

January 26, 2021

Mayor Bill de Blasio
City Hall
New York, NY 10007

Comptroller Scott M. Stringer
Office of the Comptroller of New York City
One Centre Street
New York, NY 10007

Re: Demand for Reparations on behalf of the Mott Haven Collective

Dear Mayor de Blasio and Comptroller Stringer:

We represent two dozen people injured by the New York City Police Department (“NYPD”) at protests in the Bronx last spring who submitted notices of claim under General Municipal Law Section 50-e (hereinafter the “Mott Haven Collective” or “Collective”). Twenty-three members of the Mott Haven Collective were brutalized by the NYPD at the June 4 protest in the South Bronx. The one additional Collective member—a 38-year-old Bronx resident—was assaulted by the NYPD days prior when she joined an impromptu Black Lives Matter protest. Many members of the Mott Haven Collective did not know each other before the protests; it is a group of predominantly Black and brown people who came together after being terrorized by the NYPD to demand transformative change. We write on their behalf to ask the City to provide reparations to compensate the protesters who were injured, invest in the targeted community, take responsibility for the attack, and fire those responsible. We hope you seize this opportunity to show that racially-biased police violence in New York City will not be condoned.

This past year was tremendously difficult for New York, and the City faces many challenges in the months ahead. The Bronx—home to the nation’s poorest congressional district, and the district with the greatest proportion of Black and brown people—was hit particularly hard by the pandemic: In May, The New York Times reported that the Bronx had the highest rate of infections, hospitalizations, and deaths among the boroughs, and unemployment rates had spiked considerably.¹ While the pandemic rages on, so too do the harms from the NYPD’s unlawful conduct at the Bronx protests. Members of the Mott Haven Collective still experience pain and emotional distress from the abuse and trauma they endured. Members of the Collective still fear going outside or attending another protest because they worry that they might again be trapped by the police and subjected to violence.

¹ Kimiko de Freytas-Tamura, Winnie Hu, and Lindsey Rogers Cook, “It’s the Death Towers” *How the Bronx Became New York’s Virus Hot Spot*, N.Y. TIMES (May 26, 2020), <https://www.nytimes.com/2020/05/26/nyregion/bronx-coronavirus-outbreak.html>.

In this letter, we review the claims of the Mott Haven Collective to show these claims are not only meritorious but strong. Before curfew, the Collective members were surrounded by dozens of officers and a militarized police presence. They were prevented from leaving. Without any cause that the law would deem justified, members of the Collective were beaten, punched, dragged, and thrown to the ground by police. Their requests for medical assistance were ignored. They were put in wrist restraints so tight that their hands went numb—a numbness that persists for some to this day. The Black and brown members of the Collective were subjected to more severe punishment than white protesters; women of color were subjected to publicly humiliating searches. Collective members who wore masks to protect against Covid-19 had their masks torn off by officers and were then marched onto crowded vans and held in cramped and unsanitary cells for hours.

None of this should be surprising because multiple investigative reports detailed similar facts. The Attorney General of the State of New York found that “officers wearing heavy armor used bicycles to block the path of a group of peaceful protesters” in Mott Haven “before the 8:00 p.m. curfew took effect,” and “then charged into the group, arresting dozens of people, striking them with batons, and shoving them onto sidewalks.”² Human Rights Watch found that the NYPD’s conduct at Mott Haven was “unjustified”³ and “amounts to serious violations of international human rights laws.”⁴ The NYPD Office of the Inspector General found that the force used at the June 4 protest in Mott Haven “was disproportionate to the identified threat, placed the burden of potential crime on a wide swath of people who had no apparent connection to that potential criminal activity, and severely damaged the Department’s legitimacy in the eyes of those present, the surrounding community, and (given the attention to these events) the City as a whole.”⁵ Even before these investigations were completed, the world could see from videos shared by protesters that the NYPD surrounded a predominantly Black and brown group in Mott Haven and beat them with batons.

This incident brings the City to a crossroads. We have been here before, and the City has time and again chosen to go down a path of further harm. One of the undersigned attorneys previously represented the plaintiffs in *Floyd v. City of New York*, which challenged the NYPD’s stop-and-frisk practice, and she witnessed how the City chose to put the plaintiffs through years of protracted litigation rather than commit to change. The City had a team of lawyers defending the NYPD full-time through months of trial in *Floyd*, despite fevered public outcry against the stop-and-frisk practice. The City made the same choice in defending the NYPD through many lawsuits arising out of police misconduct during recent mass protests—from the Republican

² New York State Office of the Attorney General, PRELIMINARY REPORT ON THE NEW YORK CITY POLICE DEPARTMENT’S RESPONSE TO DEMONSTRATIONS FOLLOWING THE DEATH OF GEORGE FLOYD, at 17 (July 2020), <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf>.

³ Human Rights Watch, “KETTILING” PROTESTERS IN THE BRONX: SYSTEMATIC POLICE BRUTALITY AND ITS COSTS IN THE UNITED STATES, at 2 (Sept. 2020), https://www.hrw.org/sites/default/files/media_2020/10/us_mott%20haven0920_web.pdf.

⁴ *Id.* at 74.

⁵ New York City Department of Investigation, INVESTIGATION INTO NYPD RESPONSE TO THE GEORGE FLOYD PROTESTS, at 56 (Dec. 2020), <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>.

National Convention protests in 2004, to the Occupy Wall Street demonstrations, to the protests after the murder of Eric Garner, and more. It took a decade to resolve some of those cases and many are still ongoing. Practices and tactics that the NYPD unlawfully used in Mott Haven were challenged by prior lawsuits and persisted even though policies and trainings had been improved. In all that time and through all those lawsuits, public taxes paid for City lawyers to defend the NYPD while its victims went years without recourse, if they received it at all.

