

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR ENCARNACION, KALEB HAGOS,
KENNETH CLAVASQUIN, and
THE BRONX DEFENDERS,

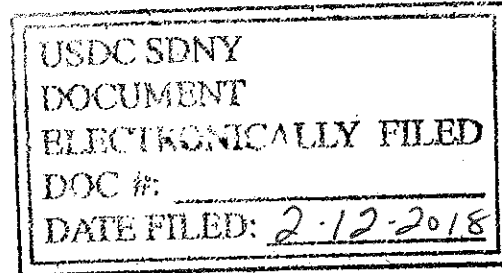
Plaintiffs,

– against –

THE CITY OF NEW YORK,

Defendant.

16-cv-156 (DLC)(JCF)



STIPULATION OF SETTLEMENT AND ORDER

WHEREAS, Plaintiffs Victor Encarnacion and The Bronx Defenders commenced this action on January 8, 2016, alleging, *inter alia*, that the Defendant City of New York (hereinafter “the City”) violated Plaintiffs’ constitutional rights under the Fourth and Fourteenth Amendment through an alleged policy and practice of retaining personal property seized in connection with an arrest after a criminal case is over and without a continued basis to retain the property; and

WHEREAS, the Amended Complaint, filed on June 3, 2016, asserted the same claims on behalf of Victor Encarnacion, Kaleb Hagos, Kenneth Clavasquin, and The Bronx Defenders (collectively “Plaintiffs”), individually and on behalf of a class of similarly situated individuals; and

WHEREAS, neither the initial complaint, nor the Amended Complaint, named the Office of the Bronx District Attorney (the “Bronx DA”) as a defendant in the action; and

WHEREAS, nonetheless, the Bronx DA determined it was in its best interest to implement the procedures detailed herein; and

WHEREAS, in light of the foregoing, the instant matter will be resolved in accordance with the terms below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, attorneys of record for Plaintiffs, and the City, and the Bronx DA, as follows:

DEFINITIONS

1. “ADA” shall mean an assistant district attorney of the Bronx DA.
2. “Bronx DA Property Window” shall mean the publicly accessible location maintained by the Bronx DA at the Bronx Criminal Court.
3. “Claimant” shall mean an individual seeking the return of property taken by the New York City Police Department (“NYPD”).
4. “DA Deferral Letter” shall mean the Bronx DA’s written statement refusing or deferring the release of Seized Property consistent with the requirements of 38 RCNY § 12-34.
5. “DA Release” shall mean a written statement from the Bronx DA that the Seized Property is no longer needed as evidence, consistent with 38 RCNY § 12-34.
6. “DA Release Request” shall mean the submission of a request form to the Bronx DA, by or on behalf of a Claimant, consistent with 38 RCNY § 12-34.
7. “DA Response” shall mean a DA Release or DA Deferral Letter.
8. “Defendant” shall mean the City of New York.
9. “Effective Date” shall mean the date this Stipulation is So Ordered by the District Judge.
10. “Individual Plaintiffs” shall mean Plaintiffs Victor Encarnacion, Kaleb Hagos, and Kenneth Clavasquin.

11. "RCNY" shall mean Title 38 of the Rules of the City of New York at the time of the Effective Date.

12. "Settling Institutional Parties" shall refer to The Bronx Defenders, Defendant, and the Bronx DA.

13. "Seized Property" shall mean property that the NYPD has taken from a Claimant prior to, simultaneous with, or subsequent to an arrest because of its relation to the matter for which a person was arrested.

14. "Termination of Criminal Proceedings" shall have the same meaning as defined in 38 RCNY § 12-34, which is: "the earliest of (i) thirty-one days following the imposition of sentence, (ii) the date of acquittal of a person arrested for an offense, (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (v) six months from the issuance of an "Adjournment in Contemplation of Dismissal" order pursuant to C.P.L. § 170.55, or twelve months from the issuance of such an order pursuant to C.P.L. § 170.56, where the case is not restored to the court's calendar within the applicable six-month or twelve-month period, and (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the district attorney elects not to prosecute such person." However, solely with respect to the return of Seized Property, a criminal

case under the jurisdiction of the Bronx DA that is resolved with an Adjournment in Contemplation of Dismissal shall be considered “terminated” on the date the adjournment is issued.

