

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DAVID FLOYD, *et al.*,

Plaintiffs-Appellees,

v.

CITY OF NEW YORK, *et al.*,

Defendants-Appellants.

Docket No. 13-3088

**MOTION OF MICHAEL B. MUKASEY AND RUDOLPH W. GIULIANI
FOR LEAVE TO FILE BRIEF *AMICI CURIAE*
IN SUPPORT OF PROPOSED POLICE INTERVENORS' OPPOSITION
TO THE CITY OF NEW YORK'S MOTION FOR REMAND**

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, Michael B. Mukasey and Rudolph W. Giuliani (“Amici”) hereby move for leave to file a brief *amici curiae* in support of (i) the memorandum of law in opposition to the City of New York’s (“City”) motion for limited remand (“Remand Motion”) filed by the Patrolmen’s Benevolent Association of the City of New York, Inc. (“PBA”), the Detectives Endowment Association, Police Department, City of New York, Inc., the Lieutenants Benevolent Association of the City of New York, Inc., and the Captains’ Endowment Association of New York, Inc. (“PBA Opposition”) and (ii) the opposition of Sergeants Benevolent Association (“SBA”) to the Remand Motion (“SBA Opposition”), each of which were filed on February 7, 2014.

DISCUSSION

The Amici have served in several of the highest public offices concerned with law enforcement and governance of the City of New York and the United States; they have served as United States Attorney General, Chief Judge of the United States District Court for the Southern District of New York, Mayor of the City of New York, and United States Attorney for the Southern District of New York, among other offices.

In light of their substantial experience across several decades, including significant involvement with the New York City Police Department (“NYPD”), the Amici are uniquely suited to provide insight into the City’s Remand Motion, which

in fact seeks to implement the district court's Remedies Opinion and Order, dated August 12, 2013 ("Remedies Order"), and Liability Opinion issued on the same date ("Liability Order") (collectively, "Orders"), and the standing of the PBA, the SBA and other proposed intervenor police associations ("Police Intervenors") to address these issues. The Orders suffer from serious errors of law, all of which were previously and extensively briefed and argued before the Court in the context of the City's motion for a stay pending appeal, which the Court granted, and as set forth in the City's appeal and 88-volume appendix. The Orders should be reviewed in full by the Court in light of their legal infirmities and issues of great public interest involved.

A full review, rather than a remand resulting in a consent decree effectuating the Orders, is also vitally important, especially given this Court's decision to disqualify the district court judge who issued the Orders due to an appearance of partiality. To grant remand would effectively sanction the district court judge's rulings notwithstanding this Court's determination that she be removed from the case.

Moreover, the Amici are interested in ensuring that the NYPD's and the City's progress in substantially reducing crime in the City of New York over the past twenty years within the bounds of the Constitution is not unjustly reversed to the detriment of the public. The Amici's extensive background with the City's

proper exercise of its police function, including the NYPD's use of stop-question-and-frisk and other policing tactics and initiatives, as well as their familiarity with the relationship between the executive and judicial branches of government provides them with a distinct and compelling perspective on the impact of granting the City's Remand Motion.¹

Accordingly, the Amici respectfully request permission to file the attached brief *amici curiae* to emphasize and add to arguments made by the Police Intervenors in their memoranda in opposition to the Remand Motion. Specifically, the Amici seek to expound upon two issues raised by the Police Intervenors: the importance of this Court's review of the Orders issued by the now-disqualified district court judge and the merits of granting the Police Intervenors' motions to intervene at this stage.

First, the Amici submit that the "resolution" the Remand Motion seeks at the district court is in fact a request to fully implement the findings and mandated remedies of the Orders, which are deeply flawed and center on several issues of great public importance. Because of the district court's substantial misapplication of existing law below, this Court should deny remand and retain jurisdiction in order to decide this appeal on the merits. Further, appellate review is considerably important under the unique circumstances of this case in light of this Court's

¹ The Amici note that they are currently employed in the private sector and have no interest in the outcome of this case aside from the continued effective and constitutional operation of the NYPD and the safety of the residents of the City of New York.

decision to remove the district court judge who issued the Orders. To grant remand and allow the Orders to be implemented would trump concerns of judicial impartiality and would serve only to hinder public confidence in the judicial process, thereby undermining this Court's orders.

Second, in addition to the substantive grounds for intervention discussed in the Police Intervenors' filings, *see* PBA Opposition at 8-13; SBA Opposition at 7-12, 18-19, judicial efficiency compels granting the Police Intervenors' motions to intervene so they may prosecute the appeal of these vitally important issues affecting the City's millions of residents. Accordingly, the Remand Motion should be denied and the Police Intervenors' motions to intervene granted.

CONCLUSION

For the foregoing reasons, the Amici respectfully request that the Court grant leave to file the attached brief *amici curiae* in support of the Police Intervenors' memoranda in opposition to the Remand Motion.

Dated: February 14, 2014
New York, New York

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2014, I caused the foregoing motion for leave to file brief as *amici curiae*, and the attached *amici curiae* brief, to be filed with the Court electronically by CM/ECF, which will automatically send notice of the filing to all parties registered in the CM/ECF system for this matter.

DATED: February 14, 2014

/s/ Daniel S. Connolly