

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

SUFFOLK, SS

SUPERIOR COURT
C.A. NO. 16-2670

BOSTON POLICE PATROLMEN’S
ASSOCIATION, INC.,

Plaintiff,

v.

CITY OF BOSTON,

Defendant.

**MEMORANDUM OF LAW OF *AMICI CURIAE*
AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS,
BOSTON POLICE CAMERA ACTION TEAM,
CHARLES HAMILTON HOUSTON INSTITUTE OF RACE AND JUSTICE,
HARVARD BLACK LAW STUDENTS ASSOCIATION,
LAWYERS’ COMMITTEE FOR CIVIL RIGHTS AND ECONOMIC JUSTICE, AND
NAACP – BOSTON
IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

This case is about more than a labor dispute, and the interests at stake extend beyond the named parties. The Boston Police Department’s (BPD) body-worn camera pilot program is a direct response to the demands of Boston residents for more accountability and transparency from the police officers sworn to protect them. Amici submit this brief to address the interests of the people and communities who will be directly affected by any further delay in concrete police reform.

Reports of unnecessary uses of deadly force across the nation—including the killings of Eric Garner in New York, Walter Scott in South Carolina, and Laquan McDonald in Illinois—have brought body cameras to the forefront of a national conversation on police accountability

and transparency. Many of this country's largest cities have already tried or fully implemented body camera programs. But police accountability measures in general, and body cameras in particular, have been delayed in arriving to Boston.

Although Boston has so far avoided notorious instances of deadly police encounters, it is not immune from the issues that plagued Ferguson, New York City, and so many other cities that failed to implement meaningful reforms before it was too late. In fact, BPD data suggests that communities of color in Boston have been policed differently than white communities. Yet the absence of body cameras creates real obstacles to addressing or even identifying racially disparate policing or other problems with police-civilian encounters. Just last month, the District Attorney for Suffolk County was forced to rely on a grainy security video from a fast food restaurant in deciding whether a Boston police officer was justified in shooting a Black civilian in June 2015. If even one of the officers on the scene had been wearing a camera, the District Attorney and the public would know more about what led to the use of deadly force. How many more questions about police-civilian encounters in Boston will go unanswered while the parties to this case sort out their labor dispute?

The Boston Police Patrolmen's Association (BPPA) has demanded an injunction that would indefinitely delay the BPD's body camera pilot program. Where, as here, the community has repeatedly demanded change and the government has taken concrete steps to facilitate that change, further delay contradicts the best interest of the public. Unlike the power disparities and political vagaries that so often stymie community requests for police accountability, case law governing requests for injunctive relief *requires* this Court to consider the public's interest. For the reasons stated below, that interest cuts decidedly against halting the BPD's pilot program.

II. INTERESTS OF THE AMICI CURIAE¹

The **American Civil Liberties Union of Massachusetts** (ACLUM), an affiliate of the national ACLU, is a statewide civil rights and civil liberties organization that has long worked to promote constitutional, safe, and transparent police practices. For many years, ACLUM has been involved in efforts to learn about and improve police practices in Boston. Beginning approximately two years ago, ACLUM has worked with individuals, community groups, civil rights organizations, police departments, and elected officials to promote body camera policies and practices that protect both civilians and police officers. *See generally* ACLU of Massachusetts, *Police body-worn cameras: Let's do it right*, at www.aclum.org/cams.

The **Boston Police Camera Action Team** (BPCAT) is a civil rights community group dedicated to addressing issues related to local police reform and accountability. Founded by two residents of Boston's Mattapan neighborhood on August 13, 2014, following the events of Ferguson, BPCAT has grown to over 50 members representing all thirteen Boston neighborhoods and several Massachusetts cities, towns, and suburbs. BPCAT focused on developing a comprehensive body-worn camera policy through discussions with several hundred community members, representatives of the legal profession, police officers, and other stakeholders. For two years, BPCAT has worked with other local community organizations, civil rights groups, and nonprofit organizations to advance its mission to make Boston the first city in the nation to adopt a full body-worn camera program that both equips all patrol and specialized unit officers with body-worn cameras, as well as regulates the use of those cameras with comprehensive, community-written policy.

