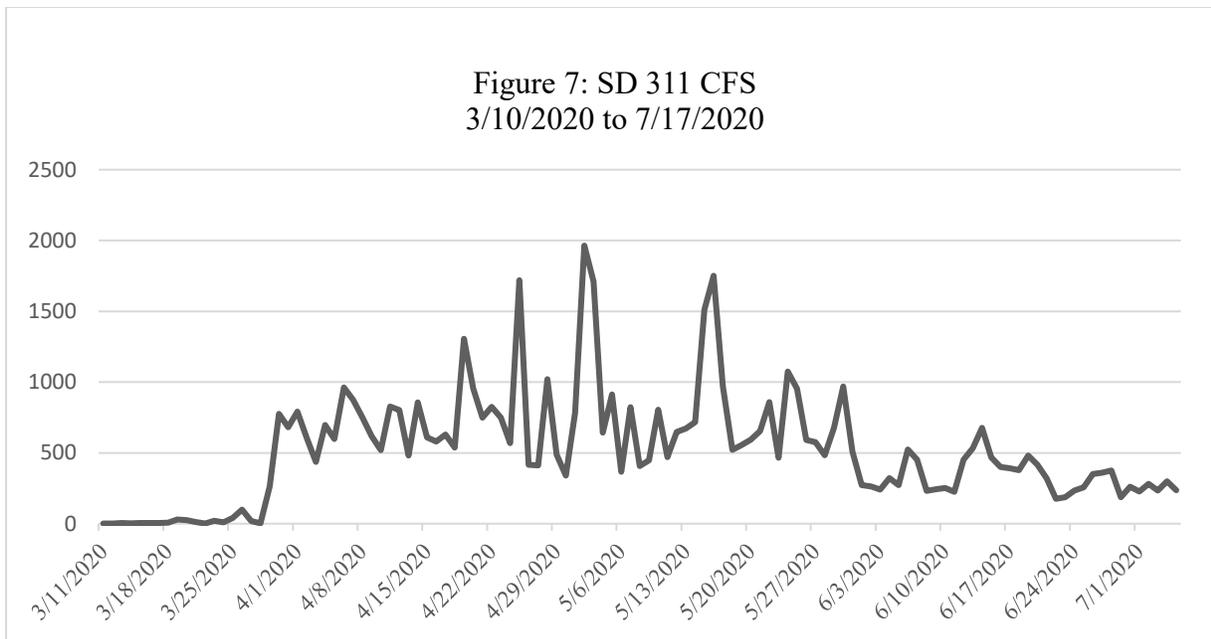
Measure	N=	%
Female	4	15%
Male	13	50%
Multiple	3	12%

None	6	23%
Race		
Asian	2	8%
Black	11	42%
Hispanic	5	19%
White	1	4%
Multiple	1	4%
Inconclusive	6	23%
Level 3 Stop		
No	25	96%
Yes	1	4%
Total	26	

The one incident that was observed to be a Level 3 encounter occurred at 19:15 hours on April 5, 2020, in the 19 Precinct. This was a domestic violence incident that occurred inside a couple's apartment. There was a concern that both parties in the incident had COVID-19 symptoms, and apparently this was categorized as a "social distancing" CFS. One party was detained during the investigation and was not free to leave.

D. 311 Social Distancing CFS Analysis

Between the period March 10, 2020, and July 17, 2020, there were 60,305 CFS placed through 311 reporting social distancing violations. Below is an illustration of the daily incidents of these calls.



Typically, calls to 311 are not criminal in nature. Because of the nature of these CFS, NYPD policy would not require officers to activate their BWCs. Nonetheless, the Monitor Team attempted to determine whether or not there were BWC videos containing information to assess if any Level 3 encounters occurred. In order to explore the feasibility of using 311 CFS data to determine if any Level 3 encounters occurred, a random sample of 50 311 CFS were selected from the population of all CFS. The same process was used here as was used to identify 911-related BWC video.

In only two of the 50 311 CFS was BWC video located. One video showed no encounters; the other showed a Captain requesting people to disperse from congregating on the sidewalk. There were no Level 3 encounters observed in these two instances. Since there was a paucity of data related to the 50 311 CFS and BWC recordings, sampled the Monitor Team did not continue to use 311 CFS in assessing investigative encounters related to social distancing.

E. Analysis of BWC Videos Tagged “Social Distancing”

The Axon BWC system was searched for videos tagged with the words “social distancing” during the period from March 10, 2020, to July 17, 2020. This search returned 13 videos from eight distinct incidents. The incidents were recorded in the 50 Precinct in the Bronx, the 66 and 67 Precincts in Brooklyn, and in the 105 and 109 Precincts in Queens. None of the incidents observed in these recordings involved Level 3 encounters.

In the 50 Precinct, a pair of videos from the same officer at the same event recorded a Captain walking on the sidewalk advising numerous people that they needed to be socially distant and wear masks and requested they disperse from sitting on the sidewalk. There was one recording in the 66 Precinct where an officer from the Mayor’s Task Force closed a religious school, and there were six recordings in the 67 Precinct in Brooklyn, where the same pair of officers responded to the same location three times and instructed people to socially distance and wear masks. In another video in the 105 Precinct in Queens, a pair of officers disperse a large gathering being held in the basement of a home and warn the participants about COVID-19. Lastly, in the 109 Precinct, an officer recorded numerous people in a park playing soccer and advised them to wear masks.

