

UNFETTERED SUSPICION AND RACIALIZED POLICING: HOW *DE BOUR* FAILS TO PROTECT NEW YORKERS

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ABSTRACT

New York stands alone among the fifty states in applying a four-tiered framework to evaluate the constitutionality of police-initiated encounters with the public. Established by the New York Court of Appeals in *People v. De Bour*, the framework was designed to afford New Yorkers greater protection against arbitrary police intrusion than the federal standard articulated in *Terry v. Ohio*. This Note argues that nearly five decades of judicial interpretation have transformed *De Bour*'s promise of heightened protection into a pliable instrument of unchecked police discretion, rendering the framework unworkable and constitutionally inadequate.

This Note employs a two-part methodology. Doctrinally, it traces the development of *De Bour* through its common law progeny to demonstrate how judicial interpretation has progressively eroded the framework's protective promise. Empirically, it synthesizes 146 New York Appellate Division decisions from the decade following *Floyd v. City of New York*, distilling each into a formula that maps the factors courts employed and the often-unpredictable progression across *De Bour*'s four levels of permissible police engagement. This analysis reveals that in over 75% of the cases reviewed, courts relied on vague, racialized, and non-criminal behavioral factors—such as furtive movement, flight, “blading,” and presence in a high-crime area—to justify escalations in police intrusion.

This Note concludes that *De Bour* no longer serves the ends of justice and calls for its replacement with a single, uniform standard requiring articulable suspicion of an ongoing or completed felony or

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misdemeanor for all police-initiated encounters. The analysis contributes to existing Fourth Amendment scholarship by offering a systematic empirical account of *De Bour*'s structural failures and a concrete doctrinal path toward greater protection of civil liberties in New York.

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INTRODUCTION

The idea of universal suspicion without individual evidence is what Americans find abhorrent and what [B]lack men in America must constantly fight. It is pervasive in policing policies—like stop-and-frisk, and . . . neighborhood watch—regardless of the collateral damage done to the majority of innocents. It’s like burning down a house to rid it of mice.¹

New York is the only state to use a four-tiered approach to analyze the constitutionality of police-initiated encounters with the public.² New York’s seminal case, *People v. De Bour*,³ developed the initial version of the four-tiered approach in 1976. *De Bour*’s legal standard intended to provide greater protections of the “right to be free from aggressive governmental interference” than the federal standard for *Terry* stops.⁴ However, over the last forty-seven years,

1. Charles M. Blow, Opinion, *The Whole System Failed Trayvon Martin*, N.Y. TIMES (July 15, 2013), <https://www.nytimes.com/2013/07/16/opinion/the-whole-system-failed.html> (on file with the *Columbia Human Rights Law Review*).

2. See 4 WAYNE R. LAFAYE ET AL., SEARCH & SEIZURE § 9.4(e) (6th ed. 2024) [hereinafter SEARCH & SEIZURE] (explaining “*De Bour*, therefore, creates a four-tier system significantly different from the three-tier system (arrest on probable cause, stop on reasonable suspicion, and a non-seizure encounter for which no grounds need to be shown) found elsewhere”); *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982) (“Supreme Court holdings sculpt out, at least theoretically, three tiers of police-citizen encounters: communication between police and citizens involving no coercion or detention, brief ‘seizures’ that must be supported by reasonable suspicion, and full-scale arrests that must be supported by probable cause.”); N.Y. STATE BAR ASS’N, CLOSE ENCOUNTERS OF THE POLICE CITIZEN KIND: A NATIONAL STUDY OF POLICE CITIZEN ENCOUNTERS IN OTHER STATES AND FEDERAL COURTS IN RELATION TO PEOPLE V. DE BOUR 1–2, 148 (2018) [hereinafter CLOSE ENCOUNTERS] (clarifying that “no state has decided to follow in *De Bour*’s footsteps”). Twenty-four states, including the District of Columbia, utilize a tiered model in police citizen encounters, most of which are a variation of the three levels: consensual or voluntary encounters, investigative detentions, and arrests. The remaining states do not delineate tiers of police citizen interactions. *Id.*

3. *People v. De Bour*, 40 N.Y.2d 210 (1976).

4. *De Bour*, 40 N.Y.2d at 216; see *People v. Hinshaw*, 35 N.Y.3d 427, 430–31 (2020) (“[T]his Court has adopted greater protections than *Terry* and its federal progeny for pedestrian stops by the police. Our *De Bour* test . . . is more protective of the rights of individuals ‘to be free from aggressive governmental interference.’” (citations omitted)). “*Terry* stop” refers to a legal stop made by police officers who, upon reasonable suspicion, perform an investigatory detention. These stops were deemed constitutional in *Terry v. Ohio*, 392 U.S. 1 (1968). See generally SEARCH & SEIZURE, *supra* note 2, at § 9.1 (exploring the constitutionality and history of *Terry* stops).

the New York Court of Appeals' application and interpretation of the *De Bour* framework has blurred the lines between each level of intrusion and suspicion, creating a slippery slope to unjustifiably increase police intrusion. The *De Bour* framework is not meeting its promise to provide greater protections for civilians by restraining police conduct to a greater degree than the federal standard.⁵ Instead, the slippage from level to level and the excessive police discretion under the *De Bour* framework creates policing harm and threatens Fourth Amendment protections.⁶

This Note proceeds in three Parts. Part I explains the importance of Fourth Amendment protections, the federal standard under *Terry*, the development of the *De Bour* framework in New York, and the *Floyd* order implementing an independent monitor to the New York City Police Department (NYPD).⁷ Part II examines *De Bour* case law over the ten years following the 2013 *Floyd* order by synthesizing the cases into formulas that encapsulate the courts' reasoning and use of factors to identify the *De Bour* level of suspicion. For example, the court's reasoning in *People v. Atkinson* was distilled into the following formula: matched description + proximity = Level 2 (founded suspicion), while founded suspicion + flight = Level 3 (reasonable suspicion).⁸ Part II then describes how *De Bour* is not fulfilling its purpose to provide greater protections to New Yorkers during police-initiated encounters short of a seizure.⁹ Altogether, this Part substantiates the link between increased policing discretion and

5. See *Hinshaw*, 35 N.Y.3d at 430–31, 433 (“[A]lthough the language of the Fourth Amendment and of article I, Section 12 of our Constitution was ‘identical,’ that language conferred only ‘similar’ rights, explaining that this Court had not hesitated to expand the rights of New York citizens beyond those required by the Federal Constitution.”).

6. New York courts label the four tiers of the *De Bour* framework Level 1, 2, 3, and 4, each representing an increasing level of intrusion justified by a respective level of suspicion. The “Level” label is also used by the NYPD federal monitor and NYPD Patrol Guide to delineate between the *De Bour* levels of intrusion and suspicion. This Note uses Level 1, 2, 3, and 4 terminologies for clarity.

7. *Terry*, 392 U.S. 1; *De Bour*, 40 N.Y.2d 210; *Floyd v. City of New York*, 959 F.Supp.2d 540 (S.D.N.Y. 2013).

8. *People v. Atkinson*, 128 N.Y.S.3d 129 (App. Div. 2020); see Appendix A, Table 2 (collecting all cases analyzed and their formulas).

9. *Contra People v. Hollman*, 79 N.Y.2d 181, 195 (1992) (“*De Bour* . . . reflected our judgment that the spirit underlying th[e] words [of the State or Federal Constitution] required the adoption of a State common-law method to protect the individual from arbitrary or intimidating police conduct”). See *infra* Section I.A (describing the development of the *De Bour* standard).

the creation of policing harm. Part III offers recommendations to impact litigators seeking to overturn *De Bour* and establish a more protective standard for police-initiated encounters and stops in New York.

I. FROM *TERRY* TO *DE BOUR*

The Fourth Amendment of the federal Constitution protects the people from unreasonable search and seizure by the government.¹⁰ In *Terry v. Ohio*, the U.S. Supreme Court held that the Fourth Amendment did not prohibit police from stopping an individual that they had reasonable suspicion to believe had committed a crime.¹¹ The practice of *Terry* stops and the susceptibility of “subconstitutional” abuses by police during crime prevention and police-initiated encounters led the New York Court of Appeals to implement a four-tiered approach meant to be more protective than the *Terry* stop standard.¹² This Part provides background on how Fourth Amendment jurisprudence led to the *Terry* stop and New York’s *De Bour* framework. Section I.A explains the federal approach to police-initiated encounters under the progeny of *Terry*. Section I.B describes New York’s approach to police-initiated

10. U.S. CONST. amend. IV; *see generally Terry*, 392 U.S. at 31 (holding that the Fourth Amendment did not prohibit police from stopping a person they have reasonable suspicion to believe had committed a crime and frisking that person if they reasonably believe that person to be armed); 25 OHIO JUR. 3D *Criminal Law: Procedure* § 127 (2025) (“The Fourth Amendment protects people, not places, and more particularly it protects people from unreasonable government intrusions into their legitimate expectations of privacy The ultimate touchstone of the Fourth Amendment is reasonableness.” (citation omitted)).

11. *Terry*, 392 U.S. at 37 (Douglas, J., dissenting) (labeling “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion” as “reasonable suspicion”).

12. *People v. Hinshaw*, 35 N.Y.3d 427, 430–31, 433 (2020) (“[G]reater scrutiny [than the federal standard] is required to prevent ‘a policeman’s badge . . . [from] be[ing] considered a license to oppress’”); *see* Yuval Simchi-Levi, *Let’s Be Reasonable: Why New York Courts Need to Embrace the Federal Standard for Analyzing Police-Civilian Encounters*, 82 ALB. L. REV. 1311, 1314 (2018–19) (explaining that the *De Bour* court “observed, crime prevention was an area of policework ‘highly susceptible to subconstitutional abuses,’ reasoning that, as a result, this aspect of policework should receive greater scrutiny”); James J. Bradley, *Justice Restrained or Unrestrained Justices: Warrantless Search and Seizure—The U.S. Supreme Court or the New York Court of Appeals—Whose is More Reasonable?*, 13 N.Y.L. SCH. J. HUM. RTS. 411, 413 (1997) (“The thrust of this Note is that the more constrained interpretation of Article I, section 12 of the New York Constitution is unreasonable for policing the streets of New York today.”).

encounters under the *De Bour* framework and how it differs from the federal standard. Section I.C highlights the current disagreements and controversies among Court of Appeals judges, who have raised concerns over applying the *De Bour* framework in recent dissents and concurrences. Section I.D covers the finding under *Floyd* and briefly describes the NYPD monitor reports.

A. The Fourth Amendment and the Federal Standard for Police-Initiated Encounters Under *Terry*

The Fourth Amendment of the U.S. Constitution guarantees:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹³

The Fourth Amendment protects the people from “unreasonable searches and seizures,” reflecting a denouncement of the “arbitrary power” of the “petty officer” found in eighteenth-century British policing practices.¹⁴ The guarded constitutional protection from unconstrained police power and discretion under the Fourth Amendment evolved from the framers’ concern over individual liberty and privacy from government intrusion.¹⁵ The Fourth Amendment includes “the right to be let alone” from government interference, described by Justice Brandeis as “the most comprehensive of rights and the right most valued by civilized men.”¹⁶ The right to be let alone and other Fourth Amendment protections can only be fully realized if police discretion is properly

13. U.S. CONST. amend. IV.

14. *Id.*; *Stanford v. Texas*, 379 U.S. 476, 481 (1965) (explaining that colonial British warrants were “denounced . . . as ‘the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book’”).

15. Brenda Forrest, *Individual Rights to Privacy and Security Versus Police Protection: Striking the Proper Balance for Idaho with State v. Henage*, 44 IDAHO L. REV. 769, 772 (2008) (citing *Stanford*, 379 U.S. at 484 n.13; *Boyd v. United States*, 116 U.S. 616, 626–27 (1886)) (describing the framers’ preoccupation with broad officer authority and protections of individual liberty and privacy).

16. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (“To protect, that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.”).

regulated, preventing officers from gaining unchecked, authoritarian control over the streets.¹⁷ To adequately check police discretion, the Court eventually developed a checkered approach to determining the constitutionality of police-initiated encounters.¹⁸

Before 1968, the Court held that seizing a person with less than probable cause violated the Fourth Amendment.¹⁹ The Court described the rights guaranteed under the Fourth Amendment as “indispensable” and “the very essence of constitutional liberty.”²⁰ As such, the Court asserted that the Fourth Amendment should be interpreted broadly to prevent subtle erosion of the rights it protects, whether through unnoticed court practices or overzealous police officers.²¹ The core concern of the Fourth Amendment—to rigorously protect individual liberty and privacy—is not likely grasped by the “zealous officers . . . engaged in the often competitive enterprise of ferreting out crime.”²² From the outset of Fourth Amendment jurisprudence, the Court focused its attention on the erosion of civilian protections caused by the actions of law enforcement officers. But, despite the Court’s concern for the degradation of Fourth

17. Tracey Maclin, *The Decline of the Right of Locomotion: The Fourth Amendment on the Streets*, 75 CORNELL L. REV. 1258, 1261 (1990) (describing the deterioration of the right of movement after *Terry* and the threat of police “dictatorial power”).

18. See generally Russel L. Jones, *Terry v. Ohio: Its Failure, Immoral Progeny, and Racial Profiling*, 54 IDAHO L. REV. 2 (2018) (arguing that the Court’s failure to define “*Terry* stop” subsequently legitimized racial profiling and decisions following *Terry*, adding further confusion rather than clarification); Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. CRIM. L. & CRIMINOLOGY 437, 440 (1988) (“These inconsistent outcomes result in part from the artificiality of the test applied by the courts. Because the seizure-noseizure decision is not based on a realistic appraisal of the individual’s freedom to walk away, but rather on an artificial reasonable person standard, the outcomes turn on ‘minute factual differences’”)

19. Maclin, *supra* note 17, at 1266 (“Prior to *Terry*, the Court had adamantly held that seizing a person with less than probable cause violated the fourth amendment.”) (citing *Carroll v. United States*, 267 U.S. 132, 154 (1925); *Beck v. Ohio*, 379 U.S. 89, 97 (1964); *Rios v. United States*, 364 U.S. 253, 261 (1960); *Henry v. United States*, 361 U.S. 98, 100–04 (1959); *United States v. Di Re*, 332 U.S. 581, 593–95 (1948)).

20. *Johnson v. United States*, 333 U.S. 10, 17 n.8 (1948) (quoting *Gouled v. United States*, 255 U.S. 298, 302–03 (1921)).

21. *Id.*

22. *Id.* at 13–14.

Amendment protections, the Court significantly expanded police discretion in *Terry v. Ohio*.²³

1. *Terry* and its Progeny

Terry and its progeny came seven years after the Supreme Court imposed a Fourth Amendment exclusionary rule on states in 1961. In *Mapp v. Ohio*, the Court held “that evidence obtained by unconstitutional search was inadmissible and vitiated conviction.”²⁴ Under *Mapp*, unconstitutional searches encompassed any search done without probable cause.²⁵ *Mapp*’s exclusionary rule signified an expansion of protections for individual rights from police abuse of power, thus deterring police misconduct.²⁶ For many, *Terry* marked a turn away from *Mapp*’s protection from police abuse of power and a move toward granting increased discretion to police.²⁷

In *Terry v. Ohio*, the Supreme Court considered “whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest.”²⁸ The Court held that a police officer may stop an individual upon reasonable suspicion that criminal activity is afoot and conduct a protective search for weapons when an officer is “able to point to *specific* and *articulable* facts.”²⁹ By creating the “protective search” carveout to the probable cause standard, the majority shifted the focus of Fourth Amendment analyses of arrests from protection of individuals from unreasonable searches to protection of police officers

23. *Terry v. Ohio*, 392 U.S. 1 (1968).

24. *Mapp v. Ohio*, 367 U.S. 643, 643 (1961).

25. *Id.* at 646 n.4 (citing “probable cause” as the standard to initiate the search of an individual).

26. *Id.* at 655–56 (explaining the utility of the exclusionary rule to check “official lawlessness” and to deter the unconstitutional conduct by “removing the incentive to disregard it.”).

27. See Josh Segal, “All of the Mysticism of Police Expertise”: Legalizing Stop-and-Frisk in New York, 1961-1968, 47 HARV. C.R.-C.L. L. REV. 573, 575 (2012) (analyzing the development of the Fourth Amendment as it was understood and affected by New York law enforcement administrators); I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 7 (2011) (arguing that an interest in equality animated the Warren Court’s criminal procedure revolution); Tracey L. Meares, *Everything Old Is New Again: Fundamental Fairness and the Legitimacy of Criminal Justice*, 3 OHIO ST. J. CRIM. L. 105, 106 (2005) (describing the Warren Court’s criminal procedure cases as “a branch of ‘race law’” that aimed to ameliorate racial inequality).

28. *Terry*, 392 U.S. at 15.

29. *Id.* at 21 (emphasis added).

from allegedly armed and dangerous individuals.³⁰ The two concurrences and the dissent in *Terry* preview a second doctrinal shift from officer safety to “permitting reasonable suspicion stops in the interest of crime control.”³¹ The Justices discussed crime prevention and crime investigation, particularly in response to the growing concerns over national homicide rates following *Mapp*.³² *Terry*’s progeny soon revealed crime control as the rationale for extending the constitutionality of *Terry* stops beyond officer safety.³³

The Court has since extended the boundaries of *Terry* stops to encompass crime investigation, to check identity (including fingerprinting), to search a car for identification, and, even to search luggage.³⁴ With the tug and pull between deterrence and truth-seeking, the Supreme Court’s reasoning in subsequent Fourth Amendment cases demonstrates a confusing approach to determining the constitutionality of stops, searches, and seizures.³⁵

After *Terry* left the New York courts full of search and seizure cases with relatively little guidance from the U.S. Supreme Court, the New York Court of Appeals attempted to fill the gaps.³⁶

B. The Rise of *De Bour* and its Four-Tiered Approach to Police-Initiated Encounters

Louis De Bour walked alone through Brooklyn around midnight one October morning in 1972.³⁷ He walked toward two

30. *Id.* at 26–27.

