

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jonathan Corbett,
Plaintiff

v.

City of New York
Defendant

___-CV-___

**COMPLAINT FOR VIOLATIONS
OF THE 4TH AMENDMENT TO
THE U.S. CONSTITUTION AND
CIVIL RIGHTS ACT**

JURY DEMANDED

SUMMARY

1. The City of New York, through their New York Police Department (“NYPD”), is in the process of rolling out “terahertz imaging devices” (hereafter, “Scanners”), which measure electromagnetic radiation to peer under the clothing of individuals, allegedly for the purpose of detecting unlawful concealed weapons.
2. These Scanners, which work from many yards away, are to be used on the streets, effectively allowing the NYPD to conduct unlimited virtual “stop-and-frisks” on unsuspecting passersby. As the search is conducted without the knowledge of the search victim, there is no possibility that the search can be judicially reviewed to determine whether the requisite level of suspicion existed.

JURY TRIAL

3. Plaintiff Jonathan Corbett (“CORBETT”) demands a jury trial.

PARTIES

4. CORBETT is an individual residing in Miami-Dade County, Florida, with significant connections to the State and City of New York: to wit, CORBETT conducts occasional business within city limits and maintains personal relationships with city residents, resulting in his presence within the city for no less than several weeks per year for each of the previous 5 years.
5. Defendant City of New York is the city incorporated by and through the laws of the State of New York and is the entity responsible for the New York Police Department.

JURISDICTION & VENUE

6. This Court has subject matter jurisdiction under 42 USC § 1983 (the “Civil Rights Act”) and 28 USC § 1331.
7. Venue is appropriate because Defendant City of New York is a city largely within the district boundaries for this Court and the NYPD is headquartered within this district.

ALLEGATIONS OF FACT

8. In January 2012, Raymond Kelly (“KELLY”), speaking as police commissioner for the NYPD, announced that he “was working with the Defense Department to develop gun-scan technology ‘capable of detecting concealed firearms.’” *See* Police Working on Technology to Detect Concealed Guns, The New York Times, Jan. 17th, 2012, <http://cityroom.blogs.nytimes.com/2012/01/17/police-working-on-technology-to-detect-concealed-guns/>
9. In January 2013, KELLY announced that development has been successful thus far and that the NYPD had obtained the technology – the Scanners – he discussed a year prior. *See* Exhibit A, Police Tool Targets Guns, The Wall Street Journal, Jan. 23, 2013, <http://online.wsj.com/article/SB10001424127887323539804578260261579068182.html>
10. The human eye can only see a small percentage of electromagnetic radiation; scientists refer to this percentage as “visible light.” For example, the sun, a television, and a light bulb all emit visible light.
11. Other kinds of electromagnetic radiation cannot be seen by the human eye. For example, when operating a microwave, medical x-ray, or infrared camera, it doesn’t appear that any “light” is coming out of the device. In reality, there is indeed “light” being emitted out of all of these devices, but our eyes are incapable of detecting this “invisible light.”
12. Every substance blocks certain kinds of electromagnetic radiation. For example, glass does not block visible light, which is why one can see through a windshield, while cotton blocks visible light, which is why one cannot see through clothing.
13. For thousands of years, humans have used clothing to protect their modesty and have quite reasonably held the expectation of privacy for anything inside of their clothing, since no human is able to see through them.

