26-0968-cv

United States Court of Appeals

for the

Second Circuit

DORETHEA FRANKLIN, TANIQUA SIMMONS, DE'JON HALL, JANE DOE, individually and on behalf of a class of others similarly situated, SHIRLEY SARMIENTO, EBONY YELDON, CHARLES PALMER, SHAKETA REDDEN, JOSEPH BONDS,

Petitioners,

– v. –

CITY OF BUFFALO, N.Y., BYRON B. BROWN, Mayor of the City of Buffalo, in his individual and official capacities, BYRON C. LOCKWOOD, Commissioner of the Buffalo Police Department, in his individual capacity, DANIEL DERENDA, former Commissioner of the Buffalo Police Department, in his individual capacity,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

RESPONSE TO PETITION FOR PERMISSION TO APPEAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 23(F)

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PRELIMINARY STATEMENT

As Plaintiffs noted in their Opposition to the City's 23(f) Petition, the requirements for leave to appeal under Rule 23(f) are "rarely met." *Black Love Resists in the Rust et al. v. City of Buffalo et al.*, Case No. 25-1191, Dkt. No. 7.1 at 7 (2d Cir. May 16, 2025). That is certainly true where, like here, the petitioner fails to meet the fourteen-day deadline prescribed by Rule 23(f). In their April 17, 2026, submission to the Court, Plaintiffs "advised the Court of a pertinent case that came to their attention after filing their Rule 23(f) petition," *Fleischman v. Albany Med. Ctr.*, 639 F.3d 28 (2d Cir. 2011). The decision came to their attention, because the City sent them a Rule 11(c)(2) "Safe Harbor" warning letter two days earlier, notifying them that their Petition was "grossly untimely" and citing *Fleischman*. Rather than withdraw the Petition, as was their obligation, Plaintiffs attempted to distinguish the obviously analogous decision of this Court, apparently in the hope of fostering forgiveness and sympathy. Forgiveness and sympathy are not appropriate grounds for granting leave, however.

Compounding Plaintiffs' procedural error is their insistence in resurrecting their twice-denied, and impossible, injunctive relief class. As in their timeliness argument, Plaintiffs' catalog of supposedly questionable analysis by the District Court disregards settled precedent. Their litany of "compelling" legal

questions ignores governing case law. Additionally, Plaintiffs' "death knell" argument is based upon speculative assumptions regarding the financial status of class members they have not even identified. And they cannot. Like their Proposed Traffic Enforcement Class, Plaintiffs' 23(f) Petition is riddled with fatal defects rooted either in Plaintiffs' misguided application or willful ignorance altogether of the law. This Court should summarily dismiss the meritless and untimely Petition.

STATEMENT OF THE CASE

Plaintiffs assert that the City engaged in discriminatory traffic enforcement against Black and Latino drivers in the City of Buffalo. Dkt. No. 63 at 68-72.[1] Plaintiffs originally sought to certify three classes; one is at issue here:

> The Traffic Enforcement Class: "All Black and/or Latino individuals who have been or will be subjected to traffic stops, traffic tickets, and 'traffic safety' vehicle checkpoints by the BPD."

Dkt. No. 211 at 3. The Traffic Enforcement Class demands injunctive relief. *See id.*

[1] The City's references to "Dkt. No." shall refer to the District Court docket in this matter: *Black Love Resists in the Rust et al. v. City of Buffalo*, 18-cv-00719 (W.D.N.Y. June 28, 2018).

After initial briefing, oral argument, and supplemental briefing, the District Court issued an Opinion and Order on April 22, 2025, which certified the Damages Classes and denied certification of the Traffic Enforcement Class. (the "Class Certification Order"). Pls.' Add. at 24-51. The City timely sought leave to appeal from that Order by filing its Rule 23(f) Petition on May 6, 2025. *See Black Love Resists in the Rust et al.*, Case No. 25-1191, Dkt. No. 1. This Court granted the City's Petition.