31. Jeffrey Fagan, *Terry’s Original Sin*, U. CHI. LEGAL F. 43, 57–58 (2016) (arguing in favor of adjusting *Terry* standards to reflect more of *Mapp*’s probable cause standard and to move away from the subjective and error-ridden *Terry* standard).

32. *Id.*

33. *Id.*

34. *Id.* at 64.

35. See generally Jones, *supra* note 18 (describing key cases in *Terry*’s progeny that created more confusion); Renee McDonald Hutchins, *Stop Terry: Reasonable Suspicion, Race, and a Proposal to Limit Terry Stops*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 883 (2013) (discussing how the continued expansion of *Terry* stops amplifies the potential for abuse and harms people of color nationwide); Tracey L. Meares, *Programming Errors: Understanding the Constitutionality of Stop-and-Frisk as a Program, Not an Incident*, 82 U. CHI. L. REV. 159 (2015) (arguing that the programmatic practice of stop-and-frisks contradicts the level of analysis articulated in *Terry*).

36. CLOSE ENCOUNTERS, *supra* note 2, at 148 (“The Court’s purpose in *De Bour* was to provide clear guidelines for police officers seeking to act lawfully in what are fast moving street encounters and to offer a cohesive framework for courts reviewing the propriety of police conduct in those situations.”).

uniformed police officers and crossed to the other side of the street when he was about thirty feet from the officers.³⁸ The officers also crossed the street, asked De Bour what he was doing in the neighborhood, and asked for identification.³⁹ As De Bour responded, one officer noticed a bulge in De Bour's jacket and asked him to unzip his jacket.⁴⁰ De Bour complied; the officer saw a gun tucked into his waistband and arrested De Bour for illegal possession of a firearm.⁴¹

De Bour's motion to suppress the firearm was denied, and the Appellate Division affirmed without opinion.⁴² De Bour appealed to New York's highest court, the Court of Appeals, arguing that the police did not have authority to "accost" and search him.⁴³ He challenged the constitutionality of the stop under the Fourth Amendment and contended that he was "deprived of his freedom of movement by the obvious show of authority and the equally obvious display of force by virtue of his being outnumbered by armed officers."⁴⁴

In *People v. De Bour*, the New York Court of Appeals held that the police officers' conduct was justified at all stages of the encounter.⁴⁵ The court pointed to the time of day, the high crime rate in the area, and De Bour's apparent avoidance of the officers as justification for their initial approach.⁴⁶ The bulge in De Bour's waistband established grounds for the police officer's request to open De Bour's jacket.⁴⁷ The plain view of the gun provided probable cause for the arrest.⁴⁸ Then-Chief Judge Sol Wachtler's opinion established the *De Bour* four-tiered framework to evaluate police encounters and ensure state and federal constitutionality.⁴⁹ The step-by-step analysis was generalized as "a graduated four-level test for evaluating street encounters initiated by the police" under the New York Constitution:

[L]evel one permits a police officer to request information from an individual and merely requires

37. *People v. De Bour*, 40 N.Y.2d 210, 213 (1976).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 213–14.

42. *Id.* at 214.

43. *Id.*

44. *Id.* at 215; *see infra* Section I.C (discussing the right to be left alone).

45. *De Bour*, 40 N.Y.2d at 221, 226.

46. *Id.*

47. *Id.* at 221.

48. *Id.* at 232.

49. *Id.*

that the request be supported by an objective, credible reason, not necessarily indicative of criminality; level two, the common-law right of inquiry, permits a somewhat greater intrusion and requires a founded suspicion that criminal activity is afoot; level three authorizes an officer to forcibly stop and detain an individual, and requires a reasonable suspicion that the particular individual was involved in a felony or misdemeanor; level four, arrest, requires probable cause to believe that the person to be arrested has committed a crime.⁵⁰

The *De Bour* Court declined to follow the federal constitution's "all or nothing approach" to seizures and more broadly defined the term "seizure" to include any "significant interruption with an individual's liberty of movement."⁵¹ The Court concluded that police-initiated encounters short of federal constitutional seizures under *Terry* were "permissible but nonetheless subject to judicial scrutiny."⁵² The Court declined to adopt Mr. De Bour's proposal for a "blanket prohibition of all police-citizen encounters conducted in the absence of probable cause or reasonable suspicion based on concrete observations" and opted for the development of its four-tiered framework.⁵³

The leading treatise on search and seizure describes *De Bour* as taking the "balancing approach used by the Supreme Court in *Terry*" and developing "it to a much greater degree of sophistication."⁵⁴ *De Bour* addresses stops not covered by *Terry*, which covers only seizures. It applies the exclusionary rule where illegally obtained evidence, "fruit of the poisonous tree," is suppressed and cannot be used in trial.⁵⁵

Level 1 of *De Bour*, "Request for Information," allows police to approach civilians to request information "when there is some objective credible reason . . . not necessarily indicative of criminality."⁵⁶ According to the Court of Appeals, examples of lawful Level 1 conduct include police approaching civilians to ask the

50. *People v. Moore*, 6 N.Y.3d 496, 498–99 (2006); accord *People v. Garcia*, 20 N.Y.3d 317, 322 (2012) (citing *De Bour*, 40 N.Y.2d at 223).

51. *De Bour*, 40 N.Y.2d at 216–17.

52. *People v. Johnson*, 40 N.Y.3d 172, 178 (2023).

53. *De Bour*, 40 N.Y.2d at 216.

54. SEARCH & SEIZURE, *supra* note 2, at § 9.4(e).

55. 33 N.Y. JUR. 2D *Criminal Law: Procedure* § 2285 (describing the scope of *Terry*, which is limited to seizures).

56. *De Bour*, 40 N.Y.2d at 223.

whereabouts of a lost child or to aid those in distress.⁵⁷ Level 1 allows police to perform noncriminal law enforcement functions and is meant to ensure that even the least intrusive encounters will not be based upon “mere whim, caprice or idle curiosity” or “with intent to harass.”⁵⁸ Provided that the interaction is absent harassment and intimidation, police are allowed to ask non-threatening questions regarding the citizen’s name, address, and destination; if the citizen is carrying something unusual, police can also ask about the item.⁵⁹ Police can say “stop” if the command is not “forceful,” but cannot request permission to search during a Level 1 request for information.⁶⁰ Police must not cause people to reasonably believe they are suspected of a crime, no matter how calm or polite the tone of questioning.⁶¹

Level 2 of *De Bour*, the “Common Law Inquiry,” is “activated by a founded suspicion that criminal activity is afoot.”⁶² With “founded suspicion,” police may “interfere with a citizen to the extent necessary to gain explanatory information”; however, this encounter must be short of forcible seizure⁶³ or pursuit without reasonable suspicion.⁶⁴ Typically, at Level 1 and Level 2, citizens are not obligated to respond to police questioning or to remain in the area.⁶⁵

57. *Id.* at 218. Notably, although the Court of Appeals listed examples related to public safety, in practice, police primarily use an initial approach for crime control purposes.

58. *Id.* at 217.

59. *People v. Hollman*, 79 N.Y.2d 181, 191 (1992).

60. *People v. Bora*, 83 N.Y.2d 531, 531 (1994) (holding that the direction by the officer to “stop,” made to the defendant as he began to walk away from the officer, was not “seizure” within the meaning of either the Fourth Amendment or the State Constitution’s search and seizure provisions).

61. *Id.*

62. *De Bour*, 40 N.Y.2d at 223.

63. *Id.*

64. *People v. Holmes*, 81 N.Y.2d 1056, 1058 (1993) (describing the distinction between approaching a civilian to request information and police pursuit, a significantly greater intrusion).

65. *People v. Clermont*, 22 N.Y.3d 931, 941 (2013) (Rivera, J., dissenting) (reiterating that civilians have “a right to refuse to respond to a police inquiry,” and flight in response to the approach of an officer “in and of itself [cannot] create a reasonable suspicion of criminal activity” (citing *People v. Martinez*, 80 N.Y.2d 444, 448 (1992))). Judge Rivera’s dissent concluded that the court granting a second “bite at the apple” allows the prosecution to “shore up their case” and rethreaten the liberty interest of the defendant. *Clermont*, 22 N.Y.3d at 941; *see also* *People v. Barksdale*, 26 N.Y.3d 139, 146 (2015) (Rivera, J., dissenting) (“[T]he well-established constitutional right of individuals “to be let alone” and to refuse to respond to police inquiry.” (quoting *People v. May*, 81 N.Y.2d 725, 728

Level 2 is differentiated from Level 1 by the purpose and focus of the approach. A Level 2 approach views the citizen as a potential suspect in suspected criminal activity and focuses on collecting explanatory information on that citizen's conduct.⁶⁶ It is therefore distinct from a Level 1 approach, which covers noncriminal law enforcement purposes, such as asking a witness about a crime or requesting general information.⁶⁷

Levels 3 and 4 correspond to the federal constitutional standards for seizure and probable cause, respectively. Level 3, "Seizure," allows police to make a "forcible stop and detention" when they possess "reasonable suspicion that [a] particular person has committed, is committing or is about to commit a felony or misdemeanor."⁶⁸ Level 3 "Seizure" is effectively codified in New York's Criminal Procedure Law § 140.50(1): "a police officer may stop a person . . . when he reasonably suspects that such person is committing, has committed or is about to commit either [a felony or misdemeanor]."⁶⁹ Level 3 also grants police the authority to stop, forcibly detain, and frisk for "danger of physical injury by virtue of the detainee being armed."⁷⁰ The frisk is a limited search to identify

(1992)). As the Court has explained, "while the police [have] the right to make the inquiry, defendant ha[s] a constitutional right not to respond." *People v. Howard*, 50 N.Y.2d 583, 590 (1980); *see also* *Davis v. Mississippi*, 394 U.S. 721, 727 n. 6 (1969)).

66. *See generally* *People v. Hollman*, 79 N.Y.2d 181, 191–92 (1992) (describing this type of stop as a "common-law inquiry" that goes beyond a "simple request for information," because it indicates to the civilian that they are "suspected of some wrongdoing").

67. *Id.* at 192 (explaining the subtle difference in a request for information and a Level 2 inquiry as hinging on the content, number, and nature of the questions).

68. *De Bour*, 40 N.Y.2d at 223.

69. N.Y. CRIM. PROC. LAW § 140.50(1) (McKinney 2010). The full text of the statutory provision reads:

In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.

Id.

70. *De Bour*, 40 N.Y.2d at 223; *Terry v. Ohio*, 392 U.S. 1, 17 n.13 (1968).

any weapon or deadly instrument.⁷¹ Level 4 covers the probable cause standard for arrests. Respectively, Levels 3 and 4 correspond to the federal stop/reasonable suspicion standard and the federal arrest/probable cause standard under *Terry*.⁷²

The NYPD's Patrol Guide articulates Levels 1, 2, and 3 nearly identically to these doctrinal articulations.⁷³ The Patrol Guide lists Level 1 encounters as "Request for Information," requiring an objective credible reason to approach a civilian that is "based on more than a hunch or a whim."⁷⁴ Level 2 encounters are labeled "Common Law Right of Inquiry," requiring "founded suspicion" that criminal activity is afoot.⁷⁵ The Patrol Guide labels a Level 3 encounter as a "*Terry* Stop," requiring reasonable suspicion that "the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor."⁷⁶

The Patrol Guide states that an officer can engage in protective measures at Levels 2 and 3 and, on "rare occasions," at Level 1.⁷⁷ Such rare occasions are described as when an officer "has a reasonable concern for his or her safety, either because of the nature of the approach or the individual's behavior."⁷⁸ The description of "Protective Measures" includes ordering an individual to remove their hands from their pockets, ordering an individual to "put down or step away from an otherwise lawful object that could be used as a weapon,

71. *De Bour*, 40 N.Y.2d at 223; N.Y. CRIM. PROC. LAW § 140.50(3) (McKinney 2010). The relevant text of the statutory provision reads:

When upon stopping a person under circumstances prescribed in subdivisions one and two a police officer or court officer, as the case may be, reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons.

Id.

72. CLOSE ENCOUNTERS, *supra* note 2, at 1–2, 148 (describing each state's approach to police-civilian encounters and how they compare to New York's unique approach under *De Bour* and the federal standard).

73. See NYPD PATROL GUIDE: INVESTIGATIVE ENCOUNTERS: REQUESTS FOR INFORMATION, COMMON LAW RIGHT OF INQUIRY AND LEVEL 3 STOPS 1–3 (2021) (explaining the procedures police officers should follow during different types of encounters with members of the public).

74. *Id.* at 2.

75. *Id.*

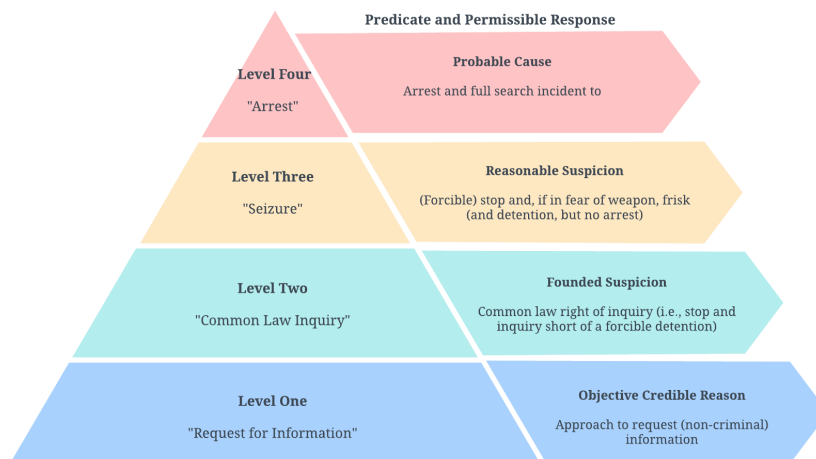
76. *Id.* at 3.

77. *Id.* at 2.

78. *Id.*

grabbing the person's hands," or "forcibly removing the person's hands from [their] pockets."⁷⁹

Figure 1. The four-tiered *De Bour* framework:



The dissent in *De Bour* previewed drawbacks to the *De Bour* framework and argued that forcible stops and police-initiated encounters under Levels 1 and 2 should not be distinguished.⁸⁰ The dissent would have applied an "articulable suspicion" standard in order "to place some meaningful check on the ability of the police to detain and question a person on the street."⁸¹ Further, the dissent believed that the facts of the *De Bour* case demonstrated that a police approach was indistinguishable from a forcible stop.⁸² According to the officer's testimony, the police directly blocked Mr. De Bour's path, caused him to stand still, and surrounded him during questioning.⁸³

Despite the majority's discussion of the "right to be free from aggressive governmental interference" and the "right to be left alone," the Court ultimately characterized the police officer's show of force and authority as "merely approach[ing]" Mr. De Bour.⁸⁴ A Level 2 "mere[]" approach authorizes temporary detention and deprivation of

79. *Id.* at 2.

80. *People v. De Bour*, 40 N.Y.2d 210, 232 (1976) (Fuchsberg, J., dissenting).

81. *Id.* at 230 (Fuchsberg, J., dissenting).

82. *Id.*

83. *Id.* at 230–31 (Fuchsberg, J., dissenting).

84. *Id.* at 216–217, 219.

liberty.⁸⁵ Although the majority minimized the negative impact of a temporary detention, it is still a deprivation of liberty.⁸⁶ For Black men like Mr. De Bour, the stakes are particularly high, as police encounters expose Black men to trauma, mental health consequences, and dignitary harm.⁸⁷ Furthermore, the historic overcriminalization of people of color—especially Black people—arguably impacted the development of the *De Bour* framework's approach to the right to be left alone and justifications for lower levels of police intrusions.⁸⁸

C. What Is Going on in New York Courts?: Dissents and Concurrences

A report issued by the New York State Bar Association and the recent dissents and concurrences criticizing *De Bour* illustrate the difficulties with the continued use of the *De Bour* framework.⁸⁹ For example, Professor Barry Kamins highlighted a distinct turning point in 2018, where both practitioners and judges questioned whether *De Bour* serves the public interest and ultimately concluded that *De*

85. *Id.* at 223.

86. See e.g., Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321 (2014) (finding trauma and anxiety symptoms in participants who reported police contact); Renee McDonald Hutchins, *Stop Terry: Reasonable Suspicion, Race, and a Proposal to Limit Terry Stops*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 883 (2013) (proposing limitations on *Terry* stops due to the stop-and-frisk abuse and harm perpetuated against people of color nationwide); Jones, *supra* note 18 (contending that the Court's inability to define "Terry stop" led to the legitimization of racial profiling); Jeanine Bell, *The Violence of Nosy Questions*, 100 B.U. L. REV. 935, 949 (2020) (showing how questioning by law enforcement creates dignitary harms); L. Song Richardson, *Implicit Racial Bias and Racial Anxiety: Implications for Stops and Frisks*, 15 OHIO ST. J. CRIM. L. 73, 78–81 (2017) (illustrating how police interactions lead to and perpetuates racial anxiety).

