



DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, New York 10020-1104
www.dlapiper.com

Anthony Paul Coles
T (212) 335-4844
E anthony.coles@us.dlapiper.com

July 17, 2020
VIA ECF

Hon. Katherine Polk Failla
United States District Court, Southern District of New York
40 Foley Square
New York, NY 10007

**Re: *Uniformed Fire Officers Association, et al. v. Bill de Blasio, et al.*
20-cv-05441 (KPF)(RWL)**

Dear Judge Failla:

We represent the Plaintiffs/Petitioners (“Plaintiffs” or the “Officer Unions”) and write in response to the letter dated July 17, 2020 (the “Letter”) from the City of New York and the other Defendants/Respondents (the “Defendants” or the “City”) concerning a TRO issued by State Supreme Court Justice Carol R. Edmead on July 15, 2020 (the “TRO”, attached below as Exhibit 1 and filed as ECF No. 3). Plaintiffs will submit a more detailed response to the City’s Letter no later than Monday July 20, unless the Court directs otherwise. As a preliminary response:

This case challenges the Defendants’ unilateral pronouncements that they will immediately release information regarding unsubstantiated, unfounded, exonerated, or pending disciplinary matters (“Unsubstantiated and Non-Final Allegations”) against thousands of firefighters, police officers, correction officers and other law enforcement personnel in the wake of the repeal of Civil Rights Law § 50-a. The Defendants have indicated their intent to publish and promote all active and retired police officer disciplinary records on the internet without regard for the fact that those records indisputably include Unsubstantiated and Non-Final Allegations that are meritless, constitute unwarranted invasions of privacy, and may destroy the reputations and imperil the safety of those affected officers and their families. Judge Edmead’s TRO stayed the release of any Unsubstantiated and Non-Final Allegations.

The City removed this action to this Court after Justice Edmead made her initial rulings on July 15. Plaintiffs have outstanding requests for further TRO and preliminary injunctive relief that have not yet been ruled upon, which are explained in the State court Order to Show Cause and its supporting papers that are being filed in this Court in connection with the removal.

1. **The TRO issued July 15.** The TRO is valid and in effect, as Defendants’ Letter acknowledges when it states that the TRO “was consented to on the record with the understanding that it would remain in effect only until the federal court could hear Plaintiffs’ application.” (Letter at 2.) Plaintiffs commenced this action in New York Supreme Court, New



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York County, on July 14, 2020, by Order to Show Cause seeking a Temporary Restraining Order and preliminary and permanent injunctive relief to prevent the City from publicly releasing a “data-dump” of certain confidential individual records of New York City firefighters, police officers, and corrections officers. State Supreme Justice Carol R. Edmead heard argument from counsel for all parties the morning of July 15 and issued rulings. In the middle of the argument, the City announced that it was removing this case to federal court. The City then asserted to Justice Edmead that her rulings on a temporary restraint were not valid. After considering the matter, Justice Edmead determined that her rulings preceded the removal and issued the attached TRO against all Defendants and “those acting in concert with them”:

ORDERED that pending the issue of an Interim Stay before the United States District Court for the Southern District of New York, the Defendants/Respondents, and those acting in concert with them, are ***Stayed*** from publicly disclosing any records concerning Unsubstantiated and Non-Final Allegations or settlement agreements as defined in the instant Petition, entered into prior to June 12, 2020, relating to the repeal of N.Y.C. Civ. Rights Law §50-a(1).

The TRO remains in effect restraining Defendants and those acting in concert with them, until further order by this Court. The Court should rule after a full hearing and full briefing.

2. **The City is mistaken on the law.** The City asserts that Plaintiffs’ Petition for temporary, preliminary and permanent relief should be denied, but the City is wrong on the law. Much of this is explained in the Memorandum of Law and other papers submitted in the State court on Plaintiffs’ Order to Show Cause, which are being concurrently filed in this Court with this Letter. Additional arguments will be explained in Plaintiffs’ fuller response to be sent on Monday, July 20. Full argument to this Court can be made in briefs under a schedule set by the Court. The need for temporary and preliminary relief is also supported by court orders in New Jersey on similar issues. See Order on Motion, *State Troopers Fraternal Assoc. v. State of New Jersey, et al.*, Superior Court of New Jersey, Appellate Div., No. A-003950-19T-4, July 8, 2020, attached hereto as Exhibit 2.