Rather than file its own Rule 23(f) Petition by May 6, 2025, on July 11, 2025, Plaintiffs filed a Motion to Reconsider the Denial of the Motion to Certify the Traffic Enforcement Class Pursuant to Rule 54(B), or in the Alternative, to Renew the Motion to Certify Pursuant to Rule 23(c)(1)(C) (the "Reconsideration Motion"). Dkt. No. 327. That same day, Plaintiffs filed a Motion to Intervene by Markel Nance and Thomas Christopher Williams, Jr. Dkt. No. 326. On March 27, 2026, the District Court issued its Opinion and Order, which denied both Motions. (Pls.' Add. at 1-23, the "Reconsideration Order"). On April 14, 2026, Plaintiffs filed a Rule 23(f) Petition ("Pls. Pet.") challenging the District Court's reiterated denial of class certification for the proposed Traffic Enforcement Class.

POINT I. UNDER NO CONCEPTION OF TIME IS PLAINTIFFS' PETITION TIMELY

The Class Certification Order provides the starting date from which Plaintiffs had fourteen days to seek leave from this Court. *See* Fed. R. Civ. P. 23(f). The District Court denied certification for Plaintiffs' Proposed Traffic Enforcement Class on April 22, 2025. Pls.' Add. at 32-36. Like the City, Plaintiffs had until May 6, 2025—fourteen days after April 22, 2025—to file a 23(f) Petition. *See* Fed. R. Civ. P. 23(f). Plaintiffs missed this deadline by nearly one year in filing their Petition on April 14, 2026. *See generally* Pls.' Pet.

This fatal defect should end the analysis. But Plaintiffs ask the Court to calculate their deadline from District Court's Reconsideration Order. Pls.' Pet. at n.2. For two reasons, this request *still* renders their Petition untimely. First, this approach violates settled Supreme Court and Second Circuit precedent: the time to file a Rule 23(f) Petition begins to run from the time of the class certification decision, *not* a reconsideration decision. *See* Fed. R. Civ. P. 23(f); *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 191-192 (2019); *Fleischman*, 639 F.3d at 31. Second, even if the fourteen-day deadline was tolled by Plaintiffs' Reconsideration Motion, which it was not, ***Plaintiffs also missed that deadline***.

Plaintiffs' complete disregard for the Federal Rules of Civil Procedure, applicable case law, and this Court's resources demand denial of Plaintiffs' 23(f) Petition.

A. Plaintiffs Had to File their Petition Within Fourteen Days of the April 22, 2025 Class Certification Order.

This Court should not accept an argument that both it and the United States Supreme Court have already soundly rejected. In *Nutraceutical*, the Supreme Court held:

> To take an immediate appeal from a federal district court's order granting or denying class certification, a party must first seek permission from the relevant court of appeals "within fourteen days after the order is entered." This case poses the question whether a court of appeals may forgive on equitable tolling grounds the failure to adhere to that deadline when the opposing party objects that the appeal was untimely. The applicable rules of procedure make clear that the answer is no.

586 U.S. at 189-190 (citing Fed. R. Civ. P. 23(f)). Rule 23(f)'s fourteen-day deadline is strictly enforced.

Plaintiffs may argue that *Nutraceutical* is distinguishable, since the Court only ruled on the equitable tolling issue. While the Court did not explicitly address the effect of a reconsideration or renewal motion on the 23(f) deadline, that

argument would be unavailing. On remand, the Ninth Circuit squarely addressed that issue and rejected the argument Plaintiffs advance here:

> The only question we must answer is whether [the] Rule 23(f) petition is timely where, following the district court's scheduling order, [the plaintiff] filed a motion for reconsideration twenty days after the district court's decertification order and then filed a Rule 23(f) petition fourteen days after the denial of the motion for reconsideration.