87. Geller et al., *supra* note 86, at 2322–23. Geller's empirical research entailed fielding a randomized population-based survey of men aged eighteen to twenty-six in New York City on the extent and nature of their experiences with the police and how those experiences impacted their mental health. The surveys were quantified through the use of scales and controlled for demographic, socioeconomic, self-reported race, education level, residence in public housing, and criminal activity.

88. See sources cited *supra* note 86 (listing a handful of articles and studies on race and police-civilian interactions); see *infra* Section II.B (highlighting key findings in recent NYPD Monitor reports and NYPD quarterly stop reports, including alarming racial disparities in stop-and-frisk practices).

89. CLOSE ENCOUNTERS, *supra* note 2, at 151 (arguing in favor of reevaluating and departing from the *De Bour* framework).

Bour is unworkable.⁹⁰ Since 2018, Chief Judge Rowan Wilson and Judge Jenny Rivera have issued increasingly strongly worded dissents and concurrences admonishing the continued use of *De Bour* and the misapplication of the existing framework.⁹¹

The growing tension among judges of the New York Court of Appeals regarding *De Bour*'s place in New York common law and state constitutional law reached a head in *People v. Perez*. Judge Rivera wrote a detailed dissent in which Chief Judge Wilson concurred. The dissent argued that “nothing about defendant’s encounter with the police support[ed] the erosion of his ‘right to be left alone’” and “[if] walking away from an officer and refusing to respond ‘cannot serve to create a reasonable suspicion of criminality,’ neither can staying put and remaining silent.”⁹² It criticized the NYPD’s attempt to justify the forced detention of an individual by citing the purported “high-crime area” and an unshaped bulge in the individual’s sleeve.⁹³ The dissent concluded that the New York Court of Appeals’ recent stance on police engagement with the public threatens to legitimize the escalation of police-initiated encounters when an individual asserts their right to be left alone, potentially enabling violations of the right to privacy.⁹⁴ Judge Rivera characterized the Court as taking a perilous path—one that could render appellate judicial review “meaningless,” threaten individual liberty, and erode civil rights.⁹⁵ A footnote flagged former Chief Judge

90. Barry Kamins, ‘DeBour’ Faces Increased Criticism: Where Do We Go From Here?, N.Y. LAW J. (June 1, 2018), <https://www.law.com/newyorklawjournal/2018/06/01/debour-faces-increased-criticism-where-do-we-go-from-here> [<https://perma.cc/B5YR-BB7V>] (“For the first time in its 42-year-old history, *People v. DeBour* . . . is facing divergent criticism from members on the New York Court of Appeals, as well as a report issued by a committee of prosecutors at the New York State Bar Association.”).

91. *Id.*

92. *People v. Perez*, 31 N.Y.3d 964, 974–75 (2018) (Rivera & Wilson, JJ., dissenting).

93. *See id.* (describing defendant’s case as falling “in the *De Bour* borderlands, straddling the line between levels 2 and 3, and highlights some of our framework’s problems.”). Judge Rivera also states:

An officer may not ascribe a suspicious nature to an individual simply because the person is observed in a high crime area . . . [and] the perennial bulge as a factor supporting police action only where the bulge has the shape or outline of a weapon, or viewed in an area of the body where weapons are typically worn.

Id. (citation omitted).

94. *Id.* at 980.

95. *Id.*

Sol Wachtler's comments encouraging a reevaluation of the *De Bour* framework by the legislature or courts.⁹⁶

Despite Judge Rivera's critiques, the majority opinion in *Perez* found that there was sufficient support in the record for the trial court's determination that the arresting officer's testimony met the necessary threshold to justify the level of intrusion.⁹⁷ Although the majority cited the *De Bour* framework, their reasoning hinged on something like a totality of the circumstances test: it focused on "the attendant circumstances" and the consideration "that 'police-citizen encounters are dynamic.'"⁹⁸

On the opposite end of the tension over whether to get rid of New York's *De Bour* framework, Judge Michael Garcia's dissent in *People v. Gates* criticized the *De Bour* approach as *overly* protective of the public in police-citizen encounters, describing it as "hyper-stringent" and "serv[ing] as a barrier to legitimate, effective, and minimally-intrusive law enforcement practices designed to detect and ward off threats at their earliest stages."⁹⁹ Despite Judge Garcia's tendency to criticize *De Bour* for *limiting* police conduct, he echoed some of Chief Judge Wilson's and Judge Rivera's concerns, such as inconsistent evaluations of similar police encounters and the confusion and uncertainty caused by the sliding scale of the *De Bour* framework.¹⁰⁰

96. "At a New York City Bar Association event marking *De Bour*'s four-decade anniversary, former Chief Judge Sol Wachtler, *De Bour*'s author, was quoted as stating, 'that's too long for a precedent of this sort, when you consider the change in communities, the change in morality, [and] the change in our sense of justice.'" *Id.* at 972 n.3 (citing Andrew Denney, *After 40 Years, 'De Bour' Author Sees Need for a Fresh Look*, LAW.COM (May 23, 2016), <https://www.law.com/article/almID/1202758274433/> [https://perma.cc/UPM2-58X8]).

97. *Id.* at 966.

98. *Id.* The Court did not cite *De Bour* levels and instead balanced all relevant factors at once to find the "requisite level of support to satisfy the applicable level of intrusion." *Id.*

99. *People v. Gates*, 31 N.Y.3d 1028, 1031 (2018) (Garcia, J., dissenting) (citing *People v. Garcia*, 20 N.Y.3d 317, 324, 326 (2012) (Smith, J., dissenting)). The majority affirmed the Appellate Division's suppression determination and pointed out that the parties litigated the case within the framework of the existing precedent, *De Bour*, and did not challenge the utility of the *De Bour* framework. The majority did not address Judge Garcia's dissent regarding the continued utility of *De Bour*. *Id.* at 1029.

100. *Id.* ("*De Bour* has created 'inconsistency in the evaluation of markedly similar police encounters' . . . [and e]vidently, the *De Bour* sliding scale generates 'such confusion and uncertainty that neither police nor courts can ascertain with

In dissent in *People v. Britt*, Chief Judge Wilson explicitly accused the Court of Appeals of misapplying and misunderstanding *De Bour* because the defendant was detained for an open-container violation, not a misdemeanor or a felony.¹⁰¹ The dissent explained that Mr. Britt “is losing three to six years of his life . . . and taxpayers will spend somewhere between \$210,000 to \$1,000,000 for his imprisonment. None of that would have happened had he been affluent, drinking rosé . . . on Central Park’s Great Lawn.”¹⁰² Chief Judge Wilson humanized the consequences of misapplying *De Bour* and drew the Court’s attention to the overcriminalization of people of color despite *De Bour*’s intention to protect against unreasonable police intrusions.¹⁰³

Finally, in *People v. Johnson*, Judge Rivera explicitly called for the end of *De Bour*.¹⁰⁴ She described the right to be left alone as “too precious to entrust to the discretion of those whose job is the detection of crime,” which is particularly precarious in light of recent accounts of “police encounters prompted by innocent conduct that quickly escalate to violent altercations.”¹⁰⁵ Judge Rivera criticized the government for casting a wide net “that ensnares the innocent in the hopes that a fishing expedition will uncover incriminating evidence.”¹⁰⁶ She concluded that while the Court initially considered *De Bour*’s approach sensible when it was adopted in 1976 and reaffirmed in 1992, the application of *De Bour* over the years has weakened its effectiveness to the point where the challenges surrounding its modern interpretation now eclipse the original

any degree of confidence precisely what it takes to meet any of these standards.” (first quoting *People v. Hollman*, 79 N.Y.2d 181, 185 (1992); and then quoting SEARCH & SEIZURE § 9.4(e), *supra* note 2)); see *infra* Section II.A (discussing the sliding scale of the *De Bour* framework).

101. *People v. Britt*, 34 N.Y.3d 607, 617 (2019) (Wilson & Rivera, JJ., dissenting) (critiquing the majority as encouraging “policing based on stereotypes, . . . where police pursue quality of life violations that disproportionately affect the poor”).

102. *Id.* at 629 (Wilson & Rivera, JJ., dissenting).

103. “[W]hen balancing the right to be left alone and avoid intrusive police conduct against the need to protect innocent persons from crime, both our court and the legislature concluded that greater police intrusion is justified if Mr. Britt is observed with a possible bomb instead of a possible beer.” *Id.* at 627 (Wilson & Rivera, JJ., dissenting) (citation omitted).

104. *People v. Johnson*, 40 N.Y.3d 172, 177 (Rivera, J., concurring).

105. *Id.* at 176.

106. *Id.* at 177.

intentions.¹⁰⁷ Her comments in the *Johnson* concurrence demonstrate how the *De Bour* framework has become outdated and has lost its relevance to present-day realities.¹⁰⁸ The framework no longer serves the ends of justice, and, in light of its analytical foundation and the United States' troubling history with police-initiated encounters, it is time to reassess whether *De Bour* remains relevant.¹⁰⁹

Judge Rivera clarified that the federal approach cannot effectively replace *De Bour*, as the need to protect the liberty and privacy interests of citizens remains present during encounters that fall short of a Fourth Amendment seizure.¹¹⁰ She aligned with Justice Sonia Sotomayor's conclusion in *Utah v. Strieff* that the Supreme Court's post-*Terry* reading of the Fourth Amendment "implies that

107. Scholars have critiqued the application of *De Bour* from a variety of perspectives, including effectiveness as a tool of judicial review, impact on police officers, and success in protecting the public of the public. Cf. Yuval Simchi-Levi, *Let's Be Reasonable: Why New York Courts Need to Embrace the Federal Standard for Analyzing Police-Civilian Encounters*, 82 ALB. L. REV. 1311, 1316 (2018) (criticizing *De Bour* as too restrictive of police conduct); Jeremy Miller, *Fourth Amendment Inquiries: When Officers Are Not Justified to Approach a Vehicle*, 31 TOURO L. REV. 769 (2015) (characterizing *De Bour* as inflexible and requiring a step-by-step analysis that does not allow the court to look at the circumstances as a whole and scrutinizes police officers unfairly and unnecessarily); James Bradley, *Justice Restrained or Unrestrained Justices: Warrantless Search and Seizure—the U.S. Supreme Court of the New York Court of Appeals—Whose is More Reasonable?*, 13 N.Y.L. SCH. J. HUM. RTS. 411 (1997) (arguing that the Court of Appeals placed unrealistic restrictions on law enforcement officers during street encounters and that the *De Bour* framework should be replaced with the federal standard). *Contra* Jon Adams, *Applying More Restrictive Search and Seizure Requirements Under State Constitutional Law in Federal Courts Using Michigan v. Long and Erie v. Tompkins*, 14 TEMP. POL. & CIV. RTS. L. REV. 201, 214 (2004) (asserting that the *De Bour* framework offers greater protections than the federal standard for police-initiated civilian encounters); Douglas Holden Wigdor, *What's in a Word? A Comparative Analysis of Article I, § 12 of the New York State Constitution and the Fourth Amendment to the United States Constitution as Interpreted by the New York Court of Appeals and the United States Supreme Court*, 14 TOURO L. REV. 757, 760 (1998) (describing New York's approach to search and seizure protections as granting greater protection than the Fourth Amendment).

108. *Johnson*, 40 N.Y.3d 172, 193–94 (Rivera, J., concurring) (citing *People v. Hobson*, 39 N.Y.2d 479, 487 (1976)) (referring to extensive research on the dangers of police-initiated interactions with civilians).

109. *Id.* at 184, 193; *see generally* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 59–96 (2010) (arguing that racial bias is embedded in the administration of criminal justice, including in *Terry* stops).

110. *Id.* at 196.

you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.”¹¹¹

D. The *Floyd* Findings and Monitor Reports

Beginning in 2002, under Mayor Michael Bloomberg and NYPD Commissioner Raymond Kelly, the NYPD implemented the Stop, Question, and Frisk program.¹¹² The program is a policing strategy intended to intervene and control crime by detaining a person suspected of either committing a crime or preparing to commit a crime; questioning them; and frisking them to determine whether the person is in possession of contraband. The Stop, Question, and Frisk program in New York City was highly controversial at the height of its implementation; in 2011, over 685,000 people were stopped.¹¹³ In 2008, the Center for Constitutional Rights filed a federal class action against the City of New York to challenge the NYPD’s practices of racial profiling and unconstitutional stops and frisks of New Yorkers.¹¹⁴ In the resulting case—*Floyd v. City of New York*—Judge Shira Scheindlin of the Southern District of New York held that the city implemented Stop, Question, and Frisk in violation of the Fourteenth Amendment because the police operating under the policy stopped people based on their race.¹¹⁵ The district court highlighted that Stop, Question, and Frisk relied on vague terms such

111. *Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting).

112. *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al> [<https://perma.cc/NWK9-BT87>] (describing the Center for Constitutional Rights work challenging the NYPD’s practices of racial profiling and unconstitutional stop and frisk practices against New York City residents).

113. According to NYPD’s quarterly stop reports, there were 8,947 stops in 2021, 15,102 stops in 2022, 16,971 stops in 2023, and 25,386 stops in 2024. *Stop-and Frisk Data*, N.Y.C.L. UNION, <https://www.nyclu.org/data/stop-and-frisk-data> [<https://perma.cc/P96V-TDMP>] (summarizing NYPD Quarterly Report data from 2002 to 2024); *NYPD Stop, Question and Frisk Data*, NYPD, <https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page> (on file with the *Columbia Human Rights Law Review*) (compiling annual stop and frisk data in downloadable files); see NATALIE ROSENBLATT, “STOP-AND-FRISK” POLICING IN NEW YORK CITY: AN HISTORICAL EVALUATION OF THE CONTROVERSIAL POLICY 11–12 (2021) (discussing the controversies associated with the policy).

114. CTR. FOR CONST. RTS., *supra* note 112; Second Amended Class Action Complaint for Declaratory and Injunctive Relief and Individual Damages, *Floyd v. City of New York*, 959 F.Supp.2d 540 (S.D.N.Y. 2013) (No. 08 Civ. 01034), [https://ccrjustice.org/sites/default/files/assets/2nd%20Am%20Complaint%20\(ECF%20Version\).pdf](https://ccrjustice.org/sites/default/files/assets/2nd%20Am%20Complaint%20(ECF%20Version).pdf) [<https://perma.cc/2FDT-3X22>].

115. *Floyd*, 959 F.Supp.2d at 633, 667.

as “Fits Description,” “Furtive Behavior,” and “Suspicious Bulge” to justify illegal Fourth Amendment searches that did not meet the reasonable suspicion threshold.¹¹⁶ Although police training is not the focus of this Note, it is important to acknowledge that police officers’ inability to articulate the definitions and distinctions between vague terms such as “Furtive Behavior” contributes to the harm perpetuated by police discretion in police-initiated encounters.¹¹⁷

The district court held that several thousand stops were the result of NYPD policy of “indirect racial profiling.”¹¹⁸ The district court also held that NYPD’s practice of “targeting the right people” unconstitutionally attempted to “instill in [Black and Hispanic men] a fear of being stopped.”¹¹⁹ During the district court’s analysis, the court clarified that there might be permissible police encounters under *De Bour* that remain unlawful under the Fourth Amendment.¹²⁰ As a result of the *Floyd* findings, the court ordered a monitor to report on racial profiling in NYPD stops, searches, and seizures.¹²¹

116. *Id.* at 562, 599.

117. *See generally Floyd*, 959 F.Supp.2d at 561 (describing vast variation in defining “furtive movements” amongst NYPD officers, including vague, innocuous behavior and stating, “[i]f officers believe that the behavior described above constitutes furtive movement that justifies a stop, then it is no surprise that stops so rarely produce evidence of criminal activity.”); *see* Jeffrey Fagan & Amanda Geller, *Following the Script: Narratives of Suspicion in Terry Stops in Street Policing*, 82 U. CHI. L. REV. 51 (2015) (finding that patterns of shared narratives or scripts of suspicion “defeat the requirement of individualization inherent in case law governing Fourth Amendment stops”); *infra* Section II.B (showing how the NYPD Monitor reports and the NYPD quarterly reports illuminate continued issues with NYPD’s stop-and-frisk practices).

118. *Floyd*, 959 F.Supp.2d at 562.

119. *Id.* at 662 (“[T]argeting the ‘right people’ means stopping people in part because of their race[, and] Commissioner Kelly’s statement that the NYPD focuses stop and frisks on young black and Hispanics . . . and other explicit references to race . . . [provide] a sufficient basis for inferring discriminatory intent.”).

120. *See Floyd*, 959 F.Supp.2d at 568–69 n.74, 569 n.81 (clarifying that the New York standard for a protective frisk is distinct from the federal constitutional standard). “[A]llow[ing] an officer to conduct a frisk even when she lacks reasonable suspicion that the stopped person is *armed* and dangerous [is not the constitutional standard]. As the Supreme Court has made clear, New York ‘may not . . . authorize police conduct which trenches upon Fourth Amendment rights.’” *Id.*

121. *Floyd*, 959 F.Supp.2d at 563.

