

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PICTURE THE HOMELESS, INC.,

Plaintiff,

**JUDGE STEIN**

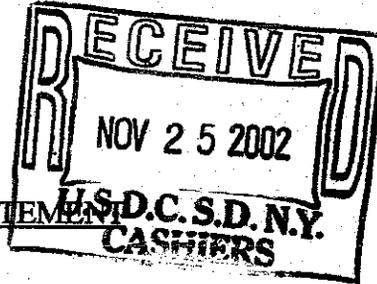
The CITY OF NEW YORK and RAYMOND  
KELLY, Commissioner of the New York City  
Police Department,

Defendants.  
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**02 CV 9379**

COMPLAINT

02 Civ.



PRELIMINARY STATEMENT

1. This is an action to vindicate the civil rights of the homeless in New York City. Sometime in mid-October 2002, following media reports of increasing numbers of homeless persons appearing on City streets, the New York City Police Department (NYPD) initiated a program of targeting the homeless for arrest. Pursuant to that initiative, the NYPD substantially increased the size of the Department unit responsible for interacting with the homeless and instructed the members of that unit that their primary mission no longer was to offer services to get homeless people off the street but instead was to arrest the homeless. Moreover, members of the unit were instructed to single out the homeless for arrest for offenses for which non-homeless persons were not to be arrested. In just the first month of this homeless-arrest initiative, the NYPD's Homeless Outreach Unit has arrested approximately 250 homeless people for minor offenses. Many of the arrested homeless have been held overnight in jail and upon information and belief have lost their personal property or had it destroyed.

2. In addition to being a heartless attack on those suffering the tragedy of homelessness, the NYPD program of targeting homeless New Yorkers for arrest violates the United States Constitution. The plaintiff seeks a declaratory judgment, preliminary and permanent injunctive relief against further implementation of the program, and attorneys fees.

### JURISDICTION AND VENUE

3. This court has subject-matter jurisdiction over the plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343(3-4).

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that plaintiff's claims arise in the Southern District of New York.

5. Jurisdiction to grant declaratory judgment is conferred by 28 U.S.C. §§ 2201, 2202. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. An award of costs and attorneys fees is authorized pursuant to 42 U.S.C. § 1988.

### PARTIES

6. Plaintiff PICTURE THE HOMELESS is a grass-roots organization that is comprised of and led by homeless and formerly homeless persons and that is based in Manhattan.

7. Defendant the CITY OF NEW YORK is a municipal corporation within the State of New York.

8. Defendant RAYMOND KELLY is the Commissioner of the New York City Police Department. He is sued in his official capacity for injunctive relief.

### FACTS

9. Picture the Homeless is a Manhattan-based, grass-roots organization comprised of and led by homeless and formerly homeless persons that works to protect and advance the civil and human rights of the homeless. The group was formed in 1999 by two homeless men in the aftermath of a notorious incident that prompted a police crackdown on the homeless and that resulted in substantial publicity that unfairly portrayed the homeless as a threat to public safety.

10. Since its founding, Picture the Homeless has worked to organize people who are homeless so they can identify and change public policies and practices affecting them. The group has a substantial membership of homeless people; has worked to develop skills in the homeless to allow them to work on issues of homelessness; has launched a Civil Rights Project to document violations by the New York City Police Department (NYPD) and New York City Department of Parks and Recreation; has conducted research into issues concerning the homeless, including the practices of the NYPD; has held public demonstrations and rallies; has educated homeless people about housing issues; and has received foundation funding to support its work. The group works to identify and implement solutions to problems affecting the homeless. It is also concerned about law-enforcement initiatives that seek to criminalize homelessness.

11. On Sunday, October 13, the New York Times published a front-page story reporting a

significant increase in the number of homeless people appearing on City streets.

12. Shortly after the New York Times story appeared, a series of high-level meetings took place in the Police Department concerning the perceived problem of increasing numbers of homeless people on the streets of New York City. Upon information and belief, those meetings included, at one time or another, Commissioner Raymond Kelly, Chief of Department Joseph Esposito, Chief of Patrol Nicholas Estavillo, and Chief Michael Scagnelli (the commanding officer of the NYPD's Transportation Bureau).

13. For many years the New York City Police Department has operated two specialized units to work with homeless people. One was the Homeless Outreach Unit of NYPD's Transit Bureau, and the other was the Homeless Outreach Unit of the Department's Specialized Operations Unit (and based in Fort Totten in Queens). The primary mission of these units long has been to work with homeless people to get them off the street by offering them services and directing them to shelters. As of October 2002, the Transit Bureau unit had approximately 37 officers and the Special Operations Division unit had approximately 11 officers.

14. The NYPD's two Homeless Outreach units have developed reputations in the homeless community as being interested in the welfare of the homeless and as providing important support for the homeless. Many members of the units have viewed themselves as playing a helpful and constructive role in dealing with the problems of the homeless.

15. On or about October 18, 2002, a message was transmitted over the NYPD's teletype system announcing that the two Housing Outreach units would be merged into a single unit within the Transit Bureau of the NYPD's Transportation Bureau. The combined unit was to be based at an NYPD building at 104 Washington Street in lower Manhattan.
  
