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May 31, 2016

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Ligon, et al. v. City of New York, et al.*, 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
Recommendation regarding NYPD TAP and NYCHA
Stop Policies and Related Documents

Dear Judge Torres,

I am pleased to submit my recommendations regarding the following documents, which deal with NYPD policies and practices concerning enforcement activities in and near residences enrolled in the Trespass Affidavit Program (“TAP”) and New York City Housing Authority (“NYCHA”) buildings. I believe that each of the proposed NYPD documents meets the requirements of the remedial order in *Ligon* (Dkt. No. 120) and the court’s order approving the settlement in *Davis* (Dkt. No. 339).

My recommendations relate to the following documents attached:

1. **Interim Order—P.G. 212-59, Interior Patrol of Multiple Dwelling Buildings Enrolled in the Trespass Affidavit Program, and P.G. 208-03, Arrests—General Processing;**
2. **Operations Order—Pilot Program—Trespass Affidavit Program (TAP) Monthly Assessment—Patrol Borough Bronx;**

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3. **Interim Order—P.G. 212-60, Interior Patrol of Housing Authority Buildings;**
and
4. **Trespass Crimes—Fact Sheet and Supporting Deposition.**

In addition, I am attaching:

5. **Interim Order—Revision to Administrative Guide 303-27, Trespass Affidavit Program, and P.G. 202-26, Crime Prevention Officer.**

This fifth document is attached for information purposes and is not being submitted for the court's approval at this time.

Background

In *Ligon*, the plaintiffs challenged the NYPD's policies and practices relating to stop and frisk and trespass arrests inside and outside TAP buildings. They moved for a preliminary injunction relating to a subset of their claims, specifically, to stops on suspicion of trespass made outside TAP buildings in the Bronx. The plaintiffs prevailed, and their relief was incorporated in the remedial order issued on August 12, 2013 that covered both *Floyd v. City of New York* and *Ligon* (*Ligon*, Dkt. No. 120). The case remains open, and the parties have engaged in extensive settlement negotiations on the plaintiffs' remaining claims.

The discussions that led to the current recommendations were complicated by several factors. First, the *Ligon* plaintiffs and the NYPD agreed that it made no sense for the changes resulting from the preliminary injunction to apply in the Bronx only; thus, they agreed that the changes would apply city-wide. Second, because from time to time, NYPD officers can be

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assigned to conduct interior patrols in both TAP and NYCHA buildings, it is important that the two patrol guide sections be consistent to avoid confusion. Therefore, the *Ligon* and *Davis* plaintiffs and the NYPD agreed that the NYPD would not promulgate a revised P.G. 212-60 (relating to NYCHA buildings) until there was a resolution of the issues relating to the TAP buildings, even though a revised P.G. 212-60 had already been approved by the court as part of the settlement in the *Davis* case. As a practical matter, this meant that any changes made to P.G. 212-60 to reconcile it with the TAP patrol guide would not diminish the remedies that the *Davis* plaintiffs had already achieved.

The recommendations set out more fully below address these concerns. The new P.G. 212-59 (relating to TAP buildings) would apply throughout the city. It and the other recommendations concerning the TAP program meet the requirements of the remedial order. Changes have been made to the P.G. 212-60 approved by the court in order to reconcile it with the recommended P.G. 212-59 without diminishing what was achieved in the *Davis* settlement.

1. Interim Order—P.G. 212-59, Interior Patrol of Multiple Dwelling Buildings Enrolled in the Trespass Affidavit Program, and P.G. 208-03, Arrests—General Processing

The remedial order in *Ligon* requires the NYPD to revise its procedure for patrolling buildings enrolled in the Trespass Affidavit Program (TAP). Under the order, stops inside and outside TAP buildings must comply with the NYPD's stop and frisk policies, P.G. 212-11. The

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new procedure must state that “mere presence” near, entry into, or exit out of a building enrolled in the Trespass Affidavit Program, without more, is not sufficient to establish reasonable suspicion for a stop on suspicion of trespass. The new procedure must also state that “mere presence” in a TAP building, or entry into or exit from a TAP building, does not constitute an “objective credible reason” for a *DeBour* Level 1 approach and request for information. The revised procedures governing stops in and around TAP buildings, P.G. 212-59, incorporate these requirements.

