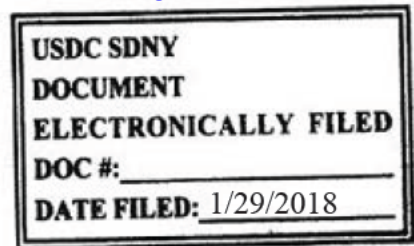


**The Bronx  
Defenders**

**Redefining  
public  
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January 10, 2018

**VIA ECF AND EMAIL**

Hon. Analisa Torres  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007  
[Torres\\_NYSDChambers@nysd.uscourts.gov](mailto:Torres_NYSDChambers@nysd.uscourts.gov)

**Re: Request for JRP Status Conference and Scheduling Order**

*Floyd, et al. v. City of New York*, 08-CV-1034  
*Davis, et al. v. City of New York, et al.*, 10-CV-0699  
*Ligon, et al. v. City of New York, et al.*, 12-CV-2274

Dear Judge Torres:

We respectfully write on behalf of the plaintiff classes in the above referenced actions pursuant to Rule III.A. of the Court's Individual Practices in Civil Cases to request a status conference on the Joint Remedial Process ("JRP") in January or as soon as practicable.

As explained herein, we respectfully submit that a status conference is necessary to establish a scheduling order for managing the resolution of the JRP – a need that arises from a dispute among the parties about whether there will be any so-ordered JRP reforms. We discussed the need for the process we propose herein with the Facilitator and Monitor, and it is our understanding and belief that this process needs to be decided by the Court.

**I. Factual Background**

This request for a JRP status conference comes at the end of an unprecedented years-long community input process required by the Remedial Order, which was implemented by the Facilitator's team and designed in collaboration with the parties and community stakeholders. Thousands of people across the city participated in the JRP through more than sixty focus groups and more than twenty community forums, all contributing toward the goal of informing a set of JRP reforms to be so-ordered by the Court in these cases. For purposes of explaining the necessity and appropriateness of the plaintiffs' current request, we provide background below on the JRP and the impasse among the parties.

**a. The Purpose and Goals of the JRP**

In advance of the *Floyd* trial, the plaintiffs submitted briefing on their requested injunctive relief in the event that the plaintiffs successfully established that the City was liable for constitutional violations. Pls. MOL in Support of Requested Injunctive Relief, Dkt # 268 (“Remedies Br.”). Therein, the plaintiffs requested three categories of reforms: (1) a “Joint-Remedial Process” for developing reforms to address the violations proven at trial, which would involve the parties and community stakeholders (Remedies Br. at 8-16); (2) a set of reforms to be developed outside of that process (Remedies Br. at 16-20); and (3) the appointment of an Independent Monitor. (Remedies Br. at 20-27). After finding the City liable, the Court in sum and substance granted all three requests. *See* Remedial Order, Dkt # 372 (“Remedial Or.”).<sup>1</sup> All of the reforms so-ordered by the court thus far have come from category (2), which is the part of the process identified in the Remedial Order as the “Immediate Reform Process.” Remedial Or. at 13-25.

In support of their request for the JRP, the plaintiffs cited evidence that the NYPD deliberately disregarded complaints about the stop and frisk practice for more than fourteen years. Remedies Br. at 15-16. Plaintiffs argued that community stakeholder input was needed “in the joint development of the Court’s injunctive remedies” to address the NYPD’s indifference to “public outcry from all sectors” about its widespread pattern and practice of unconstitutional stops. Remedies Br. at 8-9. Immediately following the trial and before the Court issued the decision on liability, the plaintiffs submitted proposed findings of fact citing testimony and documents submitted during trial that proved this pattern of deliberate indifference. Pls. Proposed Findings of Fact and Conclusions of Law, Dkt # 366 at 38-46.