Lambert v. Nutraceutical Corp., 783 F. App'x 720, 722 (9th Cir. 2019). The issue here boils down to that same question. Following the Supreme Court's rationale in *Nutraceutical*, the Ninth Circuit answered that question with a resounding "No." The Court dismissed the plaintiff's petition as untimely and held that the reconsideration decision did not trigger a new fourteen-day window to appeal because it did not change the status quo of class certification. *Id.* at 722-723. The same is true here. Although Plaintiffs argue that the Reconsideration Order "materially alters" the Class Certification Order, Pls.' Pet. at n. 2, elaboration—no matter how "substantial"—does not constitute a material alteration of the Class Certification Order. *See, e.g.*, *Lambert*, 783 F. App'x at 722; *Fleischman*, 639 F.3d at 31-32 (collecting cases); *Gutierrez v. Johnson & Johnson*, 523 F.3d 187, 193 (3d Cir. 2008) (holding that Rule 23(f)'s deadline is not revived by a later order that does not change the status quo). The Reconsideration Order did not

change the status quo: the Proposed Traffic Enforcement Class was denied certification. Therefore, under Supreme Court and resulting Ninth Circuit precedent, Plaintiffs' Petition is untimely.

As the City endeavored to advise Plaintiffs, this Court's decision in *Fleischman* aligns with the Supreme Court's decision in *Nutraceutical*. Plaintiffs cannot avoid the clear mandate of *Fleischman*. There, the petitioners moved for class certification. *Fleischman*, 639 F.3d at 29-30. In so doing, the district court certified some issues for class treatment but not others. *Id.* Petitioners did not seek leave to appeal that decision under Rule 23(f). *See id.* Instead, they moved for reconsideration, *id.* at 30, as Plaintiffs have done here. On September 17, 2008, the district court clarified its prior decision; but only the same classes remained certified. *Id.* After the parties completed discovery petitioners moved to amend the class certification order pursuant to Rule 23(c)(1)(C). *Id.* This time, the petitioners sought to certify a narrower class, but the district court denied the motion, finding that the petitioners did not present new facts justifying alteration of the original certification order. *Id.* Eighteen months after the original decision, the petitioners filed a 23(f) Petition seeking leave to appeal the denial of their Rule 23(c)(1)(C) motion. *Id.* at 30-31. This Court rejected the request as untimely:

> We conclude that an interlocutory appeal pursuant to Rule 23(f) may not be properly taken from an order denying amendment to a previous order granting class certification, at least when the motion to amend is filed more than fourteen days after the original order granting class certification.

Id. at 31. In reaching the holding, this Court noted "[i]t is well-established that Rule 23(f)'s fourteen day filing requirement is a rigid and 'inflexible' restriction." *Id.* (citation omitted). This Court emphasized that if denial of a Rule 23(c)(1)(C) motion reset the clock for an appeal, a litigant could easily circumvent Rule 23(f)'s deadline thereby rendering the deadline "toothless." *Id.* With this holding, this Court joined "several of [its] sister circuits, who have unanimously pronounced on the question." *Id.* at 31-32. The Court declined to render a holding that would "eviscerate" Rule 23(f)'s "deliberate and tight restriction on interlocutory appeals," *id.* at 31, and it should decline to do the same here.

Like in *Fleischman*, Plaintiffs also filed a motion asking the district court to alter its class certification decision. Specifically, Plaintiffs filed a motion for reconsideration or, in the alternative, to renew pursuant to 23(c)(1)(C). Dkt. No. 327. That motion was denied on March 27, 2026. Pls.' Add. at 1-23. Plaintiffs' position that they could use that denial as a new trigger for their Rule

23(f) deadline is directly contrary to *Fleischman*. The Court must dismiss the Petition as untimely.

Reviewing Plaintiffs' Petition, the only discussion of timeliness, or lack thereof, is reduced to a footnote. Perhaps Plaintiffs hoped that neither the City nor the Court would recognize the blatantly late status of the Petition. Each of the Circuits Plaintiffs points to in favor of their erroneous position has recognized and enforced the inflexible nature of Rule 23(f)'s fourteen-day deadline.[2] Plaintiffs' citations to cases from the Third, Eighth, Ninth and D.C. Circuits do not save their untimely Petition.

