



**Office of the New York State  
Attorney General**

**Letitia James  
Attorney General**

September 26, 2025

Mylan L. Denerstein  
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200 Park Avenue  
New York, NY 10166-0193

*Submitted electronically to nypdmonitor@gmail.com*

Re: Comment from the Office of the New York State Attorney General in Response to the Report to the Court on Police Misconduct and Discipline by James Yates

Dear Ms. Denerstein:

The Office of the New York State Attorney General (OAG) respectfully submits this letter in support of recommendations set forth in the Report to the Court on Police Misconduct and Discipline by the Honorable James Yates (the Discipline Report).<sup>1</sup>

We express our general approval of the Discipline Report's recommendations and highlight in this letter four sets of specific recommendations that we believe would promote constitutional policing by (1) improving supervisory accountability for searches and seizures, (2) taking into account an officer's past substantiated misconduct when considering promotions, (3) ensuring that allegations of misconduct are investigated and that discipline or other remedial actions are pursued regardless of the length of time remaining on the administrative statute of limitations, and (4) increasing transparency. These recommendations would help address issues identified during OAG investigations of NYPD officers and supervisors who have been referred to OAG pursuant to Executive Law Section 75(5)(b), as described at further length below.

#### *Statement of OAG's Interest*

The OAG has a strong interest in effective and constitutional policing by New York law enforcement agencies, including NYPD. In addition to OAG's general interest in upholding New York law and protecting the civil rights of New Yorkers, OAG's Law Enforcement Misconduct Investigative Office (LEMIO), established by Executive Law Section 75, specifically is tasked

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<sup>1</sup> Report to the Court on Police Misconduct and Discipline, *Floyd et al. v. City of New York et al.* ("Floyd"), No. 1:08-cv-1034-AT, (S.D.N.Y. 2023), ECF No. 936 ("Discipline Report").

with helping to prevent and address misconduct at local law enforcement agencies in New York. Pursuant to Executive Law Section 75(2)(d), LEMIO's statutory goals are "enhancing the effectiveness of law enforcement, increasing public safety, protecting civil liberties and civil rights, ensuring compliance with constitutional protections and local, state and federal laws, and increasing the public's confidence in law enforcement." Section 75 authorizes LEMIO to investigate allegations of misconduct at local law enforcement agencies across New York, review policies and procedures with the goal of preventing misconduct, compel testimony and the production of records in support of its work, and make recommendations for remedial action.

#### *Executive Law Section 75(5)(b) Referrals from NYPD*

Executive Law Section 75(5)(b) requires covered agencies, including NYPD, to refer to LEMIO instances in which an officer or employee has been the subject of "at least five complaints from five or more individuals relating to at least five separate incidents ... within two years." Upon receiving such a referral, LEMIO is required to "investigate such complaints to determine whether the subject officer or employee has engaged in a pattern or practice of misconduct, excessive force, or acts of dishonesty." When the investigation of a 75(5)(b) referral is completed, OAG informs the chief of the covered agency whether LEMIO has concluded that the officer engaged in a pattern or practice of misconduct, excessive force, or acts of dishonesty, and if so, describes the conduct underlying the pattern finding and provides recommendations for remedial action.<sup>2</sup>

To date, we have concluded the investigations of 50 referred NYPD officers. These determinations are made available on our website at <https://ag.ny.gov/law-enforcement-misconduct-investigative-office/75-5-b-referrals>.

Of those 50 completed investigations, we determined that 18 NYPD officers engaged in a pattern of misconduct. Fourteen of those 18 patterns involved unconstitutional stops, frisks, and/or searches.

#### *Recommendations To Promote Constitutional Policing*

We write to highlight four sets of recommendations that we believe, based on our investigative findings and the conclusions of the Discipline Report, would promote constitutional policing by NYPD.

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<sup>2</sup> Potential determinations include Administrative Closure, Pattern of Misconduct, No Pattern, and No Pattern; Issue(s) Noted. These determinations are based only on conduct that occurred after April 1, 2019.