**2. Operations Order—Pilot Program-Trespass Affidavit Program (TAP)
Monthly Assessment—Patrol Borough Bronx**

This Operations Order establishes a pilot program for increased supervisory review of stops on suspicion of trespass in the Bronx. This recommendation applies only to the Bronx for reasons explained here.

The remedial order resulting from the preliminary injunction in *Ligon* requires that the NYPD develop procedures for (1) ensuring that stop report forms are completed for all trespass stops outside TAP buildings in the Bronx, and (2) for reviewing the constitutionality of those stops. The NYPD believes, and the plaintiffs agree, that this procedure should encompass stops conducted not only outside TAP buildings but also inside TAP buildings. The Operations Order submitted to the court makes this change. The goal is to learn from this pilot program and then to use what is learned to inform what the program might be when instituted city-wide.

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3. Interim Order—P.G. 212-60, Interior Patrol of Housing Authority Buildings

This Interim Order reconciles P.G. 212-60 with the proposed new P.G. 212-59. As stated, the changes in P.G. 212-60 do not diminish the remedies the *Davis* plaintiffs had achieved in the settlement previously approved by the court.

4. Trespass Crimes Fact Sheet and Supporting Deposition

As part of the *Davis* settlement, the parties agreed on a new form to be completed by officers when they make a trespass arrest in a NYCHA building. Officers will document and provide information about the stop and the trespass arrest on a “Trespass Crimes Fact Sheet.” The new form was included in the *Davis* settlement documents and has been approved by the court. The approved form has not yet been promulgated by the NYPD because the *Davis* and *Ligon* plaintiffs and the Department agreed that one form should be used for trespass arrests in both TAP and NYCHA buildings. The parties have now agreed on a Trespass Crimes Fact Sheet that will be used in both circumstances. The submitted form also combines the Trespass Crimes Fact Sheet with a supporting deposition that could be used by the district attorneys in the criminal proceedings. Both the recommended P.G. 212-59 (TAP) and P.G. 212-60 (NYCHA) reference the Trespass Crimes Fact Sheet and require a supervisor to sign off on the form.

5. Interim Order—Revision to Administrative Guide 303-27, Trespass Affidavit Program, and Patrol Guide 202-26, Crime Prevention Officer

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The Trespass Affidavit Program applies only to selected private dwellings that meet certain requirements, sign up, and are accepted into the program. This Interim Order specifies steps members of the service will follow in the administration of the program. Administrative Guide 303-27 is referenced in the proposed new P.G. 212-59. The parties are not seeking the court's approval of this Administrative Guide section at this time. It is contemplated, however, that the revised Administrative Guide will be promulgated by the NYPD when documents 1 through 4 are promulgated.

The parties in *Davis* and *Ligon* have informed me that they support the approval of these recommendations.

Respectfully submitted,

/s/ Peter L. Zimroth

Peter L. Zimroth
Monitor

- Attachments: (1) Interim Order—P.G. 212-59 and P.G. 208-03
- (2) Operations Order—Pilot Program—Trespass Affidavit Program (TAP)
Monthly Assessment—Patrol Borough Bronx
 - (3) Interim Order—P.G. 212-60
 - (4) Trespass Crimes—Fact Sheet and Supporting Deposition
 - (5) Interim Order—A.G. 303-27 and P.G. 202-26



DRAFT INTERIM ORDER

SUBJECT: REVISION TO PATROL GUIDE 212-59, "INTERIOR PATROL" AND PATROL GUIDE 208-03, ARRESTS – "GENERAL PROCESSING"		
DATE ISSUED:	REFERENCE:	NUMBER:
05-20-16	*P.G. 212-59 AND P.G. 208-03	DRAFT 11

1. In order to enhance the interior patrol of multiple dwelling buildings enrolled in the Trespass Affidavit Program, Patrol Guide 212-59, "Interior Patrol" has been revised.