15. “Voucher” shall mean the invoice prepared by the NYPD for each item of Seized Property, containing the name of the person, an itemized list of property taken, a brief description thereof, and notice of the procedures and deadlines to obtain the return of the property consistent with the requirements of 38 RCNY § 12-32.

REFORMS BY THE NYPD

16. The NYPD shall follow practices consistent with RCNY § 12-32 to provide an individual with a Voucher for all property seized pursuant to an arrest no later than the time of arraignment, or alongside Desk Appearance Ticket (“DAT”) paperwork when a DAT is issued, absent extraordinary circumstances. The Voucher may be provided directly to the individual or to the individual by delivery to the individual’s attorney. The NYPD shall implement policies and procedures, training, supervision, monitoring, and discipline sufficient to ensure compliance with RCNY § 12-32.

17. The NYPD shall provide the Bronx DA with the “ADA” copy of the Voucher(s) at the time that an officer meets with the ADA in court prior to arraignment, or alongside DAT paperwork when a DAT is issued, absent extraordinary circumstances.

18. Contact information for the Bronx DA’s Property Release Unit, as described herein, shall be provided on notices available at the Bronx NYPD Property Clerk window.

19. Within 90 days of the Effective Date of this Stipulation, if it has not done so already, the NYPD shall provide in-service training to ensure that employees of the NYPD

Property Clerk are aware of, and are following, the relevant policies and practices described in this Stipulation.

20. NYPD has agreed to modify Section 208-03, subsection 12e of the Patrol Guide to clarify that personal property, including proof of the arrestee's identity (i.e. Driver's Licenses, employee identification cards, etc.) will not be vouchered except in special circumstances such as where the arrestee is intoxicated, and/or where the proof of identity constitutes potential evidence in and of itself. A copy of the language for the proposed modification to Section 208-03, subsection 12e of the Patrol Guide is attached hereto as Exhibit "B." Consistent with this clarification of policy, on January 16, 2018, NYPD issued a "Finest Message/Training Bulletin," reminding members of service that identification documents should only be vouchered when a prisoner is unconscious or intoxicated, or if the documents are relative to the crime charged. A copy of this "Finest Message/Training Bulletin" is attached hereto as Exhibit "C."

21. Consistent with the memo issued by NYPD to the NYPD Property Clerk on November 30, 2017 and the January 18, 2018 Fourth Endorsement of the UF 49 (collectively referred to herein as the "UF 49"), in circumstances where a Claimant is seeking the return of Seized Property and a Claimant's proof of identity has been vouchered, NYPD Property Clerk staff shall retrieve the proof of identity from the inventory bag to attempt to verify the Claimant's identity, except in extraordinary circumstances. A copy of the UF 49 is attached hereto as Exhibit "D."

22. As memorialized in the UF 49, except in extraordinary circumstances, for Claimants seeking a copy of their Voucher or the release of Seized Property the NYPD Property Clerk shall accept a single, valid, government issued, photo ID bearing the appropriate name and

address of a Claimant, provided such ID is sufficient to establish the Claimant's identity. See Exhibit "D."

23. As set forth in the UF 49, except in extraordinary circumstances, the NYPD will, upon presentation of proper identification, permit attorneys for Claimants and employees of attorneys' legal firms to obtain a copy of a Voucher from the NYPD Property Clerk by submitting a written request, signed by an attorney, on the law firm's letterhead, stating that his or her legal firm represents the Claimant, and designating by name any employee of his or her legal firm to request and obtain a copy of the Voucher on behalf of the Claimant. See Exhibit "D."