In *Cody v. City of St. Louis*, 103 F.4th 523, 527 (8th Cir. 2024), plaintiffs filed a renewed motion for class certification and proposed "four new, more narrowly defined classes." The district court granted the plaintiffs' renewed motion, and the defendants "timely petitioned" the Court for permission to appeal the district court's order on the renewed motion. *Id.* at 528. Similarly, in *Hargrove v. Sleepy's LLC*, 974 F.3d 467, 475 (3d Cir. 2020) and *Stockwell v. City*

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[2] *See, e.g., Wolff v. Aetna Life Ins. Co.*, 77 F.4th 164, 172 (3d Cir. 2023) (holding that 23(f) petition was untimely when filed 195 days after original class certification order but 14 days after reconsideration order because reconsideration order did not materially change the class certification order).

& Cnty. of San Francisco, 749 F.3d 1107, 1110-1111 (9th Cir. 2014), the Courts also granted leave to appeal from decisions on renewed motions that proposed new classes. Unlike those cases, Plaintiffs did not move to renew their class certification motion based on new classes. Instead, Plaintiffs moved for reconsideration of their same classes.

In re White, 64 F.4th 302 (D.C. Cir. 2023), is also inapposite. There, the district court denied class certification with prejudice on March 22, 2022, and the plaintiff filed a 23(f) petition fourteen days later. *Id.* at 30. The district court had entered two earlier orders denying certification without prejudice and was explicit in holding that those orders "had not yet conclusively resolved the class certification question." *Id.* Because no definitive decision on class certification was made until the March 22, 2022 order, the fourteen-day deadline only began to run from the March 22, 2022 order and not the two earlier orders. *Id.* at 308. Unlike *In re White*'s two earlier orders, Judge Reiss conclusively resolved Plaintiffs' motion for class certification in her Class Certification Order. Plaintiffs cannot circumvent their own failure to timely file their 23(f) Petition with inapposite case law and a motion for reconsideration or, in the alternative, renewal under 23(c)(1)(C). The Court should reject Plaintiffs' erroneous interpretation of the Rule 23(f) deadline and dismiss their Petition as untimely.

B. Even if Plaintiffs' Reconsideration Motion Tolled the Fourteen-Day 23(f) Deadline, Plaintiffs' Petition is Still Untimely.

The insulting nature of Plaintiffs' Petition is exacerbated by the further realization that, even if this Court were to permit them to start the fourteen-day clock with the Reconsideration Order, the petition would *still* be untimely. The Reconsideration Order was entered on March 27, 2026. Pls.' Add. at 1-23. Fourteen days from the Reconsideration Order would have been April 10, 2026. Plaintiffs waited to file their Petition until four days later on April 14, 2026. Plaintiffs do not seem at all "diligent, reasonably mistaken, or otherwise deserving;" the Supreme Court has held that even when plaintiffs do appear deserving, courts lack the authority to make exceptions to Rule 23(f)'s mandatory deadline. *See Nutraceutical*, 586 U.S. at 193.

Plaintiffs' Petition is late under any measurement, and the Court should readily dismiss it.

POINT II. PLAINTIFFS DO NOT MEET THE EXACTING RULE 23(f) STANDARD

Even if Plaintiffs' Petition were timely, it would not meet the Rule 23(f) standard. Plaintiffs must demonstrate "(1) that the certification order will effectively terminate the litigation and there has been a substantial showing that the

district court's decision is questionable, or (2) that the certification order implicates a legal question about which there is a compelling need for immediate resolution." *In re Sumitomo Copper Litig.*, 262 F.3d 134, 140 (2d Cir. 2001). Plaintiffs' arguments do not rise to the level necessary to justify interlocutory review.

A. The District Court's Reconsideration Order and its Denial of Certification for the Proposed Traffic Enforcement Class Were Not Questionable.