In its liability decision, the Court found in favor of the plaintiffs on this point, holding that that the City was deliberately indifferent to notice of constitutional violations. Liability Or. at 61 *et seq.* The Court found that “[t]he NYPD has received thorough and consistent notice of constitutional problems in its stop practices from multiple sources, including the media, community members, community and legal organizations, individual police officers, and the class members and attorneys in this case.” *Id.* at 111. Despite this “actual and constructive notice since at least 1999,” the NYPD “repeatedly turned a blind eye to clear evidence of unconstitutional stops and frisks.” *Id.* at 178. Notably, the Court found that the City’s indifference to public outcry extended over the tenure of multiple mayors and police commissioners. *Id.* at 111-117. Based on these and other findings, the Court ordered the development of “Joint Process Reforms” through the JRP. Remedial Or. at 28-32.

In ordering the JRP reforms, the Court opined that input, from those most affected by unlawful stops into a set of reforms would be critical to remedying the constitutional violations established at trial:

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<sup>1</sup> In the *Davis* settlement, it was agreed that “the Court-Ordered Monitoring related to trespass enforcement in or around NYCHA residences will be identical to the Court Ordered Monitoring in the *Floyd* Remedies Opinion . . . .” Stipulation of Settlement and Order, *Davis v. City of New York*, 10 Civ. 699 (S.D.N.Y. Feb. 4, 2015), Dkt. #330, at 10-11. Thus, as part of the Remedial Order, the JRP applies with equal force in the *Davis* case. *See also* Stipulation of Settlement and Order, *Ligon v. City of New York*, 12 Civ. 2274, (S.D.N.Y. July 19, 2017), Dkt # 296, at 4, 17.

[C]ommunity input is . . . [a] vital part of a sustainable remedy in this case. The communities affected by the NYPD’s use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms. No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety. . . . If the reforms to stop and frisk are not perceived as legitimate by those most affected, the reforms are unlikely to be successful.

Remedial Or. at 29. The Court further ordered that “[a]n essential aspect of the Joint Process Reforms will be the development of an improved system for monitoring, supervision, and discipline.” Remedial Or. at 23.

Consistent with the Court’s orders, the Facilitator’s team, the parties, and community stakeholders designed and implemented a process for securing input into reforms from those most affected by the NYPD’s unlawful stop and frisk practices. Over a two-year period, the JRP included sixty-four focus groups, twenty-eight community forums, and more than a dozen meetings with community, legal, and policy organizations. Numerous community organizations expended their resources to make this input process happen. All told, thousands of people provided input into the design of JRP reforms. The Remedial Order required negotiations among the parties and community stakeholders to draft JRP reforms. Remedial Or. at 30-31 (providing in enumerated sections 1, 2, 8 that the parties and stakeholders are to work with the Facilitator to negotiate a set of joint process reforms). In the event of an impasse, the Remedial Order provides that the Facilitator will submit a report and recommendations on the JRP and that the parties will have the opportunity to comment. Remedial Or. at 32 (enumerated section 9).

#### **b. The JRP Impasse**

In April 2017, with the process of obtaining input completed, the parties and community stakeholders began discussing JRP reform proposals based on that input, consistent with the Remedial Order’s requirements. During negotiations, the plaintiffs and community stakeholders proposed numerous reforms to NYPD discipline, monitoring, and supervision practices, tailored to addressing the constitutional violations established at trial. Unfortunately, the parties have reached a complete impasse.<sup>2</sup>

Having reached an impasse, the Remedial Order now requires the public filing of the Facilitator’s Report and briefing from the parties so that the Court may determine what reforms to so-order. Importantly, though, the impasse between the parties is not only about the substance of reforms – though the impasse includes that issue. More fundamentally, there is an impasse about the requirements of the Remedial Order with respect to the JRP itself. Specifically, there is a dispute about whether there will be *any* so-ordered reforms through the JRP at all. The procedure articulated in the Remedial Order did not contemplate this kind of impasse.

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<sup>2</sup> We are not recounting the substance of our negotiations on particular reforms because we agreed to keep those details private in order to foster more robust and candid negotiations.