The Mott Haven Collective is asking you to choose a different path this time: They are asking you to choose a path of reckoning and repair, rather than forcing those harmed through the burden and delay of litigation. As you know, the Comptroller has the authority to settle civil rights claims submitted to the City before litigation. We were glad to see the Comptroller already agreed to at least one settlement with a person injured by the NYPD during the protests last spring, and we are encouraged by the willingness that shows to compensate protesters. Yet these individual settlements—which are privately negotiated and often award a sum significantly less than what a person might be entitled to receive—are an insufficient response to what was a coordinated and government-sanctioned attack on protesters in the Bronx. The Mott Haven Collective is asking you to create a dedicated fund for compensating them and other protest victims that is easily accessible and transparently dispensed. They are further asking you to contribute an amount to this fund representing punitive damages—which should be at least equal to or perhaps more than the compensatory amount—to be given to the Bronx community for public services such as healthcare, with dispensation controlled by the Collective, others harmed by the police violence, and community members.

If New York City is opposed to police violence and if it is against racially biased policing, then it must choose a different path this time. The question is whether the City will meaningfully take responsibility for police abuse at the protests or if it will yet again choose to defend the NYPD at the expense of New York’s Black, brown, and indigenous people. We hope that you will work with the Mott Haven Collective to provide the requested reparations.

The NYPD’s Brutal and Biased Treatment of the Mott Haven Collective

On June 4, 2020, several hundred people marched through the South Bronx, a neighborhood comprised of predominantly low-income Black and brown people that has long been subjected to over-policing. The protesters voiced opposition to racially-biased policing and systemic racism after a spate of police killings in the months prior. As the protesters marched and chanted demands, the atmosphere was joyous, and community members could be heard shouting support from apartments along the route.

When the protesters approached the intersection of 136th Street and Brook Avenue, they were met by officers pointing guns at the protesters from surrounding rooftops,⁶ a helicopter flying low overhead,⁷ and dozens of officers who were dressed in military style armor.⁸ Before the 8 p.m. curfew, officers kettled the protesters and prevented them from dispersing despite

⁶ Notice of Claim (“NOC”) 2020PI020734; NOC 2020PI020918.

⁷ NOC 2020PI020918; NOC 2020PI021381.

⁸ *See, e.g.*, NOC 2020PI021373; NOC 2020PI021501; NOC 2020PI021216.

their pleas to leave.⁹ With the protesters trapped, the officers unleashed a brutal attack, indiscriminately beating protesters with batons,¹⁰ firing pepper spray at them,¹¹ and throwing them to the ground.¹² While there were numerous large protests in New York City in the spring of 2020, some of which involved looting, the NYPD arrested and charged more protesters in Mott Haven than any other protest.¹³ The Bronx District Attorney later dismissed all charges.¹⁴

The experiences of the Mott Haven Collective members at the June 4 protest are strikingly similar. Though they come from different backgrounds and attended that protest for varied reasons, the commonalities in their experiences show that the NYPD's abuse of them was coordinated and planned. And while the law permits the police to use force or make arrests in certain constitutionally circumscribed circumstances, the experiences of the Mott Haven Collective demonstrate that those circumstances did not exist. Instead, the NYPD proactively and without cause trapped and then beat these people with no lawful justification—leaving the protesters struggling to breathe, bloodied, and traumatized.

In this section, we recount what happened to the Mott Haven Collective, focusing primarily on seven members whose experiences are exemplary of the other members. For the details of each client's experience, we refer you to their notices of claim and the transcripts of their 50-h hearings. Before turning to their testimonies, though, we must underscore that racially disparate and disproportionate police violence against people in the Bronx is persistent and longstanding, and the NYPD's abusive treatment of the Mott Haven Collective is consistent rather than an aberration.¹⁵ Numerous Black and brown people have been killed by the NYPD in the Bronx, including in recent years, and the NYPD's violence against Black and brown protesters in the Bronx last year was not limited to what happened on June 4, 2020. Indeed, on June 2, Bronx resident and Mott Haven Collective member Trisha Ciraso (Notice of Claim ("NOC") 2020PI020928) was arrested while protesting police violence with her daughter. Without any cause, an officer arrested her after she began chanting Black Lives Matter slogans.

⁹ See, e.g., NOC 2020PI020737; NOC 2020PI021376; NOC 2020PI021502; Human Rights Watch, *supra* note 3, at 27; New York City Department of Investigation, *supra* note 5, at 21; New York State Office of the Attorney General, *supra* note 2, at 17.

¹⁰ See, e.g., NOC 2020PI020737; NOC 2020PI020529; NOC 2020PI021381.

¹¹ See, e.g., NOC 2020PI020834; NOC 2020PI021216; NOC 2020PI021501.

¹² NOC 2020PI021372; NOC 2020PI021501; NOC 2020PI020734; NOC 2020PI021505; NOC 2020PI020953; NOC 2020PI021216; NOC 2020PI021293; NOC 2020PI021115; NOC 2020PI021507.

¹³ Human Rights Watch, *supra* note 3, at 15.

¹⁴ Christopher Robbins, *Bronx DA Will Toss More Than 300 Summonses Issued to Protesters for Violating De Blasio's Curfew*, GOTHAMIST (Sept. 1, 2020), <https://gothamist.com/news/bronx-da-will-toss-more-300-summonses-issued-protesters-violating-de-blasios-curfew>. Mott Haven Collective members submitted Supplemental NOCs describing the manner in which their charges were dismissed. See, e.g., Supplemental NOC 2020PI020918; Supplemental NOC 2020PI020529; Supplemental NOC 2020PI021372.

¹⁵ See, e.g., Human Rights Watch, *supra* note 3, at 2 (noting that "more complaints about the use of physical force by police officers have been made in Mott Haven's 40th precinct than in any of New York City's other 76 precincts") (citing Eric Umansky, *We're Publishing Thousands of Police Discipline Records That New York Kept Secret For Decades*, PROPUBLICA (July 26, 2020), <https://www.propublica.org/article/nypd-civilian-complaint-review-board-editors-note>); see also Joseph Goldstein, *Recording Points to Race Factor in Stops by New York Police*, N.Y. TIMES (March 21, 2013), <https://www.nytimes.com/2013/03/22/nyregion/bronx-officers-recording-suggests-race-is-factor-in-stops.html> (reporting on 2013 recording in which 40th Precinct Commanding Officer can be heard pressuring an officer to increase stops of young Black men).