1. The District Court applied the correct standard of review to Plaintiffs' 23(c)(1)(C) Motion.

First, Plaintiffs argue that the District Court applied the wrong standard to Plaintiffs' 23(c)(1)(C) Motion to Renew by requiring that Plaintiffs show "newly available evidence." Pls.' Pet. at 10-11. This argument ignores controlling Second Circuit precedent. As the District Court recognized, "the [c]ourt may not disturb its prior certification findings absent some significant intervening event, or a showing of compelling reasons to reexamine the question." Pls.' Add. at 20-21. (citing *Gortat v. Capala Bros., Inc.*, 2012 WL 1116495, at *2 (E.D.N.Y. Apr. 3, 2013); *see also Mazzei v. Money Store*, 308 F.R.D. 92, 106 (S.D.N.Y. 2015), *aff'd*, 829 F.3d 260 (2d Cir. 2016) (citation omitted). "Compelling reasons 'include an intervening change of controlling law, the

availability of new evidence, or the need to correct a clear error or to prevent manifest injustice.'" *Mazzei*, 308 F.R.D. at 106.

"In other words, Rule 23(c)(1)(C) is consistent (and largely coextensive) with—and not an exception to—law of the case doctrine and the limits on reconsideration motions." *Mack v. FCA US LLC*, 2025 WL 2403393, at *11 (E.D.N.Y. Aug. 19, 2025). Plaintiffs do not cite any opposing Second Circuit authority. Contrary to Plaintiffs' position, Rule 23(c)(1)(C) does not make a class certification decision easier to reconsider than any other kind of decision; rather it simply allows alteration or amendment of such an order at any time prior to judgment. *Id.* at *13 (citations omitted). The District Court's choice to apply the governing standard for Rule 23(c)(1)(C) motions is hardly questionable.

2. <u>The District Court's standing analysis is legally sound.</u>

Next, Plaintiffs rehash their erroneous standing arguments and argue that the District Court's rejection of them renders its analysis questionable. The City will spare the Court lengthy argument concerning the standing analysis for the proposed Traffic Enforcement Class; however, it will discuss the glaring errors and mischaracterizations in Plaintiffs' argument.

Plaintiffs first argue that the City's standing arguments deal with mootness and not standing. Pls.' Pet. at 20-21. Plaintiffs insinuate that the District Court relied primarily on *White v. Mathews*, 559 F.2d 852, 857 (2d Cir. 1977) in its standing analysis and that *White* concerned mootness. Again, conveniently hiding a significant flaw in that argument in a footnote, Plaintiffs countered that the district court also relied on *Jobie O. v. Spitzer*, 2007 WL 4302921 (S.D.N.Y. Dec. 5, 2007), but that was an unpublished opinion "imprecise in its discussion of standing and mootness." Pls.' Pet. at 21. In reality, the District Court primarily relied upon *Jobie O*, which cites to *White*:

> Plaintiffs oversimplify the *Jobie O.* court's ruling by characterizing it as predominantly a mootness analysis. As the court noted, "Because Mr. O. was no longer suffering the injury for which he seeks injunctive relief at the time he moved for class certification, *in order to have standing*, he would need to show that the threat of him suffering from the same injury is "real and immediate," not "conjectural or hypothetical." *Id.* at *14 (emphasis supplied) (quoting *Shain v. Ellison*, 356 F.3d 211, 215 (2d Cir. 2004)).
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> ****
>
> In deciding the operative date for establishing standing, the *Jobie O.* court relied on *White v. Mathews*, 559 F.2d 852 (2d Cir. 1977), wherein the court "suggested that the 'material time' was the date on which the motion for class certification was filed[,]" which controls "when the complaint and the motion for class certification are *not*

> filed simultaneously[.]" *Jobie O.*, 2007 WL 4302921, at *11 (emphasis in original).

Pls.' Add. at 6. *Jobie O.* was precise in its ruling on standing, and the District Court's decision to follow that precedent was not questionable. That is especially true because Plaintiffs still fail to cite any countervailing Second Circuit authority to support their position.