¹ The undersigned counsel has consulted with counsel for the parties about the filing of this brief. The City of Boston does not object to the filing of this brief. The BPPA has declined to consent to the filing of this brief.

The **Charles Hamilton Houston Institute for Race and Justice** at Harvard Law School continues the unfinished work of Charles Hamilton Houston, one of the Twentieth Century's most talented legal scholars and litigators. The Charles Hamilton Houston Institute marshals resources to advance Houston's dreams for a more equitable and just society. It brings together students, faculty, practitioners, civil rights and business leaders, community advocates, litigators, and policymakers. The Institute has been focused on, among other things, reforming the justice system with a special interest in police practices. The Institute believes the use of body cameras by the Boston Police Department is a necessary step in this direction and should commence immediately.

The **Harvard Black Law Students Association** (Harvard BLSA), founded in 1967 and the largest chapter of the National Black Law Students Association, provides support, guidance, and direction for Black students in their development as attorneys. In April 2015, recognizing the need to act positively in the development of the Black community, members of Harvard BLSA authored *Independent Lens: Toward Transparency, Accountability, and Effectiveness in Police Tactics*. This report concluded that, when effectively implemented, body-worn cameras can reinvigorate community policing, reduce costs from complaints, litigation, and settlements, and help mend the relationship between law enforcement and the communities they police. Moreover, Harvard BLSA has attended community meetings in Boston to communicate these findings, and remains committed to the effective implementation of police body-worn cameras.

The **Lawyers' Committee for Civil Rights and Economic Justice** (LCCREJ) is the Boston-based affiliate of the Lawyers' Committee for Civil Rights Under Law. Founded in 1968, LCCREJ is a private, nonprofit, nonpartisan legal organization that provides pro bono legal representation to victims of discrimination based on race or national origin. LCCREJ handles

major law reform cases as well as legal actions on behalf of individuals. LCCREJ frequently advocates on behalf of communities of color for increased police transparency and accountability, and a properly implemented body camera policy can be an important part of that effort. LCCREJ thus has a strong interest in ensuring that the Boston Police Department's pilot body camera program is allowed to go forward as planned.

Established in 1911, the **Boston Branch of the National Association for the Advancement of Colored People** (NAACP-Boston) is the NAACP's first chartered branch. The NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. Paramount to the work of NAACP-Boston is to stand against any form of police misconduct and to advocate for greater police accountability. Our system of policing must finally wipe out the taint of racism by adopting sweeping police reforms, including the development of a body camera program in Boston that is developed with community input and designed to ensure that it provides the maximum benefit for law enforcement and citizens.

III. ARGUMENT

A. The public interest is a critical component of the Court's decision whether to issue a preliminary injunction.

In deciding whether to issue a preliminary injunction in cases between private parties, courts consider (1) whether the plaintiff is likely to succeed on the merits; (2) whether “irreparable harm” to the plaintiff will result from denying the injunction; and (3) whether the plaintiff's risk of irreparable harm “outweighs any similar risk of harm to the opposing party” if the injunction is granted. *Doe v. Superintendent of Sch. of Weston*, 461 Mass. 159, 164 (2011). But when a party seeks to enjoin governmental action, as the BPPA does in this case, there is one additional requirement: “a judge is also ‘required to determine that the requested order promotes

the public interest, or, alternatively, that the equitable relief will not adversely affect the public.”
Boston Police Patrolmen's Ass'n, Inc. v. Police Dep't of Boston, 446 Mass. 46, 49–50 (2006)
(quoting *Loyal Order of Moose, Inc. Yarmouth Lodge # 2270 v. Board of Health of Yarmouth*,
439 Mass. 597, 601 (2003) (quoting *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984))).

The party seeking an injunction bears the burden of showing that these requirements are met. *Id.* at 49. Courts have recognized public safety, logistics, and personnel training as significant public interests that weigh against the granting of a preliminary injunction. *See, e.g., Tarlaian v. City of Providence*, No. CIV.A. 97-149T, 1998 WL 34100800, at *7 (D.R.I. Apr. 6, 1998) (denying preliminary injunction that would, by delaying police department’s decision-making until resolution of officer’s grievance, “adversely affect the public interest in having safety services provided in the most efficient manner possible”).