He dug his knee into her back, put her in overly tight handcuffs, and ignored her pleas for medical attention. Months after her arrest, she still had pain from the resulting injuries. Her experience is like a harbinger of what befell the protesters in Mott Haven two days later.

1) LoriKim Alexander (NOC 2020PI020953)

Collective member LoriKim Alexander is a Black, 44-year-old resident of the Bronx who attended the protest on June 4 with two of her friends. When she was asked to move to the front of the protest and hold a banner, she left her friends and moved to the front of the march. At around 7:50 pm, she went back to check on her friends when she noticed a group of NYPD officers on bicycles were kettling the protesters and blocking them from leaving. Because of the kettling, LoriKim (due to her arthritis) and others had trouble standing. One protester fainted, and when LoriKim and other protesters tried to get this protester help, they were denied. As the 8:00 pm curfew struck and the officers began to squeeze the other protesters tighter, LoriKim struggled to stand upright. The police then broke through the group and started hitting protesters with batons and riot shields. A large white officer in a white shirt grabbed LoriKim's shirt, twisted one of her arms behind her back, and slammed her onto the ground. LoriKim feared her arm would be broken. A second officer then pressed LoriKim against the asphalt, while another officer applied heavy-duty zip ties tightly around her wrists with her arm still twisted behind her back. LoriKim told them repeatedly she was in pain, but the officers ignored her. The large white officer who originally grabbed her then started yelling at her to take off her mask that she was wearing as protection against Covid-19. She could not comply because of the zip ties, and the officer ripped the mask off LoriKim's face and threw it on the ground.

After the large white officer passed LoriKim off to another officer, she was taken to a different area, where she was sat down next to a pool of blood. There was a person sitting near her, who was handcuffed and had their head split open with blood streaming down their face; they were losing consciousness. LoriKim and other protesters were yelling for medical help for the bleeding protester, but no one came to help until the protester fell over and was lying on the ground. LoriKim was then transported to Queens to be processed and was not released until approximately 2:00 am. Her wrists were cuffed tightly in zip ties behind her back for most of her six hours in police custody.

2) Sidney Negron (NOC 2020PI021115)

Collective member Sidney Negron is a 30-year-old community gardener, teacher, and organizer; he is Puerto Rican and a lifelong resident of the Bronx. As he marched with the protesters on June 4, the atmosphere was positive. Sidney noticed that community members were showing their support and cheering for the protesters out their windows and from their stoops as the protesters marched. When the march turned on a side street, armored police officers on bicycles blocked off the exit to the street, while other officers pushed in from behind and the sides. Sidney, who was near the front of the march, was able to get out of the crowd and behind the line of bicycle police. A group of officers in riot gear then pushed Sidney into the middle of the street, and an officer hit Sidney hard with a baton in the stomach. The people trapped in the street were screaming. About a dozen officers then approached Sidney. The officers started pushing Sidney with their batons, knocked him to the ground, and two others jumped on top of him, grinding his body against the pavement. An officer put metal handcuffs on Sidney. Sidney

could feel the handcuffs rubbing against his bones and complained that they were too tight. In response, the officers around Sidney mocked him. Sidney also witnessed the NYPD grab Black and brown Mott Haven community members off their stoops who were just watching and not participating in the protest.

Sidney was then pushed into a cramped van, loaded with other protesters who were not wearing masks. One woman was bleeding from her head, and there was no space to socially distance. Sidney is a regular cigarette smoker, which made him especially worried about Covid-19. The van took Sidney to the 40th Precinct, where the majority of the police and protesters were not wearing masks. An officer eventually handcuffed Sidney's arm in an uncomfortable position to a bench. He saw that the young woman from his van with the cut on her head was still dripping blood. Many others were bleeding, and one protester had a wound on her head from being shot with a rubber bullet. Finally, after several hours, Sidney was released.

3) Selenah Martin (NOC 2020PI021377)

Selenah Martin is a 24-year-old Mexican American Latina who works as a social worker at an elementary school in East Harlem. She was participating in the June 4 protest when the police began encircling her and the other protesters. Selenah and the other protesters remained calm and chanted "let us go." As the police closed in on the protesters, Selenah could not breathe and feared being trampled, making her feel extremely anxious. Selenah witnessed police officers hitting numerous other protesters with their batons. Eventually, Selenah was able to reach the sidewalk, where the NYPD pepper sprayed her, causing her eyes and face to burn. After Selenah was then told by an officer that she was free to leave, she was arrested by another officer, who forcibly grabbed her arms and twisted them harshly behind her back and used zip ties to handcuff her. The zip ties were fastened so tightly that Selenah's fingers went numb. While zip tied, Selenah witnessed other protesters crying out for medical treatment, including an older man who was suffering from being pepper sprayed and a woman who appeared to be having a seizure, and she heard that a pregnant protester went into labor. Selenah also witnessed the NYPD hit other protesters with batons and saw protesters who had their lips and foreheads sliced open and their bodies dragged against the pavement. Selenah noticed the officers were targeting Black people and LatinX people with darker skin for worse abuse.

Before putting protesters on the van, officers were taking pictures of those arrested. Selenah heard officers joking and asking each other "how many bodies did you get?" An officer stood next to her while another officer—this one wearing a white shirt—took a picture of the two of them together. She felt like a trophy to them. Right before the photo, the officers pulled Selenah's mask down. The officers were not wearing masks. Selenah was transferred to Queens Central Bookings Unit, and while waiting in line to be processed, an officer searched Selenah's hair. She noticed that the officers were only searching the hair of Black and brown women. Another officer, who was not wearing a mask, told Selenah and others in the line to get closer as there was no need for social distancing and Covid-19 did not exist. Selenah was then put into a holding cell containing dozens of other people. Selenah asked for water multiple times, but her requests were repeatedly ignored, until an officer provided one half gallon of water to be shared among the dozens of detainees. The zip-ties were taken off after more than five hours. After Selenah was released the next morning, her friend who had been living with her moved out of the apartment because she was worried Selenah had contracted Covid-19 while being detained.