"Even if the filing date for the class certification motion was the operative date, the standing analysis would remain unchanged because every Plaintiff and every Proposed Intervenor for the Traffic Enforcement Class alleges infrequent and past harm…" Pls.' Add. at 6. The District Court's decision as to standing would still be correct, because Plaintiffs' threat of future injury is too speculative. In Judge Reiss's words, Plaintiffs allege "infrequent and past harm," that "depends upon a speculative chain of inferences that if they continue to drive in Buffalo, they will suffer discriminatory treatment after they either commit or do not commit a traffic infraction." Pls.' Add. at 6-7.

This speculative chain of inferences is analogous to those the City presented to the District Court in *MacNamara v. City of N.Y.*, 275 F.R.D. 125, 140 (S.D.N.Y. 2011) and *O'Shea v. Littleton*, 414 U.S. 488, 495-496 (1974). In both cases, the Court held that the plaintiffs lacked standing, because the threat of future

injury was too speculative as it rested on the possibility of future unconstitutional law enforcement. *See id.*

As a result, Plaintiffs' alleged harm "is unparticularized, impossible to redress through a narrowly tailored injunction, and would require an individualized evidentiary analysis of each traffic stop that took place for all Black and Latino drivers, anywhere in Buffalo, for eternity." Pls.' Add. at 6. The District Court properly declined to find an imminent risk of concrete, non-speculative, irreparable harm based on those facts.

The Court should disregard Plaintiffs' reliance on *Nicacio v. INS*, 797 F.2d 700, 702 (9th Cir. 1985), *overruled in part on other grounds, Hodgers-Durgin v. de la Vina*, 199 F.3d (9th Cir. 1999). Plaintiffs failed to raise this case or the related argument with the District Court. The case is also distinguishable. In *Nicacio*, the district court found that several of the class members had experienced repeated stops that were violative of their rights. *Id*. There is no evidence of similar findings for any of the class members here. Nor is evidence of mere stops enough to overcome the standing bar. As the District Court recognized, the crux of Plaintiffs' claims is not the stop itself, but whether the stop was motivated by discrimination or the motorist was otherwise subjected to discriminatory treatment.

Evidence of repeated stops is not necessarily evidence of repeated incidents of discriminatory treatment. The District Court standing analysis was not faulty.

3. The Traffic Enforcement Class is unascertainable.

The District Court reiterated that the Traffic Enforcement Class was unascertainable:

> it is virtually limitless because it does not specify a time period for class membership or specify a future duration for the proposed injunction, and because it would encompass every Black and Latino driver who planned to drive in the City. The practices Plaintiffs sought to enjoin other than the Checkpoints, which were discontinued as of the filing of their motion, were similarly unascertainable and amorphous and consisted of alleged discriminatory traffic enforcement writ large as opposed to specific, discrete practices.

Pls.' Add. at 7. In its Reconsideration Order, the District Court further explained additional problems:

> The court could not prohibit law enforcement from issuing tickets for motor vehicle violations, nor could it micromanage how those interactions took place, including whether the operator was Black or Latino, whether a traffic stop or other enforcement mechanism was justified, whether the fines imposed or other consequences were merited by the severity of the infractions, and whether the encounter as a whole was lawful or discriminatory.

Pls.' Add. at 8. No court could manage the class Plaintiffs propose.

Despite the impossible nature of the proposed class, Plaintiffs argue that the District Court's holding was questionable for its failure to assess whether the proposed class was defined by "objective criteria." Pls.' Pet. at 27. But Plaintiffs' argument is self-defeating. Plaintiffs note that ascertainability analyzes whether the membership has definite boundaries, such as subject matter, timing and location. *Id.* But they cite cases where, unlike the proposed Traffic Enforcement Class, the class definitions included time frames. *See Knox v. Salinas*, 193 F.3d 123, 125 (2d Cir. 1999) (class definition with time frame on and after February 8, 1990); *Plaintiffs #1-21 v. Cnty. of Suffolk*, 2021 WL 1255011, at *9, 16 (E.D.N.Y. Mar. 12, 2021) (class definition with time frame at any time after January 2012). Plaintiffs' proposed class definition *does not* include any time limitation or period. *See* Pls.' Pet. at 27.