## 1. Improving Supervision

Effective supervision is crucial to constitutional policing, as the Monitor has long recognized.<sup>3</sup> To this end, holding supervisors accountable when they or their subordinates engage in unlawful stops, frisks, and searches is critical to ensuring that both supervisors and patrol officers respect civil rights during such encounters.

However, during our review of NYPD 5b referrals, OAG repeatedly has identified issues related to supervisors' participation in, and failure to supervise officers engaged in, unconstitutional stops, frisks, and/or searches. Out of the 14 pattern determinations OAG has made involving unconstitutional stops, frisks, and/or searches by NYPD personnel, eight included incidents involving a supervisor's active or passive participation in the unlawful conduct.<sup>4</sup> In several referrals, supervisory officers themselves engaged in a pattern of wrongful searches or seizures. And, as described in more detail in the section below, officers and supervisors who repeatedly had been found to have engaged in unconstitutional searches and seizures were promoted to higher-level supervisory positions, despite their recent substantiated violations.

For example, in one referral, a then-Sergeant directed two officers to improperly frisk and search two individuals without reasonable suspicion "for the sole purpose of recovering marijuana,"

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<sup>3</sup> For example, in 2016, the then-Monitor wrote:

If the changes required by the court orders and the parties' agreements are to be implemented and take hold, the supervisors who have most to do with the officers on the street must play an increased leadership role. This includes especially sergeants, who are closest to the officers, and precinct and unit commanders, who set the tone. These supervisors must ensure that their subordinates are implementing the changes required by the court orders and the parties' agreements—that the stops, frisks and trespass arrests made by their officers are legal and proper and that these activities are correctly documented. Supervisors must take a more active role in oversight, teaching and, when appropriate, discipline

New York Police Department Monitor, Second Report of the Independent Monitor, NYPD Monitor (February 16, 2016) at 5, available at <https://www.nypdmonitor.org/wp-content/uploads/2022/09/02-2016-02-16FloydvCityofNY-MonitorsSecondStatusReport.pdf>.

<sup>4</sup> See OAG Closing Letters re Bernard, Eric, [available at https://ag.ny.gov/sites/default/files/2025-07/755b-findings-e-bernard-nypd.pdf](https://ag.ny.gov/sites/default/files/2025-07/755b-findings-e-bernard-nypd.pdf); Cuevas, Gabriel, [available at https://ag.ny.gov/sites/default/files/2025-04/755b-findings-g-cuevas-nypd.pdf](https://ag.ny.gov/sites/default/files/2025-04/755b-findings-g-cuevas-nypd.pdf); Daverin, Henry, [available at https://ag.ny.gov/sites/default/files/2024-12/755b-findings-h-daverin-nypd.pdf](https://ag.ny.gov/sites/default/files/2024-12/755b-findings-h-daverin-nypd.pdf); Hui, Samuel, [available at https://ag.ny.gov/sites/default/files/2024-12/755b-findings-s-hui-nypd.pdf](https://ag.ny.gov/sites/default/files/2024-12/755b-findings-s-hui-nypd.pdf); Navarro, Joshua, [available at https://ag.ny.gov/sites/default/files/2024-12/755b-findings-j-navarro-nypd.pdf](https://ag.ny.gov/sites/default/files/2024-12/755b-findings-j-navarro-nypd.pdf); Prusayev, Artem, [available at https://ag.ny.gov/sites/default/files/2025-06/755b-findings-a-prusayev-nypd.pdf](https://ag.ny.gov/sites/default/files/2025-06/755b-findings-a-prusayev-nypd.pdf); Redmond, Thomas, [available at https://ag.ny.gov/sites/default/files/2025-07/755b-findings-t-redmond-nypd.pdf](https://ag.ny.gov/sites/default/files/2025-07/755b-findings-t-redmond-nypd.pdf); Vargas, Dennis, [available at https://ag.ny.gov/sites/default/files/2025-05/755b-findings-d-vargas-nypd.pdf](https://ag.ny.gov/sites/default/files/2025-05/755b-findings-d-vargas-nypd.pdf); all available at <https://ag.ny.gov/law-enforcement-misconduct-investigative-office/75-5-b-referrals?page=0>.

