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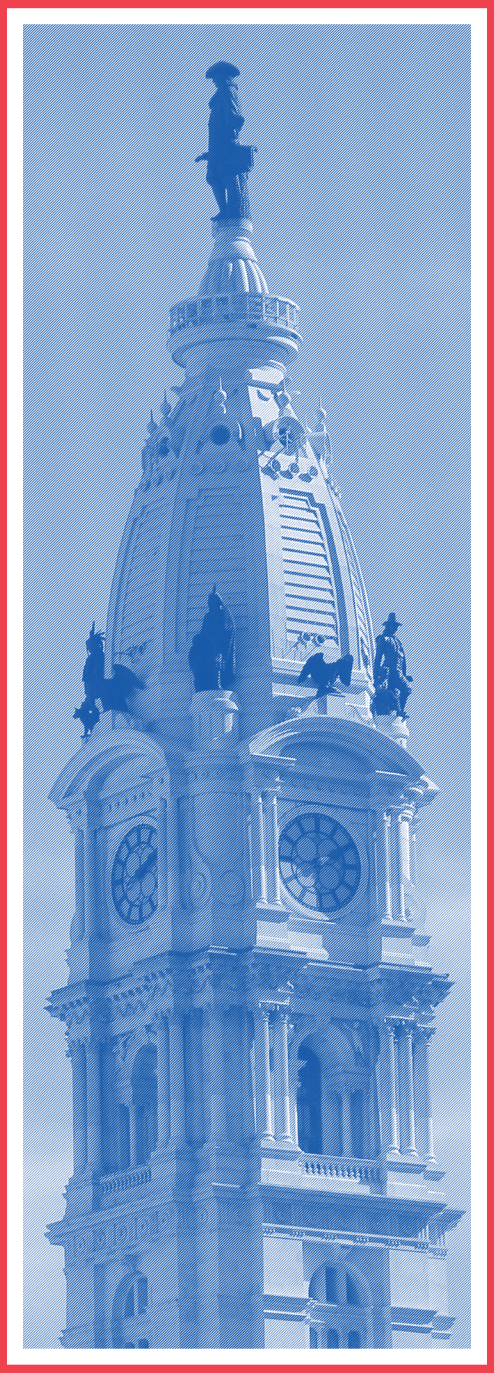

Wasted Resources:

The failures of stop-and-frisk in Philadelphia

Mary Catherine Roper and
Solomon Furious Worlds

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Executive Summary

The purpose of this policy paper is to document how the city of Philadelphia has evolved its policies regarding the use of stop-and-frisk by city police since the 2011 settlement agreement in *Bailey v. City of Philadelphia*. Stop-and-frisk (also known as a *Terry* stop) is a tactic used by police with the stated intention of finding dangerous weapons and preventing violent crime. According to Fourth Amendment law, if an officer has reasonable suspicion to believe that a particular person might have committed a crime or is about to commit a crime, the officer can "stop" them. Similarly, if an officer has reasonable suspicion that that particular person has a weapon after they are stopped, the officer can "frisk" them or conduct a pat-down search on the outside of their clothes without having to obtain a warrant from a judge.

In 2010, the ACLU of Pennsylvania, a professor from Penn Law School, and Kairys, Rudovsky, Messing, Feinberg & Lin, LLP, a civil rights law firm, filed a federal class action lawsuit on behalf of Plaintiffs (a number of Black and Latine Philadelphians) against the city for Philadelphia Police Department's ("PPD") officers' illegal and racially disproportionate use of stop-and-frisk. Less than a year later, the city and the Plaintiffs reached a settlement agreement. Under that agreement, the city and PPD agreed to reduce the number of unlawful stops and frisks to, eventually, comply with the standard set by Fourth Amendment law. The city and PPD also agreed that they would not allow officers to target people on the basis of race with stop-and-frisk and would, eventually, comply with the Fourteenth Amendment's mandate for equal treatment under the law.

The fact that the court is still monitoring the Consent Decree means that the city, PPD, and their officers are still using stop-and-frisk without having reasonable suspicion of criminal activity or that the person is armed and dangerous, and it means that PPD's officers are still stopping Black and Latine people at disproportionately high rates that cannot be explained by factors other than race.

In reality, stop-and-frisk very rarely leads to the discovery of a weapon. At the height of PPD's use of stop-and-frisk, in the first half of 2011, guns were recovered in less than 0.1 percent of the stops. Additionally, in the same time period, more than half of stops and more than half of frisks conducted were illegal, meaning police did not have reasonable suspicion to support their stops or frisks. With the policy and training changes required by the consent decree, the percentage of illegal stops and frisks dropped dramatically to 12.8% and 17.8%, respectively, by 2023. Still, the rate at which PPD recovered guns remained low with only about 6% of stops and 8.6% of frisks resulting in officers finding guns (and both percentages include illegal stops and frisks).

In addition to being ineffective, stop-and-frisk was spawned from the same racist history as our criminal legal system and so it is plagued by the same race-related issues. Black and Latine people are stopped at a much higher rate than white people. This can lead to unnecessary and dangerous interactions with police that have the potential to quickly spiral into a violent confrontation.