24. If in Defendant's assessment Section 208-03, subsection 12e of the Patrol Guide (Exhibit "B") or the practices set forth in the UF 49 (Exhibit "D") or described in paragraphs 20 through 23 above require modification or revision during the time period in which this Court retains jurisdiction over this Stipulation, Defendant will follow the procedure for modifications set forth in paragraphs 47-51 herein. However, for the time period in which this Court retains jurisdiction over this Stipulation, in the event of unforeseen or exigent circumstances, Defendant may change or deviate from the practices provided in the Section 208-03, subsection 12e of the Patrol Guide and the UF 49 or described in paragraphs 20 through 23 above pending the convening of the Working Group, as defined herein, upon written notice to Plaintiffs' counsel of the unforeseen or exigent circumstances, the modification or deviations sought, and the interim change in practice.

25. On January 16, 2018, NYPD issued a "Finest Message/Training Bulletin" reminding members of the service to provide a Voucher to an arrestee no later than the time of arraignment in Court or the issuance of a Desk Appearance Ticket. See Exhibit "C."

26. On January 16, 2018, NYPD issued a “Finest Message/Training Bulletin” reminding all commands that notices setting forth the procedures to be followed to obtain the return of Seized Property must be posted in conformance with 38 RCNY § 12-33, in the holding areas of each station house, in all central booking facilities within the City, and in each courthouse holding area within the City which is within the control of the NYPD. A copy of this “Finest Message/Training Bulletin” is attached hereto as Exhibit “E.”

27. As part of the Quality Assurance Division’s (“QAD”) routine evaluation of command compliance with NYPD’s policies and procedures, QAD will audit compliance with Patrol Guide Section 218-30 “Invoicing Property Taken From a Person’s Possession.” Absent exigent circumstances, these QAD audits will be conducted at minimum on a quarterly basis throughout the time period in which this Court retains jurisdiction over this Stipulation. Defendant will inform Plaintiffs’ counsel at the Working Group meetings, as described in paragraph 46 of this Stipulation, that the audits were conducted.

INTERVENTION OF THE BRONX DA

28. The Bronx DA, Plaintiffs, and Defendant consent to the intervention of the Bronx DA in this action solely for the purpose of this Stipulation and Order.

REFORMS BY THE BRONX DA

29. The Bronx DA shall follow practices consistent with 38 RCNY § 12-34(d) to ensure the timely issuance of DA Responses to DA Release Requests submitted to the Bronx DA for the release of Seized Property. The Bronx DA shall implement policies, procedures, training, and supervision sufficient to follow these practices. The Bronx DA has updated and will maintain a written Standard Operating Procedure for the Property Release Unit to establish and

maintain protocols that ensure compliance with the RCNY (current version attached hereto as Exhibit "A").

30. The Bronx DA has created and will maintain a request form for Claimants to make a DA Release Request that seeks release of Seized Property ("Request Form"). The Request Form will be provided to Claimants at the Bronx DA Property Clerk Window and will be date-stamped at the time of submission. A copy of the current Request Form is appended to Exhibit "A," the Property Release Unit Standard Operating Procedure.

31. The Bronx DA has created, implemented, and will maintain the BXDA Property Release Application or another suitable computer program, which tracks the date Request Forms are submitted to the Bronx DA and the response time for each request.

32. Consistent with 38 RCNY § 12-34(b), along with a Request Form, a DA Release Request shall be accompanied by (a) a copy of the Voucher or, if the Voucher is lost or absent, an explanation for its loss or absence, (b) proper identification, and (c) suitable case identification, such as an arrest number, criminal case docket number, New York State ID number (NYSID), or Voucher number. The Bronx DA may waive the requirements for a Voucher as set forth in 38 RCNY 12-34(b) where the ADA copy of the Voucher is available.

33. Consistent with RCNY § 12-34(d), except as otherwise provided for in paragraph 37 of this Stipulation, after the Termination of Criminal Proceedings, the Bronx DA shall provide a DA Release to a Claimant upon request unless the DA determines that the Seized Property needs to be retained as evidence due to (i) a pending appeal; (ii) a collateral attack or notice that a collateral attack will be commenced; (iii) another specifically identified criminal proceeding or (iv) an ongoing identifiable criminal investigation.