which no longer was criminalized at that time. After NYPD received CCRB’s findings and recommendations, but before imposing discipline, NYPD promoted him to Lieutenant. Later, following his promotion to Lieutenant, NYPD did not bring recommended charges and specifications where he stopped an individual and another officer frisked them based on the officers’ alleged observation of a bulge in the pocket that was contradicted by their body-worn camera footage, citing the “prohibitive timeframe for the Department to perform the necessary investigation” within the statute of limitations as the basis.<sup>5</sup>

We have also observed failures to supervise subordinate officers who conduct unconstitutional stops, frisks, and searches. In one referral, we found that a Detective assigned to a specialized Neighborhood Safety Team (NST) in the Bronx had engaged in a pattern of unconstitutional stops and searches. This Detective had been assigned to the NST despite having been recently found by CCRB to have engaged in an earlier wrongful stop and search and to have provided misleading official statements in an effort to conceal the encounter. During the two years he was assigned to NST, he participated in three separate incidents with at least five other NST officers, involving unconstitutional stops, frisks and searches. Two of those three incidents were substantiated by CCRB, which recommended discipline that NYPD did not impose.

One incident involving this Detective demonstrates an absence of effective supervision and accountability at every level of review. In this incident, he and two other officers were involved in an unlawful stop and frisk that resulted in all three of them deploying their tasers in drive-stun mode against an individual and such individual being hospitalized.<sup>6</sup> The stop report prepared by the reporting officer contains details that are contradicted by the body-worn camera footage and appears to be written to overcome constitutional deficiencies. Subsequently, a Captain prepared a Threat, Resistance, or Injury (TRI) Report that provided a similar narrative to the stop report, despite the verifiable inconsistencies with video footage, and which omitted several critical facts related to the encounter. Furthermore, NYPD’s Internal Affairs Bureau (IAB), which reviewed the reports and video footage, did not note the inconsistencies between the reports and the video footage, assess the legality of the stops and frisks, or refer the matter to CCRB. Instead, it found that the officers’ use of force did not violate NYPD policy and that they reported it correctly. Another officer involved in the incident was promoted to the rank of detective that same year.<sup>7</sup> These issues are consistent with the lack of supervisory accountability described by Judge

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<sup>5</sup> See OAG Closing Letter re Lieutenant Gabriel Cuevas (March 26, 2025), available at <https://ag.ny.gov/sites/default/files/2025-04/755b-findings-g-cuevas-nypd.pdf>.

<sup>6</sup> The officers recovered a firearm from the individual, arrested him, and charged him with criminal possession of a weapon in the second degree, however, the individual was not indicted on the felony charges and the criminal case against him was dismissed and sealed on August 22, 2023.

<sup>7</sup> See OAG Closing Letter re Detective Eric Bernard (June 20, 2025), available at <https://ag.ny.gov/sites/default/files/2025-07/755b-findings-e-bernard-nypd.pdf>.

Yates in the Discipline Report.<sup>8</sup> They also are consistent with other recent analyses from the Monitor indicating that first-line supervisors in specialized units, who are frequently present at stops, often fail to identify or correct high levels of unconstitutional searches and seizures, that oversight by higher level supervisors has been lacking<sup>9</sup>, and that supervisory oversight in general has been inadequate for both patrol and specialized officers.<sup>10</sup> The Monitor warned that compliance would not improve without accountability at all supervisory levels and that NYPD should “enhance its training and accountability instead of attempting to justify illegal stops.”<sup>11</sup>

We believe that Report Recommendations 33, 36, 37, 39, 41, and 42 would help address these issues and promote effective supervision. Recommendations 36, 37, and 42 would clarify the responsibility of supervisors and commanders to assess the constitutionality of searches and seizures by officers under their command, and Recommendation 39 would explicitly require supervisors to report wrongful searches and seizures by fellow officers. Recommendations 33 and 41 would authorize CCRB to investigate supervisory failures as potential abuses of authority, thereby increasing the likelihood that supervisors are held accountable for Fourth Amendment violations by officers under their supervision.