B. The public interest strongly favors the immediate commencement of a body camera program in Boston.

The public interest at stake here is the safety and security of members of the community, whose right to be free from excessive and discriminatory policing is paramount. For three reasons, further delay in implementing the BPD’s body camera program would be directly adverse to the public’s interest, and the program should be permitted to proceed while the merits of this case are litigated. *First*, there is growing evidence that a police body camera program, when done right, can protect both civilians and police officers. *Second*, the City of Boston has an acute need for increased police accountability. *Third*, halting the BPD’s pilot program would needlessly exacerbate the already long delays in bringing police accountability to Boston.

1. Body cameras appear capable of reducing violent police-civilian encounters and false claims of police misconduct.

Body cameras are becoming integral to 21st-century community policing. In late 2014, a survey found that police departments in 41 of the 100 most populous U.S. cities had already

begun using them.² A more recent survey found that 95% of the nation's largest police departments are committed to implementing body cameras.³ Evidence also suggests that many officers themselves support the use of body cameras, based on a view that cameras can reduce false claims of police misconduct.⁴ Moreover, public support for police body cameras appears to be overwhelming, with an estimated 88% of Americans favoring their use.⁵ This support cuts across political party, gender, age, race, income level, and geography.⁶

² Abigail Tracy et al., *Is Your Police Force Wearing Body Cameras?*, VOCATIV (Nov. 15, 2014), <http://www.vocativ.com/usa/justice-usa/police-force-wearing-body-cameras>; see also The Leadership Conference, *Police Body Worn Cameras: A Policy Scorecard* (Aug. 2016) at www.bwcscorecard.org (analyzing body camera policies from approximately 50 municipalities, including many major cities); *Top 25 Largest U.S. Cities and Police Body Worn Cameras*, ACLU OF MASSACHUSETTS (Aug. 2015), <https://aclum.org/app/uploads/2015/08/BWCs-Top25Cities-8-4-15.pdf>.

³ Mike Maciag, *Survey: Almost All Police Departments Plan to Use Body Cameras*, GOVERNING (Jan. 26, 2016), <http://www.governing.com/topics/public-justice-safety/gov-police-body-camera-survey.html>. While it is difficult to know for sure how many police departments are actually using body cameras, some sources estimate that nearly a third of all U.S. police departments are using them in some capacity. See, e.g., Kari Paul, *It's Still Not Clear How Many Police Departments Actually Use Body Cameras*, VICE CHANNELS (July 30, 2015, 10:26 AM), <http://motherboard.vice.com/read/its-still-not-clear-how-many-police-departments-actually-use-body-cameras>; Katie DeLong, *One-Third of United States Police Departments Using Body Cameras: They're Expensive, So Are They Worth It?*, FOX6NOW.COM (Mar. 2, 2015, 10:32 PM), <http://fox6now.com/2015/03/02/one-third-of-united-states-police-departments-using-body-cameras-theyre-expensive-so-are-they-worth-it>.

⁴ See John Ortiz Smykla et al., *Police Body-Worn Cameras: Perceptions of Law Enforcement Leadership*, AM. J. CRIM. JUST. (2015), <http://link.springer.com/article/10.1007%2Fs12103-015-9316-4>. Doug Wyllie, *Survey: Police Officers Want Body-Worn Cameras*, POLICEONE.COM (Oct. 23, 2012), <http://www.policeone.com/police-products/body-cameras/articles/6017774-Survey-Police-officers-want-body-worn-cameras> (stating that "85 percent of respondents believe that body-worn cameras reduce false claims of police misconduct, and reduce the likelihood of litigation against the agency."). Despite initial skepticism towards data reported by body camera manufacturers, there seems to be some truth in these numbers: Cleveland police officials report that complaints against officers had decreased by 40% after they began using body cameras. Leila Atassi, *Police Body Cameras Reduced Citizen Complaints by 40 Percent, Police Officials Say*, CLEVELAND.COM (Nov. 11, 2015, 3:58 PM), http://www.cleveland.com/cityhall/index.ssf/2015/11/cleveland_police_body_cameras_1.html.