2. Therefore, effective immediately, Patrol Guide 212-59, "Interior Patrol" is **SUSPENDED** and the following new procedure entitled, "Interior Patrol of Multiple Dwelling Buildings Enrolled in the Trespass Affidavit Program" will be complied with:

PURPOSE

To prevent, detect and take necessary enforcement action regarding illegal activity occurring in lobbies, stairwells, interior hallways, rooftops, basements and other common areas of multiple dwelling buildings enrolled in the Trespass Affidavit Program (TAP) that are not owned by the New York City Housing Authority, in a manner that respects the rights of TAP building residents and guests.

SCOPE

Authorization for interior patrol, the tactically planned patrol of the common areas of multiple dwelling buildings, is obtained through the Trespass Affidavit Program. Members of the service shall conduct all inquiries, interactions, and enforcement activities in Trespass Affidavit Program buildings with the courtesy, professionalism, and respect to which all persons are entitled in their own homes. This procedure must be applied consistent with *Patrol Guide 212-11, "Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops."* *Patrol Guide 212-11* and the corresponding training materials establish the parameters for all investigative encounters irrespective of location of occurrence.

PROCEDURE

To conduct interior patrols in residential multiple dwelling buildings enrolled in the Trespass Affidavit Program:

PLATOON COMMANDER/ PATROL SUPERVISOR/ ASSIGNED SUPERVISOR

1. Ensure **TRESPASS CRIMES – OWNER'S AFFIDAVIT(S) (PD651-051)** or New York County District Attorney's Supporting Affidavit(s) for the scheduled locations(s) were signed by the Owner/Managing Agent within the last six months.
2. Assign teams of two or more uniformed members of the service to conduct interior patrol at designated times and locations.
 - a. Schedule interior patrols based on times when illegal activities are prevalent.
3. Consider the appropriate number of teams necessary to perform a particular interior patrol.
 - a. The number of uniformed members that are required to conduct a particular interior patrol assignment should be based on the size of the building, the number and location of exits, and the nature of the crimes being addressed.

**PLATOON
COMMANDER/
PATROL
SUPERVISOR/
ASSIGNED
SUPERVISOR
(continued)**

4. Instruct uniformed members performing interior patrol that, absent exigent circumstances, two or more uniformed members must remain together at all times.
5. Ensure all interior patrols are conducted in an appropriate manner with special attention to:
 - a. Proper tactics
 - b. Required equipment (e.g., serviceable flashlight, O.C. spray, etc.)
 - c. Radio transmissions
 - d. Proper documentation (e.g., **ACTIVITY LOG [PD112-145]** entry, **STOP REPORT [PD383-151]**, **WHAT IS A STOP? [PD383-153]** informational card, etc.).

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6. Respond to location at designated time and coordinate activities with other assigned uniformed members.
7. Notify Communications Section radio dispatcher utilizing radio code 10-75I, and make an **ACTIVITY LOG** entry of the time and street address upon entering the building.
8. Inspect front, rear and other exterior doors, and the interior of the lobby.
 - a. Determine whether doors are secured.
9. Document in **ACTIVITY LOG** whether signs prohibiting trespassing are legible and prominently displayed in areas where persons entering the building can readily see them.
 - a. If signs are missing, illegible or defaced, notify the crime prevention officer.
10. Proceed to top floor of building by elevator, if operable, otherwise by using the stairs.
 - a. Patrol the roof, roof landing, elevator rooms, and any other accessible installations.
 - b. Patrol each floor, staircase and hallway within the building from the top floor to the ground floor
 - c. Patrol all accessible basement areas.
11. Be alert for persons who may be engaged in criminal activity.
 - a. Conduct all investigative encounters in accordance with *P.G. 212-11, "Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops,"* and, if applicable, with the procedures for trespass investigations as set forth in step "12," below.
 - b. If a person is stopped, a **STOP REPORT** shall be prepared pursuant to *P.G. 212-11, "Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops,"* and an **ACTIVITY LOG** entry shall be made to document the encounter.
 - (1) Check the appropriate box indicating the stop is related to a Trespass Affidavit Program building.

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- c. Take police action pursuant to *P.G. 208-01, "Law of Arrest"* or *Patrol Guide Series 209, "Summonses,"* only if there is probable cause to believe that a person has committed a felony or misdemeanor, or the person committed a violation in the officer's presence.