34. For cases that reach a disposition at arraignments and cases where the Bronx DA has declined prosecution, the Bronx DA will make reasonable efforts to issue a DA Response on the same day that the request is made.

35. In all other instances, the Bronx DA will issue a DA Response to submitted Request Forms no later than fifteen (15) days after submission for general property and in accordance with the Third Amended Order in *Krimstock v. Kelly*, 99 Civ. 12041 (HB) (S.D.N.Y. Oct. 1, 2007) for vehicles.

36. The Bronx DA shall not issue a DA Deferral Letter on the basis that a Claimant: (a) has other open cases unrelated to the property at issue; (b) has outstanding sentencing conditions, such as probation, community service, or fines; or (c) in instances where the underlying criminal case was resolved based on an adjournment in contemplation of dismissal, but the charges have not yet been dismissed.

37. The Bronx DA shall not issue a DA Deferral Letter solely on the basis of a possible or planned civil forfeiture proceeding that has not yet been commenced. Where a civil forfeiture proceeding has been commenced, the DA Deferral Letter will attach, when available, paperwork documenting the commencement of the civil forfeiture action or other case information, such as the court, case number, case status, and the agency that commenced the action.

38. In cases where a DA Deferral Letter is issued, the Bronx DA will inform Claimants in writing of their ability to seek review of the decision pursuant to 38 RCNY § 12-34(e).

39. The Bronx DA has created and will maintain a Property Release Unit. A designated Bronx ADA will be available during the Unit's standard business hours to consult

with Property Release Unit staff where necessary to respond to inquiries and issues concerning submitted Request Forms.

40. The Bronx DA has created and will maintain a dedicated inquiry phone line to respond to inquiries regarding the status of submitted Request Forms, including whether a response from the Bronx DA is available and, if so, whether a DA Release or a DA Deferral Letter was issued.

41. The Bronx DA will, upon presentation of proper identification, permit attorneys for Claimants and employees of attorneys' legal firms to obtain a copy of a DA Release or DA Deferral Letter by submitting a written request, signed by an attorney, on the law firm's letterhead, stating that his or her legal firm represents the Claimant, and designating by name any employee of his or her legal firm to obtain the DA Release or DA Deferral Letter on behalf of the Claimant.

42. The Bronx DA Property Window, Property Release Unit, and inquiry phone line will operate during standard business hours, or at a minimum from 8:30am-4:00pm Monday through Friday, excluding holidays and other court closures.

43. The Bronx DA has implemented and will maintain policies and procedures, training, supervision, and monitoring programs sufficient to follow, apply, and ensure that the standards and protocols set forth in this Stipulation are met.

44. The Bronx DA will comply with 38 RCNY § 12-32(f) regarding the provision of notice of the procedures for obtaining return of property when a Claimant appears at arraignment.

45. The Bronx DA shall provide Counsel for Plaintiffs with quarterly reports setting forth the following information for each case in which Seized Property was vouchered pursuant

to a defendant's arrest: (a) status of the case (open or closed); (b) date of DA Release Request, if applicable; (c) date of DA Response; and the (d) response issued; i.e. DA Release or DA Deferral Letter.

THE WORKING GROUP

46. Immediately following the Effective Date of this Stipulation, a Working Group will be established, which shall include representatives from each Settling Institutional Party, including NYPD and Bronx DA personnel fully familiar with the property release procedures referenced in this Stipulation, as well as other representatives of Plaintiffs' and Defendant's choosing. The purpose of this Working Group will be to meet periodically to share information relevant to implementation of the Stipulation, share expertise on issues concerning property seizure and release, and address any disputes or proposals to modify the Stipulation under the procedures set forth in paragraphs 47-51 herein. The parties shall maintain the Working Group during the two year period immediately following the Effective Date. The Settling Institutional Parties may voluntarily continue the Working Group beyond that time period and outside of the scope of this Stipulation.