⁵ Peter Moore, *Overwhelming Support for Police Body Cameras*, YOUNGOV (May 7, 2015, 12:21 PM), <https://today.yougov.com/news/2015/05/07/body-cams>. Additionally, a poll by The Leadership Conference Education Fund found 88% support for requiring officers to wear body cameras. Lydia Wheeler, *Poll: Overwhelming Majority Want Police to Wear Body Cameras*, THE HILL (Oct. 26, 2015, 12:04 PM), <http://thehill.com/regulation/technology/258085-majority-of-americans-want-set-rules-for-police-body-cameras-poll-shows>.

⁶ YOUNGOV APRIL 27-29, 2015, at 2 (2015), http://cdn.yougov.com/cumulus_uploads/document/rcrwgep1rx/tabs_OPI_police_body_cams_20150429.pdf (indicating that 91% Democrats, 88% of Republicans, and 87% of independents strongly or somewhat support body cameras); *id.* (indicating that 90% of male and 87% of female respondents support the use of body cameras); *id.* (indicating support across all ages); *id.* (revealing that 90% of white respondents, 84% of Hispanic respondents, and 85% of Black respondents indicated some level of support for body cameras); *id.* (showing nearly uniform levels of support amongst respondents earning less than \$40,000 per

Body cameras are becoming part of the standard police uniform because they can be valuable tools. For starters, there is growing evidence that body cameras can deter violent police-civilian encounters from happening in the first place. Body cameras have been associated with declines in civilian complaints and uses of force from Florida (Orlando and Tampa Bay) to Colorado (Denver) to California (Rialto and San Diego).⁷ For example, the Rialto Police Department's body camera program, one of the first for which scientific evidence is available, resulted in a 60% decrease in the use of force by police officers.⁸ Similarly, a study of the Orlando Police Department's one-year body camera program revealed a 53% reduction in use of force by police officers.⁹ Orlando's program was so successful that the officers who participated chose to keep their cameras after the program was over, and police commanders eventually equipped the entire department with cameras.¹⁰ These statistics are powerful evidence that body camera programs can protect both sides of the badge.

Pilot programs, like the one at issue in this case, might be particularly valuable in maximizing the deterrence value of body cameras because deterrence may hinge on the quality

year, those earning \$40,000-\$80,000, and those earning above \$80,000); *id.* (showing nearly uniform levels of support amongst respondents in the Northeast, Midwest, South, and West).

⁷ See, e.g., Dan Sullivan & Tony Marrero, *USF Study Suggests Tampa Police with Body Cameras Less Likely to Use Force*, TAMPA BAY TIMES (Aug. 24, 2016), <http://www.tampabay.com/news/publicsafety/usf-study-suggests-tampa-police-with-body-cameras-less-likely-to-use-force/2290851>; Cole Zercoe, *Body Camera Study: Denver Police See Drop in Arrests, UOF Complaints*, POLICEONE.COM (Sept. 4, 2015), <https://www.policeone.com/police-products/body-cameras/articles/9485301-Body-camera-study-Denver-police-see-drop-in-arrests-UOF-complaints/>; Lyndsay Winkley, *SDPD Used More Force, Fewer Aggressive Options in 2015*, SAN DIEGO UNION-TRIBUNE (Mar. 22, 2016), <http://www.sandiegouniontribune.com/news/2016/mar/22/sdpd-body-camera-report-force-complaints/>; *Police Body Cameras Reduce Use of Force, Study Finds*, HERALD TRIBUNE (Oct. 12, 2015) <http://www.heraldtribune.com/article/20151012/ARTICLE/151019909>.

⁸ Barak Ariel, et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509 (2015) (explaining further that implementing police body cameras resulted in fewer civilian complaints against police officers and enhanced police legitimacy and transparency within the community).

⁹ *Tampa Police with Body Cameras Less Likely to Use Force*, *supra* n.7.