V. Conclusion

In general, the NYPD enforcement of social distancing orders pursuant to Executive Orders from the Governor and Mayor appeared to be restrained. The level of enforcement actions compared to the high volume of CFS from 911 and 311 from the public was lower than expected compared to routine crime complaints and arrests. Although there was a positive and significant correlation between the non-White population in a given precinct and the rank-order and raw numbers of enforcement actions in those precincts, this is likely due to the outsized influence of a

few precincts with specific events that generated multiple enforcement actions. Precincts with high non-White population also had a higher volume 911 and 311 CFS. In addition, there are likely other variables not accounted for in this analysis that might influence both CFS and enforcement levels in the precincts: population density, the number of officers in a precinct, the availability of space for people to gather and maintain social distance, the proclivity of people to call the police and report social distancing violations, and even the overall rate of COVID-19 infections in a precinct could all be related to enforcement, CFS, and race.

The review of the BWC videos of social distancing enforcement reveals that the conduct by officers was overwhelmingly lawful. There was only one incident where the Monitor Team determined that the video did not illustrate probable cause for the arrest or summons, and one video of summons enforcement incidents where it appeared that officers made a stop without reasonable suspicion.

In 12 arrest videos it appeared that the encounter involved a *Terry* stop, but only half of these encounters were directly related to social distancing enforcement in the strict sense. The others were arrests in which the officers were mobilized by a complainant and the incident related to social distancing only indirectly. In addition, there were only two Level 3 encounters in the sample of 75 BWC summonses, and only one Level 3 encounter observed in the sample of videos related to 911 calls: that encounter occurred in an apartment where officers investigated a domestic violence incident. Therefore, it appears that officers enforcing social distancing orders from the City and State engaged in Level 3 *Terry* stops only rarely. The results of the Monitor Team's analysis bolster the Court's ruling that much of the police conduct that Plaintiffs had alleged and complained of extended beyond the suspicionless and racially motivated stops and frisks addressed by the Court in *Floyd*. Furthermore, in those situations in which a *Terry* stop appeared to occur,

the video recording indicated the officers had reasonable suspicion for most of the stops, as well as reasonable suspicion for the frisks and a legal basis for the searches, if conducted.

APPENDIX 1

Timeline of NYPD Social Distancing Orders and Directives

1. March 16, 2020 – NYS Governor’s Executive Order No. 202.3, Continued temporary suspension and modification of laws relating to the disaster emergency. This was an extension of Executive Order No. 202 that declared a state of emergency in New York State due to the COVID-19 pandemic.
 - Canceled any events or large gatherings in excess of 500 people
 - Directed bars and restaurants or bars to cease serving food or beverages on premises.
 - Ceased operation of gaming facilities
 - Ceased operations of gyms, fitness centers and movie theaters
 - Executive Order 202 has been amended 98 times with the last order issued on March 21, 2021

2. March 16, 2020 – NYC Mayor’s Emergency Executive Order No. 100 empowered City agencies to protect the public from the risk of spread of COVID-19.
 - Directed all establishments that offered food and drink be closed until further notice
 - Directed all entertainment venues be closed
 - Directed all commercial gyms be closed
 - Directed agency heads, including the Police Department, to take all appropriate steps to protect the health and well-being of the residents of the City

3. March 16, 2020 – NYPD memo entitled “Enforcement Options for Mayo’s Executive Order: Clubs/Bars and Dining Out Banned.”
 - MOS authorized to vacate premises
 - MOS may issue a C Summons to establishment operator for violations of NYC-AC 3-108
 - Memo provides phone number to Legal Bureau (M-F, 0700x2300), and to Operations Unit
 - Sample narratives for summonses provided

4. March 17, 2020 – FINEST Message suspending enforcement of NYC Administrative Codes 19-176.2(B) and 10-157(K), related to the operation of motorized scooters and e-bikes.

5. March 18, 2020 – FINEST Message about gatherings and commercial establishment restrictions.
 - All entertainment venues must be closed
 - Commercial gyms must be closed
 - Restaurants, cafes and bars that serve food may continue to operate but are prohibited from serving food or alcohol for on-premise consumption
 - NYS Liquor Authority temporarily authorized take-out alcohol purchases
 - Gatherings of more than 50 people are prohibited, except for retail establishments

6. March 20, 2020 – FINEST Message about enforcement options for persons who intentionally or negligently cause or promote the spread of COVID-19.
 - MOS may issue a C Summons for violations of NYC Health Code 11.31(A)(2)
7. March 27, 2020 – FINEST Message about Coronavirus related restrictions.
 - Reminder to stay six feet apart
 - Issuing reminders is the primary mechanism by which the NYPD will be enforcing
 - MOS should engage in summons or arrest activity as a last resort
 - MOS should order to disperse first, and if the order is ignored and people refuse to disperse, issuance of summonses is authorized
 - Guidance given that enforcement should only be used for egregious violations
 - Notice that essential businesses are allowed to be open without restrictions
 - NYPD's only role in enforcing social distance directives in commercial premises is to respond and keep the peace
 - List of essential businesses provided
 - List of closed businesses and prohibited gatherings provided
8. April 14, 2020 – FINEST Message about Mandatory Face Coverings.
 - Mandates that all MOS wear face coverings when dealing with the public
 - Requires essential businesses to provide face coverings to employees
9. April 19, 2020 – FINEST Message about placing masks on prisoners removed to department facilities for arrest processing.
10. May 8, 2020 – NYPD Memo entitled “Comprehensive Guidance on COVID 19 Restrictions.”
 - Parks
 - Gatherings (Public or Private)
 - Face Coverings
 - Open Businesses and Essential Workers
 - Closed Businesses
 - Orders of Protection
 - Evictions and Foreclosures
 - Pistol/Shotgun/Rifle Licenses
 - Drivers Licenses & Vehicle Registrations
 - Intentional Exposure
11. July 17, 2020 – Enforcement responsibility transferred to NY Sheriff's Office.