14. However, cotton and other common clothing fibers, while good at blocking visible light, do not completely block a type of invisible light known as “terahertz waves.”
15. The NYPD’s Scanners essentially contain a camera that can photograph these invisible terahertz waves and then digitally process them into visible light, such that the operator can peer through clothing.
16. The result is that the Scanner creates an image sufficiently detailed to detect small items placed on the body at medium-range (up to 25 yards). *See* Exhibit B.
17. The image created by a Scanner is clear enough to determine the presence and rough shape of objects, but not clear enough to determine the presence of a weapon conclusively. For example, tools on a tool belt, cell phones, or other objects lawfully kept in pockets may appear to the operator to be a potential unlawful concealed weapon.
18. It is not possible to “feel” a scan – an individual being searched by a Scanner would have no way to know that they were being scanned.
19. The NYPD either has or immediately intends for the scanners to be “mounted on a truck and deployed to sites identified as prone to gun violence.” *See* Exhibit A.
20. Based on it being absurdly impractical to find a crime suspect, obtain a sufficient basis to form reasonable suspicion, then drive a truck to within 25 yards of the individual to conduct a scan – hoping all along that the individual does not leave or notice the police presence in the meantime – it can only be concluded that the NYPD intends to use this device to scan random passersby in these “sites identified as prone to gun violence.”
21. Even if the police did want to scan only individuals for which reasonable suspicion was present, a Scanner would simultaneously search all innocent bystanders that were in the area.
22. In a well-trafficked area, a single Scanner could search thousands of individuals per day or *millions of individuals per year*.
23. If the NYPD were to implement a dozen of these Scanners, placed in the right locations, they could potentially scan virtually every New Yorker within a year.

24. The NYPD has been repeatedly found to have a pattern and practice of unlawful stop-and-frisk¹ (defined as detaining an individual and then “patting down” the individuals body through his or her clothing, ostensibly as a weapons search) by this Court and its sister court to the east.
25. Since KELLY took office in 2002, the number of annual stop-and-frisks has skyrocketed, reaching an all-time high in 2011 of 684,330. *See* Exhibit C, “Critics Assail NYPD Stop-and-Frisk Tactics,” The Wall Street Journal, <http://blogs.wsj.com/metropolis/2012/02/14/critics-assail-nypd-stop-and-frisk-tactics/>
26. With a population of about 8 million people, this works out to about 1 in 12 New Yorkers stopped and frisked annually.
27. The absurdity of the NYPD assertion that 1 in 12 New Yorkers actually provide reasonable suspicion to an officer that they are carrying weapons on an annual basis is confirmed by the fact that only 1.25% of these searches actually yielded a weapon. *See* Exhibit D, “NYPD Stop-and-Frisk Statistics, 2009 and 2010,” Center for Constitutional Rights. http://ccrjustice.org/files/CCR_Stop_and_Frisk_Fact_Sheet.pdf
28. A suspicion that is wrong 98.75% of the time is not “reasonable.”
29. Considering together the impracticality of using such a device in a manner that respects Fourth Amendment rights (see ¶¶ 20, 21), the ease of annually searching millions of individuals with even a single device and the resultant high probability of being searched (see ¶¶ 22, 23), and the history of NYPD abuse of stop-and-frisk (see ¶¶ 24 – 28), Plaintiff has a reasonable fear of being violated by NYPD Scanners unless the NYPD is ordered to cease and desist.
30. The NYPD has never articulated any intent to notify those who have been searched by using the Scanners.
31. Absent a showing of the creation of forms, policies, *etc.*, dictating notification requirements, it is beyond mere speculation that the intent of the NYPD is to use the scanners to conduct “secret searches.”

¹ This lawsuit in no way asks the Court to review the City’s abysmal stop-and-frisk program – there are a plethora of other lawsuits addressing that right now. Rather, stop-and-frisk is mentioned herein because if the NYPD cannot manage to lawfully search people that they know can file a lawsuit against them, it should lead the Court to conclude that the NYPD certainly would not lawfully search individuals who would never even know that they were being searched and therefore would be unable to seek justice.

CLAIMS FOR RELIEF

Count 1: The Fourth Amendment to the U.S. Constitution

32. Defendant City of New York has begun, or will immediately begin, implementation of searches conducted without suspicion via their use of the Scanners.
33. The intrusion effected by the Scanners requires at least reasonable suspicion². See *Terry v. Ohio*, 392 U.S. 1 (1968); *Kyllo v. United States*, 533 U.S. 27 (2001).
34. Use of the Scanners without notice to those being searched is further unreasonable.
35. In doing so, Defendant City of New York is, or will immediately be, in violation of the Fourth Amendment to the U.S. Constitution.

