Federal judge rules New York “stop-and-frisk” policing unconstitutional

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A major element of the New York Police Department’s longstanding “stop-and-frisk” policy was declared unconstitutional in a ruling announced by U.S. District Judge Shira Scheindlin on January 8.

The federal judge’s decision came after a seven-day hearing last fall on the NYPD’s “Clean Halls” program, under which landlords of private buildings enroll in the Trespass Affidavit Program (TAP), requesting that police patrol their buildings and arrest trespassers. According to one report, 3,261 buildings in the Bronx participate in this program, and 8,032 citywide. The court decision applies only to the Bronx buildings.

The decision comes in the case of Ligon v. New York, involving a 17-year-old boy who left his building to buy ketchup for his family and was stopped and searched by cops. His mother testified at the hearing that she was unnecessarily alarmed when called by the police.

This case is one of three challenging the stop-and-frisk policy on the grounds that it violates the Fourth Amendment right to be free from unreasonable searches. A broader lawsuit, Floyd v. the City of New York, was filed several years ago and has been granted class-action status in the same court. A third case, Davis v. the City of New York, involving stop-and-frisk in public housing projects, was filed in 2010. The latter two suits also allege violation of the 14th Amendment ban on racial discrimination, since the vast majority of those stopped are black or Latino.

Stops reached a high of 684,330 in 2011, a 600 percent increase since the inception of the program in 2002. Even as the Bloomberg administration and its police department headed by Raymond Kelly have trumpeted the steady decline in crime statistics during this period, they have insisted that greater and more blatant attacks on constitutional rights are required.

Stop-and-frisk has become notorious for turning large sections of the city into virtual occupied territory. The vast majority of stops do not lead to arrests. The policymic.com web site, for instance, reports that Jacqueline Yates, a plaintiff in one of the lawsuits, says that her building has been turned into a prison, with her dinner guests frequently searched as they leave her building and her sons stopped and frisked at least two or three times a week.

A report in *Rolling Stone* magazine last year characterized the Clean Halls program as follows:

“If you live in a Clean Halls building, you can’t even go out to take out the trash without carrying an ID—and even that might not be enough. If you go out for any reason, there may be police in the hallways, demanding that you explain yourself, and insisting, in brazenly illegal and unconstitutional fashion, on searches of your person.”

The police are granted the right to stop people on the basis of “reasonable suspicion,” but their own testimony exposes this as an excuse to intimidate residents, and youth in particular. A study reported that 44.1 percent of stops were based on what police called “furtive movement,” something that could mean almost anything. Another 16.7 percent referred to the term “fits description,” an equally vague excuse that could simply mean black youth. Another 20 percent were listed as “other.”

In her decision, Scheindlin noted that “the evidence of numerous unlawful stops at the hearing strengthens the conclusion that the NYPD’s inaccurate training has taught officers the following lesson: stop and question first, develop suspicions later.” She added that plaintiffs reported that stops left them feeling violated, disrespected, angry and defenseless.

"For those of us who do not fear being stopped as we approach or leave our own homes or those of our friends and families, it is difficult to believe that residents of one of our boroughs live under such a threat. In light of the evidence presented at the hearing, however, I am compelled to conclude that this is the case," the ruling stated .

As a person exits a building, the judge added, "the police suddenly materialize, stop the person, demand identification, and question the person about where he or she is coming from and what he or she is doing. Attempts at explanation are met with hostility; especially if the person is a young black man, he is frisked, which often involves an invasive search of his pockets; in some cases the officers then detain the person in a police van."

Donna Lieberman of the New York Civil Liberties Union called the ruling "a major step toward dismantling the NYPD's stop-and-frisk regime." The court's decision is far from the end of the matter, however. The judge issued a preliminary injunction but did not order a halt to the program. She ordered the NYPD to revise its training materials, but even that is suspended while the city prepares to challenge the ruling. City Corporation Counsel Michael Cardozo said the decision places an "unacceptable burden on the NYPD."

Police Commissioner Kelly claimed, "the police have worked to provide a modicum of safety for less prosperous tenants," and, incredibly, compared the actions of the police to those of doormen in wealthy Manhattan neighborhoods. He added, more ominously, that the court was "unnecessarily interfer[ing] with the department's efforts to use all of the crime-fighting tools necessary to keep Clean Halls buildings safe and secure." In other words, the judiciary has no business meddling in the operations of a police state.

The police tactics are designed to intimidate working-class youth and minorities in particular. It is poor and working-class neighborhoods that are targeted, as part of the assault on the democratic rights of the entire working class.

The latest court ruling reflects fears within the local political establishment that the NYPD is courting a social explosion, especially under conditions of continuing unemployment, foreclosures and growing poverty and homelessness. Stop-and-frisk has been utilized for a decade, but anger over the tactic has grown in the wake of the financial collapse that spelled a sharp attack on the jobs and living standards of working-class New Yorkers.