## 2. *Accounting for Substantiated Constitutional Violations When Considering Officer Promotions*

Report Recommendation 45 would require NYPD to take substantiated search and seizure violations into account during the promotional process. Doing so would provide a strong incentive to officers to ensure that searches and seizures comply with constitutional standards. It would also prevent officers with a history of engaging in unlawful stops, frisks, and/or searches from being placed in a position to guide and oversee the actions of subordinate officers.

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<sup>8</sup> Judge Yates concluded:

Another problem of note in enforcement of discipline for stop/frisk misconduct is the lack of discipline imposed when supervisors fail to monitor or compel proper activity. Within the precinct, be it sergeants or higher ranked officers, a failure to supervise or tolerance of inappropriate stops, frisks, or searches by officers is a breakdown of significance in achieving constitutional compliance. Yet discipline for such failures is close to non-existent.

James Yates, Report to the Court on Police Misconduct and Discipline (Sept. 19, 2024), at 5.

<sup>9</sup> New York Police Department Monitor, Nineteenth Report of the Independent Monitor, NYPD MONITOR (June 5, 2023) at 4, 8, available at [NST-Report.pdf](#); *see generally id.* at 17-21 (section titled, “Supervision and Command Oversight Is Inadequate, and Deficiencies Are Not Identified or Corrected”).

<sup>10</sup> *See* New York Police Department Monitor, Twenty-Third Report of the Independent Monitor, NYPD MONITOR (February 3, 2025) at 19-21 (section titled, “Supervisory Oversight is Inadequate for All Officers: NST, PST, and Patrol”), available at [2025.02.03-Floyd-Dkt.-952-1-Monitors-23rd-Report.pdf](#).

<sup>11</sup> New York Police Department Monitor, Nineteenth Report of the Independent Monitor at 4, 31.

In the course of investigating 5b referrals from NYPD, we have noted multiple instances of NYPD promoting officers who recently had engaged in repeated substantiated unlawful stops, frisks, and/or searches.<sup>12</sup>

One example involves the Lieutenant described above, who has been the subject of seven substantiated CCRB complaints involving unconstitutional stops, frisks and searches since 2016, five of which involve conduct that occurred prior to his promotion to Lieutenant. He was promoted to Sergeant, and then Lieutenant, notwithstanding these Fourth Amendment violations, a denial of indemnification by the City of New York in a civil lawsuit filed against him related to one of those cases, and repeated wrongful searches and seizures after his placement in the monitoring program, which began in 2019. Following a review of the referred complaints, OAG determined that he engaged in a pattern of misconduct involving repeated unlawful stops, frisks, and searches.<sup>13</sup>

In another case involving a referred Sergeant, OAG found that he engaged in a “pattern of participation in unlawful stops, frisks, and searches, including the use of unreasonable force” in violation of the Fourth Amendment and “strip searches in violation of NYPD policy” based on encounters which were the subject of three CCRB complaints and one civil lawsuit. Despite his record, this officer was promoted to Sergeant in 2023, even though at the time of his promotion, he had charges and specifications pending and two open CCRB investigations. He had also been on Level I Monitoring since January 2020 but was removed from Monitoring within days of being promoted.<sup>14</sup> Over the course of his year-long probationary period as Sergeant, he was the subject of five new CCRB complaints. Although OAG recommended during his probationary period that, given these issues, that he be prohibited from supervising subordinate officers and demoted to his former Civil Service rank, he successfully completed probation.<sup>15</sup>

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<sup>12</sup> These promotional issues are not limited to search and seizure violations. In another referral, an officer who had repeatedly and improperly used NYPD portals to obtain personal information about others was promoted to Sergeant within a year of receiving discipline for that serious wrongful conduct. *See* OAG Closing Letter re Sergeant Amy Minier (August, 2025), available at <https://ag.ny.gov/sites/default/files/2025-03/755b-findings-a-minier-nypd.pdf>.

