

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

BLACK LIVES MATTER D.C.,  
3845 S. Capitol Street SW,  
Washington, DC 20020

STOP POLICE TERROR PROJECT D.C.,  
617 Florida Avenue NW,  
Washington, DC 20001

AMERICAN CIVIL LIBERTIES UNION  
OF THE DISTRICT OF COLUMBIA,  
915 15th Street NW,  
Washington, DC 20005

Plaintiffs,

v.

No. \_\_\_\_\_

MURIEL BOWSER, in her official capacity  
as Mayor of the District of Columbia,  
1350 Pennsylvania Avenue NW,  
Washington, DC 20004,

KEVIN DONAHUE, in his official capacity  
as Deputy Mayor for Public Safety and  
Justice of the District of Columbia,  
1350 Pennsylvania Avenue NW,  
Washington, DC 20004,

PETER NEWSHAM, in his official capacity  
as Chief of Police of the Metropolitan Police  
Department,  
300 Indiana Avenue NW  
Washington, DC 20001,

Defendants.

**COMPLAINT**

## **PRELIMINARY STATEMENT**

1. This is an action for injunctive relief alleging that Defendants have unreasonably delayed implementation of Title II(G) of the Neighborhood Engagement Achieves Results (NEAR) Act of 2016, codified at D.C. Code § 5-113.01(a)(4B). That provision mandates that Metropolitan Police Department (MPD) officers collect fourteen categories of data for every investigative stop or stop-and-frisk conducted in the District of Columbia (the “data collection requirement”). This data is critical to understanding how D.C. law enforcement officers are interacting with the community they serve and to determining whether certain populations in the District of Columbia are disproportionately subjected to stops and frisks.

2. The NEAR Act has been in effect since June 30, 2016 and funding for the data collection requirement has been available since October 2016. However, the District of Columbia government and MPD have admitted that they have taken no substantive steps since the NEAR Act was passed towards ensuring that these categories of data are in fact collected consistently and systematically. Instead, various officials have given conflicting statements regarding the provision’s implementation status, alternatively stating that the NEAR Act was “fully implemented”; that the data collection requirement was not “mission critical” and was thus not a priority; that “[i]mplementation has begun, but will require alternative ways to analyze data”; that there are certain categories of data MPD “do[es]n’t collect at all” in conducting stops and frisks of D.C. residents; and that some of the required data that is being collected is not done “in a manner that can easily be sorted or consistently reviewed.”

3. Most recently, an MPD spokesperson admitted that in the two years since the NEAR Act passed, the department has “not expended” any of the \$150,000 in funding allocated by the D.C. Council for implementation of the data collection requirement.

4. Meanwhile, the need for this data remains critical, as the conversation regarding the racially disproportionate targeting of African Americans by police remains in both local and national headlines. Moreover, recent reports from news outlets and from the District of Columbia Office of Police Complaints indicate that despite now being less than half of the population of the District of Columbia, African Americans make up the vast majority of subjects of stops and frisks, as well as uses of force, in the District. Without the data collection required by the NEAR Act, such practices, which may often be unlawful and contrary to public policy, remain impossible to document comprehensively so as to facilitate meaningful reform.

5. Almost two years have passed since the D.C. Council passed a statute mandating that Defendants collect this essential data. However, the D.C. government has dragged its feet, indicating at best recalcitrance and at worst an institutional antipathy towards the law.

6. In sum, the District of Columbia has “unreasonably delayed” implementation of this compulsory provision of law, and this Court should exercise its general equitable powers to enjoin Defendants from further unreasonable delay.

#### **PARTIES**

7. Plaintiff Black Lives Matter D.C. (BLM-DC) is a District of Columbia limited liability corporation. As the local chapter of the nationwide “Black Lives Matter” movement, BLM-DC organizes against systemic racism, in particular the racially disproportionate use of state-sanctioned violence against the Black community, through protests, public accountability campaigns, coalition-building, and other programming.

8. Plaintiff Stop Police Terror Project D.C. (SPTP-DC) is an unincorporated non-profit organization. It was initially founded following the death of Michael Brown in Ferguson, Missouri as “DCFerguson.” Its mission is “to chang[e] the system of racist, militarized policing

in [the D.C.] region.” It works “to oppose police abuses and also to build community-led peacekeeping efforts to empower oppressed communities to deal with their own security concerns.”

