**[INSERT IN YOUR OMNIBUS MOTION AS A BASIS FOR SUPPRESSION, ALONG WITH ANY OTHER ARGUMENTS YOU HAVE].**

**[These template allegations are only meant to assist you in formulating your own motion to suppress on grounds of racial profiling.  Conform to the facts of your case, consider carefully any admissions you make on your client’s behalf, and include any other challenges to the stop, search, and seizure in your omnibus motion]**

**MOTION TO SUPPRESS PHYSICAL EVIDENCE AS OBTAINED IN VIOLATION OF EQUAL PROTECTION**.

x.      This affirmation is made in support of my client’s motion to suppress evidence on the ground that it was the fruit of law enforcement’s traffic stop of my client in violation of his/her right to equal protection of the laws under the state and federal constitutions. U.S. Const., amend. XIV; N.Y Const., art. I, § 11; see Mapp v. Ohio, 367 U.S. 643, 660 (1961) (holding that “the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments”); United States v. Jennings, 985 F.2d 562; 1993 WL 5927 at \*4 (6th Cir. 1993) (“[E]vidence seized in violation of the Equal Protection Clause should be suppressed. ‘[N]o distinction can logically be drawn between evidence obtained in violation of the Fourth Amendment and that obtained in violation of the Fourteenth.  The Constitution is flouted in either case.’”); People v. Jones, 210 A.D.3d 150, 155 (“For a defendant’s constitutional rights to be meaningful, the exclusionary rule must apply.”). Specifically, my client, who is **[race/ethnicity]**, alleges that s/he was racially profiled by law enforcement and a victim of selective enforcement of the laws.  Unquestionably, the police may not stop a motorist based on race or any other invidious classification.

x.     The sources of my information and belief include **[e.g., court records, public records, conversations had with my client and with various Assistant district Attorneys, data provided through discovery, etc]**.

x.     My client stands charged with **[charges].**

x.     On information and belief, my client was stopped by officers **[provide**

**circumstances of the stop - include any circumstances showing that your client was singled out and that it was a pretext.  For example, if the stop was supposedly for speeding, were there other cars that passed your client’s car immediately before the stop that weren’t stopped?  Can you allege that those drivers were white?]**

x.     Selective enforcement rules protect citizens where the government acts “with an

unequal hand” and “an evil eye” in the enforcement of its laws. 303 West 42nd Street Corp. v.

Klein, 46 N.Y.2d 686, 693 (1979) (“Klein”). It is a constitutional argument grounded in equal

protection. Id. The principle has been recognized in cases involving the enforcement of the

criminal laws. Id.

x.     Criminal Procedure Law § 710.20 permits a court to suppress or exclude evidence upon the ground that it “[c]onsists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action. . . .”  Law enforcement’s profound interference with my client’s liberty and privacy in violation of my client’s constitutional right to equal protection of the laws (i.e, racial profiling) is an “unlawful search and seizure” that entitles him/her to suppression of the evidence the prosecution intends to use against him/her at trial, or a hearing on that ground. The court must grant a hearing on a motion to suppress if the motion raises a factual dispute.  The sufficiency of the allegations should be evaluated by “the face of the pleadings, (2) assessed in conjunction with the context of the motion, and (3) defendant’s access to information.”  People v. Mendoza, 82 N.Y.2d 415, 426 (1993); CPL § 710.60(4).

x.     Under analogous pre-trial procedures,[[1]](#footnote-1) New Jersey entertains suppression claims under federal and state constitutional guarantees of equal protection where the aggrieved party has alleged that they were the victim of racial profiling and selective enforcement. See State v. Soto, 734 A.D.2d 350 (N.J. Super. Ct 1996). In Soto, the court entertained a consolidated motion to suppress evidence by 17 Black defendants who were arrested after being stopped on the highway by the New Jersey state police. The court allowed discovery concerning the relative incidence of traffic stops by New Jersey state troopers involving various racial groups, and reviewed additional statistical evidence unearthed by defense counsel.  The totality of the evidence revealed compelling statistical proof that Black motorists were disproportionately targeted for traffic enforcement. The court then held a hearing at which experts for both the defense and the prosecution analyzed the statistical evidence, and the court concluded that the state had failed to rebut the defendants’ proof that members of the defendants’ race were unfairly targeted for search and seizure.  The court suppressed the evidence used against all 17 defendants.