<sup>13</sup> *See* OAG Closing Letter re Lieutenant Gabriel Cuevas (March, 26, 2025), available at <https://ag.ny.gov/sites/default/files/2025-04/755b-findings-g-cuevas-nypd.pdf>.

<sup>14</sup> There is a discrepancy in NYPD records as to the date of this Sergeant’s promotion. Documentation provided to OAG by the department shows that the promotion was approved by the Police Commissioner on October 22, 2023, and that the Sergeant was removed from Monitoring on October 25, 2023. However, NYPD’s publicly available profile for this Sergeant lists a promotion date of October 31, 2023. Whether he was removed from Monitoring days before or days after being promoted, our concerns are the same.

<sup>15</sup> *See* OAG Closing Letter re Sergeant Sean Keegan (September 27, 2024), available at <https://ag.ny.gov/sites/default/files/2024-12/755b-findings-s-keegan-nypd.pdf>.

In another referral, OAG concluded in December 2024 that a Detective Sergeant had engaged in a pattern of unlawful stops and searches in violation of the Fourth Amendment and NYPD policy, based on six substantiated incidents from 2019 to 2021. Despite this finding, this individual was promoted to Lieutenant in January 2025.<sup>16</sup>

### *3. Investigating Allegations of Misconduct with Short Limitations Periods*

We believe that Report Recommendations 50 and 51 would prevent the potential expiration of the administrative statute of limitations from being utilized as an excuse not to investigate, pursue discipline, or otherwise address wrongful searches and seizures. In supporting these recommendations, we note that the current Commissioner has stated that NYPD will no longer use limitation periods as a categorical rationale for rejecting CCRB findings.

The Discipline Report describes problematic NYPD practices related to the statute of limitations for discipline for Fourth Amendment violations. We have similar concerns and have expressed them in our Section 75(5)(b) letters to NYPD. For example, the Monitor has observed that in recent years, prior Commissioners had “dropped,” or administratively closed, hundreds of cases where CCRB recommended discipline, citing an impending 18-month Statute of Limitations that would prevent NYPD from investigating the case prior to its expiration. Forty-eight such cases involved unconstitutional stops, frisks, and searches.<sup>17</sup>

This practice results in misconduct going unaddressed, especially because even where the administrative statute of limitations cannot be met, other measures to help correct or prevent future misconduct, such as retraining, are not subject to that statute of limitations.

In addition, NYPD’s invocation of a short statutory deadline as a basis for refusing to pursue discipline has, at times, been questionable.

The Lieutenant discussed above provides an example. In July 2024, the then-Commissioner received CCRB’s disciplinary recommendation for a Fourth Amendment violation almost two months prior to the statutory deadline. To justify the failure to discipline, NYPD cited “the prohibitive timeframe for the Department to perform the necessary investigation” within the applicable statute of limitations, notwithstanding the fact they had already completed it and found no misconduct. In other words, they invoked the approaching statutory deadline as a rationale for not “perform[ing] the necessary investigation” related to an investigation that they had already performed.

Another example involves the Detective, described above, who was assigned to an NST in the Bronx despite the CCRB having recommended charges for his involvement in an

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<sup>16</sup>See OAG Closing Letter re Sergeant Samuel Hui (December 6, 2024), available at <https://ag.ny.gov/sites/default/files/2024-12/755b-findings-s-hui-nypd.pdf>.