9. Plaintiff American Civil Liberties Union of the District of Columbia (ACLU-DC) is a 501(c)(4) nonprofit corporation incorporated in the District of Columbia. ACLU-DC is a membership organization that comprises 17,500 residents in the District of Columbia. One of the central issues ACLU-DC seeks to advance through litigation, public advocacy, and coalition organizing is criminal justice reform, including protecting the fundamental rights of individuals to be free from unreasonable search and seizure and to due process of law.

10. Defendant Muriel Bowser is the Mayor of the District of Columbia. She is sued in her official capacity.

11. Defendant Kevin Donahue is the Deputy Mayor for Public Safety and Justice for the District of Columbia. He is sued in his official capacity.

12. Defendant Peter Newsham is the Chief of Police for the Metropolitan Police Department (MPD). He is sued in his official capacity.

### **JURISDICTION**

13. This court has jurisdiction to hear this matter under its general equitable powers to hear “any civil action or other matter at law or at equity brought in the District of Columbia.” D.C. Code § 1-204.31(a).

### **FACTS GIVING RISE TO RELIEF**

14. The Council of the District of Columbia unanimously passed the NEAR Act on March 1, 2016, and it became effective on June 30, 2016, following the federally-mandated congressional review period.

15. Title II(G) of the NEAR Act amended the D.C. Code to require that MPD officers record the fourteen categories of information about all police investigative stops made in the District of Columbia, including the time and location of the stop, the duration of the stop, the violation that led to the stop, whether a search was conducted and if so whether any contraband resulted, whether an arrest or citation resulted from the stop, and the gender, race and date of birth of the person stopped. D.C. Code § 5-113.01(a)(4B).

16. Metropolitan Police Department General Order 304.10, which became effective in August 2013, establishes the existing internal policies and procedures for MPD governing stops and frisks. It defines “stop” and “frisk” and requires officers to “maintain records of all stops [and] frisks,” including “all pertinent details of the incident, including all factors relied upon in determining that the stop or frisk was justified.” However, it does not describe in detail any categories of information that should be included, leaving it up to individual officers’ discretion to determine the meaning of “all pertinent details.”

17. In its Committee Report on the NEAR Act, the D.C. Council quoted the Obama Administration’s Task Force on 21st Century Policing, which emphasized that “Data collection, supervision, and accountability are . . . part of a comprehensive systemic approach to keeping everyone safe and protecting the rights of all involved during police encounters.” The Committee Report further noted the importance of the data collection requirement by pointing out that the Task Force had “strongly encouraged local governments to allocate infrastructure and IT staff expertise to support law enforcement reporting on activities implementing their recommendations.” The Committee Report’s “Section-By-Section Analysis” makes clear that the purpose of Title II(G) is “to require the Metropolitan Police Department to collect additional data on stops and use of force incidents” beyond what MPD had previously collected.

18. Reports indicate that African Americans are the subject of the vast majority of stops and frisks conducted by MPD officers in the District of Columbia. For example, a report from local news organization WUSA9 analyzed data for stops and frisks conducted prior to the NEAR Act's passage, finding that approximately *eighty percent* of the stops involved a black subject.

19. The D.C. Council allocated \$150,000 in funds for Fiscal Year 2017 specifically to implement the data collection requirement, based on a fiscal impact analysis performed by the D.C. Office of the Chief Financial Officer who concluded that this amount was sufficient to fully implement the requirement. The D.C. Budget which included these allocated funds went into effect on October 1, 2016.

20. On February 10, 2017, ACLU-DC filed a Freedom of Information Act (FOIA) request for all data collected pursuant to the data collection requirement since the implementation of the Act.

21. MPD responded on April 5, 2017, stating that “[a]lthough the NEAR Act became law[,] it ha[d] not been implemented as of the date of the search, and existing records do not contain the NEAR data which is the subject of your request.”