3. **Expedited discovery and prevention of any further release of information covered by the TRO.** The City’s Letter asserts that some information at issue may have been released by the Civilian Complaint Review Board (CCRB) on July 13, 2020, but it is not clear what that was. Plaintiffs now, in this letter, request the CCRB and other Defendants to disclose immediately and clearly to Plaintiffs exactly and in full what has been released, when, and to whom. Plaintiffs also seek immediate expedited discovery, which will be explained more fully in the letter to be sent to the Court on July 20.



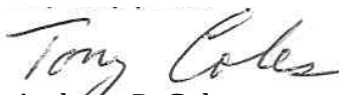
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4. **A hearing on a preliminary injunction.** At a conference next week, the Court should set a date for a preliminary injunction hearing and a briefing and expedited discovery schedule.

We are available, of course, if the Court desires further information.

Respectfully submitted,

DLA Piper LLP (US)


Anthony P. Coles

rm

cc: All counsel of record (*via* ECF)

Uniformed Fire Officers Association; Uniformed Firefighters Association of Greater New York; Correction Officers' Benevolent Association of the City of New York; Police Benevolent Association of the City of New York, Inc.; Sergeants' Benevolent Association; Lieutenants' Benevolent Association; Captains' Endowment Association; and Detectives' Endowment Association,

Petitioners/Plaintiffs,

-against-

Bill de Blasio, in his official capacity as Mayor of the City of New York; the City of New York; Fire Department of the City of New York; Daniel A. Nigro, in his official capacity as the Commissioner of the Fire Department of the City of New York; New York City Department of Correction; Cynthia Brann, in her official capacity as the Commissioner of the New York City Department of Correction; Dermot F. Shea, in his official capacity as the Commissioner of the New York City Police Department; the New York City Police Department; Frederick Davie, in his official capacity as the Chair of the Civilian Complaint Review Board; and the Civilian Complaint Review Board,

Respondents/Defendants.

Case No. 1:20-CV-05441

**NOTICE OF ENTRY OF STATE
COURT ORDER**

TO: CLERK OF COURT AND ALL PARTIES OF RECORD

PLEASE TAKE NOTICE in connection with the Notice of Removal filed by Respondents/Defendants in this action (ECF No. 1), that attached hereto is a true and correct copy of an Order issued prior to removal that was entered and filed in the office of the Clerk of the Supreme Court of the State of New York, New York County on July 15, 2020.

Dated: July 15, 2020
New York, New York

DLA PIPER LLP (US)

By: /s/ Anthony P. Coles
Anthony P. Coles
Michael R. Hepworth
1251 6th Avenue
New York, NY 10020
Telephone: (212) 335-4844
Facsimile: (212) 884-8644
Email: anthony.coles@dlapiper.com
Email: michael.hepworth@dlapiper.com

Courtney G. Saleski
(*pro hac vice* to be filed)
1650 Market Street, Suite 5000
Philadelphia, PA 19103-7300
Telephone: (215) 656-2431
Facsimile: (215) 606-2046
Email: courtney.saleski@dlapiper.com

Attorneys for Petitioners

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. C. Edmead PART 35

Justice

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UNIFORMED FIRE OFFICERS ASSOCIATION,
UNIFORMED FIREFIGHTERS ASSOCIATION OF
GREATER NEW YORK, CORRECTION OFFICERS'
BENEVOLENT ASSOCIATION OF THE CITY OF NEW
YORK, INC.,POLICE BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK, INC.,SERGEANTS
BENEVOLENT ASSOCIATION, LIEUTENANTS
BENEVOLENT ASSOCIATION, CAPTAINS' ENDOWMENT
ASSOCIATION, DETECTIVES' ENDOWMENT
ASSOCIATION,

INDEX NO. 154982/2020
MOTION DATE 07/15/2020
MOTION SEQ. NO. 001

Plaintiff,

- v -

BILL DE BLASIO, IN HIS OFFICIAL CAPACITY AS MAYOR
OF THE CITY OF NEW YORK, THE CITY OF NEW YORK,
DANIEL A. NIGRO, IN HIS OFFICIAL CAPACITY AS THE
COMMISSIONER OF THE FIRE DEPARTMENT OF THE
CITY OF NEW YORK, CYNTHIA BRANN, IN HER
OFFICIAL CAPACITY AS THE COMMISSIONER OF THE
NEW YORK CITY DEPARTMENT OF CORRECTION,
DERMOT F. SHEA, IN HIS OFFICIAL CAPACITY AS THE
COMMISSIONER OF THE NEW YORK CITY POLICE
DEPARTMENT, THE FIRE DEPARTMENT OF THE CITY
OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF
CORRECTION, THE NEW YORK CITY POLICE
DEPARTMENT, FREDERICK DAVIE, IN HIS OFFICIAL
CAPACITY AS THE CHAIR OF THE CIVILIAN COMPLAINT
REVIEW BOARD, THE CIVILIAN COMPLAINT REVIEW
BOARD

ORDER

Defendant.