¹⁰ *Id.*

of the municipality's body camera policy. For example, the study on which the BPPA principally relies—to the exclusion of the studies cited above—suggests that body cameras can lead to increased uses of force *if* officers are permitted to decide when to turn them on.¹¹ Fortunately, Boston's pilot program policy prohibits such discretion.¹²

Moreover, even when cameras do not deter the use of force, the recordings they generate can improve the likelihood that disputes will be resolved fairly and that the public will have a meaningful opportunity to voice concerns. For example, in July 2015, University of Cincinnati Police Officer Ray Tensing fatally shot a Black man named Samuel Dubose in the head after stopping him for a minor traffic violation.¹³ Tensing claimed that he had reached into the car to restrain Dubose and prevent him from driving away.¹⁴ Tensing also insisted that he fired his weapon only after his arm became lodged in the steering wheel as Dubose attempted to drive away, supposedly causing Tensing to be “dragged” and requiring him to “hold[] on for dear life.”¹⁵ In fact, Tensing's body camera footage revealed that Dubose's car began to drive away

¹¹ See *Body-Worn Cameras Associated with Increased Assaults Against Police, and Increase in Use-of-Force If Officers Choose When to Turn on Body-Worn Cameras*, RAND CORPORATION (May 17, 2016), <http://www.rand.org/news/press/2016/05/17.html>.

¹² *Body-Worn Camera Program Policy* at Sec. 2.2, BOSTON POLICE DEPARTMENT (July 12, 2016), <https://www.documentcloud.org/documents/2992552-Special-Order-16-023-Body-Worn-Camera-Pilot.html#document/p1>. In addition, if the pilot program goes forward with officers who are randomly selected, it might provide better data about deterrence than a program that relies on self-selected participants.

¹³ Richard Perez-Pena, *University of Cincinnati Officer Indicted in Shooting Death of Samuel Dubose*, N.Y. TIMES (July 29, 2015), http://www.nytimes.com/2015/07/30/us/university-of-cincinnati-officer-indicted-in-shooting-death-of-motorist.html?_r=0.

¹⁴ KROLL, REVIEW AND INVESTIGATION OF OFFICER RAYMOND M. TENSING'S USE OF DEADLY FORCE ON JULY 19, 2015: UNIVERSITY OF CINCINNATI 22 (2015).

¹⁵ *Id.* at 42.

only *after* Tensing had shot Dubose. Further, at no point did Tensing's arm appear to be caught in the car's interior. Tensing was subsequently indicted for murder.¹⁶

Conversely, body cameras can serve as powerful support for police officers who are wrongfully accused of misconduct. During the pilot phase of the San Diego Police Department's body camera program, there was a 40% decrease in complaints regarding police misconduct.¹⁷ The department's deputy chief described body cameras as a "win-win for both the officer[s] and the community."¹⁸ Thus, by shedding light on the true nature of an encounter, body cameras can protect civilians and police officers alike from punishment for offenses they did not commit.

2. There is an urgent need for more police accountability and transparency in Boston.

If Ferguson and New York City¹⁹ are any indication, every city is one incident away from a major problem, and Boston is no exception. The security of its communities and the safety of its police officers require a proactive and immediate response to gaps in transparency and accountability.

¹⁶ Dana Ford, *University Cop Indicted for Murder in Shooting of Motorist Samuel Dubose*, CNN (July 30, 2015), <http://www.cnn.com/2015/07/29/us/ohio-sam-dubose-tenzing-indictment/>; see also Monica Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, N.Y. TIMES (Dec. 6, 2015), <http://www.nytimes.com/2015/12/07/us/justice-dept-expected-to-investigate-chicago-police-after-laquan-mcdonald-case.html> (discussing dash-cam footage of the shooting of Laquan McDonald).

¹⁷ Tony Perry, *San Diego Police Body Camera Report: Fewer Complaints, Less Use of Force*, L.A. TIMES (March 18, 2016), <http://www.latimes.com/local/lanow/>.