As of the end of 2025, the NYPD monitor has issued over twenty-five reports and several supplemental letter updates.¹²² The June 2023 monitor report described continued use of unlawful stops and reported that, out of the 419 encounters observed, more than 97% of police-initiated encounters were with Black or Hispanic individuals.¹²³ *Floyd* provides important background to the legal issues of *De Bour* because it illustrates the pervasive issue of police discretion creating harm and increasing the risk of racial profiling.¹²⁴

II. THE UNWORKABILITY OF *DE BOUR*

Scholars, practitioners, and judges alike have criticized *De Bour*'s sliding scale and the slippery slope reasoning used to justify sub-*Terry* stops, frisks, and detentions in the decades since *De Bour*.¹²⁵ The sliding scale and factor analysis are two key features of

122. See MYLAN DENERSTEIN, 2025 END OF YEAR MONITOR UPDATE (February 17, 2026), <https://www.nypdmonitor.org/wp-content/uploads/2026/02/2026.02.17-977-Monitors-2025-End-of-Year-Report.pdf> [<https://perma.cc/SFS3-HTEH>] (summarizing NYPD's failure to achieve substantial compliance with the 2013 *Floyd* order during 2025); see also *Resources & Reports*, NYPD MONITOR, <https://www.nypdmonitor.org/resources-reports> [<https://perma.cc/AQD5-KC6A>] (compiling the Federal Monitor reports submitted to the court to date). Mylan Denerstein was appointed to be the Federal Monitor in January 2022 and is currently a litigation partner at Gibson, Dunn & Crutcher LLP. The Monitor Team is comprised of attorneys, professors of criminology, psychology, and sociology, and former police officers in NYPD. The City of New York is responsible for the reasonable costs and fees of the Monitor, her staff, and any experts she retains. *About*, NYPD MONITOR, <https://www.nypdmonitor.org/about> [<https://perma.cc/UJG3-AL44>].

123. MYLAN DENERSTEIN, NYPD'S NEIGHBORHOOD SAFETY TEAMS (June 5, 2023), <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf> [<https://perma.cc/3A5T-XWBH>]; see also MYLAN DENERSTEIN, RACIAL DISPARITIES IN NYPD STOP, QUESTION, AND FRISK PRACTICES: AN ANALYSIS OF 2013 TO 2022 STOP REPORTS (2024), <https://www.nypdmonitor.org/wp-content/uploads/2024/04/2024.04.11-927-1-Twentieth-Report.pdf> [<https://perma.cc/KUF2-KGBW>] (finding that stops of Black and Hispanic individuals remained the highest portion (over 80%) of all reported stops from 2013 to 2022).

124. See *infra* Section II.B (describing key findings in recent NYPD Monitor reports and NYPD quarterly stop reports).

125. CLOSE ENCOUNTERS, *supra* note 2, at 151 (arguing in favor of reevaluating and departing from the *De Bour* framework); Emily J. Sack, *Police Approaches and Inquires on the Streets of New York: The Aftermath of People v. De Bour*, 66 N.Y.U. L. REV. 512, 554 (1991) (arguing that the *De Bour* framework's atomized levels are susceptible to conflation with one another in a manner that triggers the police to initiate and escalate encounters with civilians); SEARCH & SEIZURE § 9.4(e), *supra* note 2.

the *De Bour* framework in determining intrusion and suspicion levels. Professor LaFave explains that “those sympathetic to the notion that the non-seizure encounter ‘cries out for some sort of fourth amendment regulation’ acknowledge that a *De Bour*-type ‘sliding scale approach’ may ‘produce more slide than scale,’ which ‘means in practice . . . trial courts defer to the police.’”¹²⁶ Immense police discretion controls level determination, the slide from level to level, and the analysis of factors used to justify police intrusions.¹²⁷ With high rates of fruitless intrusions and illegal encounters, from the beat cop to New York courts, the *De Bour* framework fails to protect New Yorkers, threatens liberty interests, and subjects individuals and communities to policing and dignitary harm.¹²⁸

In addition to the unworkability of *De Bour*, the framework does not live up to the promise of increased protection compared to the federal standard. As this Part will discuss, the broken promise is illustrated through the New York Court of Appeals’ decision in *People v. Blandford*¹²⁹ and in the continued practice of racial profiling despite the *Floyd* holding and NYPD monitor.¹³⁰

A. *De Bour*’s Problematic Factor Analysis

New York courts use a wide variety of factors to determine *De Bour* levels: matching description of suspects (general and specified), appearing in close proximity to the scene, moving furtively, fleeing or walking away, being present in a high-crime area, having a visible bulge in their clothing, grabbing or reaching for waistband, “blading,” and ignoring police command, request, or question, as well as the training and experience of the officer engaged in the interaction.¹³¹ As New York courts have become involved in efforts to justify law enforcement stops, the *De Bour* framework has evolved to be confusing and unworkable. This subsection examines the severity of *De Bour*’s unworkability through an analysis of judicial deference to

126. SEARCH & SEIZURE § 9.4(e), *supra* note 2.

127. *Id.*

128. *See infra* Section II.B (compiling recent NYPD quarterly stop reports).

129. *People v. Blandford*, 37 N.Y.3d 1062 (2021).

130. For a critical analysis of *De Bour* and the problematic use of vague and racialized factors in the first fifteen years of the legal framework’s existence, see generally Sack, *supra* note 125 (“the rapid escalation allowed by the *De Bour* model can increase the harmful consequences of an initial arbitrary or discriminatory stop, as a low-level intrusion quickly develops into a full arrest”).

131. *See* Appendix A, Table 1 (identifying and defining frequently cited factors to determine *De Bour* level of intrusion).

police expertise and discretion, the slippage from level to level, and the lack of police accountability for racial profiling.

1. *De Bour's* Sliding Scale and the Right to Be Left Alone

Despite forty-seven years of common law development and attempted clarification of the *De Bour* framework, the sliding scale nature of *De Bour* and the problematic factor analysis often used by police and the courts render it insufficient to protect New Yorkers.¹³²

The concerns of the *De Bour* court and commentators over the decades continue to ring true when analyzing the case law out of New York's four Appellate Division departments.¹³³

This Note examined ten years of criminal cases reviewing suppression motions decided under *De Bour's* tiered framework in the four departments of the New York Appellate Divisions.¹³⁴ Of the 252 Appellate Division cases citing *De Bour*, 146 cases reviewed the trial court's suppression decision under the *De Bour* framework.¹³⁵ Each case used various factors to decide whether law enforcement had the requisite level of suspicion for the intrusion.

The ten most frequently used factors, in descending order, include: (1) matched description (satisfactory level match from a sufficiently reliable source), (2) proximity (spatial/geographical and/or

132. See Sack, *supra* note 125, at 512–13 (1991) (arguing that the slippage between *De Bour* levels facilitate the escalation of police-initiated civilian encounters). With over thirty years of additional stop and frisk case law and research, this Note offers a solution that abandons the *De Bour* framework rather than finetuning the framework as Sack suggested in 1991.

133. This Note examines case law over the ten years following the *Floyd* order, looking at cases decided under *De Bour* (meaning the use of the four-tiered framework) in the four departments of the New York Appellate Divisions. The research elucidated commonly used factors and provided examples of the sliding scale of *De Bour*, but there were many limitations to the research. For example, the Appellate Division courts frequently reviewed police justifications for stops, frisks, seizures, and searches without invoking *De Bour*, even when the Court of Appeals later cited *De Bour* to affirm the Appellate Division's holding; additionally, the courts sometimes used terms like "intrusion" or "stop" without referring to Levels 1–4 of *De Bour*. The controlling factual determinations of the suppression court are given great weight under a clearly erroneous standard of review and typically involve fewer factual details than a suppression hearing.

134. The review of these cases is not exhaustive, as it does not include civil cases or federal cases and only includes appellate review of suppression hearings within criminal court. Further research should be conducted to determine whether *De Bour's* use in civil and federal cases also pose similar issues reviewed in this Note.

135. See Appendix A, Tables 2 & 3 (compiling all 146 cases).

temporal proximity to scene, incident, or report), (3) furtive behavior (nervous fidgeting; sweating; out of breath; heavy breathing; avoiding eye contact; anxious, inconsistent, illogical, contradictory, vague, or evasive answers), (4) flight (including quickening pace, running, and immediate flight), (5) high-crime area (including areas known for illegal drug transactions, robberies, or trespassing), (6) bulge (in pocket or in waistband), (7) waistband (grabbing, reaching, holding, or moving toward waistband), (8) officer training and/or experience, (9) blading (shifting body away from a police officer), and (10) ignore (includes failure to answer questions, avoiding, and unresponsiveness).¹³⁶ The next most frequently used factors include marijuana smell; hand-to-hand (exchange of items, particularly currency); heavy object (in pocket); staring (at officers or patrol cars); prior knowledge of criminal record or gang member status; lying to law enforcement; being alone; no registration, license, or identification during a lawful vehicle stop; and the time of day.¹³⁷

Using the factors identified and defined above, the reasoning for each of the 146 cases was distilled into a formula to track the movement and slippage between *De Bour*'s four levels. For example, the court's reasoning in *People v. Owens* was distilled to the following formula: heavy object in pocket = Level 1, + blading = Level 2 founded suspicion, + waistband = Level 3 reasonable suspicion.¹³⁸ This research elucidates commonly used factors, reasoning patterns, and contradictions among New York appellate courts. The cases show that the New York government and courts continue to rely on the amorphous, vague, and racialized factors, which commentators criticized over thirty years ago, to justify the stop, frisk, and detention of New Yorkers.

De Bour's sliding scale and factor-based analysis—which grants significant police discretion to up the level of the encounter through the assertion of subjective factors such as furtive behavior, flight, and “blading”—is in tension with the constitutional “right to be left alone.”¹³⁹ Oftentimes, once Level 2 “founded suspicion” is established through a matched description and proximity to the

136. See Appendix A, Table 1 (bolding the ten most frequently used factors in descending order).

137. See Appendix A, Table 1 (listing the next most frequently used factors without emphasis to distinguish from the ten most frequently used factors).

138. *People v. Owens*, 6 N.Y.S.3d 146 (N.Y. App. Div. 2015); see Appendix A, Tables 1 & 2.

139. Judge Rivera, in dissent, comments on this tension in *People v. Barksdale*, 26 N.Y.3d 139, 146 (2015) (Rivera, J., dissenting).

scene, the Appellate Division courts then affirm the use of these factors to justify increasing the intrusion to Level 3 “reasonable suspicion.”¹⁴⁰

Over the ten years following the *Floyd* order, the Appellate Division used a finding of furtive behavior to justify the initial interaction between civilians and officers or to increase the level of intrusion in roughly 25% (28 out of 111) of cases.¹⁴¹ Furtive behavior encompasses a slew of innocuous and non-criminal behavior: acting nervous, fidgeting, sweating, heavy breathing, avoiding eye contact, and responding to officer questioning in an inconsistent, illogical, contradictory, vague, or evasive manner.¹⁴² In around 23% (26 out of 111) of Appellate Division cases, judges and the government used flight to justify increasing the level of intrusion by law enforcement, often allowing law enforcement to pursue, stop, and frisk solely because a person turned and ran or walked away quickly.¹⁴³ Law enforcement—affirmed and supported by New York Courts—construe these attempts to assert the right to be left alone as criminality.

Judge Rivera’s strongly worded concurrence in *Johnson* highlighted the issues with squaring *De Bour*’s framework with the right to be left alone:

The choice not to engage with police is no choice in fact for many people of color. Indeed, as *De Bour* itself acknowledged, it is difficult to understand how *any* person is not intimidated or otherwise believes that they cannot leave when approached by, as in this case, a uniformed officer or someone identifying themselves as a law enforcement official who tells them to stop. And although the Court has said the right to walk away exists—elevating it to almost sacrosanct status—it has simultaneously

140. The use of furtive behavior and other non-criminal behavior has been used since the inception of the *De Bour* framework. See Sack, *supra* note 125 (“The *De Bour* standards thus have allowed low-level police intrusions to be justified by the inappropriate combination of ‘furtive’ behavior, by itself not probative, with a variety of other factors with little or no probative value.”); see also Appendix A, Tables 1–3 (showing the patterns in police reasoning justifying increased levels of intrusion during encounters with civilians).

141. Appendix A, Tables 2–3 (tracking and compiling each case where furtive behavior was used to justify an initial interaction or increased intrusion).

142. Appendix A, Tables 1–2 (distilling what type of behavior is included in the use of the term “furtive” by police officers and courts analyzing police-civilian encounters).

143. Appendix A, Tables 2–3 (identifying each instance judges and the government used flight to justify increasing the level of intrusion).

recognized that turning and walking or running away from an officer may be a factor supporting Level 2, 3, and 4 intrusions on the ground that “[f]light, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, could provide the predicate necessary to justify pursuit.”¹⁴⁴

The badge and uniform, symbols of the cultural and social valuation of law enforcement and policing, deter civilians from questioning the authority of officers.¹⁴⁵ With this in mind, Judge Rivera advocated that the Court of Appeals should hold that police-initiated encounters with civilians are unconstitutional absent reasonable suspicion of criminality and argued that this approach would better protect the right to be left alone.¹⁴⁶

Heightened forms of intrusion are triggered by non-criminal behavior like fleeing, exhibiting furtive behavior, ignoring officers, “blading,” and reaching or grabbing the waistband. The Appellate Division affirmed the use of these non-criminal behavior factors to justify the initial interaction between civilians and officers or increase the level of intrusion in over 75% of cases in the last ten years.¹⁴⁷ New York courts often describe interactions between civilians and law enforcement as “ripen[ing]” to justify increasing the level of intrusion from Level 1 to Level 2 or 3 under the *De Bour* framework.¹⁴⁸ New

144. *People v. Johnson*, 40 N.Y.3d 172, 191 (2023) (Rivera, J., concurring) (citations omitted).

145. See *supra* note 86 (citing studies on the social, psychological, and cultural impacts on civilian interactions with law enforcement); *Johnson*, 40 N.Y.3d at 187 (Rivera, J., concurring).

146. *Johnson*, 40 N.Y.3d at 195–97 (Rivera, J., concurring).

147. Furtive behavior, flight, grabbing or reaching for the waistband, blading, and ignoring police are non-criminal behavior and do not indicate criminality. Of the 146 cases analyzed under the *De Bour* four-tiered framework, 111 cases affirmed the use of the identified factors to justify the police intrusion. Of the 111 cases, 85 cases relied on furtive behavior, flight, grabbing or reaching for the waistband, blading, or ignoring the police as justification for the police intrusion and in turn affirmed the trial court’s decision to deny the suppression motion. See Appendix A, Tables 1–3.

148. See *e.g.*, *People v. Soscia*, 946 N.Y.S.2d 653, 654 (App. Div. 2012) (“[T]he arresting police officer had a founded suspicion that the defendant was engaged in criminal activity, triggering the common-law right of inquiry, which, by virtue of the defendant’s flight, ripened into reasonable suspicion to pursue.” (emphasis added) (citations omitted)); *People v. Britt*, 67 A.D.3d 1023, 1024 (App. Div. 2009) (“[B]y virtue of the defendant’s flight, ripened into reasonable suspicion to pursue.” (citations omitted)); *People v. Stephens*, 851 N.Y.S.2d 136, 138–39 (App.

York courts defer to the expertise of the police to determine whether innocuous behavior should be construed to indicate criminality.¹⁴⁹

A third of Appellate Division decisions analyzing police-initiated encounters through the *De Bour* framework in the ten years after the 2013 *Floyd* order found police justification for an intrusion either entirely or partially unconvincing and illegal.¹⁵⁰ This thirty percent corrective rate raises major concerns about how law enforcement operates on the ground and how often officers make mistakes in the field. Although appellate review and the application of the *De Bour* framework have identified some illegal stops, the corrective rate suggests that the framework does not function as an effective deterrent to such stops. The New York courts are instead often left to invalidate the use of subjective, and therefore problematic, factors, such as knowledge of prior criminality, furtive behavior, avoidance of the police, and presence in high-crime areas, as grounds for establishing reasonable suspicion. However, the same courts tasked with applying the reasonable search and seizure standard regularly fail to distinguish truly incriminating conduct from otherwise innocent behavior when determining the level of suspicion required to justify the intrusion in question.¹⁵¹

2. Illustrative Cases

In order to justify arbitrary police intrusions, New York courts aggregate factors that, on their own, do not establish “founded suspicion.” This practice both misapplies *De Bour* and leads to contradictory conclusions between Appellate Division departments. For example, in 2016, the Fourth Department held that the presence of the “high-crime area” and “avoidance of police” factors were an insufficient basis to establish a Level 1 interaction.¹⁵² In the same

Div. 2008) (“[T]he Court found that these actions gave rise to a founded suspicion, which ripened into reasonable suspicion upon the appellant’s flight.”).

149. See Anna Lvovsky, *Rethinking Police Expertise*, 131 YALE L. J. 475, 485, 496 (2021) (detailing the criticisms of judicial deference to police officer expertise as both a skepticism of police expertise and an unconstitutional practice).

150. Out of the 146 Appellate Division cases analyzed under the *De Bour* framework, 45 cases rejected the justification for the police intrusion completely or partially, resulting in the suppression of evidence. Appendix A, Table 2.

151. See, e.g., *infra* note 153 (discussing case in which a court allowed a police officer to justify an increased level of intrusion with arguably innocuous behavior).

152. *People v. Savage*, 28 N.Y.S.3d 184, 186 (App. Div. 2016). The police officer claimed that the defendant was “staring” at him and began walking faster after the officer greeted him. *Id.* The court concluded that merely staring or

year, the First Department held that these same factors *were* sufficient to establish a Level 1 interaction, which permitted officers to escalate the encounter to Level 3 when other factors—such as a bulge in the sleeve and ignorance of the police—were present.¹⁵³ Similar contradictions occur in the traffic stop setting. The Second Department found Level 3 reasonable suspicion when the driver acted furtively by breathing heavily and not making eye contact,¹⁵⁴ whereas the Fourth Department found the police lacked Level 2 founded suspicion when the driver acted furtively by fidgeting and providing illogical and contradictory answers to the police.¹⁵⁵ What was true in 1991 remains true today: inappropriate factors easily satisfy the minimal suspicion required to justify low-level intrusions.¹⁵⁶

Level 2 of the *De Bour* test has stretched to include police conduct that would meet the Fourth Amendment's test for a seizure requiring reasonable suspicion. Most notably, in *Blandford*, the Court of Appeals applied the lower standard of "founded suspicion" to canine sniff searches during traffic stops.¹⁵⁷ "Founded suspicion" corresponds with Level 2 of *De Bour*, the level of suspicion created by the New York Court of Appeals granting police officers the right of common law inquiry for stops short of a seizure (i.e., sub-*Terry* stops).¹⁵⁸ The Court of Appeals decision in *Blandford* directly contradicts the federal constitutional standard articulated six years

looking away from police officers in a high crime area does not justify a Level 1 encounter. *Id.*

153. *People v. Perez*, 37 N.Y.S.3d 243, 245 (App. Div. 2016). The defendant attempted to avoid the police officers by not responding to their repeated questions about whether he lived in the building and turning away from the officers. *Id.* The defendant tried to not engage with the officers but was frisked based on his behavior and association with a building with high crime levels. *Id.* The court held that the defendant's refusal to respond justified the Level 1 encounter. *Id.* at 248.

154. *People v. Rodriguez*, 75 N.Y.S.3d 523 (App. Div. 2018).

155. *People v. Hightower*, 25 N.Y.S.3d 764 (App. Div. 2016).

156. *See generally* Sack, *supra* note 125 (detailing the use of improper factors to justify low-level intrusions).

157. *People v. Blandford*, 37 N.Y.3d 1062, 1063 (2021). Judge Wilson, in dissent, criticized the opinion for applying this reduced standard and allowing law enforcement to "pursue someone they suspect of criminal behavior without a founded suspicion of criminality, wait for the right moment to stop that person for a minor traffic infraction, and then serve up a stew of flavorless facts to transform the stop . . ." *Id.* at 1067 (Wilson, J., dissenting).

158. *Id.* at 1069 (Wilson, J., dissenting) (characterizing the majority's founded suspicion approach to canine searches of vehicles).

earlier in *Rodriguez v. United States*,¹⁵⁹ which held that law enforcement must have reasonable suspicion to prolong traffic stops for the purpose of conducting a canine sniff search.¹⁶⁰

In *Rodriguez*, the Supreme Court held that, reasonable suspicion of criminality—not merely “founded suspicion” (i.e., *De Bour* Level 2)—is required to prolong a traffic stop to conduct a canine sniff search under the Fourth Amendment.¹⁶¹ Therefore, all of the New York Court of Appeals’ decisions applying the lower standard of “founded suspicion” were wrongly decided,¹⁶² because the Supreme Court’s interpretation of the Fourth Amendment provides broader protection than the New York Court of Appeals’ interpretation of the New York Constitution Article I, Section 12, which shares the exact same language as the federal constitution.¹⁶³

Prior to the Supreme Court’s decision in *Rodriguez*, the New York Court of Appeals, in *People v. Devone*, made clear that “a canine sniff of the exterior of a lawfully stopped vehicle constitutes a search . . . requiring founded suspicion that criminal activity is afoot.”¹⁶⁴ In *Blandford*, the defendant argued that *Devone*’s founded suspicion standard is unconstitutional under *Rodriguez*, which found that the federal constitution requires reasonable suspicion.¹⁶⁵ But the *Blandford* majority applied *Devone*’s founded suspicion holding, ignoring *Rodriguez* on the basis that the defendant did not preserve the constitutionality argument for review.¹⁶⁶ Judge Wilson, in a dissent joined by Judges Rivera and Fahey, argued that the issue was preserved *and* that the police lacked founded suspicion.¹⁶⁷

159. *Rodriguez v. United States*, 575 U.S. 348 (2015).

160. Judge Wilson, in dissent, highlights this contradiction: “Although our state constitution can provide greater protections than the U.S. Constitution, it cannot provide less.” *Id.* at 1073 (Wilson, J., dissenting).

161. *Rodriguez*, 575 U.S. at 354–355.

162. See *Blandford*, 37 N.Y.3d at 1074 (Wilson, J., dissenting) (making this point). Under New York’s jurisprudence, Level 2 only requires founded suspicion that criminal activity is afoot. *People v. Moore*, 6 N.Y.3d 496, 498–99 (2006).

163. U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12.

164. *People v. Devone*, 15 N.Y.3d 106, 110 (2010).

165. *Blandford*, 37 N.Y.3d at 1072 (Wilson, J., dissenting). The majority makes a conclusory statement regarding preservation and does not explain the defendant’s arguments, whereas Judge Wilson’s dissent does cover the defendant’s preservation.

166. *Id.* at 1063.

167. *Id.*

The Court of Appeals thus missed an opportunity to keep the *De Bour* framework in line with Fourth Amendment jurisprudence.¹⁶⁸ With the Supreme Court denying certiorari to review *Blandford*, the threat of unconstitutional canine sniff searches continues to endanger the safety and liberty of New Yorkers.¹⁶⁹ This analysis of *Rodriguez*, *Blandford*, and *Devone* is not meant to argue the unconstitutionality of the *De Bour* framework as a whole. The analysis simply illuminates one example of how courts' reliance on the *De Bour* framework can create odd results that even contradict the Supreme Court's Fourth Amendment jurisprudence.

B. The Harms of Growing Police Discretion Under *De Bour*

Case law does not capture all the times when the police initiated an unconstitutional encounter.¹⁷⁰ The common law development of *De Bour* illustrates the unworkability of the framework and the creation of immense police discretion.¹⁷¹ However, the level of harm perpetuated by the growing police discretion under *De Bour* is best captured by the NYPD Monitor's Twenty-Third Report and the rate of error in the NYPD's quarterly stop reports.¹⁷²

168. *Id.* at 1074 (Wilson, J., dissenting) (“Regrettably, the majority concludes that neither way of phrasing the issue was properly preserved, which means that officers and civilians alike must live with uncertainty about the proper test to be applied to canine searches.”).

169. *Id.* (“*Rodriguez* thus stands for the proposition that, under the federal constitution, an officer must have ‘reasonable suspicion of criminal activity’ to justify prolonging a traffic stop to conduct a canine search of an automobile.”). Because the denial of certiorari did not include an explanation, it is not clear whether the Supreme Court denied cert due to lack of conflict with precedent, because the issue lacks national significance, or some other reason. As discussed in several portions of this Note, only New York takes this four-tiered approach, which likely limits the Supreme Court’s interest in granting review.

170. *People v. Johnson*, 40 N.Y.3d 172, 189 (2023) (Rivera, J., concurring) (“Even if the officer’s hunch turned out to be correct in *Samuels*, such fails to account for the cases featuring similar encounters where no weapon is recovered and which, consequently, never find their way into our courts . . .”).

171. *Supra* Section II.A.1 (describing the problematic sliding scale of the *De Bour* framework); *contra* Jon Adams, *Applying More Restrictive Search and Seizure Requirements Under State Constitutional Law in Federal Courts Using Michigan v. Long and Erie v. Tompkins*, 14 TEMP. POL. & CIV. RTS. L. REV. 201, 202–03 (2004) (arguing that the *De Bour* framework in New York is more protective than the federal standard).

172. See DENERSTEIN, *supra* note 123, at 2 (highlighting key findings of the report, including that NST officers had reasonable suspicion for only 73% of the frisks assessed and that, based on the stop reports analyzed, 87% of the people encountered were Black or Hispanic).

The NYPD Monitor's Twenty-Third Report audited NYPD's Neighborhood Safety Teams (NST), Public Safety Teams (PST), and regular patrol officers on stop, frisks, and searches conducted in 2023.¹⁷³ The NYPD initiated NST and PST in certain high-crime areas respectively tasked with taking illegal guns off the street and engaging in proactive enforcement to address violent crimes.¹⁷⁴ The Monitor's review found that despite the enhanced level of training and experience of NST officers, in 2023, they had reasonable suspicion for only 65% of the stops, reasonable suspicion for just 58% of the frisks, and a legal basis for only 54% of the searches reviewed.¹⁷⁵ Based on the stop reports reviewed by the Monitor, more than 95% of the civilians involved in these encounters were Black or Hispanic.¹⁷⁶

According to NYPD's quarterly stop reports, from 2014 to 2017, 79% (73,055) of stops involved individuals who had not engaged in any unlawful behavior, as indicated by the fact that they were neither issued a summons nor arrested.¹⁷⁷ Additionally, "Black and Latino people were more likely to be frisked than whites and, among those frisked, were less likely to be found with a weapon."¹⁷⁸ More recently, despite changes to the stop form and the existence of a federal monitor for a prolonged period, from 2018 to 2024, about 66% of stops did not result in a summons or arrest.¹⁷⁹

An analysis of any standard governing police stops—in this case *De Bour*—must account for the negative impacts of these interactions on people of color and their communities. The stakes in these cases go beyond illegality and unconstitutionality of police-initiated encounters. People of color are subjected to an alarming rate of interactions with law enforcement that increase racial anxiety, hypervigilance, trauma, and other adverse mental health

173. *Id.* at 1.

174. *Id.*

175. *Id.* at 3.

176. *See id.* (noting that "NYPD has not, to date, implemented measures to audit and monitor officers' Fourteenth Amendment compliance").

177. N.Y. C.L. UNION, STOP-AND-FRISK IN THE DE BLASIO ERA 25 (Mar. 2019), https://www.nyclu.org/uploads/2024/05/20190314_nyclu_stopfrisk_singles.pdf [<https://perma.cc/T2W6-P7J2>].

178. *Id.* at 2.

179. *Stop-and Frisk Data*, N.Y. C.L. UNION, <https://www.nyclu.org/data/stop-and-frisk-data> [<https://perma.cc/U36M-4DVQ>] (aggregating each NYPD quarterly stop report to find the percentage of stops resulting in summons or arrests, which is included in the quarterly reports).

consequences.¹⁸⁰ Communities are burdened by losing members who are swept up in the criminal legal system and incarcerated, at times wrongfully or unjustifiably.¹⁸¹ Additionally, police-initiated encounters are “an intrusive affront to individual dignity and privacy, particularly to racial and ethnic minorities who have been subjected to discriminatory policing practices.”¹⁸² It is exceptionally difficult to tease out the historic overcriminalization of people of color, especially Black people, from the problematic development of the *De Bour* framework and the continued targeting of people of color under NYPD’s stop-and-frisk practices.¹⁸³

Law enforcement expends immense resources on stops with extremely low rates of arrest or summons.¹⁸⁴ However, it is the individuals who are stopped who bear the primary burden of this

180. See *supra* note 86 (reviewing literature related to the impact of police stops on people of color); see also Jordan DeVlyder et al., *Impact of Police Violence on Mental Health: A Theoretical Framework*, 110 AM. J. PUB. HEALTH 1704 (2020) (distinguishing police violence from other forms of violence and trauma exposure to find that exposure to police violence is associated with broad range of mental health outcomes and is “a unique risk factor for mental distress”); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESCENT HEALTH 627 (2019) (finding that youth stopped by police more frequently were more likely to report heightened emotional distress and posttraumatic stress symptoms); JL Hirschtick et al., *Persistent and Aggressive Interactions with the Police: Potential Mental Health Implications*, 29 EPIDEMIOLOGY PSYCHIATRIC SCIS. 19 (2020) (reporting that persistent exposure to police authority, especially if perceived as discriminatory, activates a perpetual stress response); Aline Ara Santos Varvalho et al., *Racial Prejudice and Police Stops: A Systematic Review of the Empirical Literature*, 15 BEHAV. ANALYSIS PRAC. 1213 (2022) (conducting an international review of empirical articles published from 2014 to 2019 that investigated institutional racism in police stops).

181. *Supra* Section II.B (compiling NYPD quarterly reports that include wrongful and unjustifiable arrests that stem from unjustifiable stops, seizures, and searches).

182. Jeanine Bell, *The Violence of Nosy Questions*, 100 B.U. L. REV. 935, 949 (2020) (criticizing broad discretion for officers to ask nosy questions that embarrass and dysregulate).

183. Between the racialized factors under *De Bour*, the continued over-policing of communities of color under NYPD’s stop-and-frisk, and the heavy burden placed on communities of color, the interaction between race and policing in New York continues to demand the attention of the legal community. This project is beyond the scope of this Note but should be prioritized by legal scholars.

184. Only about 34% of stops from 2018 to 2024 resulted in arrest or summons. See N.Y. C.L. UNION, *supra* note 179.

ineffective policing strategy,¹⁸⁵ even as their safety and liberty become increasingly endangered by the high rates of invalid stops.¹⁸⁶ Judge Rivera highlights studies and reports demonstrating that people of color are affected the most by the “escalation from Levels 1 through 4 of *De Bour*.”¹⁸⁷ Unfettered suspicion turns into a tangible impact on individuals and communities. Although *De Bour* is a highly technical legal framework, the on-the-ground effects of this judicial creation are far beyond technicalities and semantics.

III. INCREASING PROTECTION FOR NEW YORKERS

The continued use of *De Bour* is a problem that needs fixing by legislators, practitioners, and courts. Overturning *De Bour* and creating a more protective standard, rather than merely relying on the federal standard like most states, will help alleviate the current harms perpetuated by high levels of police discretion. Although the *De Bour* framework has been criticized since its inception, more

185. *Id.* (“The individuals stopped of course bear the brunt of this failed policing strategy.”).

186. See, e.g., Monique Jindal et al., *Police Exposures and the Health and Well-being of Black Youth in the US: A Systematic Review*, 176 JAMA PEDIATRICS 78 (2022) (arguing that seemingly trivial police contact or even fear of contact may be detrimental to the health of Black youth); Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. URB. HEALTH 42 (2016) (finding that indirect exposures to invasive policing practices operate as illness-generating structures of society because highly surveilled neighborhoods correlated to poorer health outcomes); Katherine P. Theall et al., *Neighborhood Police Encounters, Health, and Violence in a Southern City*, 41 HEALTH AFFS. 228 (2022) (arguing that the negative health outcomes that did not rely on personal encounters with police, suggesting that people living in frequently policed neighborhoods need not experience direct contact with the police to be affected by the stress of the events and instead may experience negative outcomes based on indirect involvement, such as witnessing police stops); Emily Widra, *Despite Fewer People Experiencing Police Contact, Racial Disparities in Arrests, Police Misconduct, and Police Use of Force Continue*, PRISON POLY INITIATIVE (December 19, 2024), https://www.prisonpolicy.org/blog/2024/12/19/policing_survey_2022 [<https://perma.cc/6XZ8-B82N>] (analyzing the 2022 Bureau of Justice Statistics’ Public-Police Contact report and finding that a decrease in police encounters does little to address racism in policing); Fleda Mask Jackson et al., *Anticipated Negative Police-Youth Encounters and Depressive Symptoms Among Pregnant African American Women: A Brief Report*, 94 J. URB. HEALTH 259 (2017) (observing associations between antenatal depressive symptoms and anticipated negative police-youth encounters, creating unique psychosocial risks for pregnant African American women).

187. *Id.*

recent dissents and concurrences from the New York Court of Appeals highlight a resurgence in judges' frustration with *De Bour*.¹⁸⁸ Additionally, within the last decade, the New York State Bar Association released a comprehensive report comparing New York's approach to citizen encounters with the police to other states and the federal courts, advocating for the end of *De Bour*.¹⁸⁹ Legislators should use this renewed political will to enact necessary change and end the use of *De Bour*.

A. Overruling or Overriding *De Bour*

In *Hollman*, the Court of Appeals declined to overrule *De Bour*, explaining that “constitutional law and common law both played a part in the articulation of the four-part test.”¹⁹⁰ In addition to interpretation of the federal or New York state constitutional language, *De Bour* was also based on “considerations of reasonableness and sound State policy.”¹⁹¹ The Court of Appeals instead took *Hollman* as an opportunity to clarify the difference between Level 1 and Level 2, affirming *De Bour*'s framework as workable and protective.¹⁹² Now, thirty years after *Hollman* and fifty years after *De Bour*, further common-law development of the *De Bour* framework has not salvaged its workability.¹⁹³

The New York Court of Appeals should overrule *De Bour*. According to New York stare decisis principles, a case may be overruled only when there is a compelling justification, such as if the case led to a rule that is unworkable, creates more questions than it resolves, or “no longer serves the ends of justice or withstands the cold light of logic and experience.”¹⁹⁴ *De Bour* presents several compelling justifications for overruling: it is unworkable, creates

188. See *supra* Section I.C (describing recent Court of Appeals dissents and concurrences that elucidate judicial disagreements on the vitality of *De Bour*).

189. CLOSE ENCOUNTERS, *supra* note 2, at 1–2, 149 (arguing in favor of reevaluating and departing from the *De Bour* framework).

190. *People v. Hollman*, 79 N.Y.2d 181, 194–95 (1992). In this case, the government argued that *De Bour* should be overturned because many Supreme Court cases since *Terry* have clarified that “police-initiated encounters falling short of actual seizures do not implicate the Fourth Amendment.” *Id.* at 194.