-----X

The application of Petitioners/Plaintiffs Uniformed Fire Officers Association; Uniformed
Firefighters Association of Greater New York; Correction Officers' Benevolent Association of
the City of New York, Inc.; Police Benevolent Association of the City of New York, Inc.;
Sergeants Benevolent Association; Lieutenants Benevolent 75, Association; Captains
Endowment Association; and Detectives' Endowment Association for an Order
pursuanttoCPLR§6301, on behalf of Petitioners/Plaintiffs("Petitioners") Uniformed Fire Officers

Association, Uniformed Firefighters Association of Greater New York, Correction Officers Benevolent Association of the City of New York, Police Benevolent Association of the City of New York, Inc., Sergeants Benevolent Association, Lieutenant Benevolent Association, Captains Endowment Association, and Detectives' Endowment Association, preliminarily restraining Respondents, and those acting in concert with them, from publicly disclosing any records concerning disciplinary matters against individual New York City police officers, firefighters, and correction officers that are non-final, unsubstantiated, unfounded, exonerated or resulted in a finding of not guilty ("Unsubstantiated and Non-Final Allegations"), or that regard settlement agreements entered into prior to June 12, 2020, is decided in accordance with the "So Ordered" transcript (Laura Ludovico, Sr.Ct.Rptr.)

During the court's first oral argument on this application, Counsel for Defendants/Respondents advised the court that this matter was being **Removed** from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. Initially counsel for Defendants/Respondents consented to this court issuing the following which was "So Ordered" by the Court:

It is hereby

ORDERED that pending the issue of an Interim Stay before the United States District Court for the Southern District of New York, the Defendants/Respondents, and those acting in concert with them, are **Stayed** from publicly disclosing any records concerning Unsubstantiated and Non-Final Allegations or settlement agreements as defined in the instant Petition, entered into prior to June 12, 2020, relating to the repeal of N.Y.C. Civ. Rights Law §50-a(1). Thereafter, the court received an e-mail from counsel for Defendants/Respondents

advising as follows:

Since the case has been removed it is our position, respectfully, that it is not appropriate for the Court to issue an order, including a stay pending the Federal Court hearing the TRO.

Per 28 USC 1446(d):

(d)Notice to Adverse Parties and State Court. —

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal **and the State court shall proceed no further unless and until the case is remanded.**

A second Skype conference was held (Laura Ludovico, Sr. Ct.Rptr.) to address the issue of this court's authority to issue a Stay. Firstly, the above e-mail from counsel for Defendants/Respondents was not copied to counsel for Plaintiffs/Petitioners. Secondly uploading the Removal notice to NYCEF apparently does not constitute filing of a copy of the notice with the clerk of the court.¹ Thirdly, counsel for Plaintiffs/Petitioners were not provided a written notice of removal. And finally, and most importantly, the court's stay Order was in effect. For the foregoing reasons, the following Order of this Court is in full force and effect. It is hereby

¹ . From the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases -Subsection J Paragraph 1-" If an order in a NYSCEF case directs that the County Clerk take action, a copy of the order must be served on the County Clerk (CPLR § 8019 (c)), as the order will usually expressly provide. This shall be done by filing with NYSCEF a completed Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)."

ORDERED that pending the issue of an Interim Stay before the United States District Court for the Southern District of New York, the Defendants/Respondents, and those acting in concert with them, are **Stayed** from publicly disclosing any records concerning Unsubstantiated and Non-Final Allegations or settlement agreements as defined in the instant Petition, entered into prior to June 12, 2020, relating to the repeal of N.Y.C. Civ .Rights Law §50-a(1).

7/15/2020

DATE


HON. CAROL R. EDMED
J.S.C.

CHECK ONE:

☒

CASE DISPOSED

☐

GRANTED

☐

DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE