



**The Barbara McDowell and Gerald S. Hartman Foundation
National Center for Law and Economic Justice - Midyear Report
April 1, 2019**

Overview

Since our inception, NCLEJ has been committed to advocacy on behalf of low-income individuals and families. That commitment, in addition to our successful work around the criminalization of poverty, and the disproportionate impact of such practices on communities of color, is what led us to file *Black Love Resists in the Rust v. City of Buffalo* last June. The Buffalo Police Department (BPD) had conducted thousands of “traffic safety” stops at checkpoints that were overwhelming placed in Black and Latinx neighborhoods. There people of color were being stopped, searched, ticketed, and even arrested and having their cars towed in violation of their constitutional rights. They were also being issued multiple tickets for offenses such as having tinted windows, as the City of Buffalo sought ways to generate an increase in revenue at their expense.

Over the past several months, NCLEJ has been hard at work to stop these practices. As the litigation proceeds, we have simultaneously been conducting outreach, beginning the discovery phase, and participating in the court’s process to determine whether the case can be addressed through mediation.

Activities to Date

Outreach - NCLEJ planned and held meetings with our plaintiffs and community members in Buffalo, which took place after a pretrial conference with the judge and defense counsel in early October. In the meetings, we informed both plaintiffs and community members about the case and listened to stories about their experiences with checkpoints, ticketing, and the BPD. In December 2018, we also coordinated an outreach training for plaintiffs where questionnaires, case fact sheets, and flyers we created were distributed to plaintiffs, law student volunteers, and other legal team members who would be canvassing and conducting outreach. Since that time, we have continued to coordinate and supervise canvassing and outreach efforts around the city of Buffalo.

As a result, we been receiving phone calls from and reaching out to many of the people with whom the legal team and our volunteers have made contact. We have conducted numerous intake interviews with people who have been through checkpoints or experienced the BPD’s excessive ticketing practices, and we are in the process of gathering and reviewing the documents of about half a dozen people we have identified as viable potential plaintiffs so far. We plan to amend our complaint, including adding additional plaintiffs, later this spring.

Discovery - NCLEJ has submitted and requested various types of information to support our claims for relief on behalf our individual named plaintiffs as well as our claims about the BPD and the City of Buffalo's policy and practice of discriminatory and excessive ticketing and revenue generating for the City. First, we prepared and submitted initial disclosures with information concerning evidence we plan to use to support our plaintiffs' claims. Then, we drafted and submitted requests for production and interrogatories asking the defendants to produce certain documents and reveal certain information to us.

However, although it has been several months, opposing counsel has yet to turn over much of the information that we have requested, and much of what he has produced has not been produced in the form we requested it in so that we can effectively analyze it. The production has been so sparse and ineffective that we have had or will have to subpoena multiple state and county agencies just to get the information we requested from opposing counsel. However, as the discovery process requires, we have had and continue to have lengthy conversations in the hopes of assisting opposing counsel in producing the information that we need. We have also been meticulously documenting these conversations and preparing the record in the event that we have to take these discovery disputes to the judge.

In the meantime, we have begun reviewing the responses we have received, and still plan to request additional information beyond that originally requested. Finally, after identifying and interviewing several economics and policing scholars, we have retained two who will now serve as expert witnesses in the case.

Mediation - The local rules for the federal district court in which our case was filed require that we attempt to address our dispute through mediation. As a result, we selected a mediator for the case to assess whether we might be able to do so. In preparation for this, we coordinated phone calls with our plaintiffs where we discussed their goals for the case and ideas they might have about potential injunctive relief. We included these ideas in a letter to the mediator, which we sent to him in advance of our call to discuss the possibility of settlement.

Media Coverage - The case has also generated strong media coverage. Marsha McLeod, a reporter for the *Investigative Post* has written two articles that were inspired by and explicitly mention our case about the BPD's discriminatory ticketing practices and the City of Buffalo's use of traffic tickets, including excessive surcharges, to generate revenue. The first article was published in February 2019 and the other was published in March.

Progress Anticipated Over the Next Six Months

A primary focus of the next six months will be on obtaining the discovery needed to move for class certification and prepare for trial, beginning with obtaining all necessary data sets from state and county agencies so that our experts can begin their work. We also must obtain and review substantial electronic discovery from defendants concerning their policies and practices; obtaining this information will likely require some motion practice before the district court. After we obtain and analyze document discovery, we will begin taking depositions. If we can obtain all necessary discovery within the next six months, we will move for class certification. As mentioned, we also plan to amend our complaint to add additional plaintiffs. Finally, we will continue to engage with the City in settlement discussions as appropriate.

Conclusion

The assistance from the Barbara McDowell and Gerald S. Hartman Foundation supports our efforts to fight for fundamental civil right of low income communities of color. This assistance has been absolutely essential to our work, which has been very resource intensive. We could not be more grateful for the support – it is truly making a difference.

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