191. *Id.* at 195.

192. *Id.* at 196.

193. *Cf.* Sack, *supra* note 125, at 559 (arguing, in 1991, that the *De Bour* framework can be salvaged with minor adjustments to its application).

194. 28 TRACY BATEMAN, ET AL., N.Y. JUR. 2D *Courts and Judges* § 230 (2025) (citing *Higby v. Mahoney*, 48 N.Y.2d 15 (1979); *People v. Peque*, 22 N.Y.3d 168 (2013); *People v. Bing*, 76 N.Y.2d 331 (1990)).

more questions than it resolves, and is indefensible because it no longer serves the ends of justice and fails to stand up to logical scrutiny and real-world experience.¹⁹⁵ The Court of Appeals should replace the tiered approach under *De Bour* with an articulable suspicion of an ongoing or completed felony or misdemeanor requirement for all police-initiated encounters. Although a requirement for articulable suspicion of an ongoing or completed felony or misdemeanor is not necessarily immune from human error or implicit bias, it would at least require police to move away from vague justifications and incrementally invading the liberty interest of individuals.¹⁹⁶

Impact litigators should identify plaintiffs to challenge *De Bour*.¹⁹⁷ To overrule *De Bour*, practitioners should make sure to raise the argument early in litigation, thus preserving it for appeal. Litigators should look for cases like *Blandford*¹⁹⁸—perhaps other canine sniff search cases—where the application of *De Bour* strikingly contradicts the federal constitutional standard. Such a canine sniff search case could be especially primed to overrule *De Bour* if the case does not involve the lying-in-wait tactic of policing: in *Blandford*, because the police officer was pursuing the defendant based on preconceived impressions, the Court of Appeals exercised exceptional deference, failing to engage with the facts in their analysis.¹⁹⁹

195. *Id.* See *supra* Section II.A (articulating the unworkability of the *De Bour* framework through an analysis of the problematic sliding scale).

196. An articulable suspicion requirement would satisfy Judge Rivera's concerns in her concurrence in *Johnson*: "To better ensure public safety and protect the rights of individuals and diverse communities from abusive and ineffective policing, we should require all police-initiated encounters to be justified on reasonable suspicion and actual signs of criminality—i.e., reasonable suspicion of an ongoing or completed felony or misdemeanor." *People v. Johnson*, 40 N.Y.3d 172, 195 (2023) (Rivera, J., concurring).

197. Organizations like the Legal Aid Society, the oldest and largest provider of public defense in the nation, and NYCLU, who have conducted extensive research on NYPD stop and frisk policies and misconduct, are well positioned for this work. Codifying a new standard under criminal procedure will potentially have a slow remedial effect on New Yorkers but should be explored as a viable option to address the harms of *De Bour*.

198. See *supra* notes 157–169 and accompanying text, arguing that the New York courts' application of *De Bour* in *People v. Blandford*, 37 N.Y.3d 1062 (2021), allowed a lower level of suspicion to justify a canine search of defendant's vehicle than is required under the federal standard articulated in *Rodriguez*.

199. See *Blandford*, 37 N.Y.3d at 1063 (stating conclusory that "there is record support for the determination that a founded suspicion of criminal activity existed here and, thus, the issue is beyond further review"). In contrast to the majority, Judge Wilson in dissent goes through the facts of the case in detail and

Pressure from practitioners and community advocates could also assist in the overruling of *De Bour*, as such pressure has shifted police policy in related areas. Impact litigators filed amicus briefs in *People v. Barksdale*, where the Court used *De Bour* to validate unruly police conduct, allowing officers to approach any person present in a Trespass Affidavit Program-registered building.²⁰⁰ After pressure from the community pressure and the federal monitor, the NYPD discreetly closed its Trespass Affidavit Program.²⁰¹

Because the framework is mostly judge-made law, and thus subject to future changes in the courts, the legislature should also consider statutorily overriding *De Bour* by amending New York Criminal Procedure Law section 140.50(1).²⁰² This Note proposes that such an amendment should read as follows: “a police officer may only initiate an encounter with a person in a public place . . . when the police officer has articulable suspicion that such person is committing or has committed either a felony or a misdemeanor.” As noted above, removing the tiered approach and instead requiring articulable suspicion for *all* police-initiated encounters would substantially avoid the slippage and escalation caused by the current framework. Importantly, limiting criminal suspicion to acts which an individual is presently committing or has already committed will avoid the speculation and subjective perceptions of law enforcement. Specifying felony and misdemeanor behavior within the definition also serves to clarify that police are not justified in initiating contact with civilians who might be committing a simple violation.²⁰³ Further, the

explains why each of the officers’ pre-stop observations fail to justify founded suspicion. *Id.* at 1070–72 (Wilson, J., dissenting).

200. *People v. Barksdale*, 26 N.Y.3d 139, 144 (2015) (affirming the officer’s immediate approach of defendant simply because he was standing in the lobby of a TAP-registered building). The Trespass Affidavit Program allowed NYPD officers to regularly patrol privately owned apartment buildings where the landlord enrolled their buildings in the program. *Id.* at 142 n.2.

201. MYLAN DENERSTEIN, MONITOR’S AUDIT OF THE TRESPASS AFFIDAVIT PROGRAM 6 (2023) (<https://www.nypdmonitor.org/wp-content/uploads/2023/03/NYPD-Monitors-18th-Report-re-TAP.pdf>) [<https://perma.cc/LJS7-RJA2>].

202. N.Y. CRIM. PROC. LAW § 140.50(1) (MCKINNEY 2010) (incorporating the *De Bour*’s reasonable suspicion standard into statutory law).

203. In New York, a violation is any non-criminal offense. Violations are punishable by up to fifteen days in jail, court costs, or orders of protection, and they include offenses such as trespassing and disorderly conduct. *Types of Criminal Cases*, N.Y. COURTHelp, <https://www.nycourts.gov/courthelp/criminal/typesCriminalCases.shtml> [<https://perma.cc/82MV-4ZA9>].

legislative amendment should also include a definition for “articulable suspicion” that requires officers to provide objective, specific, and concrete facts to support it.

Notably, similar steps are already being taken. The pressure for change has continued to mount in recent years as the number of stops recorded by NYPD nearly tripled under Mayor Eric Adams’ tenure, with 25,386 stops reported by NYPD in 2024.²⁰⁴ In a 2023 NYPD Monitor report, the Monitor team admonished the NYPD’s lack of “accountability in the field and at all levels within the Department” and its noncompliance with the *Floyd* order.²⁰⁵ With growing concerns for unlawful encounters between officers and young people of color, the New York City Council passed the “How Many Stops Act,” overriding Mayor Eric Adams’ veto.²⁰⁶ The new law requires officers to collect and share information about low-level interactions with members of the public, including race, age, and gender.²⁰⁷ The How Many Stops Act is a move in the right direction, but, with the high stakes and high risks of police-initiated encounters, a multi-angled approach to rid New York of *De Bour* is necessary.

204. See *supra* note 113 (collecting data on NYPD stops); see also Bahar Ostadan, *NYPD Officers Now Have to Report When They Stop Someone on the Street to Ask for ID*, GOTHAMIST (Dec. 20, 2023), <https://gothamist.com/news/nypd-officers-now-have-to-report-when-they-stop-someone-on-the-street-to-ask-for-id> (on file with the *Columbia Human Rights Law Review*) (describing City Council efforts to address the recent rise in police stops); Lindsey Smith, Opinion, *Police Stops in NYC Are at Their Highest Level Since 2015. The NYPD Doesn’t Want Us to Know Just How High*, QUEENS DAILY EAGLE (Dec. 19, 2023), <https://queenseagle.com/all/2023/12/19/opinion-commonsense-how-many-stops-act-will-bring-transparency-to-police-encounters> [https://perma.cc/25DQ-NU76] (highlighting the negative effects of police stops and the need for reform in NYPD stop records).

205. DENERSTEIN, *supra* note 123, at 1 (concluding that NYPD’s practices and compliance with the *Floyd* order oversight “is inadequate at all levels”).

206. Press Release, New York City Council, *New York City Council Overrides Mayor’s Vetoes on Legislation to Support Police Transparency and Ban Solitary Confinement* (Jan. 30, 2024) (on file with the *Columbia Human Rights Law Review*).

207. Maria Cramer & Chelsia Rose Marcus, *Race, Age, Gender: What the N.Y.P.D. Must Track During Stops, and Why*, N.Y. TIMES (Feb. 3, 2024), <https://www.nytimes.com/2024/02/03/nyregion/nypd-how-many-stops-act.html> (on file with the *Columbia Human Rights Law Review*).

CONCLUSION

Street, traffic stop, and neighborhood patrol interactions represent one tipping point to the often-deadly domino effect of over-policing, overcriminalization, and unfettered suspicion. Due to the Supreme Court's continued empowerment of police discretion and the dwindling of Fourth Amendment protections to individuals, it is up to the states to protect their citizens—especially people of color—from the harms of over-policing. The *De Bour* framework represents one attempt to address sub-*Terry* stops in a manner that prioritizes the privacy and liberty interests of citizens. But New York's approach to stops, frisks, and detentions is notoriously aggressive despite the *De Bour* court's intention to protect individuals more than the federal approach.²⁰⁸ The ongoing police encroachment on civilians' rights under *De Bour* ought to serve as an example and a warning for other states looking to provide protection to their citizens during sub-*Terry* encounters with law enforcement, as well as an indicator to New York courts and legislators that change is necessary. The *De Bour* framework no longer serves the ends of justice, and the Court of Appeals should replace the tiered approach with a blanket standard requiring articulable suspicion of an ongoing or completed felony or misdemeanor for *all* police-initiated encounters.

208. See Alice Speri, *The NYPD is Still Stopping and Frisking Black People at Disproportionate Rates*, INTERCEPT (June 10, 2021), <https://theintercept.com/2021/06/10/stop-and-frisk-new-york-police-racial-disparity> (on file with the *Columbia Human Rights Law Review*) (reviewing NYPD stop reports to analyze racial disparities); Ashley Southall & Michael Gold, *Why "Stop-and-Frisk" Inflamed Black and Hispanic Neighborhoods*, N.Y. TIMES (Feb. 19, 2020), <https://www.nytimes.com/2019/11/17/nyregion/bloomberg-stop-and-frisk-new-york.html> (on file with the *Columbia Human Rights Law Review*) (describing NYPD's historically controversial stop-and-frisk policies and practices); *supra* Section I.B (detailing the intentions of the *De Bour* framework).

APPENDIX A

A. Table 1

List of frequently used factors for determining the level of suspicion during police-initiated encounters and each factor's respective definitions. The bolded factors are the top ten most frequently cited factors in the 146 cases reviewed in Table 2.

#	Factors	Definition
1	Matched description	satisfactory level match from sufficiently reliable source (person or car)
2	Proximity	spatial/geographical and/or temporal proximity to scene, incident, report
3	Furtive	includes nervous, fidget, sweating, out of breath, heavy breathing, avoiding eye contact, anxious; includes inconsistent, illogical, contradictory, vague, or evasive answers
4	Flight	includes quickening pace, running, immediate
5	High-crime area	includes areas known for illegal drug transactions, robberies, trespassing
6	Bulge	in pocket or in waistband
7	Waistband	civilian grabbed, reached, was holding, or moved toward waistband
8	Officer T/E	officer training and/or experience
9	Blading	cop speak for civilian shifting their body away from officers to obscure view
10	Ignore	includes failure to answer questions, avoiding, and unresponsiveness
11	Marijuana smell	officer detection of the smell of marijuana on or near civilian or civilian's car
12	Hand-to-hand	exchange of items, particularly currency, used during drug transactions according to law enforcement
13	Heavy object	in pocket
14	Staring	staring at officers or patrol cars
15	Prior	prior knowledge of criminal record or gang member status
16	Lied	lied to law enforcement in response to questions

17	Alone	no one else in the vicinity
18	No reg/lic/ID	no registration, license, or identification (usually during lawful traffic stop)
19	Time of day	whether early morning or late evening
20	Other	particular to the case (e.g., wearing gloves, red eyes, slurred speech, reach for pocket)

B. Table 2

List of 146 New York Appellate Division cases reviewing the trial court's suppression decision under the four-tiered *De Bour* framework in the decade following the 2013 *Floyd* order. Using the identified and defined factors in Table 1, the reasoning for each case was distilled into a formula to track the movement and slippage from *De Bour* level to level.

	Case	Formula
1	People v. Price, 971 N.Y.S.2d 635 (App. Div. 2013) (4th Dep't)	matched description + spatial and temporal proximity = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
2	People v. Vasquez, 977 N.Y.S.2d 73 (App. Div. 2013) (2d Dep't)	generally matched description + proximity = Level 2 founded suspicion + evasive/vague = Level 3 reasonable suspicion
3	People v. Salter, 974 N.Y.S.2d 737 (App. Div. 2013) (4th Dep't)	matched description + blading + not responsive = Level 3 reasonable suspicion
4	<i>In re</i> Jakwon R., 973 N.Y.S.2d 228 (App. Div. 2013) (2d Dep't)	matched description + proximity = Level 3 reasonable suspicion
5	People v. Lee, 974 N.Y.S.2d 676 (App. Div. 2013) (4th Dep't)	high-crime area + hand-to-hand = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
6	People v. Nunez, 975 N.Y.S.2d 125 (App. Div. 2013) (2d Dep't)	extremely vague description + vicinity of earlier in day activity + flight ≠ Level 3 reasonable suspicion
7	People v. Beckford, 976 N.Y.S.2d 160 (App. Div. 2013) (2d Dep't)	proximity to broken into car + walk away from complainant = Level 3 reasonable suspicion
8	<i>In re</i> Shakir J., 990 N.Y.S.2d 85 (App. Div. 2014) (2d Dep't)	high-crime area + waistband + furtive/nervous = Level 2 founded suspicion
9	People v. Laviscount, 984 N.Y.S.2d 394 (App. Div. 2014)	time of day + move something from dashboard + wearing gloves ≠ Level 1
10	People v. Harris, 997 N.Y.S.2d 481 (App. Div. 2014) (2d Dep't)	high-crime area + waistband + bulge = Level 2 founded suspicion (to ask if armed but not to frisk)
11	<i>In re</i> Shariff H., 997 N.Y.S.2d 718 (App. Div. 2014) (2d Dep't)	heavy object in pocket + furtive/fidget + staring + ignoring = Level 2 founded suspicion + bulge = Level 3 reasonable suspicion
12	People v. Ingram, 980 N.Y.S.2d 653 (App. Div. 2014) (4th Dep't)	high-crime area + general vicinity = Level 1 + reaching for pocket + flight (without bulge or outline) ≠ Level 3 reasonable suspicion
13	People v. Major, 978 N.Y.S.2d 165 (App. Div. 2014) (1st Dep't)	Passenger took item from driver of lawful traffic stop + ignoring = Level 2 founded

		suspicion (walking away ≠ flight)
14	People v. Brown, 978 N.Y.S.2d 206 (App. Div. 2014) (1st Dep't)	flight + prior knowledge ≠ Level 3 reasonable suspicion
15	People v. Wofford, 982 N.Y.S.2d 666 (App. Div. 2014) (4th Dep't)	matched description + blunt material = Level 3 reasonable suspicion
16	People v. Thomas, 979 N.Y.S.2d 34 (App. Div. 2014) (1st Dep't)	prior knowledge of companion + flight ≠ Level 3 reasonable suspicion
17	People v. Mobley, 991 N.Y.S.2d 193 (App. Div. 2014) (4th Dep't)	high-crime area + flight + emptying hands (innocuous) ≠ Level 3 reasonable suspicion (plus no visible outline of gun)
18	People v. Quarless, 999 N.Y.S.2d 488 (App. Div. 2014) (2d Dep't)	high-crime area + hand-to-hand = Level 4 probable cause
19	People v. Sykes, 995 N.Y.S.2d 883 (App. Div. 2014) (4th Dep't)	no registration, license, or ID + nervous/fidgety + suspicious answers = Level 2 founded suspicion
20	People v. Cespedes, 990 N.Y.S.2d 823 (App. Div. 2014) (2d Dep't)	hand-to-hand + officer T/E + high-crime area = Level 3 reasonable suspicion
21	<i>In re Reggie T.</i> , 993 N.Y.S.2d 27 (App. Div. 2014) (1st Dep't)	vague matched description + flight ≠ Level 3 reasonable suspicion (plus on a busy street)
22	People v. Abdul-Mateen, 4 N.Y.S.3d 310 (App. Div. 2015) (2d Dep't)	matched description + proximity = Level 2 founded suspicion + failure to comply + waistband = self-protective hand grab, then felt firearm on waist = Level 3 reasonable suspicion
23	People v. Owens, 6 N.Y.S.3d 146 (App. Div. 2015) (2d Dep't)	heavy object in pocket = Level 1 + blading = Level 2 founded suspicion + waistband = Level 3 reasonable suspicion
24	People v. Clermont, 20 N.Y.S.3d 85 (App. Div. 2015) (2d Dep't)	high-crime area + waistband + flight ≠ Level 3 reasonable suspicion
25	People v. Fletcher, 15 N.Y.S.3d 797 (App. Div. 2015) (2d Dep't)	bulge (in waistband) + officer T/E + increased walking pace = Level 3 reasonable suspicion
26	People v. Burnett, 6 N.Y.S.3d 375 (App. Div. 2015) (4th Dep't)	matched description + staring = Level 1 + failure to answer cop questions = Level 2 founded suspicion (following defendant while attempting to engage him is not seizure)
27	People v. Ellison, 1 N.Y.S.3d 594 (App. Div. 2015) (4th Dep't)	carrying bag + proximity to larceny + getaway car = Level 2 founded suspicion + false answers to inquiry = Level 3 reasonable suspicion
28	People v. Jennings, 12 N.Y.S.3d 275 (App. Div. 2015) (2d Dep't)	high-crime area + detective T/E + unusual activity of occupants of car entering, exiting, re-entering + flight = Level 3 reasonable suspicion
29	People v. Whorley, 3 N.Y.S.3d 554 (App. Div. 2015) (4th Dep't)	bouncer identified suspect and reported a gun = Level 3 reasonable suspicion