Moreover, Plaintiffs' argument that objectivity somehow equates to ascertainability has been foreclosed by this Court. "While objective criteria may be necessary to define an ascertainable class, it cannot be the case that any objective criterion will do." *Brecher v. Republic of Argentina*, 806 F.3d 22, 25 (2d Cir. 2015). A class that has no limitation on time is not ascertainable; it cannot be sufficiently definite and readily identifiable. *See id.* Considering *Brecher* and

Plaintiffs' own cited authority, that Plaintiffs would label this aspect of the District Court's decision questionable is incredible.

4. Plaintiffs' request for "obey the law" injunctive relief is sufficient grounds to deny class certification.

"[A] class may *not* be certified under Rule 23(b)(2) if *any* class member's injury is not remediable by the injunctive or declaratory relief sought." *Bernit v. Barilla S.p.A.*, 964 F.3d 141, 146 (2d Cir. 2020). Plaintiffs have repeatedly and unsuccessfully argued that they seek "specific" or "tailored" injunctive remedies. In fact, after failing to definitively define those remedies in their initial class certification briefing and at oral argument, the District Court gave Plaintiffs a subsequent opportunity to do so through supplemental briefing. Plaintiffs still failed. For the sake of judicial efficiency, the City incorporates its arguments regarding Plaintiffs' failure to provide specific, permissible injunctive relief requests articulated in its Opposition to Plaintiffs' Supplemental Briefing herein. Dkt. No. 245 at 15-20. To this date, Plaintiffs have never specified what reforms they truly seek.

Sykes v. Mel S. Harris & Assocs. LLC, 780 F. 3d 70 (2d Cir. 2015) is distinguishable. First, there is no indication that the issue of obey the law relief was raised by either party. Second, the injunction the plaintiffs sought had other

facets beyond "obey the law" relief. In addition to directing defendants to cease illegal debt collection practices and to serve proper process going forward, the injunction also directed them to locate and notify class members of the default judgments entered against them and to provide affidavits of merit in the future. *Id.* at 97. The injunctive relief in *Sykes* also differs from that requested here, because it is definitive and specific. *See Id*. Plaintiffs have yet to define the exact contours of their intended injunctive relief beyond their basic obey the law relief such as "enjoining the City from conducting vehicle checkpoints for the purpose of general crime control; targeting Buffalo motorists for traffic stops, tickets, and vehicle Checkpoints based on their race and ethnicity; and performing traffic stops and vehicle Checkpoints for improper pecuniary purposes." Dkt. No. 211, p. 3.

The proposed class members' alleged injuries would not be remedied by the relief sought. The relief sought is prohibited obey the law and vague injunctive relief. The District Court's decision citing these additional reasons for denying certification is appropriate.

B. Plaintiffs Fail To Show that Denial of Certification for the Traffic Enforcement Class is the Death Knell.

Plaintiffs' death knell argument reduces to nothing more than counsel's uninformed and unverified representation of the financial wherewithal of

class members they have not even identified. Plaintiffs baldly assume the class members are "primarily low-income individuals who receive *pro bono* representation in this matter, for whom private counsel would be prohibitively expensive." Pls.' Pet. at 32. No evidence in the record supports this assertion, and it is not even something that could be readily determined.

To the extent Plaintiffs point to the socioeconomic statistics of City of Buffalo residents, that still would not be enough to determine whether the class members are "primarily low-income." Plaintiffs' expansive class definition does not limit class members to City of Buffalo residents. Rather, class members would include "[a]ll Black and/or Latino individuals who have been or will be subjected to traffic stops, traffic tickets, and 'traffic safety' vehicle checkpoints by the BPD." Pls.' Pet. at 27. For Plaintiffs to credibly argue that their proposed Traffic Enforcement class members are "primarily low income," they would need evidence to support that the majority of all Black and Latino individuals who have been or will be subjected to BPD traffic stops, traffic tickets, and vehicle and traffic safety Checkpoints are "low income." They do not, and practically cannot, have the evidence to support that bold assumption. Plaintiffs cannot simply show that the District Court's certification decision with respect to the proposed Traffic Enforcement Class meets the death knell standard under Rule 23(f).

