



September 15, 2014

VIA ECF

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals
for the Second Circuit
40 Foley Square
New York, N.Y. 10007

Re: *Floyd v. City of New York*, 14-2829 (L), 13-3088

Dear Ms. Wolfe:

On behalf of the plaintiffs-appellees in the above-captioned cases concerning the New York City Police Department's stop-and-frisk program, we write concerning the panel assignment for the pending appeals in 14-2829 and a pending motion in this litigation filed in the original *Floyd* appeal, 13-3088, last year about the assignment of ongoing matters in *Floyd* and the consolidated appeal in *Ligon v. City of New York*, 13-3123.

Appeals in *Floyd* and *Ligon* originally were filed last year by New York City, which then moved for a stay of underlying orders issued by the District Court. Those stay motions were assigned to a motions panel, which heard oral argument on October 29, 2013, and granted the stay on October 31, 2013. In its stay order, the panel also ordered that "[i]n the interest of judicial economy, any question, application, or further appeal regarding the scope of this Order or its implementation shall be directed to this panel, which will hear the case on the merits in due course." *Floyd v. City of New York*, 13-3088, Dkt # 247 at 3 (Oct. 31, 2013).

In response, the *Floyd* plaintiffs filed petitions for reconsideration and certain motions with the full Court, including a request that all future matters in this litigation be assigned consistent with the Court's standard procedures instead of being routed to the stay motions panel. *Floyd*, 13-3088, Dkt # 267-2 at 17 (Nov. 11, 2014). On November 25, 2013, the full Court issued an order holding those and other pending motions in abeyance "[t]o maintain and facilitate the possibility that the parties might request the opportunity to return to the District Court for the purpose of exploring a resolution." *Floyd*, 13-3088, Dkt # 338 at 2. Following that, the stay motions panel issued an order on February 21, 2014, remanding both *Floyd* and *Ligon* to the District Court for certain proceedings, including a ruling on pending intervention motions from various police unions that had participated as amici in the stay proceedings. *See Floyd*, 13-3088, Dkt # 476-1 (Feb. 21, 2014).

On July 30, 2014, the District Court adjudicated and denied the police unions' intervention motions. The unions then appealed, *see Floyd v. City of New York*, 14-2829, 14-2848; *Ligon v.*

City of New York, 14-2834, and on August 14, the Court consolidated and expedited the appeals and set oral argument for October 15, 2014. *See Floyd v. City of New York*, 13-3088, Dkt # 494 (Aug. 14, 2014).

Meanwhile, on August 6, 2014, New York City filed a motion pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure seeking dismissal of its pending appeals of the District Court liability and remedy orders issued in 2013. *Floyd*, 13-3088, Dkt # 484. Though not parties to those appeals, the police unions filed oppositions on August 8 and 11, and the City and plaintiffs filed replies on August 18. *Floyd*, 13-3088, Dkt ## 487, 490, 495, 500. As of the date of this letter, the Court has issued no order deciding that Rule 42 motion.

All of this raises the prospect that the union intervention appeals and the City's Rule 42 motion have been assigned to the motions panel that heard the stay motion last year, pursuant to its directive that "any question, application, or further appeal regarding the scope of this Order or its implementation shall be directed to this panel, which will hear the case on the merits in due course." To the extent that assignment in fact has occurred, that would implicate the plaintiffs' pending request that future proceedings in this litigation be assigned pursuant to the Court's normal assignment procedure and not to the motions panel.

We therefore write to request that the Court inform us if the intervention appeals and Rule 42 motion have been assigned to a panel other than the stay motions panel (not disclosing to us, of course, the members of that panel). Alternatively, if these matters have been assigned to the stay motions panel, we ask that the full Court rule on the pending request challenging the assignment of all matters in this litigation to the stay motions panel. We have consulted with plaintiffs-appellees in *Ligon v. City of New York*, who join in our request.

To the extent the intervention appeals and Rule 42 motion have been assigned to the stay motions panel, we think this would be inappropriate for the reasons stated in the original request. *See Floyd*, 13-3088, Dkt # 27-2 at 17. Moreover, we note that the intervention appeals pending before the Court are wholly unrelated to anything decided by the stay motions panel last year, making it particularly problematic for those appeals not to have been assigned to a regular panel as opposed to being sent to the stay motions panel.

In addition, we reiterate the point made in the pending motion to the full Court about the appearance implications of routing all ongoing appeals and motions, no matter how unrelated to the original stay motion, to the original stay motions panel. That panel took the extraordinary step of removing the District Court judge from these cases because of concerns it expressed about an appearance of impartiality arising from the way that these two cases had been assigned to her. Though the plaintiffs vigorously contest that assessment, that same concern arises from a directive assigning all ongoing issues in this litigation to a panel that was initially assigned to hear an original stay motion.

Finally, because our original request concerning panel assignment was made to the full Court, we respectfully request that this letter be forwarded to all members of this Court. Thank you.

Respectfully submitted,

/s/ Darius Charney

Darius Charney
Center for Constitutional Rights

/s/ Jonathan C. Moore

Jonathan C. Moore
Beldock, Levine & Hoffman

Counsel for Floyd Plaintiffs

c: All Counsel (by ECF)