## II. A JRP Status Conference and Scheduling Order is Necessary and Appropriate

The Court has inherent authority to require status conferences and enter scheduling orders to facilitate the management of complex matters. *See Escoffier v. City of New York*, 13 CV 03918 (JRP) (DF), 2017 WL 65322. \*7, 2017 U.S. Dist. LEXIS 988 (S.D.N.Y. Jan. 4 2017) (noting court’s “inherent authority to manage litigation”); *Advanced Analytics, Inc. v. Citigroup Global Markets, Inc.*, 301 F.R.D. 47, 51 (S.D.N.Y. 2014) (same). Status conferences and scheduling orders are customary and routine in remedial processes involving police departments and other public agencies. *See, e.g., U.S. v. City of New York*, 1:07-cv-02067 (NGG) (in remedial process involving New York City Fire Department and court-appointed monitor who regularly files status reports, court held seven status conferences in the past year); *U.S. v. Seattle*, 12-cv-1282 (in first three years of remedial process involving the Seattle Police Department and an independent monitor, court held six status conferences and entered various scheduling orders).

There are several substantive and procedural matters that need to be managed in order for the Court to render a determination on the JRP reforms, and a status conference would facilitate the development and timeline of an appropriate process. First, Plaintiffs seek an order directing the Facilitator to immediately and publicly file the primary community input materials from the JRP. This includes the Facilitator’s summary of the JRP input process; the anonymized focus group transcripts; and formal non-party written submissions made to the Facilitator as part of what the Facilitator termed “Leadership Meetings.” The immediate submission of these materials is necessary to enable the parties to prepare anticipated motions and to ensure appropriate public transparency about this extensive community input process. Second, Plaintiffs seek a date certain for the issuance of the Facilitator’s Report that would allow for the expeditious resolution of the parties’ disputes about the JRP. Third, we seek an order scheduling motions on the JRP, which will include, at least, a motion by the plaintiffs to enforce the injunction and so-order JRP reforms. It would serve the interests of judicial economy to hold a status conference to determine and set out the best timing and sequence for these submissions, motions, and proceedings.

Notably, in light of the parties’ impasse about the requirements of the JRP, there is an increased need for a transparent process around the determination of the JRP reforms – which are a critical component of the injunction the plaintiff class secured. As the Second Circuit has opined, “[t]he notion that the public should have access to the proceedings and documents of courts is integral to our system of government.” *U.S. v. Erie County*, 763 F.3d 235, 238-39 (2d Cir. 2014) (opining that “it is essential that the people themselves have the ability to learn of [and] monitor . . . the actions of their representatives and their representative institutions.”). *See also Newsday LLC v. County of Nassau*, 730 F.3d 156, 164 (2d Cir. 2013) (discussing First Amendment values underpinning public court proceedings and the “need . . . for the public to have confidence in the administration of justice”) (citation and quotation omitted). This high-profile remedial process is administering reforms on behalf of three city-wide plaintiff classes to address a government entity’s widespread constitutional violations. More than a thousand people participated in the JRP with the expectation of designing reforms to NYPD discipline, monitoring, and supervision practices. Without a status conference and a scheduling order that requires a clear process for resolving the JRP reforms, we are concerned the legitimacy of and public confidence in the stop and frisk remedial process will be compromised.

GRANTED in part and DENIED in part. Plaintiffs' request for a date certain for the issuance of the Facilitator's Final Report is GRANTED. Plaintiffs' requests for a status conference, the immediate publication of the input materials, and a scheduling order on motions are DENIED.

In order to facilitate a free and open exchange among stakeholders, it is ORDERED that:

By **March 2, 2018**, the Facilitator shall distribute a confidential and private draft of his Final Report to the parties.

By **March 23, 2018**, the parties shall provide the Facilitator with confidential and private written comments, if any, on the draft.

By **April 13, 2018**, the Facilitator and the parties shall conclude discussion on the Joint Process Reforms.

By **April 30, 2018**, the Facilitator shall file on the public docket the Final Report and the input materials, redacted as necessary.

SO ORDERED.

Dated: January 29, 2018  
New York, New York



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ANALISA TORRES  
United States District Judge

Respectfully submitted,

/s/ J.R.B.  
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