<sup>17</sup> New York Police Department Monitor, Twenty-First Report of the Independent Monitor, NYPD MONITOR (September 4, 2024) at 4, available at [https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report\\_Stamped.pdf](https://www.nypdmonitor.org/wp-content/uploads/2024/09/21st-Monitor-Report-General-Compliance-Report_Stamped.pdf)

unconstitutional stop and search in May 2020. The CCRB further found that the Detective had made misleading official statements which it supported with facts that suggested the Detective was aware that his actions had violated NYPD policy. Nevertheless, NYPD administratively closed the case based on a short statute of limitations, despite having received the CCRB's findings more than a month prior to the expiration of the limitations period. A year later, NYPD administratively closed another case in which the CCRB had substantiated a complaint against the Detective based on an unconstitutional frisk of a passenger in the rear of an Uber who had not been wearing a seatbelt. In explaining why discipline was not imposed in that case, NYPD again based its decision on a short statute of limitations, even though it received CCRB's disciplinary recommendation almost three months prior to the deadline.

Likewise, in a case involving a referred Captain, NYPD again relied on a short Statute of Limitations to explain its failure to discipline him for a Fourth Amendment violation, notwithstanding NYPD's service on two other subject officers in the case of the same charges and specifications, which CCRB provided to NYPD on the same date.

#### *4. Improving Transparency Regarding Discipline and Searches and Seizures*

We believe that Report Recommendations 1, 4, 5, 6, and 21 would help improve public transparency regarding accountability for civil rights violations. These Recommendations would ensure that information related to the rules governing police officer conduct and police officer discipline are publicly available. Report Recommendation 21 would also require the Commissioner to clearly describe the factual and legal conclusions, and/or assessment of lenity factors, when departing from CCRB recommendations or disciplinary guidelines or retaining a case.

The Discipline Report expounds the importance of transparency and the impact it has upon public trust and accountability.<sup>18</sup> It states, and we agree, “[t]ransparency does not work if it is half-hearted.” It goes on to explain that “[t]ransparency includes open discussion of the factual basis for decisions, whether substantiated or not, and explanation of the rules that applied.”<sup>19</sup>

As discussed above, LEMIO aims to increase law enforcement's transparency with the public and, in turn, enhance the public's trust in law enforcement. We model this in our own work, publicly reporting Section 75(5)(b) determinations. We also have recommended the passage of statewide legislation promoting law enforcement transparency through standardized data collection and reporting requirements for pedestrian and vehicle stops.

We support the Report Recommendations that aim to enhance NYPD's transparency with the public, including the sharing of discipline-related information with the public. For example, Recommendation 6 calls for the posting of “all substantiated SQFS allegations accepted by the Police Commissioner (with date of the incident and specific outcome, including guidance or penalty) . . . whether made by CCRB, IAB or within the Department” in the “Disciplinary History” in NYPD's “Officer Profile,” which is available to the public online. In LEMIO's own

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<sup>18</sup> See Report to the Court on Police Misconduct and Discipline at 390.

<sup>19</sup> *Id.* at 391.

work to date, at least four referred NYPD officers have SQFS allegations that have been accepted by the Police Commissioner. However, none of the details recommended in the report appear in the NYPD's summary of those officers' "Disciplinary History" in their publicly-available Officer Profiles.<sup>20</sup> In fact, much of the record is empty except for the date and the level of discipline, leaving questions about the nature of the underlying conduct.

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In sum, OAG's investigations of NYPD Section 75(5)(b) referrals to date have identified issues that are consistent with the conclusions drawn by Honorable James Yates in the Discipline Report.

We are grateful to the Court, the Monitor and her team, and the parties for their work in seeking to address these issues, ensure accountability for unconstitutional searches and seizures, and promote effective and constitutional policing.

Thank you,

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<sup>20</sup> NYPD Online – Officer Profile, available at <https://nypdonline.org/link/officer-profile>.