4) Tareq Radi (NOC 2020PI021507)

Tareq Radi is a 29-year-old PhD candidate and a Palestinian-American who was living in Brooklyn until recently. He attended the protest on June 4 with a friend. The police officers forced him and other protesters into a confined space and blocked them from leaving. As the officers forced the protesters closer together, Tareq saw officers standing on top of cars and beating protesters with batons and then breaking into the crowd to continue beating the protesters. Tareq and his friend tried to hold on to each other, but Tareq's body was exposed to the police on the edge of the crowd. Tareq was hit by a baton on the arms, shoulders, and jaw multiple times by various police officers, and had his glasses shattered. He was pushed onto a pile of people. He saw the protesters at the bottom of the human pile struggling to breathe. After Tareq got out of the pile, another officer beat him with a baton, and then kicked him in the head as officers shot pellets filled with pepper spray at Tareq and others. At some point Tareq was pushed by officers into another pile of people. Then, an officer grabbed and punched him, and officers hit him with a baton. In the midst of this, one of three surrounding officers pulled Tareq's Arabian head wrap down over his eyes. These three officers then tackled Tareq to the ground and one of the officers kneed Tareq in the head. Officers cursed repeatedly at Tareq. One of the officers then zip tied Tareq's hands behind his back. While Tareq was zip tied, officers continued to hit and kick his legs. An officer grabbed his camera out of his backpack and broke a part of it on the ground.

Officers placed Tareq in an individual cell on a bus, where he was forced to wait for a few more hours before being taken to a Queens jail. After hours of being zip-tied, Tareq's hands began to swell and he asked for help but was at first ignored; after a long time, an officer cut them and applied new ones. At the jail, Tareq had to wait outside for several more hours. Once inside the jail, Tareq was placed in a series of overcrowded cells. Officers refused to provide him with food or water for hours despite Tareq's repeated requests for both. The cell was dirty, the toilets were unsanitary, it was impossible to socially distance, and the protesters were not given masks (Tareq's mask had been removed by police officers earlier). Most of the officers did not wear masks either. Tareq was kept in these conditions until late the next morning when he was released.

5) Gina Tedesco (NOC 2020PI021146)

Gina Tedesco is a 31-year-old office manager, who resides in the Bronx and identifies as mixed ethnicity. When she approached the march site on June 4, she noticed there were a lot of police officers, with many officers biking towards the marchers. As Gina and other protesters were marching and chanting, police flanked the group on all sides on bikes. Eventually, the police pinned in the protesters on all sides so they could not leave. Once the officers had surrounded the group of protesters, the officers proceeded to squish the protesters tighter and tighter together. Then, the officers started grabbing people and hitting them with batons and pepper spraying the crowd. At this point, an officer with his badge number concealed forcefully grabbed Gina. A second officer came to help zip tie Gina's hands and wrists together behind her back. Gina's ID was in her bra, and an officer searched Gina's bra and breasts in the midst of the crowd without her permission. With dozens of officers and members of the public within viewing distance, the officer continued searching Gina for a prolonged period of time until she found Gina's ID.

As the police walked Gina to a police transport, she heard a lot of screaming and shouting, and saw people being beaten with batons. She heard people say their zip ties were too tight. If a protester was being vocal, police suppressed them by grabbing people's tied arms and forcefully pulling up above their head. Gina also saw approximately 10 to 15 police officers throw an essential worker who was not part of the protest onto the ground and pummel him. Once on the police transport, Gina witnessed a person urinate on themselves after the NYPD ignored the protester's request for a bathroom. At the Queens facility, Gina was placed in a very small cell with more than 10 other people. Everyone was zip tied. None of the officers were wearing masks. The detainees were eventually given masks, but when the officer handed them into the holding cell, he did so with his full hand, making the masks unusable. Gina was later taken to a second, equally crowded cell. In this cell, officers did not give masks to anyone. Gina was in police custody for approximately four hours, and her hands were tightly zip tied for almost all of that time. From the moment the interaction with the police began, Gina felt the police treated the protesters like cattle, not people.

6) Jessica Enriquez (NOC 2020PI020734)

Jessica Enriquez is a 22-year-old recent graduate of New York University, and a LatinX resident of Brooklyn. As she marched with the protesters on June 4, a large group of NYPD police officers (some in riot gear, some on bicycles) kettled the group of protesters. The police blocked off both sides of the street such that Jessica and the other protesters could not escape. It appeared the officers outnumbered the protesters by three or four to one, and Jessica noticed a helicopter flying low overhead and officers positioned on surrounding rooftops pointing guns at the protesters. She feared the police would shoot everyone to set an example. As the officers pushed the protesters tightly together, Jessica could not breathe and experienced an anxiety attack. Jessica saw the officers beating protesters at the front and the back of the group with batons. An officer threw Jessica's friend to the ground, zip-tied her wrists tightly, and put her into a circle of other arrested protesters. Subsequently, a police officer zip tied Jessica's wrists extremely tightly and then threw her to the ground, which caused her backpack to press down on the zip ties. Jessica asked the officers repeatedly to lift up the backpack since it was causing so much pain, but the officers refused. Officers were also ripping masks off some of the other protesters' faces and not offering replacements, and most of the police officers were not wearing masks themselves.

After waiting approximately two hours, Jessica was tightly packed into a van with other protesters to be taken to a precinct in Queens. The officers did not turn on the air conditioning in the van for a long time despite the heat outside. Jessica and several other protesters who were on their periods were denied access to a bathroom while on the van. At this point, Jessica could no longer feel her left hand. An officer noticed her hands were discolored and swollen and finally changed her zip-ties, which were looser but remained very tight. Jessica was finally able to lift the backpack off of her wrists. There were indentations from the first zip ties that were so deep in Jessica's wrists that she could fit her finger inside the groove. Once they arrived at the precinct, Jessica and the other protesters were forced to stand in line outside of the building in the heavy rain for approximately four to five hours. Jessica was then put into a holding cell which was dirty, moldy, and extremely cold. The sink was broken and there was one open bathroom stall,

which did not give Jessica privacy to change her tampon. At approximately 6 am the following day, the officers finally provided one cup of water for each protester. Jessica received only one additional cup of water before she was released after 1 pm the next day.