RECOURSE UNDER THE STIPULATION

47. During the time period in which this Court retains jurisdiction over this Stipulation as specified in paragraph 66 below, any dispute arising out of or related to this Stipulation concerning any asserted failure by NYPD or the Bronx DA to comply with any provision of this Stipulation, or a request for a modification to this Stipulation by a Settling Institutional Party, may be submitted to this Court after following the procedure set forth in paragraphs 48-51. This Court may adjudicate any such dispute and grant all appropriate relief.

48. Any Settling Institutional Party raising a dispute or seeking a modification related to this Stipulation shall provide the other Settling Institutional Parties to this Stipulation with prompt written notice specifying the nature of the dispute, along with a demand to promptly convene and attend a meeting of the Working Group. The Settling Institutional Parties shall make good faith efforts to convene the Working Group within twenty-one (21) days following the written notice.

49. Should the Defendant or the Bronx DA agree that it is not in compliance with any of the specified term(s) of the Stipulation after receipt of notice pursuant to paragraph 48 above, Defendant or the Bronx DA shall have a reasonable period of time to specifically perform said term(s) prior to any requests for judicial intervention, with such time period to be mutually agreed through the good faith efforts of the Settling Institutional Parties and their counsel, but such period shall be no fewer than twenty-one (21) days. Should the Defendant or the Bronx DA specifically perform the term(s) raised in said notice within such reasonable period of time, the Settling Institutional Parties shall not be required to convene the Working Group, and the Plaintiffs shall not have recourse to apply to the Court for any relief.

50. If representatives of the Settling Institutional Parties in the Working Group fail to convene within twenty-one (21) days following the written notice the parties may apply to the Court for appropriate relief; however, if the Working Group convenes and the Settling Institutional Parties are unable to reach agreement to resolve a modification or dispute, the party alleging non-compliance or seeking modification may not apply to the Court for appropriate relief until at least seven (7) days after convening the Working Group. A party may apply to the Court sooner if it is able to demonstrate to the Court that such action is justified in the circumstances.

51. If at any time during the two year period immediately following the Effective Date, Defendant and/or the Bronx DA becomes aware of any change in federal or state law (including regulations, interpretation of law and regulations by authorized governmental agencies, and/or interpretations by the Courts), that Defendant and/or the Bronx DA believes changes their legal obligations or responsibilities under this Stipulation, Defendant and/or the Bronx DA shall make good faith efforts to promptly notify Plaintiffs' counsel once it has been determined a change to the stipulation is required. Defendant and/or the Bronx DA may immediately commence acting in accordance with the change in state or federal law and shall notify Plaintiffs' counsel of said change in action within fourteen (14) days of implementing the change. Following the procedure for modifications set forth in paragraphs 48-50 above, the Settling Institutional Parties shall attempt to come to an agreement as to any proposed modifications to the Stipulation that are warranted by the change in state or federal laws, interpretation of law and regulations by authorized governmental agencies, and/or interpretations by the Courts. If representatives of the Settling Institutional Parties in the Working Group fail to convene within twenty-one (21) days following the written notice, the party opposing the modification may submit the dispute to the Court; however, if the Working Group convenes and the Settling Institutional Parties are unable to reach an agreement, the party opposing the modification may not submit the dispute to the Court until at least seven (7) days after convening the Working Group. A party may apply to the Court sooner if it is able to demonstrate to the Court that such action is justified in the circumstances. Any application to the Court with respect to alleged changes in the law shall be made pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Should the party opposing the modification fail to submit a dispute to the Court pursuant to this paragraph, Defendant and the Bronx DA may continue acting in accordance with

the change, notwithstanding that it may not otherwise comply with the provisions of this Stipulation. The filing by Plaintiffs of an appeal of an adverse decision by the Court shall not operate as a stay of Defendant's right to implement the proposed modification without further order of the District Court or the Court of Appeals.

52. Subsequent to the two-year period immediately following the Effective Date of this Stipulation, Defendant and/or the Bronx DA may act in a manner consistent with the law notwithstanding the fact that their actions may not be consistent with the terms of this Stipulation; and the Defendant and Bronx DA shall not be required to notify Plaintiffs of any such change in their actions.