C. The District Court's Denial of Certification for the Proposed Traffic Enforcement Class Does Not Raise Issues with Compelling Need for Immediate Resolution.

This ground for appellate review requires "a novel legal question . . . of fundamental importance to the development of the law of class actions and . . . is likely to escape effective review after entry of final judgment." *Sumitomo*, 262 F.3d at 140. As already explained, Plaintiffs' proposed issues on appeal do not present any novel questions of fundamental importance. Each of the "issues" they identify has either been addressed by Second Circuit precedent or district court precedent without any countervailing authority. Bluntly, Plaintiffs' untimely Petition does not raise issues sufficient to warrant 23(f) review. Their Petition should be denied.

POINT III. THE DISTRICT COURT MADE THE CORRECT RULING, TWICE

Even the cases Plaintiffs cite to support their Petition concede:

> A district court has "broad discretion" to determine whether certification is appropriate. The district court's rulings on questions of law are reviewed de novo and its application of the law is reviewed for an abuse of discretion. The district court's factual findings are reversable only if clearly erroneous. "The district court abuses its discretion if it commits an error of law."

See e.g., *Cody*, 103 F.4th at 528 (citations omitted). Judge Reiss did not err in her findings or conclusion as to the Proposed Traffic Enforcement Class.

The Proposed Traffic Enforcement Class was too problematic to be certified. The many problems preventing certification include that Plaintiffs lacked standing, the class was unascertainable, that the proposed injunctive relief was vague and merely obligated the BPD to "obey the law," and that the proposed injunction would have necessitated entirely too much involvement on the part of the District Court. It is enough to say that any of these concerns Judge Reiss discussed alone would defeat certification. Taken together, these impediments render certification impossible.

Despite their ferocious challenge in their Reconsideration Motion, Plaintiffs did not remedy these fatal defects and, contrary to 23(c)(1)(C), failed to present any compelling reasons to materially alter the Class Certification Order. Judge Reiss properly held her ground on denial.

POINT IV. PLAINTIFFS' INTENTIONAL DISREGARD OF SETTLED LAW MERITS SANCTIONS

The City understands Rule 11(c)(2), which requires a separate application for sanctions, and the City will do so in a timely manner; however, the

City is compelled to bring the gravity of the inappropriate nature of Plaintiffs' submissions to the Court's attention. Plaintiffs' stubborn refusal to withdraw their procedurally defective and legally meritless petition should be sanctioned. Rule 11 provides, in pertinent part:

> By presenting to the Court a pleading…an attorney…certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> ***
>
> (2) The claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Fed. R. Civ. P. 11(b)(2). Plaintiffs' Petition is anything but "non-frivolous."

It is difficult, if not impossible, to imagine how in their research Plaintiffs could have missed *Nutraceutical Corp.* and *Fleischman*, especially given their Footnote 2, which surveys cases from other circuits and discusses their holdings with respect to timeliness. But even if Plaintiffs' research was genuine, the City immediately sent them a Rule 11 Safe Harbor communication. Rather than acknowledging their error, Plaintiffs instead compounded it by submitting their April 17, 2026, letter to this Court.

Plaintiffs' frivolous Petition has caused the City to incur considerable and unnecessary expense to oppose it. Enacted and amended nearly forty years ago, Rule 11 was designed to prevent just this waste of judicial and attorney resources. Especially in a case such as this one, where Plaintiffs purport to represent the public interest, this practice should not be tolerated.

CONCLUSION

For the compelling reasons asserted in this brief, for Plaintiffs' failure to withdraw their meritless petition, and for the sheer untimeliness and insufficiency of the Petition itself, this Court should refuse to grant leave.

Dated: April 29, 2026

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CERTIFICATE OF COMPLIANCE

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Dated: April 29, 2026

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