x.     To prove discriminatory purpose, it has been suggested that motorists of color alleging that a traffic stop constituted a denial of equal protection must show that similarly situated white motorists who could have been stopped, were not.  United States v. Armstrong, 517 U.S. 456, 465 (1996).  However, that data is not even available. While there is extensive and compelling data and scholarship establishing racial disparities in traffic enforcement in the State and across the country[[2]](#footnote-2) – including in observations by New York Court of Appeals judges[[3]](#footnote-3) – on information and belief, no data is maintained showing whether law enforcement does not enforce the traffic laws against similarly situated white drivers.

x.     Addressing the proof burden for claims of selective enforcement, the Court of

 Appeals in Klein stated that “[l]atittude should be allowed in this complex area of proof.”  46 N.Y.2d at 693. In Commonwealth v. Long, 485 Mass. 711 (2020), the Massachusetts high court attacked this very problem in the context of racial profiling in traffic stops.  Recognizing that “the right of drivers to be free from racial profiling will remain illusory unless and until it is supported by a workable remedy,” the court created a framework which allows a defendant to show that he or she was the victim of selective enforcement without the necessity of statistical data – data either unavailable or inaccessible.  The court identified six, non-exclusive, factors that a court should consider in determining whether the defendant raised a “reasonable inference” of selective enforcement:

1. Patterns in enforcement actions by the particular officer - i.e. if a significant percentage of stops the officer made involved drivers of the same race for minor traffic violations.
2. Regular duties of the officer involved in the stop - i.e., an officer assigned to a specialized unit, such as a gang unit or the domestic violent unit, suggests that the traffic enforcement is not a primary objective;
3. Sequence of events prior to the stop - i.e., if the officer followed the vehicle for an extended period of time;
4. The manner of the stop - i.e., whether the officer's conduct, or the duration of the stop, was consistent with enforcement of a motor-vehicle violation;
5. The safety interests in enforcing the motor-vehicle violation - i.e., did the driver's conduct actually impact public safety (such as operating under the influence);
6. The specific police department's policies and procedures regarding traffic stops - i.e., if an officer's conduct deviates from specific policies.

x. In addition, the Appellate Division, Second Department found in People v. Jones that the inquiry of whether a traffic stop was premised on racial profiling includes “for example, whether the arresting officers were involved in a plausible investigation prior to executing the vehicle stop” as well as “consideration of the officers’ actions and comments during the encounter.” 210 A.D.3d 150, 156 (3d Dep’t 2022).

x.       In support of my client’s request for suppression of physical evidence on the ground that the traffic laws were selectively enforced on the basis of race, the defense sets forth the following:

a.      My client is a **[race/ethnicity]** person such that the selective enforcement of the laws he/she alleges is based on an impermissible standard, see Klein at 693.

b.    Black and Latinx drivers in New York State and throughout the country are disproportionately stopped for committing traffic infractions.  See fns. 1 and 2, ante **[If you are in one of the seven New York Counties, or Suffolk or Buffalo, the areas specifically referenced in New York Law School’s Fines and Fees report, reference that data].**

c.  Relevant statistical data obtained in connection with this case includes the following: **[explain any data you obtained about traffic stops in your community, or the officer’s specific history, how accumulated, determine what the data means statistically if possible- this may require an expert.  If you were not able to obtain any data, explain your efforts and the results].**

d. In connection with the stop of my client’s car, certain facts stand out**: [list any facts that support racial profiling and pretext]**.  These circumstances alone give rise to an inference of discriminatory purpose sufficient to require a hearing, consistent with the  “latitude” the Court of Appeals has said is appropriate in this area.  Klein, 46 N.Y.2d at 693.  Even if deemed a departure from current law regarding the proof burden, this court should adopt this framework under state and federal constitutional principles of equal protection and due process and in light of our state’s unique commitment to achieving racial justice and equity, as reflected in the broader language of our state constitution’s equal protection clause.[[4]](#footnote-4)  U.S. Const. amends., IV; N.Y. Const., art. 1, §§ 6, 11; see Commonwealth v. Long, 485 Mass. 711 (2020).

x.      At a minimum, in light of the context of the motion, the defense’s limited access to data, and the circumstances of the stop, the court must order a hearing at which the prosecution must rebut the inference of racial profiling my client has raised.  See Mendoza, 82 N.Y.2d at 426.

x.     Wherefore, **[Client name]** seeks an order suppressing **[detail the evidence]** recovered by law enforcement as a direct consequence of law enforcement’s unlawful and unconstitutional traffic stop. See, e.g., People v. Jones, 210 A.D.3d 150, 155 (3d Dep’t 2022) (analyzing the appropriate remedy for “a traffic stop predicated on racial profiling” and finding “the remedy for such an unconstitutional stop would be suppression of the evidence seized”). Alternatively, **[Client name]** requests a hearing on this motion, at which the prosecution must rebut the inference that law enforcement selectively enforced the traffic laws against my client on account of his/her race.