¹⁸ *Id.*

¹⁹ The deaths of two unarmed black men in New York City and Ferguson sparked national outrage and led to protests across the country. In July 2014, Eric Garner suffocated and died while NYPD police officers attempted to arrest him. Garner's autopsy report concluded that one officer's illegal chokehold along with the compression of Garner's chest by other officers caused Garner's death. Al Baker, J. David Goodman, and Benjamin Mueller, *Beyond the Chokehold: The Path to Eric Garner's Death*, NY TIMES (June 13, 2015), http://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html?_r=0.

Less than a month later, Michael Brown, an unarmed black teenager, was shot and killed by a white police officer in Ferguson, Missouri. See Larry Buchanan, et al., *What Happened in Ferguson*, NY TIMES (August 10, 2015), <http://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html>.

The City of Boston has acknowledged that “the use of excessive and potentially lethal force by a police officer on a civilian . . . has been one of the most important issues facing our nation over the last few years.”²⁰ The community agrees with the City, and has called for an immediate response from the BPD in private meetings, informal gatherings, and public hearings since at least 2014 and as recently as a Boston City Council hearing on August 4, 2016.²¹ The BPD also acknowledged a “desire by the public for more accountability,”²² albeit nearly two years after civil rights organizations first suggested body cameras in response to community concerns.²³ The BPD stated further that although “Boston has been fortunate to have not experienced any high profile cases,” having body cameras “could potentially have great benefits if such a situation were to arise.”²⁴ It is in the public’s interest to implement body cameras before, and not after, a situation arises.

The need for concrete and expeditious police reform is especially urgent because Boston has a history of disparate treatment in police encounters with people of color. A June 2015 report by academic researchers found “racially disparate treatment” of Blacks and Hispanics by the BPD in its street-level encounters from 2007 to 2010.²⁵ The report found that, compared to

²⁰ Application for Direct Appellate Review at 1, *City of Boston v. Boston Police Patrolmen’s Association*, 2015-P-1692 at 2 (Mass. Feb. 11, 2016).

²¹ Travis Andersen, *City May Have to Force Police to Wear Cameras*, BOSTON GLOBE (Aug. 4, 2016), <https://www.bostonglobe.com/metro/2016/08/04/boston-police-body-camera-program-set-for-hearing-thursday/MXrf0TdHzX6GZPIITqs4jP/story.html>.

²² Ex. 1. (Commonwealth of Massachusetts Office Executive Office of Public Safety and Security Office of Grants & Research: Body Camera Pilot Program Application, submitted by Boston Police Department on May 17, 2016, at 3).

²³ See, e.g., *Black, Brown, and Targeted: A Report on Boston Police Department Street Encounters from 2007-2010* at 15, ACLU OF MASSACHUSETTS, https://www.aclum.org/sites/all/files/images/education/stopandfrisk/black_brown_and_targeted_online.pdf.

²⁴ Ex. 1, *supra* n.22, at 3.

²⁵ Ex. 2 (Jeffrey Fagan, et al., *Final Report: An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk and/or Search Reports* (2015) at ii, available at <https://assets.documentcloud.org/documents/2158964/full-boston-police-analysis-on-race-and-ethnicity.pdf>).

identically-situated white communities and people, Black and Hispanic communities in Boston were subjected to more frequent police encounters,²⁶ and Black and Hispanic people were more likely to be subjected to repeat encounters and to be frisked and/or searched.²⁷ Their findings suggest, for example, that a single Boston census tract—typically an area of just 20 to 30 blocks—would experience *over six hundred additional street level encounters* each year that are attributable to race, not to crime or other “non-race” factors, if its population were 85% Black.²⁸ The report revealed that these disparities were due to “processes of racial discrimination.”²⁹

In January 2016, following a public records lawsuit, the BPD disclosed recent data that does not appear to contain any grounds for concluding that this problem of disparate treatment has been solved.³⁰ To the contrary, the BPD has conceded that the racial distributions in this new data “remain fairly stable over each year.”³¹ Likewise, an Associated Press analysis of this data found that “between 2011 and 2015 Black people accounted for nearly 60% of all street-level encounters [in Boston] annually.”³² These numbers suggest that racially discriminatory police encounters continue to be a problem in Boston.