53. The remedies with regard to specific individuals for alleged improper delay in the issuance of a DA Response or denial of the issuance of a DA Release by the Bronx DA, or the denial of the release of Seized Property held by the NYPD Property Clerk, which do not suggest a systematic pattern of non-compliance with the terms of this Stipulation, shall lie exclusively in the available State and City administrative remedies, subject to review under the procedures governed by city and state laws and rules.

NOTICES

54. All notices under the Stipulation shall be delivered by overnight mail or overnight courier, with an additional copy by email, and shall be addressed as follows:

FOR THE PLAINTIFFS:

Johanna B. Steinberg
The Bronx Defenders
360 East 161st Street
Bronx, NY 10451
Email: johannas@bronxdefenders.org

FOR THE DEFENDANT

Aviva Horowitz, Assistant Corporation Counsel
New York City Law Department,
Administrative Law Division
100 Church Street,
New York, NY 10007
Email: ahorowit@law.nyc.gov

and

Sherrill Kurland, Assistant Corporation Counsel
New York City Law Department,
Administrative Law Division
100 Church Street,
New York, NY 10007
Email: skurland@law.nyc.gov

FOR THE BRONX DA:

Julian B. O'Connor, General Counsel
Office the District Attorney, Bronx County
198 E. 161st Street
Bronx, New York 10451
Email: Oconnorjb@Bronxda.nyc.gov

55. The Settling Institutional Parties may substitute the individual designated to receive notice by advising all other parties in a writing sent by overnight mail or overnight courier, and by email.

INDIVIDUAL PLAINTIFFS' DAMAGES CLAIMS

56. The Bronx DA has issued DA Releases to the Individual Plaintiffs for the Seized Property referred to in the Amended Complaint.

57. The NYPD Property Clerk has released the Individual Plaintiffs' Seized Property referred to in the Amended Complaint.

58. Defendant will pay a total of \$10,000 in full and complete satisfaction of any and all of the Individual Plaintiffs' damages claims, except for attorneys' fees and litigation expenses. The payments shall be made by check or check(s) within ninety (90) days of receipt

by the Office of Corporation Counsel of the following executed documents and information by Plaintiffs: (1) the Stipulation of Settlement and Order; (2) the agreed upon Release forms; (3) Affidavits of No Liens; (4) W-9 forms; and (5) dates of birth and social security numbers. The check(s) will be made out to each Individual Plaintiff and delivered to Johanna B. Steinberg, The Bronx Defenders, 360 East 161st Street, Bronx, NY 10451. Plaintiffs' counsel will be responsible for remitting this sum to the Individual Plaintiffs.

59. The Individual Plaintiffs represent that they are not Medicare recipients at the time this Stipulation is executed or at any time prior thereto. Plaintiffs shall hold Defendant and the Bronx DA harmless for any Medicare liens, and for past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, Defendant reserves the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

PLAINTIFFS' RELEASE OF CLAIMS

60. In consideration of the terms and conditions called for herein, Plaintiffs remise, remit, release and completely and forever discharge Defendant and the Bronx DA, their departments, officials, agents, attorneys, servants, representatives, and employees and all other persons with whom any of the former have been, are now or may hereinafter be affiliated, of and from any and all past or present claims, demands, obligations, actions, causes of actions, suits, rights, damages, debts, sums of money, costs, expenses, and any claims, in law and equity, for relief or punitive or other damages of any type which have accrued as of the Effective Date of this Agreement, and which relate to the allegations contained in, or arising from, the Complaint and Amended Complaint in this action, except as otherwise provided for in paragraph 61 of this

Stipulation. Each of the Plaintiffs hereby acknowledges and agrees to sign the agreed upon release form as a condition for payment of damages. The Individual Plaintiffs further hereby waive, release and forever discharge Defendant and the Bronx DA from any and all claims, known or unknown, past and/or future conditional payments, arising out of the Plaintiff's Medicare eligibility and receipt of Medicare benefits related to the claimed injury in this matter and/or arising out of the provision of primary payment (or appropriate reimbursement) including causes of action pursuant to 42 U.S.C. §1395y(b)(3)A of the Medicare, Medicaid and SCHIP Extension Act of 2007.

ATTORNEYS' FEES AND COSTS

61. Defendant agrees to pay Plaintiffs' reasonable costs and attorneys' fees through the Effective Date, either pursuant to stipulation or if a stipulation is not entered into, pursuant to the Order of the Court. If the Defendant and Plaintiffs cannot resolve the matter of costs and attorneys' fees via stipulation, Defendant agrees to pay Plaintiffs' reasonable costs and attorneys' fees associated with negotiating and litigating a fee application to the Court, in the event that such fees associated with negotiating and litigating a fee application are awarded by the Court. Plaintiffs and Defendant agree that, if a stipulation to pay Plaintiffs' reasonable costs and attorneys' fees is not executed within 14 days after the Effective Date of this Stipulation, then the deadline set forth for filing a motion for attorneys' fees and related non-taxable expenses under Rule 54(d)(2)(B) of the Rules of Civil Procedure will be extended by four months and may be further extended by subsequent agreement of Plaintiffs and the Defendant or as the Court permits.

62. Plaintiffs reserve their rights to seek attorneys' fees and costs after the Effective Date of this Stipulation, and Defendant reserves its rights to oppose such fees and costs. If any

dispute arises concerning attorneys' fees and costs after the Effective Date, Plaintiffs may submit an application to the Court for reasonable costs and attorneys' fees associated with the enforcement of this Stipulation.

63. Plaintiffs shall not seek any costs or attorney's fees from the Bronx DA in connection with this litigation.

MODIFICATION OF THE AGREEMENT

64. The terms of this Stipulation may only be modified by a written agreement signed by the attorneys for all of the Settling Institutional Parties, or upon an Order of the Court.

EFFECT OF SETTLEMENT STIPULATION AND RELEASE

65. The terms of this Stipulation shall be a full, final, and complete resolution of this action.

66. Upon the execution and "so-ordering" of this Stipulation, the action will be dismissed. This Court will retain Jurisdiction to hear and resolve disputes arising under or related to this Stipulation and to otherwise enforce the terms of this Stipulation for a period of two years following the Effective Date of this Stipulation. During the period in which this Court retains jurisdiction over this Stipulation, Plaintiffs shall not commence any action or proceeding against the Bronx DA or the Defendant arising from the terms of this agreement and Stipulation except as otherwise provided in this Stipulation.

67. This Stipulation contains all the terms and conditions agreed upon by the Individual Plaintiffs and the Settling Institutional Parties, and there are no other terms relied upon by the Individual Plaintiffs and the Settling Institutional Parties, verbal or otherwise.

68. This Stipulation may be signed in multiple counterparts and all counterparts when so executed shall together be deemed one final original instrument.

69. If for any reason any provision of this Stipulation is determined to be invalid or unenforceable, the remaining provisions of this Stipulation shall be construed, performed, or enforced as if the invalidated or unenforceable provision had not been included in the text of the Stipulation.

70. The Individual Plaintiffs and the Settling Institutional Parties agree that this Stipulation shall not be construed as an admission of wrongdoing on the part of the Plaintiffs, the City, or the Bronx DA.

71. The Individual Plaintiffs and the Settling Institutional Parties agree that any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation concerning this Stipulation, shall be treated as compromise offers and negotiations covered by the restrictions of Federal Rule of Evidence 408.

72. The Settling Institutional Parties agree that any matter raised in the context of the Working Group referred to in this Stipulation, including but not limited to any discussion, admission, concession or offer to settle, whether oral or written, shall be treated as compromise offers and negotiations covered by the restrictions of Federal Rule of Evidence 408.

So ordered.
Denise Cote
2/12/18

Dated: February 2, 2018
New York, NY

THE BRONX DEFENDERS

Niji Jain
Johanna B. Steinberg
Adam N. Shoop
360 East 161st Street
Bronx, New York 10451
Telephone: (718) 838-7878
Facsimile: (718) 665-0100

By: 

Attorneys for Plaintiffs

ZACHARY W. CARTER

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Telephone: (212) 356-2176
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By: _____

Attorneys for Defendant City of New York

BOIES SCHILLER FLEXNER LLP

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Facsimile: (212) 446-2350

By: _____

*Attorneys for Plaintiffs Kaleb Hagos and
The Bronx Defenders*

**OFFICE OF THE BRONX COUNTY
DISTRICT ATTORNEY**

Julian Bond O'Connor
198 E. 161st Street
Bronx, New York 10451
Telephone: (718) 838-7456
Facsimile: (718) 992-0545

By: _____

General Counsel, Bronx DA Office

SO ORDERED:

United States District Judge

Dated:

Dated: February , 2018
New York, NY

THE BRONX DEFENDERS

Niji Jain
Johanna B. Steinberg
Adam N. Shoop
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By: _____

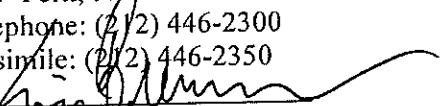
Attorneys for Plaintiffs

ZACHARY W. CARTER

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Attorneys for Defendant City of New York

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By: 

*Attorneys for Plaintiffs Kaleb Hagos and
The Bronx Defenders*

**OFFICE OF THE BRONX COUNTY
DISTRICT ATTORNEY**

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Facsimile: (718) 992-0545
By: _____

General Counsel, Bronx DA Office

SO ORDERED:

United States District Judge
Dated:

Dated: February 9, 2018
New York, NY

THE BRONX DEFENDERS

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Facsimile: (718) 665-0100
By: _____

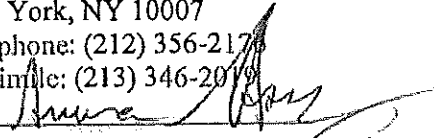
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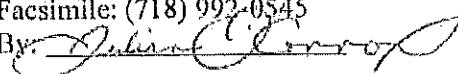
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General Counsel, Bronx DA Office

SO ORDERED:

United States District Judge
Dated:

EXHIBIT D

PCD# 2017-219
SSB# 17-1269


**POLICE DEPARTMENT
CITY OF NEW YORK**

November 30, 2017

From: Commanding Officer, Property Clerk Division
To: Deputy Commissioner, Support Services Bureau
Subject: **REVISED PROCEDURES FOR CLAIMING PROPERTY
RECOMMENDATIONS AND/OR COMMENTS**

1. Upon further review, the Property Clerk Division recommendations are as follows:
 - An employee of attorney firm must submit a signed written request on an official letterhead stating that they represent the individual from whom the property was taken or the lawful owner of the property.
 - A single valid government issued photo identification bearing the appropriate name and address or two (2) forms of identifications (photo and non-photo) of the claimant shall be sufficient proof of identity (As per PCD Admin Memo # 2015-13).
 - In circumstances where a claimant seeks the return of seized property and a claimant's proof of identity has been vouchered, individuals working in property retrieval roles of the NYPD Property Clerk must retrieve the proof of identity from the inventory bags to attempt to verify the claimant's identity. If verified, that ID will constitute sufficient proof of identity.
2. For your information.

TS/c


Thomas Scollan
Inspector

SSB RCVD 17DEC1 12:44


SSB# 17-1269A
LB# 2295-2017
DCLM# 659/2017
PCD# 2017-219

FOURTH ENDORSEMENT

Deputy Commissioner, Support Services Bureau to Deputy Commissioner, Legal Matters, January 18, 2018. Contents noted. Concur with the revision recommended by the Deputy Commissioner, Legal Matters to comply with the terms with a settlement of Encarnacion v. The City of New York, 16-cv-156, regarding the revised procedures for claiming property from all Property Clerk locations:

"If a person submits a written request signed by an attorney for a copy of their client's voucher, a copy of a voucher shall be provided. The attorney must state in writing that they represent the individual from whom the property was taken or the lawful owner of the property."

For your **REVIEW** and **CONSIDERATION**.


Robert S. Martinez
Deputy Commissioner

RSM/ra
C: C.O., PCD