

20-2789(L)

Uniformed Fire Officers Association et al. v. de Blasio et al.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit,  
2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the  
3 City of New York, on the 16<sup>th</sup> day of February, two thousand twenty-one.  
4

5 PRESENT: AMALYA L. KEARSE,  
6 PIERRE N. LEVAL,  
7 RAYMOND J. LOHIER, JR.,  
8 *Circuit Judges.*  
9

10 -----  
11 UNIFORMED FIRE OFFICERS ASSOCIATION;  
12 UNIFORMED FIREFIGHTERS ASSOCIATION OF  
13 GREATER NEW YORK; POLICE BENEVOLENT  
14 ASSOCIATION OF THE CITY OF NEW YORK,  
15 INC., CORRECTION OFFICERS' BENEVOLENT  
16 ASSOCIATION OF THE CITY OF NEW YORK,  
17 INC., SERGEANTS BENEVOLENT ASSOCIATION,  
18 LIEUTENANTS BENEVOLENT ASSOCIATION,  
19 CAPTAINS ENDOWMENT ASSOCIATION,  
20 DETECTIVES' ENDOWMENT ASSOCIATION,  
21

22 *Plaintiffs-Appellants-Cross-Appellees,*

v.

No. 20-2789-cv(L)

No. 20-3177-cv(XAP)

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

*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE REFORM,

*Intervenor-Defendant-Appellee-Cross-Appellant.*

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14 INC., SUFFOLK COUNTY POLICE  
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16 INC., METROPOLITAN  
17 TRANSPORTATION AUTHORITY  
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Alex J. Kaminski, Davis &  
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20  
21 Appeal from an order of the United States District Court for the Southern  
22 District of New York (Katherine P. Failla, *Judge*).

23 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,  
24 AND DECREED that the order of the District Court is AFFIRMED.

25 This appeal arises from the repeal of § 50-a of the New York Civil Rights  
26 Law, which for decades shielded law enforcement disciplinary records from  
27 public disclosure. Shortly after the repeal, New York City (the “City”)

1 announced its intention to proactively publish certain types of disciplinary  
2 records and provide other records upon request consistent with its obligations  
3 under New York’s Freedom of Information Law (FOIL), N.Y. Pub. Off. Law  
4 §§ 84–90. Several unions (the “Unions”) representing uniformed members of the  
5 New York City Police Department (“NYPD”), the New York City Fire  
6 Department (“FDNY”), and the New York City Department of Correction  
7 (“DOC”) filed this action against the City, the NYPD, the FDNY, the DOC, the  
8 Civilian Complaint Review Board (“CCRB”), and their principal officers. The  
9 Unions moved to preliminarily enjoin any disclosure of allegations of  
10 misconduct against their members that are unsubstantiated, unfounded, or non-  
11 final, or that resulted in an exoneration or a finding of not guilty. The District  
12 Court (Failla, L) denied the motion in substantial part, but granted a limited  
13 preliminary injunction in favor of the Unions, which we explain further below.  
14 The Unions appealed from the denial of their motion, and Communities United  
15 for Police Reform (“CPR”), which intervened in this case, cross-appealed from  
16 the District’s Court’s limited preliminary injunction. Another panel of this Court  
17 granted a stay of the District Court’s order pending disposition of this appeal.

1 We assume the parties' familiarity with the underlying facts and prior  
2 record of proceedings, to which we refer only as necessary to explain our  
3 decision to affirm.

4 1. The Unions' Appeal: Preliminary Injunction in Aid of Arbitration

5 We review the District Court's order for abuse of discretion. See SG  
6 Cowen Sec. Corp. v. Messih, 224 F.3d 79, 81 (2d Cir. 2000).

7 Each of the Unions' collective bargaining agreements ("CBAs") contains an  
8 arbitration provision, and the Unions ask the Court to enjoin the NYPD's and the  
9 CCRB's planned disclosures pending adjudication of their claims in arbitration.  
10 Under New York law, which governs the CBAs, a court may issue a preliminary  
11 injunction in aid of arbitration if the movant demonstrates that (1) absent a  
12 preliminary injunction, an award in arbitration "may be rendered ineffectual,"  
13 (2) the movant is likely to succeed on the merits of the claim to be arbitrated,  
14 (3) there is a "danger of irreparable harm" to the movant should preliminary  
15 relief be denied, and (4) the balance of the equities "tips in the petitioner's favor."  
16 Id. at 81–84.