NOTE

Mere presence in or near a building enrolled in the Trespass Affidavit Program does not provide a basis to approach and conduct an investigative encounter, nor does it establish reasonable suspicion for a stop. When approaching a person based only on an objective credible reason (Level 1 Request for Information), members are prohibited from requesting consent to search the person.

12. Trespass Investigation: Be alert for persons who may be engaged in Criminal Trespass.
 - a. Level 1 Request for Information: If there is an objective credible reason to approach such a person based on observed behavior or other credible information, a member of the service may approach and ask in a non – threatening and non – accusatory manner:
 - (1) If he or she lives in the building
 - (2) If he or she is visiting someone in the building
 - (3) If he or she has business in the building.
 - b. Level 2 Common Law Right of Inquiry: If, based on the answers to questions in the initial encounter and/or observed behavior, there is a founded suspicion of Criminal Trespass, take reasonable measures to verify the person's authorization to be in the building.

NOTE

Do not use a tone or take steps that would create a situation where a reasonable person would not feel free to leave when there is less than reasonable suspicion that the person is a trespasser.

- c. Level 3 Terry Stop: Stop a person in accordance with *P.G. 212-11, "Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops,"* and take reasonable measures to investigate only if there is reasonable suspicion to believe that the person has committed, is committing, or is about to commit Criminal Trespass. Such measures include, but are not limited to, the following:
 - (1) Temporarily detaining the person while another uniformed member visits the building resident whom the person claims to be visiting; and/or
 - (2) Requiring the person to accompany uniformed member to the apartment of the building resident whom the person claims to be visiting.

NOTE

Merely passing through a door that has a broken lock or that has been propped open does not, alone, constitute reasonable suspicion of criminal activity.

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(continued)**

- d. Take police action pursuant to *P.G. 208-01, "Law of Arrest"* or *Patrol Guide Series 209, "Summonses,"* only if there is probable cause to believe that the person committed Trespass. A reasonable investigation is ordinarily necessary to determine whether probable cause exists.
 - (1) Make **ACTIVITY LOG** entry describing the details of arrest/summons.
 - (2) Document investigative steps taken prior to making the arrest or issuing the summons including the factors used to determine that the person knowingly entered or remained unlawfully particularly if signs are not present or visible.
 - (3) Utilize Department-issued smartphone to photograph sign(s) prohibiting trespassing or document the warning and the location in **ACTIVITY LOG**.

NOTE

Even if there is probable cause to arrest a person for trespassing, officers may exercise their discretion to refrain from arresting that person, and instead instruct that person to leave under appropriate circumstances.

- e. In all cases when an arrest is made for Criminal Trespass, the arresting officer must:
 - (1) Prepare a **TRESPASS CRIMES – FACT SHEET (PD351-144)** and submit to the Desk Officer for review
 - (2) Prepare a **STOP REPORT**, if appropriate
 - (3) Submit the **TRESPASS CRIMES – OWNER’S AFFIDAVIT** or New York County District Attorney’s Supporting Affidavit, as appropriate, for the building to the desk officer.
- 13. Notify Communications Section radio dispatcher upon exiting the building and make an **ACTIVITY LOG** entry indicating the time the interior patrol was completed and any conditions noted.

DESK OFFICER

- 14. Ensure that the completed **TRESPASS CRIMES – FACT SHEET** and the **TRESPASS CRIMES – OWNER’S AFFIDAVIT** or New York County District Attorney’s Supporting Affidavit, as appropriate, are included in the arrest package for all arrests that include a charge of Criminal Trespass.
- 15. Review the **TRESPASS CRIMES – FACT SHEET** for accuracy and completeness and endorse in the appropriate space on the form.
 - a. Have **TRESPASS CRIMES – FACT SHEET** photocopied.
 - b. Return original **TRESPASS CRIMES – FACT SHEET** to the arresting officer for inclusion in the arrest package.
- 16. Have photocopies of **TRESPASS CRIMES – FACT SHEETS** placed in chronological order in a binder and maintained at the desk.

ADDITIONAL DATA

During the course of an interior patrol, members of the service are likely to encounter other persons in the building. While detecting trespassers inside buildings enrolled in the Trespass Affidavit Program is an important public safety function, it is equally critical that members of the service treat residents and their guests with courtesy, professionalism and respect at all times.

