

US appeals court blocks order against NYPD stop-and-frisk

A reporter
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A federal appeals court has intervened unexpectedly into the long-running legal challenge to the reactionary stop-and-frisk policy of the New York Police Department, blocking the order of a federal district court judge against the police and removing her from further consideration of the case.

The three-judge panel of the Second US Circuit Court of Appeals was acting on an appeal by the city government of the order issued by District Court Judge Shira Scheindlin, which set limits on stop-and-frisk and required a series of remedial steps by the NYPD.

The panel went well beyond the scope of the request from city officials, who only sought a stay of Scheindlin's order, pending appeal. The three judges not only issued the stay, but ordered the case to be taken away from Scheindlin and reassigned.

They claimed that Scheindlin had violated the judicial code of conduct by appearing not to be impartial, citing a series of public statements and media reports since August, in which Scheindlin rebutted criticism of her initial ruling by Mayor Michael Bloomberg, police chief Ray Kelly, and right-wing media pundits.

The judge denied in a written statement that she had improperly discussed the case with any journalists, noting that some of them had quoted from her written opinions in a manner that "gave the appearance that I had commented on the case." She added, "However, a careful reading of each interview will reveal that no such comments were made."

The appeals court panel made no decision on the merits of Scheindlin's decision, which found that stop-and-frisk was a gross violation of the Fourth Amendment to the US Constitution, which prohibits unreasonable searches. Instead, the panel granted the stay based on Scheindlin's alleged misconduct, even though no such allegations were made by the city

attorneys seeking the stay.

Essentially, following the model of the Supreme Court's ruling in *Bush v. Gore* and numerous other anti-democratic decisions, the three-judge panel started with the result they had predetermined—gutting Scheindlin's order—and worked backwards to find a legal pretext for such a decision.

When the constitutional arguments of city attorneys proved inadequate, they simply invented an entirely new reason for overturning Scheindlin, in the comments she made after the ruling, and in her conduct six years ago when the issue of stop-and-frisk first came before her court.

Scheindlin ruled in August that police officers violated the civil rights of tens of thousands of people by disproportionately and arbitrarily targeting black and Hispanic men, the vast majority of them innocent of any crime.

Over a period of more than eight years, from January 2004 to June 2012, the NYPD detained 4.4 million people under stop-and-frisk. There was no further action for 88 percent of those stopped, with 12 percent given summonses or arrested. Only 2 percent of those stopped were found in possession of weapons—the supposed reason for the "frisk" portion of the encounter.

Stop-and-frisk is overwhelmingly unpopular in the working class of New York City, and has become a major issue in the ongoing mayoral election campaign, which will select Bloomberg's successor next Tuesday. In upper-class circles, however, any limitation on the authority of the NYPD is regarded as too dangerous, given the extreme social tensions in a city with 389,000 millionaires and three million people on food stamps.

It is significant that the three-judge panel that overturned the sanctions on stop-and-frisk included two

judges viewed as liberals and appointed by Democratic presidents, Jose Cabranes and Barrington Parker. The federal district judge whose name was drawn randomly to replace Scheindlin, John Koeltl, is also a Democratic appointee, selected by Bill Clinton in 1994.

Jonathan Moore, a lead attorney in the lawsuit against stop-and-frisk, denounced the appeals court action. “It’s embarrassing, it’s unprecedented and it’s a travesty of justice that this panel did this,” he said. “To not only issue a stay, but to remove this judge who had been working on this case for so many years and worked very hard and conscientiously and provided everybody a fair trial ... to remove her, based upon the things that the court said ... I never heard of such a thing.”

Bloomberg and police chief Kelly, hailed the ruling and stepped up their vilification of Judge Scheindlin, who has been a target of the police, the mayor and the right-wing tabloid media in New York City since she issued her decision on stop-and-frisk.

The ruling poses an immediate political test for Democratic mayoral candidate Bill de Blasio, widely expected to win the November 5 general election. De Blasio made stop-and-frisk a major issue, criticizing it throughout the Democratic primary campaign and appealing for support in working-class areas, particularly those with minority populations disproportionately affected by the police harassment.

A de Blasio administration would immediately confront the decision of whether to continue the appeal, now scheduled to be heard in March—as demanded by police officials—or to drop it and adhere to the terms of Scheindlin’s original decision. DeBlasio has already backed off from the posture of outright opposition to stop and frisk, issuing a statement calling for “reforming stop-and-frisk and bringing police and communities together.”



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