7) Carlos Ministro (NOC 2020PI021372)

Collective member Carlos Ministro, a father of three children and a 28-year-old Mexican American resident of the Bronx, attended the protest on June 4 to watch over his sister. He was marching alongside his sister and his friend when the NYPD kettled them. They attempted to walk away and were able to escape the crowd, but then a group of officers surrounded Carlos and his sister and started shoving them. Carlos and his sister hugged each other to stay together, but the officers physically pulled them apart. The officers pushed Carlos's sister around, violently grabbing her arms. Carlos pleaded with the officers to stop being so violent with his sister. The officers then arrested Carlos, punched him in the stomach, and with his hands against a fence, hit them with a baton. The officers threw Carlos to the ground, and restrained his wrists with very tight zip ties, which eventually made him lose feeling in his hands and turned his fingers purple. His multiple requests for the zip ties to be removed or loosened were ignored. Carlos's friend, who was walking ahead, was yelled at by the officers before they jumped on him and tackled him to the ground. Carlos's friend pleaded for them to stop violently shoving Carlos's sister. After arresting them, the officers instructed Carlos and his sister to sit on the ground and wait for a police van. The officers sat Carlos's friend next to him and an officer called Carlos's friend a homophobic slur.

The officers loaded them onto a police van and took them to the precinct where they waited to be processed. The officers held Carlos longer than his sister, and only released him after his sister questioned their decision to continue to hold him.

The experiences of the other Mott Haven Collective members mirror these accounts of police violence. According to Collective member Ikaika Ramones (NOC 2020PI021501), "officers pushed him into a human pile. There were people both above him and below him. [His] glasses were taken from him and he was pepper sprayed in his face and up his pants. His overalls were soaked with pepper spray. Ikaika was then thrown to the ground causing his head to hit the pavement hard." Collective member Francheska Alcantara (NOC 2020PI021138) tried to escape the kettle, but an NYPD officer grabbed her leg as she was trying to leave and slammed her on the street. At that point, Francheska thought she might die. Then a second officer hit Francheska in the head, and zip tied her hands together so tight it caused pain. Another Collective member, Mateo Cartagena (NOC 2020PI021216), was thrown to the ground by the NYPD. An officer then put his knee on Mateo's neck. The officer ignored Mateo's pleading that he was having trouble breathing and kept his knee on his neck. Similarly, an officer put his knee on Nicholas Klein's (NOC 2020PI021293) neck and back and ignored him when he told them he could not breathe. While Nicholas was being held on the ground by multiple officers and unable to breathe, an officer had his foot on Nicholas's groin and kicked him, causing extreme pain. Collective member Robert Goyanes (NOC 2020PI021375)—whose experience is detailed in the Attorney General's complaint—was trying to help two protesters get up off the ground when an NYPD

officer slammed him with his riot shield, and then another officer punched him several times with a closed fist.

The other Collective members' accounts also echo how the abuse continued after the NYPD loaded the protesters on police vans and buses to transport them to holding cells all around the City. Collective member Kyla Savino (NOC 2020PI021505) described officers removing the masks of the protesters who were wearing them on the bus, exposing everyone to the threat of Covid-19. Despite the fact that many protesters on Kyla's bus were bleeding from the attack and asking for their zip ties to be loosened, no one received medical attention. Jayson Ramirez (NOC 2020PI020926) was transported and had to walk into the precinct with no shoes on. At the precinct, Collective member Alex Suarez (NOC 2020PI020737) waited in a line outside for more than three hours, and when it started to rain, the tear gas that the NYPD had sprayed in his hair ran down his face and into his eyes. When another protester tried to help Alex, the NYPD officers laughed at him. After being taken to another processing center and waiting there for several hours, Alex was released 17.5 hours after he was originally taken into custody. Collective member Daniel Gonzalez (NOC 2020PI020834) had a similar experience at Queens Central Booking, where the pepper spray in his hair trickled down into his eyes and over his body as he waited outside in the rain, making his other injuries hurt worse. When Nicholas Klein was transferred between precincts and handcuffed in the back of a police car, the officer driving ran a red light in the rain without the alarm on. The officer laughed and, in response to the suggestion that he could have crashed, said to Nicholas: "I would've made you a lot of money if you lived."

Collective member Daria Reavan (NOC 2020PI021376) described the conditions inside a holding cell in Queens, where she was denied water until the next morning and food until later the next day: "The holding cell did not appear as if it were intended to hold people—it was quite old, did not have running water, and had a non-functioning toilet in the corner. The holding cell was also so cold that it caused her and several others (all of whom were not allowed to wear shoes in the holding cell) to shiver uncontrollably. In addition, Covid-19 guidelines were not followed in the holding cell, including because it was crowded and not everyone was given (or wearing) a mask." Officers mocked protesters' concerns about Covid-19 and said it did not exist.¹⁶ Family members looking for the protesters who had been arrested could not find them, and when they called precincts looking for information on loved ones the NYPD hung up on them.¹⁷

The Mott Haven Collective Suffered Significant Injuries

Each member of the Mott Haven Collective suffered injuries as a result of the NYPD's violations of the law. The physical injuries range from cuts and bruising to persistent numbness and diagnosed nerve damage. Collective members also suffered emotional injuries, including conditions that indicate the onset of Post-Traumatic Stress Disorder. As you may know, trauma can result in lasting harm to both the individuals directly affected and to larger communities that witness or are the targets themselves of the government violence that induced the trauma. The NYPD's June 4 attack is yet another chapter in the longstanding history of police abuse in the

¹⁶ See NOC 2020PI021293.

¹⁷ See NOC 2020PI021377.

Bronx, and the effects of this government-sanctioned violence have reverberated through the entire community.