22. In a February 27, 2017 letter to D.C. Councilmember Charles Allen in advance of the D.C. Council Judiciary Committee's Fiscal Year 2016 Performance Oversight hearings, MPD Chief Newsham responded to the Committee's question regarding MPD's “progress and plans for implementation” of the data collection requirement by stating that compliance was “more challenging.” Newsham described how “Cobalt,” the computer software MPD has used since Fall 2015 to “document incidents, offenses, field contacts, missing persons, and arrests” needed “additional work” with respect to certain other “mission critical issues” and “other

important programming areas” that MPD had previously planned to “roll out” in “later phases,” but which ostensibly took priority over the data collection requirement. Newsham stated that the department was “working to come into compliance, but must evaluate where these changes fit with mission critical objectives.”

23. In a publication released on January 30, 2018, the Office of the Mayor stated that Defendant Bowser’s administration had “fully implemented” the NEAR Act. This was not true.

24. In February 2018, the Office of the Mayor circulated a document describing the progress made on each aspect of the NEAR Act, which stated that with respect to the data collection requirement, “[i]mplementation has begun, but will require alternative ways to analyze data.”

25. On February 22, 2018, Defendant Donahue testified before the D.C. Council Judiciary Committee. Regarding the data collection requirement, Donahue admitted that there were certain required elements of data that the MPD “do[es]n’t collect . . . at all,” and that doing so would require “a fundamental change to . . . an I.T. System” and/or a new “police protocol.” Donahue focused on the data that was being collected through the pre-NEAR Act procedures, “some” of which the MPD “collect[s] exactly as listed” and “some” of which MPD “collect[s] but not consistently or ha[s] to clean” for “consistency,” including through DMV records connected to traffic stops. Donahue said the government “ha[s] turned [its] attention” to “articulating clearly and honestly here’s what [it is] not collecting” and what “I.T. investment or change in procedure” would be required to collect the data that is required under the NEAR Act.

26. On February 26, 2018, Defendant Newsham submitted his pre-oversight hearing responses to the D.C. Council Judiciary Committee, responding again to the same question the committee had asked a year earlier regarding the implementation status of the data collection

requirement. He stated that “MPD or the Department of Motor Vehicles (DMV) collects almost half of the data” required under the statute. He stated that MPD “will be examining if there are creative ways to use existing data to address the same issues, such as with potentially capturing other data through DMV records.”

27. In March 2018, MPD Communications Director Dustin Sternbeck stated that “MPD officers have the ability to collect most of the data required in the legislation,” but “the data is not collected in a manner that can easily be sorted or consistently reviewed” since much of it is “only documented in the narrative text portion” of the relevant forms used by MPD. Sternbeck provided no indication which of the relevant categories of information are available using the “narrative text portion” of existing forms nor whether this information is collected on a consistent and systematic basis. Although Sternbeck referred to MPD’s “continu[ed] . . . efforts . . . to identify a process from which [MPD] can extract usable information from the raw data and / or narrative information,” he admitted that “[a]n end date for this work has not yet been confirmed.” Sternbeck also stated that MPD had “not expended” any of the \$150,000 in funding allocated by the D.C. Council for implementation of the data collection requirement.

28. On March 29, 2018, the D.C. Council held a budget oversight hearing in which Councilmember Allen again asked Defendant Donahue whether the NEAR Act Stop & Frisk Data was being collected. Councilmember Allen asked, if it was not being collected, what infrastructure changes needed to be made to collect the data and why those changes could not have been made with the \$150,000 in funds previously allocated. Defendant Donahue stated that fully complying with the provision would require changing both MPD’s Cobalt System and the DMV’s ticket processing system. Donahue stated that his office had been in contact with the vendors responsible for those systems, but that he did not have an answer as to how much those



changes would cost or how long the changes would take. When further pressed on why it took the D.C. government two years to determine that two systems needed to be changed, Defendant Donahue stated that they had “sequenced” implementation of the NEAR Act based on other provisions of the law that contained explicit deadlines, to which Councilmember Allen responded by stating that he “continue[d] to be very frustrated” because the D.C. council “didn’t sequence the law,” but rather passed certain requirements that were not meant to be “slowly phased in.” Allen also expressed the importance of the provision, stating that it would be “vital information” that helps policymakers, the police force, and residents in achieving “transparency and accountability” and to “make the right decisions in terms of where . . . policies and laws may need to . . . change.”