Count 2: Civil Rights Act, 42 USC § 1983

36. Defendant City of New York has begun, or will immediately begin, implementation of unlawful searches via their use of the Scanners.
37. Defendant City of New York retains municipal liability for these unlawful searches because they are establishing these searches as official department policy.
38. In doing so, Defendant City of New York is, or will immediately be, in violation of the Civil Rights Act.

² Since the intrusion effected by the Scanners is potentially greater than a traditional stop-and-frisk (that is, traditional stop-and-frisk can be lawfully used to identify large, hard objects that could possibly constitute a weapon, but the Scanners may be able to identify a significantly broader list of objects), reasonable suspicion may be too light of a standard, and a rational court could determine that probable cause and a warrant would be required.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a) Declaratory relief stating that the use of the Scanners in public places throughout the city, absent reasonable suspicion or probable cause, as determined by the Court, is unlawful.
- b) Declaratory relief stating that searches using the Scanners without
- c) Permanent injunctive relief placing the same requirements on the NYPD as discussed in Plaintiff's motion for temporary restraining order and preliminary injunction (or stricter requirements, should the Court determine that probable cause is the appropriate standard).
- d) Cost of the action.
- e) Reasonable attorney's fees, should CORBETT retain an attorney³.
- f) Any other such relief as the Court deems appropriate.

Dated: New York, NY

January 28th, 2013

Respectfully submitted,

Jonathan Corbett

Plaintiff, *Pro Se*

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Miami, FL 33179-3899

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³ CORBETT is presently representing himself in this action *pro se*, and is not seeking attorney's fees for any *pro se* work. CORBETT only seeks attorney's fees in the event that he retains an attorney at a later point, and only for the work completed by said attorney.

Exhibit A

THE WALL STREET JOURNAL.

WSJ.com

NY CRIME | January 23, 2013, 9:20 p.m. ET

Police Tool Targets Guns

Kelly Says 'T-Ray' Can Indicate a Firearm Under Clothing

By TAMER EL-GHOBASHY

The New York Police Department is testing a new device it says can detect firearms concealed beneath layers of clothing, a high-tech crime-fighting tool seemingly torn from the pages of science fiction.

The so-called T-Ray machine detects terahertz radiation, a high-frequency electromagnetic natural energy that is emitted by people and can penetrate many materials, including clothing.



NYPD

The T-Ray machine.

"If something is obstructing the flow of that radiation, for example a weapon, the device will highlight that object," said Commissioner Raymond Kelly, who described the device Wednesday in a speech at the Waldorf-Astoria Hotel.

News of the device prompted concerns from privacy advocates, though they also saw a potential benefit: It might render unnecessary the legally disputed police policy of stopping and frisking people who haven't been first identified as suspects in crimes.

In an image displayed by Mr. Kelly, the T-Ray scanner highlighted the body of a plainclothes officer in neon green—with a gun clearly visible as a black shape. The image was captured with the officer standing about 30 feet away.



NYPD

An image captured with a T-Ray scanner of a plainclothes officer in neon green with a gun clearly visible as a black shape.

"You get a sense of why we're so hopeful about this tool," Mr. Kelly told the audience, which was mostly members of the New York City Police Foundation, a nonprofit group that raises money for the department.

Another photo showed the machine, tripod-mounted and about the size of an old-style projection television and housed in blue plastic. Officials said in its current form, the machine could be mounted on a truck and deployed to sites identified as prone to gun violence.

Mr. Kelly said the department had been working with a security-and-surveillance systems manufacturer based in Britain, along with the London Metropolitan Police, to

develop the device.

The NYPD received its machine last week, he said. Representatives of the company, [Digital Barriers](#), could not be reached for comment.

The program is being paid for by the U.S. Department of Defense, said Paul Browne, chief spokesman for the NYPD. Mr. Browne described the machine as a "multimillion" dollar device but wouldn't specify its cost.

Mr. Browne said the police aimed to get the T-Ray technology in a device small enough to carry on an officer's gun belt. The police provided no timetable for when any version of the device would be deployed.

