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Leading Civil Rights Organizations Urge Court to Recognize How Oppressive and Racially Biased Policing Constrains the Freedom to Leave

Leading civil rights groups filed an [amicus brief](#) in the New York State Court of Appeals in *The People v. Nicholas Hill*. In the case, a split First Department panel ruled that a police encounter — in which officers asked Mr. Hill, an African-American man outside a New York City Housing Authority residence, to turn over his identification, instructed him to “stand right there” with other officers, walked away with his identification, and went up to the 11th floor of the building — was not a forcible stop, and that Mr. Hill was free to leave at any time. The brief urges the Court of Appeals to overturn this ruling and recognize that the location of the police encounter and the race of the person stopped must be considered when determining whether a reasonable person would have felt free to leave.

The NAACP Legal Defense & Educational Fund Inc. (LDF), The Bronx Defenders, The Center for Constitutional Rights, and The New York Civil Liberties Union represented the plaintiffs in the three city-wide class action lawsuits that successfully challenged the New York City Police Department’s unlawful and racially biased stop-and-frisk and trespass enforcement practices. The brief draws on evidence from those cases ([Floyd v. City of New York](#), [Davis v. City of New York](#), and [Ligon v. City of New York](#)).

“The law needs to recognize that Black people reasonably fear harm from disobeying police, given the history and continuing reality of aggressive, discriminatory policing,” said Shakeer Rahman, an attorney at The Bronx Defenders. “Courts must not ignore that reality when deciding whether someone felt free to walk away from police questioning.”

- 1. The brief argues that a person’s race can lead them to reasonably fear disobeying police, in light of the well-documented history of discriminatory policing.**

The panel ruled that Mr. Hill was free to leave even after the officer left with his identification because “police did not engage in any other coercive or intimidating conduct.” The brief argues that New Yorkers of color have good reason to comply with police regardless of whether officers are

overtly coercive, given the well-documented history of police making unlawful arrests or acting violently when people of color disobey them.

“We’re asking the court to acknowledge a fact that legal scholars have been arguing for decades: it’s impossible to consider ‘the totality of the circumstances’ of a police-civilian encounter or what a ‘reasonable person’ would have done without taking into account the civilian’s race, especially in light of how communities of color have been and continue to be policed in New York City and nationally,” said Britney Wilson, an attorney at the Center for Constitutional Rights.

2. The stop-and-frisk lawsuits further demonstrated how police intrusion in the lives of those who live in or visit NYCHA residences is particularly egregious and influences how free people feel to ignore officer requests.

The stop-and-frisk cases demonstrated that people who live in or visit NYCHA buildings have reason to fear unjustified scrutiny from police. In *Davis v. City of New York*, the federal court referenced evidence that “only fifty percent of NYCHA trespass stops between 2009 and 2011 were apparently justified.”

Unjustified police stops around NYCHA residences were the most severe examples of a widespread problem of discriminatory stops across the city. NYCHA trespass stops were especially likely to be discriminatory against Black people, with data showing that a NYCHA building’s racial composition is a better predictor of where police made the most trespass stops than crime levels or other neutral variables.

“Our challenge to the NYPD’s trespass enforcement practices showed that the NYPD systematically violated the rights of New Yorkers, particularly those of color, who live in or visit NYCHA residences,” said [Jin Hee Lee](#), Deputy Director of Litigation at LDF. “Given the NYPD’s past abuses, courts must consider this unfortunate reality when determining whether a stop in a NYCHA complex was forcible.”

Testimony from the stop-and-frisk cases further demonstrated the harm people experienced from disregarding officer requests, including requests for identification, in and around residential buildings. Ligon plaintiff Abdullah Turner said he had not heard of a single person walking away when police ask for identification to investigate trespassing. The City of New York agreed in *Davis* that a plaintiff who police questioned about trespass in a NYCHA building “was not free to leave because the officer had taken his identification.”

3. The Court of Appeals should hold that Mr. Hill was forcibly stopped and clarify that courts reviewing the legality of police encounters should ask whether a person would have felt free to leave.

The First Department ruling is part of a broader trend in intermediate appellate courts that has weakened constitutional protections established by the Court of Appeals in *People v. De Bour*. That case set limits on when police can question or stop people, yet lower courts have confused the law to allow police to make coercive stops without reasonable suspicion. The organizations urge the court to correct that trend.

“Police do not have a blank check to approach and question people without reasonable suspicion,” said Donna Lieberman, executive director of the New York Civil Liberties Union. “In determining

whether a police encounter is legal, context matters, and that includes the NYPD's over-policing of communities of color. Courts must consider whether a person would have felt free to leave.”

Read the amicus brief [here](#).

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[The NAACP Legal Defense & Educational Fund, Inc.](#) (LDF), is the nation's first and foremost civil rights law organization. [The Bronx Defenders](#) (BxD) is a public defense office that provides holistic defense to low-income people of the Bronx, which include criminal defense, family defense, immigration defense, civil legal services, and social work support and advocacy. [The Center for Constitutional Rights](#) (CCR) is a national, nonprofit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the U.S. Constitution and international law. [The New York Civil Liberties Union](#) (NYCLU) is the New York State affiliate of the American Civil Liberties Union. NYCLU is a non-profit, nonpartisan organization committed to the defense and protection of civil rights and civil liberties, with over 100,000 members across the State.