At least half of the Collective members were physically beaten by NYPD officers.¹⁸ At least five were pepper sprayed.¹⁹ Many were thrown to the ground.²⁰ Most of the Collective members were placed in overly tight wrist restraints.²¹ When Collective members asked the officers to loosen their wrist restraints, officers refused.²² One Collective member was left in overly tight wrist restraints for almost ten hours.²³ These injuries were exacerbated by the ongoing pandemic—which the NYPD seemed to wholly ignore as it pushed people close together,²⁴ tore off their masks,²⁵ and prevented them from being able to socially distance.²⁶

At least 21 Collective members reported physical injuries that persisted long after the protests. Collective member Francheska Alcantara, for example, had bruises on her knees, shoulders, hands and wrists, and severe pain in her ankle, wrists, neck, and head that lasted for several weeks. Collective member Jayson Ramirez’s face was scraped and bruised from being pressed and dragged against the concrete pavement, his wrists were swollen and in significant pain for several days, and his right forearm was scratched from the concrete. Collective member Jessica Enriquez had zip ties so tight that she had bruises on her wrists for almost two months and could not do anything that required her to hold something for an extended period of time, like holding the handlebars of a bike. She also had to quarantine for two weeks after the protest for fear that she was exposed to Covid-19. Collective member George Aumoithe (NOC 2020PI021204) had welts and nerve damage to his fingers and wrists that required him to wear a brace. His mobility was so limited that he experienced shooting pain when he tried to work for weeks after the protest. Reina Roman (NOC 2020PI021502) thought she may lose multiple fingers because of how tight her handcuffs were, and months later, her thumb was still numb and dark scars marked her wrists.

All Collective members also suffered emotional injuries from experiencing and witnessing fellow protesters experience police violence. Collective member Nicholas Klein said that, while handcuffed, he “witnessed extreme police brutality towards other individuals who were pepper sprayed directly in their eyes, hit by batons, punched in their stomachs, had their head sliced open, and/or their bodies dragged against the pavement.”²⁷ Because of the brutality they experienced and witnessed, many Collective members had symptoms of severe emotional

¹⁸ NOC 2020PI020737; NOC 2020PI020918; NOC 2020PI020926; NOC 2020PI021505; NOC 2020PI021375; NOC 2020PI021507; NOC 2020PI021372; NOC 2020PI020834; NOC 2020PI021138; NOC 2020PI021216; NOC 2020PI021502; NOC 2020PI021376.

¹⁹ NOC 2020PI020737; NOC 2020PI020834; NOC 2020PI021501; NOC 2020PI021377; NOC 2020PI021507.

²⁰ *See, e.g.*, NOC 2020PI021372; NOC 2020PI021501; NOC 2020PI020734; NOC 2020PI021505; NOC 2020PI020953; NOC 2020PI021216; NOC 2020PI021115; NOC 2020PI021507.

²¹ *See, e.g.*, NOC 2020PI020734; NOC 2020PI021372; NOC 2020PI021501; NOC 2020PI021502.

²² *See, e.g.*, NOC 2020PI021372; NOC 2020PI021501; NOC 2020PI020734; NOC 2020PI021293; NOC 2020PI021375; NOC 2020PI020928; NOC 2020PI021115.

²³ NOC 2020PI020737.

²⁴ *See, e.g.*, NOC 2020PI020734; NOC 2020PI020953; NOC 2020PI021373.

²⁵ *See, e.g.*, NOC 2020PI021501; NOC 2020PI020734; NOC 2020PI020953; NOC 2020PI021373; NOC 2020PI021507.

²⁶ *See, e.g.*, NOC 2020PI021377; NOC 2020PI021507; NOC 2020PI021115.

²⁷ *See also, inter alia*, NOC 2020PI020918.

trauma in the days, weeks, and months after the attack. One Collective member²⁸ experienced a panic attack for the first time in her life several days later and still feels shaken. Another Collective member experienced sleeplessness, night terrors, and fatigue after the protest. Other Collective members experienced a range of symptoms stemming from the traumatic experience, including racing and intrusive thoughts, hypervigilance, anxiety, exhaustion, depression, diminished energy, low mood, fear of going outside, sleeplessness, and hopelessness.

Many members of the Collective have not participated in protests since these incidents because they fear they will again face similar police abuse. And, in addition to the injuries described above, each member of the Mott Haven Collective suffered violations of constitutional rights—violations which in and of themselves constitute actionable injuries. We turn to those violations next.

The Mott Haven Collective’s Civil Rights Claims

If the Mott Haven Collective members are forced to sue, they will be able to bring numerous claims for relief under federal, state, and city law. Each Collective member provided a non-exhaustive list of those causes of action in their Notice of Claim. Of particular note is that the Mott Haven Collective has strong claims for discriminatory treatment, excessive force, and abridgment of freedom of speech and association.

Discriminatory Treatment: Black and brown members of the Mott Haven Collective experienced disparate treatment and selective enforcement based on race and/or ethnicity. The disparate treatment is evident from both a macro view of the incident and the individual experiences of the protesters. At the macro level, the overly-militarized, violent, and mass arrest by the NYPD of the Mott Haven Collective was comparatively more severe and punitive than NYPD actions around the same time at protests in whiter or richer neighborhoods. The NYPD Inspector General found that “[u]nlike some protests that continued in various parts of Manhattan and Brooklyn well after 8:00 p.m., the NYPD strictly enforced the curfew in the Bronx.”²⁹ Mott Haven is a majority Black and brown neighborhood and it was in this neighborhood and not any other neighborhood—not even the neighborhood in downtown Manhattan that experienced extensive looting³⁰—that the NYPD used such a militarized force and instigated a mass arrest.³¹ In sharp contrast to the treatment afforded the Mott Haven Collective, a group of predominantly white protesters supporting former President Trump who

²⁸ We have not included Collective members’ names or NOC numbers when discussing emotional trauma in this section due to the sensitivity of the information. We are happy to privately provide those to the Comptroller’s office on request. We specifically preserve and do not waive any privileges or protections for medical or mental health information.

²⁹ New York City Department of Investigation, *supra* note 5, at 21.