²⁶ *Id.* at 8-10 & Figure 2.

²⁷ *Id.* at 11-14.

²⁸ *Id.* at 9-10.

²⁹ *Id.* at 4, 20-21.

³⁰ Allison Manning, *Boston Police Data Shows Black Men Were Stopped Most Often*, BOSTON.COM (Jan. 19, 2016), <https://www.boston.com/news/local-news/2016/01/19/boston-police-data-shows-black-men-were-stopped-most-often>.

³¹ *Commissioner Evans Continues Efforts to Increase Transparency and Accountability of Policing Activities to the Public*, BOSTON POLICE DEPARTMENT (Jan. 8, 2016), <http://bpdnews.com/news/2016/1/7/commissioner-evans-continues-efforts-to-increase-transparency-and-accountability-of-policing-activities-to-the-public>.

³² Phillip Marcello, *Boston Police Defend Steps on Stop and Frisk*, NEW BOSTON POST (March 7, 2016), <http://newbostonpost.com/2016/03/07/boston-police-defend-steps-on-stop-and-frisk/>.

Although the percentages speak for themselves, specific police-civilian encounters also illustrate the immediate need to try body cameras in Boston. According to the City, in 2012 an officer unreasonably subdued a civilian with a *chokehold*.³³ Although the Police Commissioner found that the officer was “untruthful” when this incident was investigated, an arbitrator rejected the Commissioner’s finding and the officer is still employed by the BPD (over the City’s objections).³⁴ In August 2015, a Boston police officer placed his hands around an 18 year-old civilian’s neck while arresting him for shouting at the police.³⁵ A month before this incident, a civilian was fatally shot within one minute of being surrounded in a parking lot by a surveillance team of BPD officers and FBI agents.³⁶ According to Suffolk County District Attorney Daniel Conley, the civilian brandished a knife before being shot.³⁷ Yet the District Attorney also found that the knife was known to the surveillance team in advance.³⁸ If the officers had been wearing cameras, the public might know more about why this incident ended so quickly in death rather than de-escalation. But none were. Consequently, the “[t]he most significant video evidence” is “grain[y]” footage taken at some “distance” by a Burger King security camera.³⁹

³³ Application for Direct Appellate Review at 1, *City of Boston v. BPPA*, 2015-P-1692 *supra* n.20.

³⁴ *Id.* at 2.

³⁵ Daniel Medwed, *Should Boston Breathe Easy? The Use of Force in Roslindale*, WGBH (September 4, 2015), <http://news.wgbh.org/post/should-boston-breathe-easy-use-police-force-roslindale> (noting that evidence of the incident was “not from a police camera . . . but because a bystander recorded the incident”).

³⁶ *Surveillance Video of Shooting of Boston Terror Suspect*, CNN (June 8, 2015), <http://www.cnn.com/videos/us/2015/06/08/boston-terror-suspect-usaamah-rahim-surveillance-video.cnn/video/playlists/boston-terror-plot/>.

³⁷ Daniel F. Conley, *Report of Suffolk County District Attorney Daniel F. Conley On Findings in the June 2, 2015, Shooting Death of Usaamah Abdullah Rahim* at 5-6 (Aug. 24, 2016), <http://www.suffolkdistrictattorney.com/das-final-report-on-the-june-2-2015-police-involved-shooting-of-usaamah-rahim/>.

³⁸ *Id.* at 3.

³⁹ *Id.* at 6.

Three days before releasing his report on this shooting, District Attorney Conley said, “I’ve been a big supporter of the police going to body cameras for a good couple of years now.”⁴⁰ It is easy to see why. Data and recent police-civilian encounters show that further delays in implementing body cameras are serious threats to police transparency and accountability in Boston, that these threats are felt most acutely in Boston’s communities of color, and that they could ignite serious controversy around some future incident.