Last month, the California Institute of Technology developed a terahertz microchip, raising the possibility the technology could one day be packed into hand-held devices.

As part of the Bloomberg administration's stance against the flow of illegal weapons into the city, Mr. Kelly has promoted the seizure of guns as a primary reason New York City's murder rate reached record lows this decade.

He said on Wednesday that since 2002, 800 illegal guns had been taken off the street. Toward that end, the NYPD has employed its stop-and-frisk policy, which has been the target of legal challenges and assailed by critics as discriminatory for targeting minorities overwhelmingly.

Critics said the prospect of a no-hands T-Ray search raised general privacy concerns and fears over so-called false positives—where an object on a person's body could be misread to be a weapon.

"Any technology that allows police to peer into a person's body or possessions raises a lot of questions....," [Donna Lieberman](#), executive director of the New York Civil Liberties Union, said in an email. "But to the extent that this technology reduces the abuse of stop-and-frisk that harms hundreds of thousands of New Yorkers every year, we're intrigued by the possibilities."

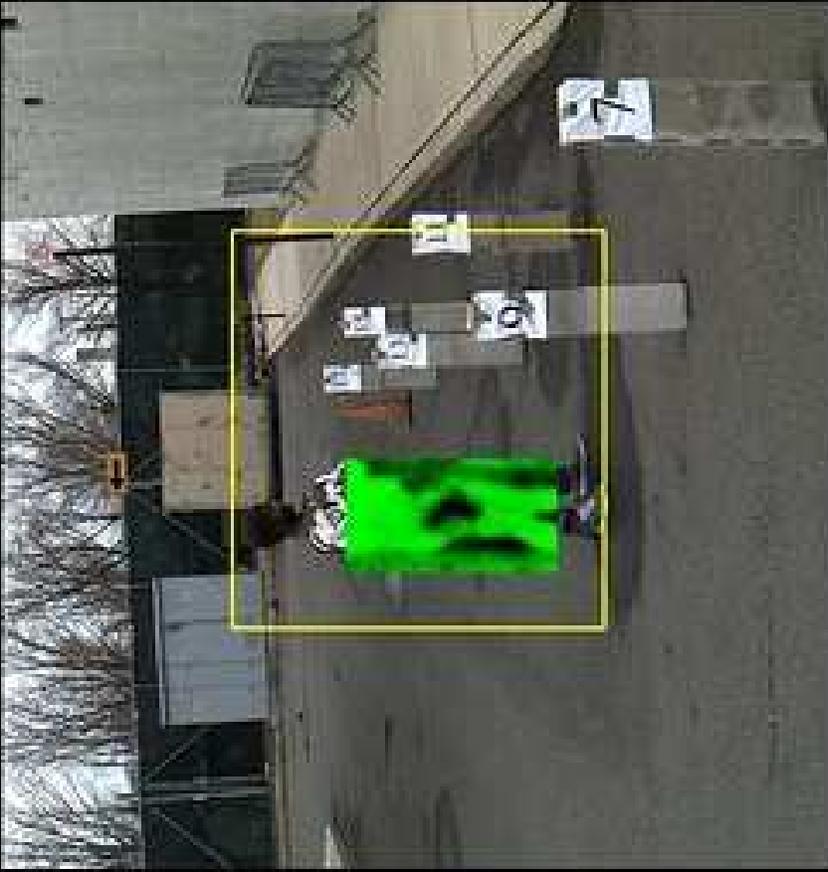
Mr. Kelly said the department was working with its lawyers to assess "how we can utilize [the new machine] and how we can deploy it" in light of due-process protections under the U.S. Constitution and to guard against possible litigation that could arise from its use.

Separately, Mr. Kelly said that a pilot program in which the NYPD videotaped interrogations of suspects in felony assaults has been expanded to include sex crimes and murders. He said 23 out of a targeted 61 department facilities have been equipped with the cameras and lighting to implement the program.

Write to Tamer El-Ghobashy at tamer.el-ghobashy@wsj.com

A version of this article appeared January 23, 2013, on page A19 in the U.S. edition of The Wall Street Journal, with the headline: Police Tool Targets Guns.

Exhibit B



Jan 14 2013 15:13:40



Jan 14 2013 15:13:40



Close

Exhibit C

FEBRUARY 14, 2012, 6:25 PM ET

Critics Assail NYPD Stop-and-Frisk Tactics

Search Metropolis

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Article

Comments (5)

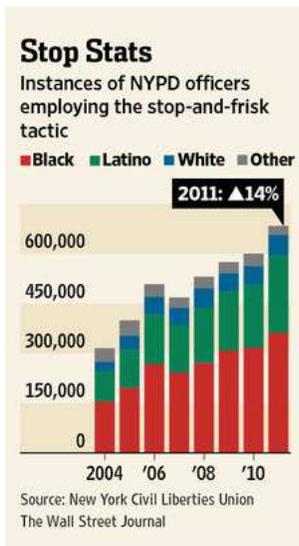
METROPOLIS HOME PAGE »

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By Pervaiz Shallwani

Joseph Midgley, who identifies himself as a homeless New Yorker, is no stranger to the New York Police Department's stop-and-frisk policy.

"I have been stopped and frisked four times," said Midgley, who volunteers with the advocacy group Picture the Homeless. In each instance, he said, police asked if he had anything illegal and proceeded to search him even after he said no. "I was never ever charged, never even given a ticket."



Midgley joined a group of critics who turned out Tuesday to challenge police tactics on the steps of City Hall. The event came in the wake of [The Wall Street Journal's report](#) that police performed a record-high 684,330 stops last year.

The number of stops jumped by 14% over 2010 totals — a pattern of increases that has been repeated nearly every year since Mayor Michael Bloomberg took office in 2002, said Darius Charney, lead attorney in a lawsuit challenging the stop-and-frisk policy. In Bloomberg's first year, the number of people stopped by police was under 100,000, he said.

Civil rights advocates, Manhattan Borough President Scott Stringer and City Council members participated in the press conference, calling on the Bloomberg administration to change the way stop-and-frisks are used and charging that the current system is racially biased.

"Acknowledge that this is a problem," said City Council Member Jumaane Williams. "I am not against stop and frisk as a police tactical tool, but it is being abused in my community in a way that would never be allowed."

Critics noted, as the Journal reported, that 84% of those stopped in 2011 were black and Latino. "Little wonder, then, that police in New York City is a tale of two cities," said Donna Lieberman, executive director of the New York Civil Liberties Union.

She said blacks are stopped more than six times as often as whites, while Latinos are stopped by police four times more frequently than whites. Men of color between the ages of 14 and 24 make up 7.2% of the city's population but account for 41% of the stops, Lieberman said.

Lieberman put the stop-and-frisk policy in the context of Bloomberg's philanthropic efforts to address the hurdles faced by young, underprivileged men in New York City. Police stops "are a significant part of the problem," she said.

The NYPD has said the practice has helped to bring down crime numbers and save lives. Homicides dropped 4% in 2011 compared to the low tally from the year before, and in total remained under 600 for the 10th straight year. Major crime, which includes violent offenses and serious theft, ticked up by less than 1% last year.

On Monday, NYPD spokesman Paul Browne estimated that over the past 10 years, there were 5,628 fewer homicides than in the decade before Bloomberg took office — as a result, in part, of the stop-and-frisk policy.

"There is no empirical data that shows stop and frisk reduces crime," Charney countered on Tuesday.

Councilman Williams, who represents Brooklyn, echoed that skepticism. "We cannot feel comfortable with these numbers," he said. "We cannot feel comfortable with a mayor who says just we don't care what you are saying, a commissioner who says we just don't care about what you are saying — we are going to do what we want anyways."

Exhibit D



NYPD Stop-and-Frisk Statistics 2009 and 2010

The Center for Constitutional Rights (CCR)¹ has long been active in the movement to address racial profiling, particularly in New York City.² CCR filed *Floyd, et al. v. City of New York, et al.*, a federal class action lawsuit against the New York City Police Department (NYPD) and the City of New York that challenges the NYPD's practices of racial profiling and unconstitutional stops-and-frisks.³ Stop-and-frisk is the practice by which an NYPD officer initiates a stop of an individual on the street allegedly based on so-called reasonable suspicion of criminal activity. Stop-and-frisks occur at an alarming rate in communities of color, who often feel under siege and harassed by the police.

In 2009, a record 576,394 people were stopped, 84 percent of whom were Black and Latino residents — although they comprise only about 26 percent and 27 percent of New York City's total population respectively.⁴ The year 2009 was not an anomaly. Ten years of raw data from the NYPD reveal that stops-and-frisks result in a minimal weapons and/or contraband yield. Moreover, the practice contributes to continued mistrust, doubt and fear of police officers in communities of color that are already scarred by systemic racial profiling and major incidents of police brutality and torture. There is a clear need for accountability, independent oversight and reform in the NYPD's use of stops-and-frisks.

2009 Total Stops



Black:	306,965
Latino:	178,690
White:	53,278

2009 Arrests Made during stop-and-frisk



Black:	18,022
Latino:	10,959
White:	3,255

2009 Summons Given during stop-and-frisk



Black:	18,842
Latino:	11,847
White:	3,114

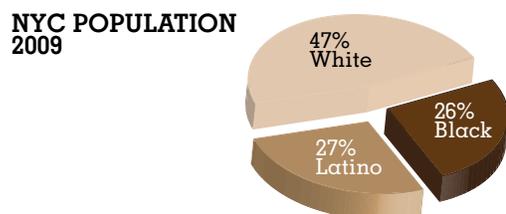
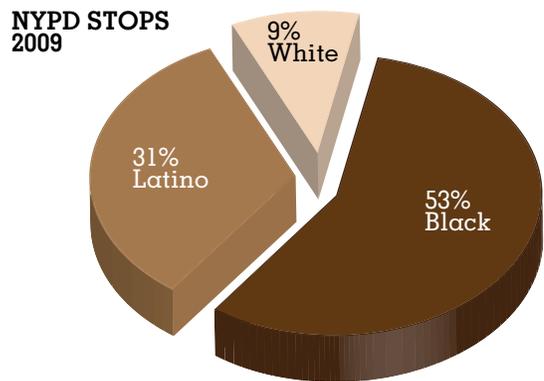
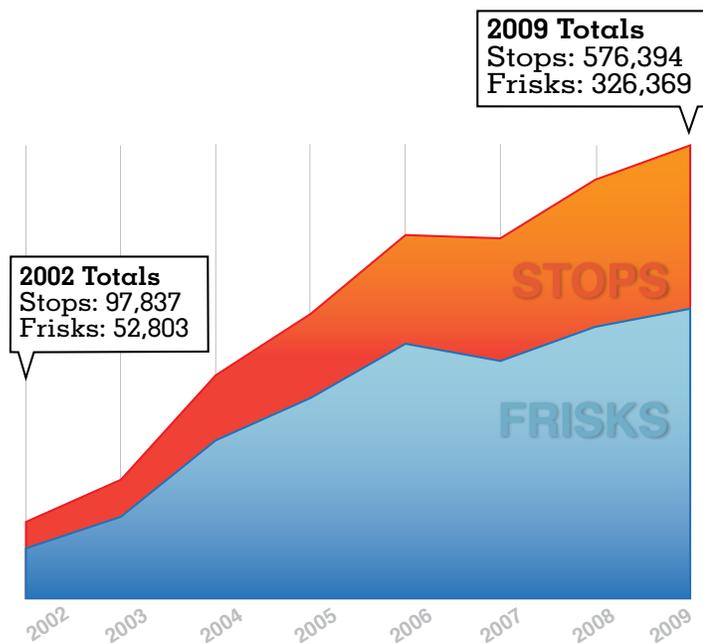
2009 Times Force Used during stop-and-frisk



Black:	75,424
Latino:	48,607
White:	10,041

The NYPD's use of stops-and-frisks is still on the rise. In 2008, the number of people stopped and frisked was 540,302. In 2009, it was 576,394. This is a 6.7% increase in one year and almost a 600% increase since 2002.