30	People v. Brown, 11 N.Y.S.3d 616 (App. Div. 2015) (2d Dep't)	partially matched description + proximity = Level 3 reasonable suspicion
31	People v. Mitchell, 11 N.Y.S.3d 731 (App. Div. 2015) (3d Dep't)	acting as lookout + dressed similar to drug dealer companions = Level 3 reasonable suspicion
32	People v. Warren, 998 N.Y.S.2d 455 (App. Div. 2015) (2d Dep't)	matched description + proximity = Level 3 reasonable suspicion
33	People v. Cook, 20 N.Y.S.3d 744 (App. Div. 2015) (3d Dep't)	matched description = Level 3 reasonable suspicion
34	People v. Roosevelt, 3 N.Y.S.3d 544 (App. Div. 2015) (4th Dep't)	nervous/sweating + avoiding cops ≠ Level 3 reasonable suspicion
35	People v. Severino, 5 N.Y.S.3d 304 (App. Div. 2015) (2d Dep't)	bulge or holster that's actually a buckle ≠ Level 3 reasonable suspicion
36	People v. Ties, 18 N.Y.S.3d 54 (App. Div. 2015) (1st Dep't)	rigidly carrying potential "booster bag" out of store ≠ Level 2 founded suspicion
37	People v. Morris, 4 N.Y.S.3d 305 (App. Div. 2015) (2d Dep't)	dropping heavy bag + ignoring cop ≠ Level 3 reasonable suspicion
38	People v. Lightfoot, 1 N.Y.S.3d 358 (App. Div. 2015) (2d Dep't)	high-crime area + knew he did not live in building + fidgety + marijuana smell = Level 3 reasonable suspicion
39	People v. Wiggins, 4 N.Y.S.3d 798 (App. Div. 2015) (4th Dep't)	no registration or license + furtive toward jacket pocket = Level 3 reasonable suspicion
40	People v. Smith, 4 N.Y.S.3d 119 (App. Div. 2015) (2d Dep't)	matched general description + proximity = Level 3 reasonable suspicion
41	<i>In re Jose T.</i> , 8 N.Y.S.3d 334 (App. Div. 2015) (2d Dep't)	matched description + proximity + flight = Level 3 reasonable suspicion
42	People v. Currie, 16 N.Y.S.3d 866 (App. Div. 2015) (2d Dep't)	matched general description + proximity = Level 3 reasonable suspicion
43	People v. Baksh, 5 N.Y.S.3d 443 (App. Div. 2015) (2d Dep't)	proximity + no one else in vicinity = Level 2 founded suspicion + waistband + L-shaped bulge + flight = Level 3 reasonable suspicion
44	People v. Williams, 12 N.Y.S.3d 699 (App. Div. 2015) (4th Dep't)	matched description + proximity + nervous/sweating/heavy breathing + flight = Level 3 reasonable suspicion
45	People v. Johnson, 10 N.Y.S.3d 371 (App. Div. 2015) (4th Dep't)	outline of handgun = Level 2 founded suspicion + confirmation from defendant that he had a handgun = Level 3 reasonable suspicion
46	People v. Thompson, 8 N.Y.S.3d 185 (App. Div. 2015) (1st Dep't)	flight of companion ≠ Level 3 reasonable suspicion
47	People v. Thompson, 17 N.Y.S.3d 820 (App. Div. 2015) (4th Dep't)	matched description + proximity = Level 3 reasonable suspicion
48	People v. Savage, 28 N.Y.S.3d 184 (App. Div. 2016) (4th Dep't)	high-crime area + staring ≠ Level 1
49	People v. Hightower, 25 N.Y.S.3d 764 (App. Div. 2016) (4th Dep't)	lawful traffic stop (Level 1) + fidgety/nervous + illogical and contradictory answers ≠ Level

		2 founded suspicion + walking away ≠ Level 3 reasonable suspicion
50	People v. Morris, 29 N.Y.S.3d 653 (App. Div. 2016) (3d Dep't)	bike traffic stop = Level 3 reasonable suspicion to stop + flight = Level 3 reasonable suspicion to pursue, stop and frisk
51	People v. Perez, 37 N.Y.S.3d 243 (App. Div. 2016) (1st Dep't)	high-crime area + avoid cops = Level 1 + ignoring + bulge (in sleeve) = Level 3 reasonable suspicion
52	People v. Graves, 37 N.Y.S.3d 131 (App. Div. 2016) (2d Dep't)	time of night + car speeding + high-crime area + furtive + ignoring + abnormal bulge (in groin) = Level 3 reasonable suspicion
53	People v. Tucker, 34 N.Y.S.3d 744 (App. Div. 2016) (3d Dep't)	failure to answer ≠ Level 3 reasonable suspicion
54	People v. Osteen, 44 N.Y.S.3d 650 (App. Div. 2016) (4th Dep't)	high-crime area + staring + prior knowledge + looking around = Level 1 + flight + visible handgun = Level 4 probable cause
55	People v. McClain, 43 N.Y.S.3d 195 (App. Div. 2016) (3d Dep't)	proximity + partially matched description + sweating/out of breath = Level 3 reasonable suspicion
56	People v. Santiago, 38 N.Y.S.3d 363 (App. Div. 2016) (4th Dep't)	matched general description + proximity = Level 3 reasonable suspicion
57	People v. Elliott, 32 N.Y.S.3d 801 (App. Div. 2016) (4th Dep't)	waistband + bending down to floor of car ≠ Level 3 reasonable suspicion
58	People v. Feliciano, 32 N.Y.S.3d 435 (App. Div. 2016) (4th Dep't)	generally matched description + proximity = Level 1 + waistband + flight = Level 3 reasonable suspicion
59	People v. Goldson, 26 N.Y.S.3d 543 (App. Div. 2016) (2d Dep't)	large bulge (in waistband) + hand move down bulge + officer T/E = Level 3 reasonable suspicion
60	People v. Cabrera, 22 N.Y.S.3d 418 (App. Div. 2016) (1st Dep't)	arguing with person on street = Level 2 founded suspicion to ask if armed + reach for knife = Level 3 reasonable suspicion
61	People v. Williams, 39 N.Y.S.3d 482 (App. Div. 2016) (2d Dep't)	matched description + proximity + tracked by K9 = Level 3 reasonable suspicion
62	People v. Simmons, 52 N.Y.S.3d 762 (App. Div. 2017) (4th Dep't)	high-crime area + officer T/E + waistband = Level 2 founded suspicion to show hands
63	People v. Newson, 64 N.Y.S.3d 248 (App. Div. 2017) (2d Dep't)	lawful traffic stop + companion matched description ≠ Level 2 founded suspicion
64	People v. Jones, 64 N.Y.S.3d 803 (App. Div. 2017) (4th Dep't)	high-crime area + furtive + waistband + matched description from day before + known gang member = Level 2 founded suspicion + immediate flight = Level 3 reasonable suspicion
65	People v. Nance, 52 N.Y.S.3d 589 (App. Div. 2017) (4th Dep't)	high-crime area + avoiding cops + wearing gloves + bulge (in pocket) + flight = Level 3 reasonable suspicion

66	People v. Brown, 48 N.Y.S.3d 865 (App. Div. 2017) (4th Dep't)	proximity + possible hand-to-hand = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
67	People v. Hough, 57 N.Y.S.3d 780 (App. Div. 2017) (4th Dep't)	marijuana smell = Level 3 reasonable suspicion + companion flight = Level 3 reasonable suspicion
68	People v. Rose, 65 N.Y.S.3d 323 (App. Div. 2017) (3d Dep't)	proximity + walking fast away from reported stolen car ≠ Level 2 founded suspicion
69	People v. Gates, 59 N.Y.S.3d 636 (App. Div. 2017) (4th Dep't)	nervousness/fidgeting + illogical or contradictory answers to Level 1 ≠ Level 2 founded suspicion
70	People v. Jordan, 68 N.Y.S.3d 250 (App. Div. 2017) (4th Dep't)	high-crime area + looked similar to mugshot list + sock with L-shape object = Level 1 + nervous + blading = Level 2 founded suspicion
71	People v. Davis, 65 N.Y.S.3d 253 (N.Y. App. Div. 2017) (3d Dep't)	inconsistent answers + lied + marijuana smell = Level 2 founded suspicion
72	People v. Vieweg, 65 N.Y.S.3d 275 (App. Div. 2017) (3d Dep't)	proximity + matched description + avoided cops + failed to stop in response to cop's demand = Level 3 reasonable suspicion
73	People v. Banks, 50 N.Y.S.3d 583 (App. Div. 2017) (3d Dep't)	inconsistent answers + lied + nervous + parolee = Level 2 founded suspicion
74	People v. Peterkin, 61 N.Y.S.3d 398 (App. Div. 2017) (4th Dep't)	matched description = Level 1 + false ID/lied = Level 2 founded suspicion
75	People v. Dogan, 62 N.Y.S.3d 667 (App. Div. 2017) (4th Dep't)	matched description + proximity = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
76	People v. Martin, 66 N.Y.S.3d 572 (App. Div. 2017) (3d Dep't)	lawful traffic stop + officer T/E + no ID + extremely nervous + erratic movements = Level 2 founded suspicion (for self-protective pat)
77	<i>In re Lavon S.</i> , 61 N.Y.S.3d 37 (App. Div. 2017) (2d Dep't)	proximity = Level 2 founded suspicion + bulge (in waistband) = Level 3 reasonable suspicion
78	People v. Roberson, 64 N.Y.S.3d 835 (App. Div. 2017) (4th Dep't)	lawful traffic stop + waistband + blading + sound of metal on metal (gun hitting car) = Level 3 reasonable suspicion
79	People v. Casey, 52 N.Y.S.3d 377 (App. Div. 2017) (2d Dep't)	bulge (in pocket) + large/heavy object = Level 2 founded suspicion + confirmation = Level 3 reasonable suspicion
80	People v. Bowers, 50 N.Y.S.3d 138 (App. Div. 2017) (2d Dep't)	proximity + matched car description = Level 3 reasonable suspicion
81	People v. White, 71 N.Y.S.3d 568 (App. Div. 2018) (2d Dep't)	passenger of lawful traffic stop + nervousness ≠ Level 2 founded suspicion (no bulge, no waistband, no furtive movements)
82	People v. Jones, 85 N.Y.S.3d 75 (App. Div. 2018) (2d Dep't)	nondescript bulge (in pocket) + walking away from request to stop by cops ≠ Level 3 reasonable suspicion

83	People v. Roberts, 70 N.Y.S.3d 688 (App. Div. 2018) (4th Dep't)	proximity = Level 1 (did not match description so no reasonable suspicion)
84	People v. Rodriguez, 75 N.Y.S.3d 523 (App. Div. 2018) (2d Dep't)	lawful traffic stop + furtive + heavy breathing + lack of eye contact = Level 3 reasonable suspicion
85	People v. Smith, 90 N.Y.S.3d 431 (App. Div. 2018) (4th Dep't)	high-crime area + staring (furtive/evasive) + marijuana smell = Level 2 founded suspicion
86	People v. Tyler, 88 N.Y.S.3d 724 (App. Div. 2018) (4th Dep't)	high-crime area + startled by cop car + bulge + late hour + no one else in vicinity = Level 1 + implausible answers = Level 2 founded suspicion + display of handgun + flight = Level 3 reasonable suspicion
87	People v. Holz, 90 N.Y.S.3d 724 (App. Div. 2018) (4th Dep't)	vague tip + sweaty/fidgety ≠ founded or reasonable suspicion
88	People v. Harvey, 89 N.Y.S.3d 817 (App. Div. 2018) (4th Dep't)	security guard ID & report of gun in waistband = Level 2 founded suspicion + bulge + furtive + reach for waistband = Level 3 reasonable suspicion
89	People v. Wheeler, 72 N.Y.S.3d 220 (App. Div. 2018) (3d Dep't)	proximity + partial description match + marijuana smell + officer T/E = Level 3 reasonable suspicion
90	People v. Lawson, 82 N.Y.S.3d 568 (App. Div. 2018) (2d Dep't)	lawful traffic stop + proximity + car matched description = Level 3 reasonable suspicion
91	People v. Sutton, 90 N.Y.S.3d 109 (App. Div. 2018) (2d Dep't)	officer T/E + hand-to-hand = Level 3 reasonable suspicion
92	People v. Thomas, 90 N.Y.S.3d 439 (App. Div. 2018) (4th Dep't)	matched general description + proximity + blading + evasive and inconsistent answers = Level 3 reasonable suspicion
93	People v. Booth, 70 N.Y.S.3d 704 (App. Div. 2018) (4th Dep't)	lawful traffic stop + officer T/E re: meth production = Level 1 + chemical order + bulge (in pocket) = Level 3 reasonable suspicion
94	People v. Jackson, 78 N.Y.S.3d 419 (App. Div. 2018) (2d Dep't)	Level 2 founded suspicion + flight = Level 3 reasonable suspicion
95	People v. Pruitt, 70 N.Y.S.3d 691 (App. Div. 2018) (4th Dep't)	proximity + matched description = Level 3 reasonable suspicion
96	People v. Bilal, 96 N.Y.S.3d 1 (App. Div. 2019) (1st Dep't)	vague general description + flight ≠ Level 3 reasonable suspicion
97	People v. Stevens, 98 N.Y.S.3d 239 (App. Div. 2019) (2d Dep't)	matched description + proximity = Level 2 founded suspicion + waistband + fled = Level 3 reasonable suspicion
98	People v. Hunter, 115 N.Y.S.3d 241 (App. Div. 2019) (1st Dep't)	bulge (in sleeve) = Level 2 founded suspicion + unresponsiveness + blading = ok to grab bulge
99	People v. Pettiford, 101 N.Y.S.3d 797 (App. Div. 2019) (4th Dep't)	matched description + proximity + car matched description = Level 3 reasonable suspicion

100	People v. Ramirez, 112 N.Y.S.3d 723 (App. Div. 2019) (1st Dep't)	matched description + proximity + walking, stopped, then walk again = Level 3 reasonable suspicion
101	People v. Ravenell, 107 N.Y.S.3d 408 (App. Div. 2019) (2d Dep't)	vague description + flight + hand placement ≠ Level 3 reasonable suspicion (no bulge)
102	People v. Jones, 105 N.Y.S.3d 252 (App. Div. 2019) (4th Dep't)	vague generic description + proximity near large apt + flight ≠ Level 3 reasonable suspicion
103	People v. Harmon, 96 N.Y.S.3d 783 (App. Div. 2019) (4th Dep't)	matched description + proximity = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
104	People v. Williams, 112 N.Y.S.3d 836 (App. Div. 2019) (4th Dep't)	car matched description + fully reclined in driver seat = Level 2 founded suspicion (not reasonable suspicion)
105	People v. Nichols, 106 N.Y.S.3d 532 (App. Div. 2019) (4th Dep't)	hand-to-hand + high-crime area + furtive + packaging material for narcotics = Level 4 probable cause to stop car
106	People v. Dunbar, 116 N.Y.S.3d 293 (App. Div. 2019) (2d Dep't)	matched description + proximity = Level 3 reasonable suspicion
107	People v. Stover, 120 N.Y.S.3d 650 (App. Div. 2020) (3d Dep't)	high-crime area + arguing on phone in lawfully parked car does not suggest criminality or safety concerns
108	People v. Johnson, 134 N.Y.S.3d 877 (App. Div. 2020) (4th Dep't)	car matched description + proximity (+ flight) = Level 3 reasonable suspicion
109	People v. Atkinson, 128 N.Y.S.3d 129 (App. Div. 2020) (4th Dep't)	proximity + matched description = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
110	People v. Ross, 128 N.Y.S.3d 747 (App. Div. 2020) (4th Dep't)	lawful traffic stop + car matched description + furtive = pat-down frisk + flight = Level 3 reasonable suspicion
111	People v. Wallace, 120 N.Y.S.3d 525 (App. Div. 2020) (4th Dep't)	high-crime area + officer T/E + wearing mask in cold ≠ Level 2 founded suspicion
112	People v. McCurbin, 135 N.Y.S.3d 137 (App. Div. 2020) (2d Dep't)	gun handle in waistband + flight = Level 3 reasonable suspicion
113	People v. Fitts, 135 N.Y.S.3d 731 (App. Div. 2020) (4th Dep't)	car proximity = Level 2 founded suspicion, no reasonable suspicion to stop car
114	People v. Williams, 126 N.Y.S.3d 565 (App. Div. 2020) (3d Dep't)	matched description = Level 2 founded suspicion + flight = Level 3 reasonable suspicion
115	People v. Smith, 126 N.Y.S.3d 819 (App. Div. 2020) (3d Dep't)	matched description = Level 3 reasonable suspicion
116	People v. Eugenio, 128 N.Y.S.3d 233 (App. Div. 2020) (2d Dep't)	unconscious in parked car = Level 1
117	People v. Nazario, 119 N.Y.S.3d 778 (App. Div. 2020) (4th Dep't)	vague description ≠ Level 3 reasonable suspicion
118	People v. Lawrence, 135 N.Y.S.3d	Level 1 + flight + discarded what looked like a