If a member of the service has reason to seek to determine if a person is authorized to be in the building, the member may ask for the person’s voluntary cooperation. When feasible and consistent with safety, advise the person that the purpose of the interior patrol is to keep the building safe and ensure that only tenants and their invited guests are within the building, and advise the person that he or she is free to leave (unless the person is under arrest or detained in a Level 3 stop). A person’s refusal or inability to produce identification or provide information does not elevate the level of the encounter. However, if the individual refuses or is unable to explain his or her presence in the building, the member may instruct the person that he or she must leave the building or be subject to arrest for Trespass.

*The **TRESPASS CRIMES – OWNER’S AFFIDAVIT (PD651-051)** will be utilized for Department Trespass Affidavit Program buildings in the Bronx, Brooklyn, Staten Island and Queens. The New York County District Attorney’s Office manages a Trespass Affidavit Program in Manhattan and utilizes its own supporting affidavits.*

*The **TRESPASS CRIMES – FACT SHEET (PD351-144)** will be prepared in every instance, including Manhattan, where a uniformed member of the service effects a Trespass arrest in a building participating in a Trespass Affidavit Program.*

RELATED PROCEDURES

*Law of Arrest (P.G. 208-01)
Arrests – General Processing (P.G. 208-03)
Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops (P.G. 212-11)
Interior Patrol of Housing Authority Buildings (P.G. 212-60)
Trespass Affidavit Program (A.G. 303-27)
Summonses (P.G. 209 Series)*

FORMS AND REPORTS

ACTIVITY LOG (PD112-145)
STOP REPORT (PD383-151)
WHAT IS A STOP? (PD383-153)
TRESPASS CRIMES – OWNER’S AFFIDAVIT (PD651-051)
TRESPASS CRIMES – FACT SHEET (PD351-144)

- 3. Patrol Guide 208-03, “Arrests – General Processing” is amended as follows:
 - a. **ADD** new subdivision “**h**,” following step “**23**,” opposite actor “ARRESTING OFFICER,” on page “**6**” to read:

“ARRESTING OFFICER **h.** **TRESPASS CRIMES – FACT SHEET (PD351-144), if appropriate.**
(1) Prepare the form if the arrest includes a charge for Trespass or Criminal Trespass.”

- b. **REVISE** “*FORMS AND REPORTS*” on page “**13**” to read:

“FORMS AND REPORTS

ACTIVITY LOG (PD112-145)
ARREST REPORT - SUPPLEMENT (PD244-157)
ARREST DOCUMENTATION CHECKLIST (PD240-010)
COMPLAINT REPORT WORKSHEET (PD313-152A)
DAT ARREST PACKAGE (PD260-123)
DESK APPEARANCE TICKET INVESTIGATION (PD360-081)
JUVENILE ARREST INVESTIGATION/PROBATION INTAKE REPORT WORKSHEET (PD277-151A)
MEDICAL TREATMENT OF PRISONER (PD244-150)
MIRANDA WARNINGS FOR JUVENILE INTERROGATIONS (PD244-1413)
MISSING – UNIDENTIFIED PERSON REPORT (PD336-151)
ON-LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)
PRISONER PEDIGREE CARD (PD244-092)
PRISONER TRANSPORT DISPATCH (PD171-132)
PROPERTY CLERK INVOICE (PD521-141)
PROPERTY CLERK INVOICE WORKSHEET (PD521-141A)
REQUEST FOR LABORATORY EXAMINATION REPORT (PD521-168)
SUPPORTING DEPOSITION (PD244-060)
TRESPASS CRIMES – FACT SHEET (PD351-144)
UNUSUAL OCCURRENCE REPORT (PD370-152)
Omniform Complaint Revision”

4. **REVISE** references to Patrol Guide 212-59, “Interior Patrol” in Patrol Guide 212-11, 212-60, Administrative Guide 303-27 and wherever else it appears in the Department Manual to read:

“Patrol Guide 212-59, ‘Interior Patrol of Multiple Dwelling Buildings Enrolled in the Trespass Affidavit Program”

5. Upon publication, this Interim Order has been incorporated into the On-Line Patrol Guide and the On-Line Administrative Guide.

6. Any provisions of the Department Manual or other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

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INTERIM ORDER NO. DRAFT 11