Blacks and Latinos are disproportionately stopped. In 2009, Blacks and Latinos represented 84% of those stopped. Blacks and Latinos comprise only 26% and 27% of the NYC population, respectively.

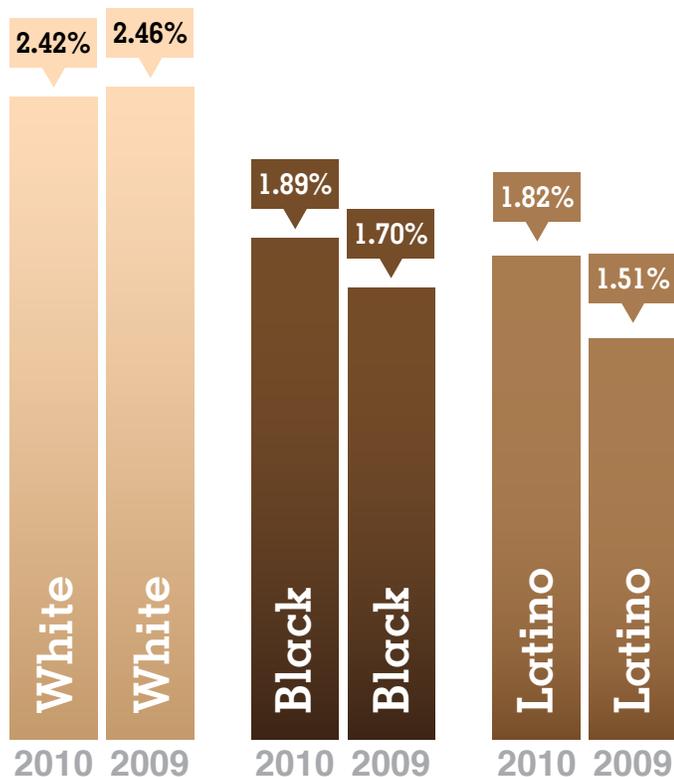




NYPD Stop-and-Frisk Statistics 2009 and 2010

In a report issued in October 2010, renowned policing expert Jeffrey Fagan of Columbia University confirmed that the NYPD stopped-and-frisked New Yorkers without reasonable suspicion and engaged in a pattern of unconstitutional stops that disproportionately affected Black and Latino New Yorkers. The report also concluded that most stops occur in Black and Hispanic neighborhoods, and the main factor for determining who gets stopped, even after controlling for crime rates, is race. Additionally, Black and Latino New Yorkers are treated more harshly, more likely to be arrested rather than issued a summons and more likely to have force used against them than White suspects.

Contraband yielded during NYPD stops during first half of 2010 and 2009



Stops resulted in extremely low weapons yields. Weapons were recovered in 7,201 stops in all of 2009 — which represented only 1.25% of all stops. One of the NYPD's primary talking points regarding their stop-and-frisk policy has been that it keeps weapons off the street. These numbers clearly contradict that claim.

The information contained in this document does not necessarily reflect any of the conclusions, evidence or arguments that will be presented by plaintiffs in the lawsuit *Floyd v. City of New York*, 08 Civ. 1034 (SAS) (SDNY)

1 CCR works to advance and protect the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. Learn more about CCR at: <http://ccrjustice.org>.

2 CCR is currently working with a wide range of community groups to develop a comprehensive Police Accountability and Transparency Project, which will advocate for city-wide police-reform efforts. Because of the city's enormous influence, we believe that police reform in New York City has the potential to set a standard for police departments nationwide.

3 The plaintiffs in this case represent the thousands of African American and Latino New Yorkers who have been illegally stopped on their way to work, in front of their homes or just walking down the street, primarily because of their race or ethnicity.

4 Census Bureau (<http://censtats.census.gov/cgi-bin/pct/pctProfile.pl>), Table DP-1. Profile of General Demographic Characteristics: 2000, Geographic area: New York City, New York.