16. Several days after October 18, 2002, Captain Neill Farrell reported to 104 Washington Street as the commanding officer of the combined Homeless Outreach Unit. He informed the members of the unit that its mission had been changed from offering services to the homeless to engaging in proactive law enforcement and seeking to arrest the homeless.
  
17. During the week of October 21, approximately 30 additional police officers were assigned to the combined Homeless Outreach Unit, bringing it up to a unit of approximately 80 officers.
  
18. On or about October 23, 2002, Chief Michael Scagnelli appeared at the Homeless Outreach Unit to address all members and officers who were present. Chief Scagnelli informed those present that the Department had received complaints about the homeless, including complaints from Mayor Michael Bloomberg. He then repeated the earlier message from Captain Farrell that the mission of the unit had been changed from one offering services to the homeless to one that would engage in proactive law enforcement and that would seek to arrest the homeless. Chief Scagnelli also stated that members of the unit who did not commit to the new program to make arrests would be punished by being transferred from the unit or by being given less desirable shift assignments.

19. Consistent with the statements of Chief Scagnelli, members of the combined Homeless Outreach Unit repeatedly have been informed that they are to arrest the homeless for any possible violation of law. At the same time, they have been instructed not to enforce the law in a similar manner against those who are not homeless. Thus, if a homeless person was spotted in a park stretched out on a bench, officers were to arrest that person while not arresting nonhomeless persons seen engaging in the same activity. The NYPD thus is targeting the homeless for arrest and is singling them out for arrest.

20. Members of the combined Homeless Outreach Unit repeatedly have been informed that if they do not make arrests of the homeless they will be transferred out of the unit to less desirable commands.

21. In the several days following Chief Scagnelli's appearance at the Homeless Outreach Unit, members of the unit arrested a number of homeless people, but that number was relatively small. Shortly thereafter, Captain Farrell was summoned to a meeting with Chief Scagnelli. Upon information and belief, Chief Scagnelli informed Captain Farrell that the unit was not making nearly enough arrests and needed to be making many more arrests of the homeless.

22. Supervisory officers in the combined Homeless Outreach Unit have gone out into public areas of the City specifically seeking homeless people to arrest. They then have pointed out homeless people to unit members and have told them to arrest them.

23. On or about October 26, 2002, the Homeless Outreach Unit started compiling a daily activity report that is sent to Transit Bureau Chief William Calhoun and that upon information and belief is provided regularly to Chief Scagnelli. That report indicated that, as of midnight November 12, 2002, the unit had made 160 arrests since October 26. Of those arrests, 86 were for alleged violations, 73 for alleged misdemeanors (a large number of which, upon information and belief, are for lying on a park bench), and 1 for an alleged felony. Upon information and belief, this marks a substantial increase in the number of homeless people being arrested. During that same time, the unit has issued only 15 summonses to homeless persons.

24. As of November 21, 2002, the Homeless Outreach Unit had made approximately 272 arrests since October 26, 2002, virtually all of which were of homeless people.

25. Because they have no home address and because they often have no formal identification, homeless people when arrested often do not qualify for the NYPD procedure by which a person arrested for a minor offense can be released from a precinct without being held for formal arraignment. As a result, homeless people routinely are "put through the system," which often results in their being held in jail overnight. Moreover, the arrest of homeless persons often results in their property being lost or destroyed. The NYPD homeless-arrest program therefore is substantially disrupting the already extraordinarily disrupted lives of homeless people.

26. Upon information and belief, the Manhattan District Attorney's office has refused to prosecute a significant number of the arrests made by the Homeless Outreach Unit under the

Department's new initiative.

27. Members of Picture the Homeless have been arrested pursuant to the NYPD's homeless-arrest initiative. The group also has many members who are homeless people living on the streets of Manhattan who are at significant risk of arrest under this program.

28. On November 12, 2002, the New York Civil Liberties Union wrote to NYPD Commissioner Kelly expressing concern about the Department's homeless-arrest initiative. Following receipt of a letter from the NYPD on November 20, the NYCLU on that day and on November 22 informed the Police Department that it intended to pursue litigation unless immediate and substantial changes were made. As of the filing of this complaint, the NYPD had not informed the NYCLU of any such changes.

29. The defendants' actions were taken under color of law.

#### CAUSE OF ACTION

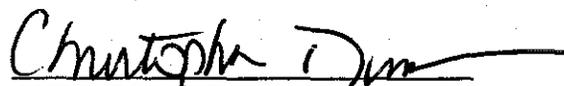
30. The defendants' policies and practices of targeting and singling out the homeless for arrest violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

WHEREFORE, the plaintiff requests that this court:

- (1) Assume jurisdiction over this matter;
- (2) Issue a declaratory judgment that the defendants' policies and practices of targeting and singling out the homeless for arrest violates the Due Process Clause of the United States Constitution;
- (3) Issue a preliminary injunction enjoining the defendants from enforcing their policies and practices of targeting and singling out the homeless for arrest and ordering them to take appropriate steps to implement the injunction;
- (4) Issue a permanent injunction enjoining the defendants from enforcing their policies and practices of targeting and singling out the homeless for arrest and ordering them to take appropriate steps to implement the injunction;
- (5) Award the plaintiff attorneys' fees; and
- (6) Grant any other relief the court deems appropriate.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION, by



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ARTHUR EISENBERG (AE-2012)

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Counsel for the Plaintiff

Dated: November 25, 2002  
New York, N.Y.