1           Here, the Unions assert that the planned disclosures will violate two  
2 provisions common to all of their CBAs. The District Court denied the Unions'  
3 motion for a preliminary injunction only as it related to the first provision, which  
4 states that upon an officer's "written request to the Chief of Personnel," NYPD  
5 "will . . . remove from the Personnel Folder investigative reports which, upon  
6 completion of the investigation are classified 'exonerated' and/or 'unfounded.'" App'x 1528. We agree with the District Court that this provision does not  
7 conflict with the planned public disclosures, substantially for the reasons set  
8 forth in the District Court's decision. Special App'x 19–21. Removal of such  
9 records from a personnel file, as called for by the CBAs, does not require  
10 eliminating them from all of the City's records. There is no contention that the  
11 City has failed to adhere to its obligation to remove the records from personnel  
12 files or has improperly considered them in connection with personnel decisions  
13 (such as promotion or termination). Moreover, to the extent that this claim  
14 implicates records that must be disclosed under FOIL, the NYPD cannot bargain  
15 away its disclosure obligations. Matter of M. Farbman & Sons v. N.Y.C. Health  
16 & Hosps. Corp., 62 N.Y.2d 75, 80, 476 N.Y.S.2d 69, 71 (1984). The District Court

1 therefore acted within its discretion when it concluded that the Unions failed to  
2 demonstrate a likelihood of success on the merits in the arbitration of this claim.

3 See SG Cowen, 224 F.3d at 84.

4 2. The Unions' Appeal: Preliminary Injunction Pending Resolution of  
5 Remaining Claims

6 “[D]istrict courts may grant a preliminary injunction where a plaintiff  
7 demonstrates irreparable harm and meets either of two standards: (a) a  
8 likelihood of success on the merits, or (b) sufficiently serious questions going to  
9 the merits to make them a fair ground for litigation, and a balance of hardships  
10 tipping decidedly in the movant’s favor.” Trump v. Deutsche Bank AG, 943 F.3d  
11 627, 635 (2d Cir. 2019) (quotation marks omitted), vacated and remanded on  
12 other grounds, 140 S. Ct. 2019 (2020). We do not decide whether the Unions  
13 must satisfy one standard or the other here because we conclude that the District  
14 Court did not abuse its discretion under either standard.

15 A. Irreparable Harm

16 The Unions assert that law enforcement officers will have fewer  
17 employment opportunities in the future if records of the allegations against them  
18 that prove to be unfounded or unsubstantiated are disclosed, even though each

1 record will reveal the outcome of the investigation. But the District Court noted  
2 that future employers were unlikely to be misled by conduct records that  
3 contained “dispositional designations” specifying that allegations of misconduct  
4 were unsubstantiated, unfounded, or that the accused officer was exonerated.  
5 See Special App’x 14–15. As the District Court also noted, despite evidence that  
6 numerous other States make similar records available to the public, the Unions  
7 have pointed to no evidence from any jurisdiction that the availability of such  
8 records resulted in harm to employment opportunities. Id. For these reasons,  
9 the District Court did not abuse its discretion when it determined that the  
10 asserted harm was speculative and that the Unions had failed to demonstrate on  
11 this record that the officers will suffer irreparable harm to their employment  
12 opportunities that cannot be remedied by an award of lost wages. In general,  
13 “irreparable harm is not shown in employee discharge cases simply by a  
14 showing of financial distress or difficulties in obtaining other employment  
15 ‘however severely they may affect a particular individual.’” Stewart v. INS, 762  
16 F.2d 193, 199 (2d Cir. 1985) (quoting Sampson v. Murray, 415 U.S. 61, 92 n.68  
17 (1974)).

1           We also address the Union’s more general assertion of heightened danger  
2 and safety risks to police officers. We fully and unequivocally respect the  
3 dangers and risks police officers face every day. But we cannot say that the  
4 District Court abused its discretion when it determined that the Unions have not  
5 sufficiently demonstrated that those dangers and risks are likely to increase  
6 because of the City’s planned disclosures. In arriving at that conclusion, we note  
7 again that many other States make similar misconduct records at least partially  
8 available to the public without any evidence of a resulting increase of danger to  
9 police officers. See App’x 1035–36, 1163, 2140–42.

10           B. The Merits

11           The Unions also have not raised sufficiently serious questions on the  
12 merits of their claims. First, the Unions assert a “stigma-plus” claim under the  
13 Federal and New York State Constitutions. Under both federal and state law,  
14 stigma-plus claims require the plaintiff to adequately demonstrate an “injury to  
15 one’s reputation (the stigma) coupled with the deprivation of some ‘tangible  
16 interest’ or property right (the plus), without adequate process.” DiBlasio v.  
17 Novello, 344 F.3d 292, 302 (2d Cir. 2003); see Matter of Lee TT. v. Dowling,

1 87 N.Y.2d 699, 708, 642 N.Y.S.2d 181, 187 (1996). The Unions fail to demonstrate  
2 that any officer will be deprived of a tangible interest or property right. We have  
3 held that diminished future employment opportunities resulting from a  
4 damaged reputation, as opposed to some independent legal detriment, are not  
5 sufficient. See Sadallah v. City of Utica, 383 F.3d 34, 38–39 (2d Cir. 2004).<sup>1</sup>