1. Before trial in New Jersey, a defendant claiming to be aggrieved by an unreasonable search or seizure may apply to suppress the evidence seized, whether the search or seizure was executed with a warrant or constitutes a warrantless search. R. 3:5–7(a). Subsection (b) of that rule allocates the evidentiary burden as to searches based on whether they are or are not supported by a warrant, and subsection (c) prescribes that “[i]f material facts are disputed [in suppression motions], testimony thereon shall be taken in open court.” R. 3:5–7(c). Rule “3:5–7 ... contemplate[s] pre-trial hearings on Fourth Amendment issues which are collateral to guilt or innocence. In addition, evidence relating to the propriety of a stop or seizure is generally separate from issues of guilt or innocence. Usually, judicial economy is best served by resolving these issues pre-trial.” State v. McLendon, 331 N.J. Super. 104, 109, 751   A.2d 148 (App. Div. 2000). [↑](#footnote-ref-1)
2. Charles R. Epp et al., Pulled Over: How Police Stops Define Race and Citizenship 2 [2014] [each year about 12% of all drivers are stopped by the police, and the share of Black drivers stopped is about double] ); Emma Pierson et al., A Large–Scale Analysis of Racial Disparities in Police Stops Across the United States, Nature Human Behaviour [2020], available at http://web.stanford.edu/~csimoiu/doc/traffic-stops.pdf [study of 95 million traffic stops finding Black drivers were more likely to be stopped, ticketed, searched, and arrested than white drivers, and that Hispanic drivers, when stopped, were more likely to be ticketed, searched, and arrested than white drivers]; Robert E. Worden et al., Traffic Stops by Suffolk County Police 7, 48 [Sept.2020], available at https://suffolkcountyny.gov/Portals/0/formsdocs/police% 20reform/Traffic% 20Stops% 20by% 20Suffolk% 20County% 20Police% 2010.19.2020.pdf [study of over 130,000 traffic stops by Suffolk police finding that, compared to white drivers, Black and Hispanic drivers were more likely to be stopped for equipment violations, Black drivers were over three times more likely to be subjected to physical force, and Hispanic drivers were 16% more likely to be searched and 16% more likely to be arrested]; New   York Law School, Racial Justice Project, Driving while Black and Latinx: Stops, Fines, Fees, and Unjust Debts (Feb. 2020), available at

https://finesandfeesjusticecenter.org/content/uploads/2020/02/RJP.-Drivers-License-Suspension.-Final.pdf [noting that although statewide data is not available, state police date compiled in seven New York Counties, as well as data from Suffolk County and Buffalo, show that people of color are disproportionately stopped by law enforcement. In 2017, Black individuals accounted for 31.38 percent of the New York State Police’s traffic stops in Monroe county, yet made up just 14.4 percent of the county’s population. In 2018, Black individuals accounted for 17.69 percent of the Suffolk County Police Department’s traffic stops, yet made up just 7.2 percent of the county’s population); Rushin and Griffin, An Empirical Assessment of Pretextual Stops and Racial Profiling, 73 Stan. L. Rev. 637 (March 2021)(employing a novel analysis of a newly available dataset, the Article analyzes almost 9 million traffic stops in Washington State, from 2008-2015, to illustrate empirically that judicial doctrines permitting police officers to engage in pretextual traffic stops contribute to a statistically significant increase in racial profiling of minority drivers). [↑](#footnote-ref-2)
3. See People v. Robinson, 97 N.Y.2d at 366-67 (Levine, J., dissenting); People v.Pena, 36 N.Y.3d

978, 990, 997-98 (Wilson, J. and Rivera, J. dissenting). [↑](#footnote-ref-3)
4. The Fourteenth Amendment guarantees that “[no State] shall . . . deny to any person . . . the equal protection of the laws.” But Article 1, § 11 has even broader language: “no person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any person or by any firm, corporation or institution, or by this state or any agency or subdivision of the state.” (Emphasis added). [↑](#footnote-ref-4)