	441 (App. Div. 2020) (2d Dep't)	gun = Level 3 reasonable suspicion
119	People v. Martinez-Gonzalez, 134 N.Y.S.3d 599 (App. Div. 2020) (4th Dep't)	proximity + innocuous behavior = Level 2 founded suspicion + high-crime area ≠ Level 3 reasonable suspicion
120	People v. Wright, 148 N.Y.S.3d 585 (App. Div. 2021) (4th Dep't)	can in paper bag + blading + waistband = Level 1, not founded suspicion
121	People v. Parker, 150 N.Y.S.3d 575 (App. Div. 2021) (2d Dep't)	matched report + red eyes + slurred speech + anxious = Level 3 reasonable suspicion
122	People v. Brown, 156 N.Y.S.3d 276 (App. Div. 2021) (2d Dep't)	nervous + pacing in store ≠ Level 1 or Level 2
123	People v. Ahmad, 146 N.Y.S.3d 302 (App. Div. 2021) (2d Dep't)	driving slowly ≠ Level 3 reasonable suspicion because no description match
124	People v. Nelson, 157 N.Y.S.3d 292 (App. Div. 2021) (2d Dep't)	handgun = Level 3 reasonable suspicion
125	People v. King, 154 N.Y.S.3d 619 (App. Div. 2021) (4th Dep't)	high-crime area + parked car + 3 occupants ≠ Level 3 reasonable suspicion
126	People v. Johnson, 152 N.Y.S.3d 387 (App. Div. 2021) (4th Dep't)	proximity + matched general description = Level 3 reasonable suspicion
127	People v. Bethea, 141 N.Y.S.3d 633 (App. Div. 2021) (4th Dep't)	lawful traffic stop + furtive + chalky crumbs look like crack cocaine = Level 3 reasonable suspicion and probable cause
128	People v. Dixon, 164 N.Y.S.3d 354 (App. Div. 2022) (4th Dep't)	high-crime area = Level 1
129	People v. Ginty, 167 N.Y.S.3d 701 (App. Div. 2022) (4th Dep't)	furtive + blading + waistband + reached slowly = Level 3 reasonable suspicion
130	People v. Jones, 162 N.Y.S.3d 145 (App. Div. 2022) (2d Dep't)	hand-to-hand + high-crime area + officer T/E + furtive = relevant factors but without hand-to-hand, no reasonable suspicion or probable cause
131	People v. Bowes, 170 N.Y.S.3d 334 (App. Div. 2022) (3d Dep't)	high-crime area + cradling plastic bag + speed walking away from patrol car = Level 2 founded suspicion
132	People v. Thorne, 169 N.Y.S.3d 63 (App. Div. 2022) (1st Dep't)	race match only not enough for Level 3 reasonable suspicion
133	People v. Wright, 178 N.Y.S.3d 662 (App. Div. 2022) (4th Dep't)	proximity + matched description + marijuana smell = Level 3 reasonable suspicion
134	People v. Medina, 175 N.Y.S.3d 625 (App. Div. 2022) (3d Dep't)	inconsistent answers + parolee + sitting unusual = Level 2 founded suspicion + bulge (in waistband) = Level 3 reasonable suspicion
135	People v. Robles, 180 N.Y.S.3d 752 (App. Div. 2022) (4th Dep't)	proximity + matched description + bulge (in waistband) = Level 3 reasonable suspicion
136	People v. Dantzer, 172 N.Y.S.3d 738 (App. Div. 2022) (2d Dep't)	matched general description + proximity = Level 3 reasonable suspicion
137	People v. Joyette, 194 N.Y.S.3d 287 (App. Div. 2023) (2d Dep't)	marijuana smell after stopping car cannot justify reasonable suspicion

138	People v. Richardson, 194 N.Y.S.3d 157 (App. Div. 2023) (2d Dep't)	matched general description + proximity = Level 3 reasonable suspicion
139	People v. Diallo, 181 N.Y.S.3d 888 (App. Div. 2023) (1st Dep't)	heavy object in pocket = Level 1 (not founded suspicion) + flight + nervousness ≠ Level 3 reasonable suspicion
140	People v. Watkins, 200 N.Y.S.3d 217 (App. Div. 2023) (4th Dep't)	partially matched description + no one else in vicinity = Level 2 founded suspicion + hand in pocket or waistband + flight = Level 3 reasonable suspicion
141	People v. Austin, 185 N.Y.S.3d 460 (App. Div. 2023) (4th Dep't)	inadequate match + flight ≠ Level 3 reasonable suspicion
142	People v. Watkins, 199 N.Y.S.3d 148 (App. Div. 2023) (2d Dep't)	officer T/E + marijuana smell = Level 3 reasonable suspicion
143	People v. Rhames, 192 N.Y.S.3d 589 (App. Div. 2023) (2d Dep't)	heavy object in pocket + flight ≠ Level 3 reasonable suspicion
144	People v. Avant, 187 N.Y.S.3d 785 (App. Div. 2023) (2d Dep't)	matched description + proximity + heavy object in sweatshirt = follow defendant + holding gun = Level 4 probable cause
145	People v. Baez-Caban, 199 N.Y.S.3d 484 (App. Div. 2023) (1st Dep't)	prior knowledge + proximity = Level 2 founded suspicion
146	People v. Beltran, 183 N.Y.S.3d 239 (App. Div. 2023) (4th Dep't)	proximity + matched description + no one else in vicinity = Level 3 reasonable suspicion

C. Table 3

New York Appellate Division cases reviewing the trial court's suppression decision in the decade following the 2013 *Floyd* order that were not reviewed under the *De Bour* four-tiered framework and not included in the qualitative findings.

1	<i>In re Kareem J.</i> , 974 N.Y.S.2d 511 (App. Div. 2013) (2d Dep't)
2	<i>People v. Sykes</i> , 972 N.Y.S.2d 758 (App. Div. 2013) (4th Dep't)
3	<i>People v. Price</i> , 977 N.Y.S.2d 524 (App. Div. 2013) (4th Dep't)
4	<i>People v. Nichols</i> , 985 N.Y.S.2d 676 (App. Div. 2014) (2d Dep't)
5	<i>People v. Ramos</i> , 997 N.Y.S.2d 24 (App. Div. 2014) (1st Dep't)
6	<i>People v. Loper</i> , 981 N.Y.S.2d 806 (App. Div. 2014) (2d Dep't)
7	<i>People v. Bellamy</i> , 987 N.Y.S.2d 666 (App. Div. 2014) (3d Dep't)
8	<i>People v. Mercado</i> , 992 N.Y.S.2d 12 (App. Div. 2014) (1st Dep't)
9	<i>People v. Portelli</i> , 983 N.Y.S.2d 355 (App. Div. 2014) (3d Dep't)
10	<i>In re Jashaun A.</i> , 996 N.Y.S.2d 357 (App. Div. 2014) (2d Dep't)
11	<i>People v. Robinson</i> , 996 N.Y.S.2d 433 (App. Div. 2014) (4th Dep't)
12	<i>People v. Mitchell</i> , 992 N.Y.S.2d 112 (App. Div. 2014) (2d Dep't)
13	<i>People v. Layou</i> , 979 N.Y.S.2d 723 (App. Div. 2014) (4th Dep't)
14	<i>People v. Nonni</i> , 20 N.Y.S.3d 345 (App. Div. 2015) (1st Dep't)
15	<i>People v. Robinson</i> , 22 N.Y.S.3d 771 (App. Div. 2015) (4th Dep't)
16	<i>In re Eljihn C.</i> , 22 N.Y.S.3d 206 (App. Div. 2015) (2d Dep't)
17	<i>People v. Cintron</i> , 2 N.Y.S.3d 715 (App. Div. 2015) (4th Dep't)
18	<i>In re Kawon W.</i> , 9 N.Y.S.3d 25 (App. Div. 2015) (1st Dep't)
19	<i>People v. Harris</i> , 17 N.Y.S.3d 225 (App. Div. 2015) (4th Dep't)
20	<i>Matter of Stewart v. Fiala</i> , 12 N.Y.S.3d 138 (App. Div. 2015) (2d Dep't)
21	<i>People v. Smith</i> , 22 N.Y.S.3d 783 (App. Div. 2015) (4th Dep't)
22	<i>People v. Farnsworth</i> , 22 N.Y.S.3d 612 (App. Div. 2015) (3d Dep't)

23	People v. Godallah, 19 N.Y.S.3d 119 (App. Div. 2015) (3d Dep't)
24	People v. Howard, 12 N.Y.S.3d 708 (App. Div. 2015) (4th Dep't)
25	People v. Graham, 21 N.Y.S.3d 702 (App. Div. 2015) (2d Dep't)
26	People v. Witt, 11 N.Y.S.3d 767 (App. Div. 2015) (4th Dep't)
27	People v. Bradley, 26 N.Y.S.3d 653 (App. Div. 2016) (4th Dep't)
28	People v. Carter, 38 N.Y.S.3d 855 (App. Div. 2016) (4th Dep't)
29	People v. Ortiz, 35 N.Y.S.3d 536 (App. Div. 2016) (3d Dep't)
30	People v. O'Brien, 32 N.Y.S.3d 741 (App. Div. 2016) (3d Dep't)
31	People v. Coronado, 30 N.Y.S.3d 628 (App. Div. 2016) (1st Dep't)
32	People v. Karagoz, 39 N.Y.S.3d 217 (App. Div. 2016) (2d Dep't)
33	People v. Hill, 57 N.Y.S.3d 14 (App. Div. 2017) (1st Dep't)
34	People v. Rong He, 68 N.Y.S.3d 130 (App. Div. 2017) (2d Dep't)
35	People v. Lewis, 57 N.Y.S.3d 62 (App. Div. 2017) (2d Dep't)
36	People v. Hutthinson, 54 N.Y.S.3d 116 (App. Div. 2017) (2d Dep't)
37	People v. Sweat, 51 N.Y.S.3d 299 (App. Div. 2017) (4th Dep't)
38	People v. Small, 67 N.Y.S.3d 249 (App. Div. 2017) (2d Dep't)
39	People v. Noble, 63 N.Y.S.3d 401 (App. Div. 2017) (2d Dep't)
40	Schoonmaker v. N.Y. Dep't of Motor Vehicles, 85 N.Y.S.3d 222 (App. Div. 2018) (2d Dep't)
41	People v. Box, 85 N.Y.S.3d 132 (App. Div. 2018) (2d Dep't)
42	People v. Quaye, 89 N.Y.S.3d 225 (App. Div. 2018) (2d Dep't)
43	People v. Whitehead, 78 N.Y.S.3d 840 (App. Div. 2018) (4th Dep't)
44	People v. Reed, 73 N.Y.S.3d 718 (App. Div. 2018) (4th Dep't)
45	People v. Fleck, 89 N.Y.S.3d 281 (App. Div. 2018) (2d Dep't)
46	People v. Terry, 87 N.Y.S.3d 15 (App. Div. 2018) (1st Dep't)
47	People v. Bailey, 82 N.Y.S.3d 514 (App. Div. 2018) (2d Dep't)
48	People v. Swain, 90 N.Y.S.3d 403 (App. Div. 2019) (3d Dep't)

49	People v. Sarkodie, 100 N.Y.S.3d 63 (App. Div. 2019) (2d Dep't)
50	People v. Harvey, 96 N.Y.S.3d 785 (App. Div. 2019) (4th Dep't)
51	People v. Champion, 97 N.Y.S.3d 555 (App. Div. 2019) (4th Dep't)
52	People v. Lawhorn, 112 N.Y.S.3d 631 (App. Div. 2019) (4th Dep't)
53	People v. Cole, 121 N.Y.S.3d 714 (App. Div. 2020) (4th Dep't)
54	People v. Griffin, 136 N.Y.S.3d 619 (App. Div. 2020) (4th Dep't)
55	People v. Grays, 114 N.Y.S.3d 531 (App. Div. 2020) (3d Dep't)
56	People v. Mabry, 126 N.Y.S.3d 160 (App. Div. 2020) (2d Dep't)
57	People v. Ringrose, 130 N.Y.S.3d 176 (App. Div. 2020) (4th Dep't)
58	People v. Hernandez, 131 N.Y.S.3d 456 (App. Div. 2020) (4th Dep't)
59	People v. Miller, 134 N.Y.S.3d 605 (App. Div. 2020) (4th Dep't)
60	McCaul v. N.Y. Dep't of Motor Vehicles, 117 N.Y.S.3d 692 (App. Div. 2020) (2d Dep't)
61	People v. Rice, 125 N.Y.S.3d 728 (App. Div. 2020) (2d Dep't)
62	People v. Gonzalez, 121 N.Y.S.3d 625 (App. Div. 2020) (2d Dep't)
63	People v. Allen, 135 N.Y.S.3d 211 (App. Div. 2020) (4th Dep't)
64	People v. Spradlin, 136 N.Y.S.3d 517 (App. Div. 2020) (3d Dep't)
65	People v. Gonzales, 129 N.Y.S.3d 823 (App. Div. 2020) (2d Dep't)
66	Burns v. City of New York, 120 N.Y.S.3d 360 (App. Div. 2020) (2d Dep't)
67	People v. Sanders, 128 N.Y.S.3d 350 (App. Div. 2020) (3d Dep't)
68	People v. Faulk, 128 N.Y.S.3d 43 (App. Div. 2020) (2d Dep't)
69	People v. Magee, 159 N.Y.S.3d 793 (App. Div. 2021) (4th Dep't)
70	People v. Rodriguez, 147 N.Y.S.3d 678 (App. Div. 2021) (2d Dep't)
71	Shaw v. City of Rochester, 161 N.Y.S.3d 536 (App. Div. 2021) (4th Dep't)
72	People v. South, 155 N.Y.S.3d 132 (App. Div. 2021) (2d Dep't)
73	People v. Mortel, 152 N.Y.S.3d 68 (App. Div. 2021) (2d Dep't)
74	People v. Mosquito, 152 N.Y.S.3d 152 (App. Div. 2021) (2d Dep't)

75	People v. Addison, 157 N.Y.S.3d 214 (App. Div. 2021) (4th Dep't)
76	People v. Murray, 146 N.Y.S.3d 707 (App. Div. 2021) (4th Dep't)
77	People v. Contreras, 147 N.Y.S.3d 675 (App. Div. 2021) (2d Dep't)
78	White v. N.Y. Tax Appeals Tribunal, 150 N.Y.S.3d 414 (App. Div. 2021) (3d Dep't)
79	People v. Ibrahim, 147 N.Y.S.3d 836 (App. Div. 2021) (4th Dep't)
80	People v. Benbow, 145 N.Y.S.3d 584 (App. Div. 2021) (2d Dep't)
81	People v. Rhames, 149 N.Y.S.3d 550 (App. Div. 2021) (2d Dep't)
82	People v. Butler, 148 N.Y.S.3d 286 (App. Div. 2021) (3d Dep't)
83	People v. Burgos, 156 N.Y.S.3d 213 (App. Div. 2021) (2d Dep't)
84	People v. Biggs, 175 N.Y.S.3d 117 (App. Div. 2022) (2d Dep't)
85	People v. Davis, 166 N.Y.S.3d 377 (App. Div. 2022) (3d Dep't)
86	People v. Hodge, 170 N.Y.S.3d 436 (App. Div. 2022) (4th Dep't)
87	People v. Roots, 178 N.Y.S.3d 671 (App. Div. 2022) (4th Dep't)
88	People v. Jones, 179 N.Y.S.3d 728 (App. Div. 2022) (2d Dep't)
89	People v. Bonich, 171 N.Y.S.3d 910 (App. Div. 2022) (2d Dep't)
90	People v. Noble, 180 N.Y.S.3d 262 (App. Div. 2022) (2d Dep't)
91	People v. Vazquez, 180 N.Y.S.3d 612 (App. Div. 2022) (2d Dep't)
92	People v. Moore, 170 N.Y.S.3d 912 (App. Div. 2022) (2d Dep't)
93	People v. Rice, 166 N.Y.S.3d 57 (App. Div. 2022) (2d Dep't)
94	People v. Lewis, 172 N.Y.S.3d 116 (App. Div. 2022) (2d Dep't)
95	People v. Hatchett, 170 N.Y.S.3d 553 (App. Div. 2022) (1st Dep't)
96	People v. Turner, 160 N.Y.S.3d 626 (App. Div. 2022) (2d Dep't)
97	People v. Johnson, 169 N.Y.S.3d 773 (App. Div. 2022) (4th Dep't)
98	People v. Gomez, 168 N.Y.S.3d 128 (App. Div. 2022) (2d Dep't)
99	People v. Dubuisson, 169 N.Y.S.3d 140 (App. Div. 2022) (2d Dep't)
100	People v. Baker, 167 N.Y.S.3d 550 (App. Div. 2022) (2d Dep't)

101	People v. Johnson, 186 N.Y.S.3d 664 (App. Div. 2023) (2d Dep't)
102	People v. Brooks, 186 N.Y.S.3d 475 (App. Div. 2023) (4th Dep't)