6 The Unions’ equal protection claims fare no better. Because law  
7 enforcement officers are not a protected class for equal protection purposes, they  
8 must show that there is no rational and nondiscriminatory basis to treat their  
9 records differently from the records of other public employees. See Sensational  
10 Smiles, LLC v. Mullen, 793 F.3d 281, 284 (2d Cir. 2015). Even the Unions  
11 recognize that “the unique responsibilities of law enforcement officers set them  
12 apart.” Unions Br. 56. Because the public has a stronger legitimate interest in the  
13 disciplinary records of law enforcement officers than in those of other public  
14 employees, the District Court correctly determined that there was a rational,  
15 nondiscriminatory basis for treating the two sets of records differently.

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<sup>1</sup> We assume, without deciding, that the protections provided by the New York State Constitution are equivalent to their federal counterparts, as no party has suggested otherwise.

1           Next, the Unions contend that when officers entered plea agreements in  
2 disciplinary proceedings, those agreements implicitly incorporated § 50-a of the  
3 Civil Rights Law. Again, we disagree. The New York Court of Appeals has  
4 cautioned that a contract “does not transform all statutory requirements that may  
5 otherwise be imposed under [the governing] law into contractual obligations,”  
6 and it has “decline[d] to interpret [a contract] as impliedly stating something  
7 which [the signatories] have neglected to specifically include.” Skanska USA  
8 Bldg. Inc. v. Atl. Yards B2 Owner, LLC, 31 N.Y.3d 1002, 1007, 74 N.Y.S.3d 805,  
9 807–08 (2018) (quotation marks omitted). “[R]ead[ing] into . . . contracts terms  
10 that do not exist based on then-existing statutory language, . . . would protect  
11 against all changes in legislation, . . . [and] severely limit the ability of state  
12 legislatures to amend their regulatory legislation.” Am. Econ. Ins. Co. v. State of  
13 N.Y., 30 N.Y.3d 136, 154, 65 N.Y.S.3d 94, 107 (2017) (quotation marks omitted).  
14 The Unions do not point to any legislative history in support of their argument,  
15 or to any evidence that the parties to the plea agreements intended to incorporate  
16 § 50-a as the Unions suggest. Nor do the Unions argue that § 50-a “affect[s] the  
17 validity, construction, and enforcement” of the plea agreements. Id.

1           The Unions also argue that the City’s decision to publish certain  
2 disciplinary records without individualized review is arbitrary and capricious  
3 under Article 78 of the New York Civil Practice Law and Rules. See N.Y.  
4 C.P.L.R. §§ 7801, 7803(3). Substantially for the reasons provided by the District  
5 Court in its order, we reject their argument. As the District Court observed, the  
6 City appears to still recognize those specific FOIL exemptions that are designed  
7 to protect against unwarranted invasions of personal privacy or endangering a  
8 person’s safety. See N.Y. Pub. Off. Law § 87(2)(b), (f).

9           Alternatively, the Unions assert that it was arbitrary and capricious for the  
10 City to change without explanation its established practice of asserting that  
11 records relating to unsubstantiated allegations should be withheld under FOIL’s  
12 exemption for documents whose disclosure would constitute an unwarranted  
13 invasion of privacy. See Unions Br. 48–51; Matter of Charles A. Field Delivery  
14 Serv., Inc., 66 N.Y.2d 516, 520, 498 N.Y.S.2d 111, 115 (1985). But that practice, if it  
15 ever existed, appears to have ended no later than 2017. See App’x 1614, 1643.  
16 And any change in the CCRB’s position was adequately explained by the  
17 Mayor’s public remarks following the repeal of § 50-a. See Transcript: Mayor de

1 Blasio Holds Media Availability, NYC.gov (June 17, 2020), available at  
2 [https://www1.nyc.gov/office-of-the-mayor/news/446-20/transcript-mayor-de-](https://www1.nyc.gov/office-of-the-mayor/news/446-20/transcript-mayor-de-<br/>3 blasio-holds-media-availability)

4 C. Balance of the Equities

5 As for the balance of the equities, the Unions argue that the equities favor a  
6 preliminary injunction because disclosure of information is permanent, while  
7 those who seek information will suffer only delay if an injunction is entered. We  
8 do not doubt the sincerity of the Unions' concerns. As several amici point out,  
9 however, delay for victims unable to obtain information about the status of their  
10 complaints is itself costly both for them and for various other stakeholders in the  
11 criminal justice system, see, e.g., Brief for Former Prosecutors as Amici Curiae  
12 Supporting Intervenor-Defendant-Appellee-Cross-Appellant 6–10, as well as the  
13 press, see Brief for The Reporters Committee for Freedom of the Press & 31 News  
14 Media Organizations as Amici Curiae Supporting of Intervenor-Defendant-  
15 Appellee-Cross-Appellant 15–21. Because the Unions' stated interests are  
16 counterbalanced by other important policies, the District Court did not abuse its



1 discretion in determining that the balance of the equities does not tip in their  
2 favor.