³⁰ *NYC Stores Destroyed by Looters Riots During George Floyd Protests*, ABC7NY (May 31, 2020) <https://abc7ny.com/looting-nyc-was-there-in-soho/6223350/#:~:text=Looters%20stormed%20Lower%20Manhattan%20on,of%20violent%20George%20Floyd%20protests.&text=The%20NYPD%20said%20what%20started,was%20widespread%20throughout%20multiple%20neighborhoods>.

³¹ See, e.g., NOC 2020PI021381; NOC 2020PI020834; NOC 2020PI021376; see also, e.g., Human Rights Watch, *supra* note 3, at 2, 31.

stopped traffic on City bridges just a few months later faced no police violence and no arrests.³² These are not the only disparities. Just one more example is that across the City, Black protesters faced more significant punishment from the police than white protesters: Black protesters received 68% of felony charges while only comprising 38.4% of the people charged.³³

The disparate treatment is also evident from the experiences of the protesters. The NYPD trapped the Mott Haven Collective members before the curfew despite their pleas to let them go, and in one case they threw a Black Collective member violently back into the protest after she tried to leave.³⁴ This was setting them up for arrest. Collective members experienced and witnessed officers target protesters of color for worse treatment than white protesters—from more severe violence to longer confinement. The NYPD searched Selenah Martin’s hair and she saw the NYPD search the hair of other Black and brown protesters too but not white ones. She also noticed that officers were targeting people with darker skin for worse treatment. Sidney Negron witnessed the NYPD harass and arrest Black and brown community members who just happened to be near the protest. Officers pulled Tareq Radi’s Arabian headdress over his eyes while beating him. Collective member Andom Ghebreghiorgis (NOC 2020PI021381) noticed that white women were released more quickly from booking while he and other Black people were held longer.

Together, this constitutes not only sufficient but significant evidence of biased policing in violation of city, state, and federal law.³⁵ Notably, none of the challenged police tactics were tailored in a manner that would have appropriately advanced a legitimate government interest—meaning that the City has no defense.³⁶

Excessive Force: The Mott Haven Collective was also uniformly subjected to excessive force, many of them repeatedly over the course of the incident. Force becomes excessive if the amount used is disproportionate to the need legitimately animating its application.³⁷ When

³² Jake Offenhartz, *Photos: Police Stand By as Caravans of Trump Supporters Block Bridges, Threaten Counter-Protesters*, *GOTHAMIST* (Nov. 2, 2020), <https://gothamist.com/news/photos-police-stand-caravan-trump-supporters-block-bridges-threaten-counter-protesters>.

³³ New York City Department of Investigation, *supra* note 5, at 27.

³⁴ NOC 2020PI021138.

³⁵ This includes but is not limited to violations of N.Y. Code § 14-151, which prohibits biased-based policing; New York Constitution, Article I Section 11 (guaranteeing equal protection of the law); and the Fourteenth Amendment to the United States Constitution (same). *See Floyd v. City of New York*, 959 F. Supp. 2d 540, 570–72 (S.D.N.Y. 2013) (discriminatory treatment under federal law can be established where a facially neutral policy is selectively used against a person because of their race) (citing *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010)); *People v. Gary M.*, 526 N.Y.S.2d 986, 997 (Sup. Ct. Kings Cty. 1988) (collecting cases showing that state and federal equal protection affords the same rights). The New York City Council notably passed the prohibition on biased-based policing to provide a private right of action to New Yorkers who had been racially profiled by the NYPD. It was the Council’s intention “that the provisions [in § 14-151] be construed broadly, consistent with the Local Civil Rights Restoration Act of 2005, to ensure protection of the civil rights of all persons covered by the law.” N.Y. Code § 14-151.

³⁶ *See* N.Y. Code § 14-151 (providing that, to defeat a biased-based profiling claim, the NYPD would have to prove that a tactic was necessary and narrowly tailored to achieve a compelling governmental interest, and that there was no better tactic that would have been sufficient).

³⁷ *See Edrei v. Maguire*, 892 F.3d 525, 534 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 2614 (2019) (excessive force “merely requires showing that ‘the force purposely or knowingly used against [the subject] was objectively unreasonable’ . . . through contextual factors”) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)); *see*

people are not under arrest or resisting, the force used to maintain order should be *de minimus*.³⁸ Here, the NYPD had no legitimate need to use force against the Collective members. The City all but admits this in the NYPD Inspector General's report, which found that "[t]he force required to carry out a mass arrest" on June 4 "was disproportionate to the identified threat."³⁹ The NYPD subjected Collective members to force the instant they kettled them. This was before curfew⁴⁰ and the NYPD had by its actions permitted the protest to occur up to that point which means no one could have been lawfully arrested and the NYPD was prohibited from using any force at all.⁴¹ The kettling itself was therefore excessive force.⁴² After the kettling, the NYPD physically beat at least half of the Collective members, and used excessively tight wrist restraints on most of them.⁴³

Meanwhile, officers made no effort to limit the amount of force they used. In fact, statements from high-ranking NYPD officials suggest that the use of force was pre-planned, regardless of whether it was necessary.⁴⁴ Collective members posed no threat to the officers, and no one was resisting arrest.⁴⁵ Each Collective member has strong claims against the City for excessive force.⁴⁶

also Graham v. Connor, 490 U.S. 386, 396 (1989). Additionally, under New York State law, Collective Members can state a claim for assault and battery for the force used by police officers because "any use of force during the commission of an unlawful arrest is actionable." *Budgar v. State*, 98 Misc. 2d 588, 592 (Ct. Cl. 1979); *see also Johnson v. Suffolk Cty. Police Dep't*, 245 A.D.2d 340, 341 (2nd Dep't 1997) (finding that the officer "committed a battery when he touched the plaintiff during [an unlawful] arrest") (internal citation omitted).

³⁸ *See Edrei*, 892 F.3d at 534–36 (explaining that "proportionality" or "the relationship between the need for the use of force and the amount of force used" is a factor that must be considered for the use of force on non-arrestees for whom "the government has not even shown probable cause of criminal activity, much less a public safety (or flight) risk warranting detention") (quoting *Kingsley*, 576 U.S. at 394).

³⁹ New York City Department of Investigation, *supra* note 5, at 56. This is assuming there was any threat at all, which we do not concede.