3. Halting the BPD’s pilot program would exacerbate the already long delays in bringing police accountability to Boston.

The BPPA asserts that there is “no evidence” that delaying the City’s body camera pilot program will “harm to the public” because there is no “imminent threat” and Boston has been largely free of “serious racial tensions due to incidents involving white officers and black suspects.”⁴¹ In addition to overlooking *all* of the data and specific cases cited in this brief, the BPPA’s assertion fails to mention there has already been a significant lapse in time since the community first began calling for body cameras in Boston.

Community members and civil rights organizations have been urging the BPD to try body cameras since at least 2014. In September 2014, Commissioner William Evans acknowledged having “some discussions” about body cameras with the ACLU, but noted that there is a “strong union . . . [and the BPD] would have to do [it] with the unions.”⁴² Former Commissioner Ed Davis told reporters that “he tried for years to put cameras on Boston officers

⁴⁰ Jon Keller, *Keller @ Large: Suffolk DA Disappointed In Boston Police Union Handling Of Body Cameras*, CBS BOSTON (Aug. 21, 2016), <http://boston.cbslocal.com/2016/08/21/dan-conley-boston-police-body-cameras-aaron-hernandez-jon-keller-wbz/>.

⁴¹ BPPA Mem. in Support of Temporary Restraining Order and Preliminary Injunction at 30, Aug. 26, 2016.

⁴² Will Roseliep, *Boston Police Commissioner: ‘We Don’t Show Up Anymore With the Sticks and the Helmets’*, WGBH (Sept. 30, 2014), <http://news.wgbh.org/post/boston-police-commissioner-we-dont-show-anymore-sticks-and-helmets>.

when he was commissioner,” but was unsuccessful “largely due to the fact that Massachusetts has a very strong police union.”⁴³

Body cameras were apparently kept at bay until September 2015, when Commissioner Evans announced that he hoped to begin a body camera pilot program “within the next couple months.”⁴⁴ But, notwithstanding the community support expressed at the packed Boston City Council hearing that preceded the Commissioner’s announcement,⁴⁵ the pilot program did not begin in a few months. After an exchange of letters, the Department and the BPPA agreed to meet and discuss body cameras in December 2015.⁴⁶ In July 2016, they finally agreed on a pilot program.⁴⁷ Two months later, the BPPA filed this action and asked the Court to enjoin the program indefinitely while the parties resolve their labor dispute.

Given how long it took the parties to reach an initial agreement, it could be months or even years before the parties agree again on the logistics of a pilot program that would *try out* body cameras. Even then, it could take additional months or years to begin a full body camera program that corrects mistakes or lesson learned from the pilot. Contrary to the BPPA’s assertions, communities that are already concerned about disparate and excessive policing cannot afford further delay.

⁴³ Lauren Leamanczyk, *I-Team: Mass. Police Departments Considering Body Cameras*, CBS Boston (Oct. 21, 2014), <http://boston.cbslocal.com/2014/10/21/i-team-mass-police-departments-considering-body-cameras/>.

⁴⁴ *Boston Police Department Will Test Body Cameras on Officers*, WGBH News (Sept. 15, 2015), <http://news.wgbh.org/post/boston-police-department-will-test-body-cameras-officers>.

⁴⁵ Delores Handy, *Boston City Council Considers Proposal to Equip Police with Body Cameras*, WBUR (Aug. 6, 2015), <http://www.wbur.org/news/2015/08/06/boston-city-council-police-body-cameras>.

⁴⁶ BPPA Complaint ¶ 23, Aug. 26, 2016.

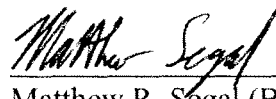
⁴⁷ *Id.* ¶ 54.

IV. CONCLUSION

Amici respectfully submit that the injunction requested by the BPPA should be denied because it will harm the public. The people of Boston have already had to wait far too long for the City to address concerns about how their communities are policed. Their lives matter. And, under the law, so do their views.

September 6, 2016

Respectfully submitted,



Matthew R. Segal (BBO #654489)
Rahsaan D. Hall (BBO #645369)
Carlton E. Williams (BBO # 600973)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MASSACHUSETTS
211 Congress Street
Boston, MA 02110
Tel: 617-482-3170
Fax: 617-451-0009
msegal@aclum.org