3 3. CPR's Cross-Appeal

4 The District Court granted the Unions' motion for a preliminary injunction  
5 in aid of arbitration as it related to the second provision of the CBAs relevant to  
6 this appeal, Section 8.<sup>2</sup> Under Section 8, a police officer who has "been charged  
7 with a 'Schedule A' violation as listed in [the] Patrol Guide," proceeds to a  
8 disciplinary trial on such charge, and is not determined guilty may "petition the  
9 Police Commissioner for a review for the purpose of expunging the record of the  
10 case." App'x 1528. On its cross-appeal, CPR argues that the District Court's  
11 decision to enjoin the disclosure of these records was an abuse of discretion  
12 because the NYPD cannot bargain away its FOIL obligations. See CPR Br. 22–29,  
13 70–73.<sup>3</sup> But on this record, we conclude that enforcing Section 8 would not affect

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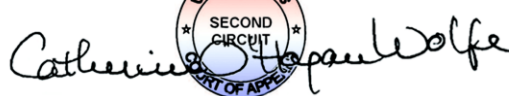
<sup>2</sup> The relevant provision appears in Section 8 of most, but not all, CBAs. Like the District Court, we refer only to its usual location for ease and clarity.

<sup>3</sup> We are not persuaded by the Unions' contention that CPR lacks standing to appeal because it is not a signatory to the CBAs. CPR is injured by the injunction because it prevents the NYPD from fulfilling CPR's FOIL request for documents covered by this provision. CPR argues that the CBAs impermissibly deprive it of rights guaranteed by FOIL.

1 those obligations. As the City notes, “Schedule A” lists “technical violations,”  
2 City Br. 16, such as “[i]mproper uniform or equipment” and “[r]eporting late for  
3 duty,” N.Y. Police Dep’t Patrol Guide 206-03 Schedule A (effective April 20,  
4 2017). And under New York law, “a law enforcement agency may redact records  
5 pertaining to technical infractions . . . prior to disclosing such records” pursuant  
6 to FOIL. N.Y. Pub. Off. Law § 89(2-c). Accordingly, we conclude that the District  
7 Court did not abuse its discretion in preliminarily enjoining disclosure of these  
8 records. If CPR can show that “Schedule A” violations include anything other  
9 than “[t]echnical infraction[s]” as defined by New York law, see N.Y. Pub. Off.  
10 Law § 86(9), it may move the District Court for appropriate relief, see Weight  
11 Watchers Int’l, Inc. v. Luigino’s, Inc., 423 F.3d 137, 141 (2d Cir. 2005).

12 We have considered the Unions’ remaining arguments and conclude that  
13 they are without merit. For the foregoing reasons, the District Court’s order is  
14 AFFIRMED.

15 FOR THE COURT:  
16 Catherine O’Hagan Wolfe, Clerk of Court

  
The signature of Catherine O'Hagan Wolfe is written in black ink over a circular official seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**DEBRA ANN LIVINGSTON**  
CHIEF JUDGE

Date: February 16, 2021

Docket #: 20-2789cv

Short Title: Uniformed Fire Officers Associ v. DeBlasio

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

DC Docket #: 20-cv-5441

DC Court: SDNY (NEW YORK CITY)DC Docket #: 20-cv-5441

DC Court: SDNY (NEW YORK CITY)

DC Judge: Failla

**BILL OF COSTS INSTRUCTIONS**

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- \* be filed within 14 days after the entry of judgment;
- \* be verified;
- \* be served on all adversaries;
- \* not include charges for postage, delivery, service, overtime and the filers edits;
- \* identify the number of copies which comprise the printer's unit;
- \* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- \* state only the number of necessary copies inserted in enclosed form;
- \* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- \* be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**DEBRA ANN LIVINGSTON**  
CHIEF JUDGE

Date: February 16, 2021  
Docket #: 20-2789cv  
Short Title: Uniformed Fire Officers Associ v. DeBlasio

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

DC Docket #: 20-cv-5441  
DC Court: SDNY (NEW YORK CITY)DC Docket #: 20-cv-5441  
DC Court: SDNY (NEW YORK CITY)  
DC Judge: Failla

**VERIFIED ITEMIZED BILL OF COSTS**

Counsel for

\_\_\_\_\_

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

\_\_\_\_\_

and in favor of

\_\_\_\_\_

for insertion in the mandate.

Docketing Fee \_\_\_\_\_

Costs of printing appendix (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing reply brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

**(VERIFICATION HERE)**

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Signature