29. Councilmember Allen asked Defendant Newsham about the data collection requirement later in the budget oversight hearing. Defendant Newsham stated that the D.C. government was “guilty” of not prioritizing the data collection requirement and of not having “a complete understanding of the necessary infrastructure changes that would be required.” Defendant Newsham agreed that the lack of implementation was “not acceptable,” but stated he believed Defendant Donahue was “determined to get this done, particularly after [Councilmember Allen’s] conversation with him.” Councilmember Allen responded that he was also dedicated, and commented that “two years in . . . if we haven’t had those conversations before, I don’t know why.”

30. Councilmember Allen also expressed his frustration with the Government’s inability to articulate what changes would be necessary to achieve full compliance, stating in his questioning of Defendant Donahue in February 2018, “We’re coming up on two years since the NEAR Act. There are specific data elements that are to be requested. I guess what I’m hearing

you say is we don't collect the data that way. So what was it that we passed two years ago? Was it, was it a recommendation? Or was it a law?" He continued, "[P]art of the frustration is that it feels like we talked through some of these same issues about a year ago at last year's hearing and we put \$150,000 into the budget to try to help give you the resources that you need to make sure we are collecting what we have. . . . [W]e've been told resources that are needed to do the things we're talking about, . . . and have provided them. And it sounds like we're going to get a request back to say these are the things we need to get there. And that's the source of frustration is it feels like we had that conversation about a year ago."

31. On April 26, 2018, Defendant Bowser sent a letter to D.C. Council Chairman Phil Mendelson regarding the Fiscal Year 2019 budget. In that letter, she requested an additional \$300,000 for MPD and an additional \$200,000 for the DMV in order "to fully fund and implement the data collection requirements under the NEAR Act." She specified that these funds would come from a reduction to the "Emergency Rental Assistance Program," a program that provides short-term funding to low-income D.C. residents facing eviction.

32. On March 28, 2018, Plaintiffs submitted another FOIA request for data on all stops and frisks conducted beginning on the NEAR Act implementation date, as well as for documents reflecting MPD's plan for achieving full implementation of the NEAR Act Stop & Frisk Data requirement. On April 24, 2018, the Government gave notice that it was exercising its right to a 10-day extension pursuant to D.C. Code § 2-532(d)(2).

33. On May 1, 2018, MPD's FOIA Officer indicated that the Government would provide Plaintiffs a sample of ten forms documenting ten stops conducted from 2016-2018. However, the Government failed to produce those sample documents by the extended deadline. Further, as of the time this complaint is filed, Defendants have provided neither the D.C. Council

nor the Plaintiffs with any concrete plans or timetables for complying with the mandatory data collection requirement of the NEAR Act.

**CLAIM FOR RELIEF: Unreasonable Delay**

34. Defendants' continuing failure to implement the statutory requirements of Title II(G) of the NEAR Act constitutes "unreasonable delay" of a statutory mandate, for which relief is available under this Court's general equitable powers.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs requests that this Court:

- (a) RULE that Defendants' failure to implement the statutory requirements of Title II(G) of the NEAR Act constitutes unreasonable delay.
- (b) ENJOIN Defendants from further delaying implementation of Title II(G) of the NEAR Act.
- (c) ORDER the Metropolitan Police Department to create a new form for collecting the required data within 30 days of the Court's order, to implement the IT changes necessary to collect and store that data within another 30 days, and to train its officers on the use of the new form within another 30 days, thereby ensuring full compliance with the NEAR Act within 90 days of this Court's order.
- (d) GRANT Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: May 4, 2018

Respectfully submitted,

/s/ Shana Knizhnik

Shana Knizhnik (D.C. Bar No. 1020840)  
Scott Michelman (D.C. Bar No. 1006945)  
Arthur B. Spitzer (D.C. Bar No. 235960)  
American Civil Liberties Union Foundation  
of the District of Columbia  
915 15<sup>th</sup> Street, NW, Second Floor  
Washington, D.C. 20005  
(202) 457-0800  
sknizhnik@acludc.org  
Counsel for Plaintiffs