⁴⁰ *See, e.g.*, NOC 2020PI020953; Human Rights Watch, *supra* note 3, at 27.

⁴¹ *Vodak v. City of Chicago*, 639 F.3d 738, 746–47 (7th Cir. 2011) (finding that police cannot "say to a person go ahead and march and then, five minutes later, having revoked the permission for the march without notice to anyone, arrest the person for having marched without police permission").

⁴² *Cf. Edrei* 892 F.3d at 544 (finding that the use of long-range acoustic device on a group of nonviolent protesters constituted excessive force under the Fourteenth Amendment).

⁴³ *See Shamir v. City of New York*, 804 F.3d 553, 557 (2d Cir. 2015) (collecting circuit court decisions "recogniz[ing] that excessively tight handcuffing that causes injury can constitute excessive force in violation of the Fourth Amendment").

⁴⁴ The NYPD Commissioner, Dermot Shea, confirmed the day after the protest that the force used in the Bronx was pre-planned: "We had a plan which was executed nearly flawlessly in the Bronx." Human Rights Watch, *supra* note 3, at 49.

⁴⁵ Even if any Collective member did resist arrest, they have a right in New York to resist unlawful arrest. *See, e.g., People v. Kevin W.*, 91 A.D.3d 676, 677 (2nd Dep't 2012), *aff'd* 3 N.E.3d 1121 (2013) (dismissing resisting arrest charge against defendant because "there was no probable cause to arrest the defendant and that there was not an 'authorized arrest,'" both of "which are essential elements of the crime of resisting arrest" under New York State law).

⁴⁶ Collective members will have claims for excessive force under the Fourteenth and/or Fourth Amendments to the United States Constitution, *see supra* notes 42 and 43, and also have claims under the corollary sections of the New York Constitution, which provides more robust protections than the federal law. *See, e.g., People v. Taylor*, 848 N.Y.S.2d 554, 562 (N.Y. 2007) (interpreting New York State due process clause more broadly than its federal counterpart); *People v. Scott*, 79 N.Y.2d 474, 496-97 (N.Y. 1992) (interpretating New York state prohibition against unreasonable searches and seizures more broadly than its federal counterpart); *Sharrock v. Dell Buick-Cadillac, Inc.*,

Freedom of Speech and Association: The Mott Haven Collective also suffered significant abridgment of their rights to free speech and association.⁴⁷ It is axiomatic that “police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they simply fear possible disorder.”⁴⁸ While the Collective members were animated to attend the protests for varying personal reasons, they each attended to voice opposition to police violence and demand accountability from the government. This is without question activity that is protected under the federal and state constitutions. The NYPD responded to the exercise of these protected rights with a militarized police presence, unprovoked violence, and a mass arrest, and this response appears to have at least in part been motivated by the fact that a subset of protesters were believed by the NYPD to be “among the most outspoken critics of police violence and racism.”⁴⁹ The NYPD’s actions functioned as a “direct prohibition” on the Collective members’ rights as the NYPD effectively shut down the protest the moment they kettled the protesters,⁵⁰ and the violence that day subsequently chilled many Collective members in exercising their First Amendment rights in future protests out of fear of further violence from the NYPD.⁵¹

Conclusion and Next Steps

We recognize that establishing and administering the reparations demanded by the Mott Haven Collective would require sorting out logistics that we do not address in this letter. Should you be willing to develop the fund,⁵² we are certain we can negotiate those details to make it happen. The Collective also has additional requests for reparations, such as wanting the City to acknowledge responsibility, apologize, fire those who directed or permitted this assault, and ban the use of kettling.

45 N.Y.2d 152, 160-61 (N.Y. 1978) (interpreting New York State due process clause more broadly than its federal counterpart).

⁴⁷ In order to state a claim under the First Amendment, Collective members must show (1) they have a First Amendment interest at stake; (2) the NYPD’s “actions were motivated or substantially caused by [their] exercise of that right;” and (3) the NYPD’s “actions effectively chilled the exercise of” that right or they “suffered some other concrete harm.” *Dorsett v. Cty. of Nassau*, 732 F.3d 157, 160 (2d Cir. 2013) (citing *Curley v. Village of Suffern*, 268 F.3d 65, 73 (2d Cir. 2001)). Collective members will also be able to state a claim under the free speech protections found in Section 8 of Article I of the New York Constitution, which has been interpreted more broadly than its federal counterpart in some cases. *See Courtroom Television Network LLC v. State of New York*, 800 N.Y.S.2d 522, 526 (N.Y. 2005) (citing example of broader interpretation of New York State Constitution’s free speech protections than its federal counterpart but declining to do so in instant case).

⁴⁸ *Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) (citing *Cox v. Louisiana*, 379 U.S. 536, 550 (1965)).

⁴⁹ Human Rights Watch, *supra* note 3, at 47.

⁵⁰ *See Rodriguez v. Winski*, 973 F. Supp. 2d 411, 427 (S.D.N.Y. 2013) (quoting *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir.1992)).

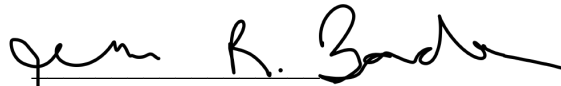
⁵¹ Even on the rare occasion when the police may disperse or stop a protest, the police “have an obligation, absent imminent harm, to inform demonstrators that they must disperse and may not use unreasonable force.” *Edrei*, 892 F.3d at 541 (internal quotations and citations omitted). The NYPD failed to provide any such warnings, and in fact, did the opposite by trapping Collective members and preventing them from dispersing before the 8 pm curfew struck.

⁵² The Mott Haven Collective seeks a fund to compensate people injured at the Bronx protests and to benefit the Bronx, but it may be appropriate to expand the fund to others who experienced police misconduct at protests.

As a first step, we would like to meet with you to discuss the Collective's demands. To schedule a meeting, contact Jenn Rolnick Borchetta at jborchetta@bronxdefenders.org and Seth Packrone at spackrone@bronxdefenders.org

Thank you for your time and attention to this matter. We hope to hear from you soon.

Sincerely,



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