By 2020, the overall number of stops recorded by police had dropped significantly; however, the

racial disparities remained nearly unchanged. In the tenth year of litigation, data showed that Black people were over 50% more likely to be stopped without reasonable suspicion and over 40% more likely to be frisked without reasonable suspicion than white people. This led the city to finally acknowledge that these disparities could not be explained other than as racial targeting. This admission led the court to order the city to consider remedies to address the racial disparities. The city's own expert conceded that race was the most significant factor to determine whether someone is likely to be stopped.

Because of this, the court ordered the city to implement something bold: the Quality of Life Pilot Program ("program").

Under this new program, PPD officers are supposed to instruct someone engaged in a number of minor offenses (called "quality of life offenses") to stop doing the illegal activity without formally using stop-and-frisk. The program started in one police district but is now city-wide. That means PPD officers are supposed to verbally warn someone to stop doing whatever the minor offense[1] is before using stop-and-frisk. The hope was that by reducing officers' use of stop-and-frisk on people engaged in non-violent, low-level unlawful conduct, officers would reduce the number of illegal uses of stop-and-frisk and lessen the racial disparity in their use of stop-and-frisk.

As PPD officers have reduced the overall number of stops as a result of the program, the percentage of illegal stops has dropped and the percentage of stops that uncover a dangerous weapon has increased. This is a success both in cutting down on unnecessary police interactions with the public and in improving the impact that legal stops have had on increasing public safety.

It is clear that reducing the instances of police using stop-and-frisk for minor offenses allows officers to focus on more serious crime and significantly increases the percentage of stops that recover dangerous weapons. More stops decreases the impact that police have on improving public safety.

In 2024, with the inauguration of Mayor Cherelle Parker and a change of leadership at PPD, there has been a clear shift in the rhetoric city leadership uses when talking about the use of stop-and-frisk. To them, it seems more stops-and-frisks means more effective policing. But research and Philadelphia-specific experience shows that is not true. Of course, PPD under the Parker Administration could increase the use of stop-and-frisk without violating Bailey court orders. But doing so would be a mistake. Increasing even legal stops goes against the clear lessons learned from the changes made to stop-and-frisk in recent years and will make Philadelphia less safe, and policing in Philadelphia more racist.

This policy paper will serve as a starting point for a renewed conversation with the Parker Administration and PPD leadership about stop-and-frisk. The program that reduced the use of stop-and-frisk for minor offenses improves public safety while continuing to reduce unjustified stops. Critically, it also monitors and seeks to address the persistent racial disparities in pedestrian stops and frisks.

There is still a lot of work to do, but forcing ourselves back in time to use tactics that even the city admits failed to make Philadelphia safe is not the way to make progress. A safer Philadelphia is possible, and it does not require the city and PPD to use tactics proven to disproportionately harm people of color and poor people. Instead, the city, ACLU of Pennsylvania, and all those who are invested in a safer future can work together to move forward.

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1 Those minor "quality of life" offenses include: sounds from residential properties, sounds created on public right of way, spitting, alcoholic beverages (open containers), public urination or defecation, aggressive conduct on sidewalk (panhandling), gambling, disorderly conduct, obstructing the highway or other passageway, defiant trespass, litter in public places, litter in parks, smoking marijuana in a public space, sound production devices (loud music from cars), and prostitution.

Introduction

This paper is intended to capture the history of *Bailey v. City of Philadelphia*[1], a lawsuit that was filed in the U.S. District Court in Philadelphia in 2010 to challenge the Philadelphia Police Department's ("PPD") use of what police call "investigative stops" and the rest of us call stop-and-frisk. Some – especially some elected officials – refer to stop-and-frisk as "*Terry* stops."[2] Bailey continues to this day in the form of a Consent Decree[3] and a series of Court orders that regulate PPD's stop-and-frisk practices.

Stop-and-frisk refers to police action that is supposed to be shorter and less coercive than an actual arrest. In *Terry v. Ohio*[4], the United States Supreme Court held that police may briefly detain a person for investigatory purposes if they have "reasonable suspicion" based on "particularized and objective grounds" that "the individual detained was, or was about to be, engaged in criminal activity"[5] – which is less than probable cause, the evidentiary standard needed for officers to justify arresting someone.[6] That is the "stop" in stop-and-frisk. The "frisk" was never supposed to be automatic. Police are allowed to "frisk" a person (i.e., "pat down" the outside of their clothing)[7] only when they have "reasonable suspicion" that a "particular person" is armed and dangerous.[8]

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1 *See Bailey, et al. v. City of Philadelphia, et al.*, ACLU Pennsylvania, https://www.aclupa.org/en/cases/bailey-et-al-v-city-philadelphia-et-al (last accessed Apr. 19, 2024).

2 Some courts call this police tactic an "investigative detention" and will even use the words "stop," "detention," and "seizure" interchangeably. See *Commonwealth v. Hicks*, 208 A.3d 916, 938 ("The individualized nature of the justification for a seizure is central to the Terry doctrine, inherent in the requirement that an investigative detention must be premised upon specific and articulable facts particular to the detained individual."), *cert. denied*, —— U.S. ——, 140 S.Ct. 645 (2019); *see also Commonwealth v. Hicks*, 208 A.3d 916, 927 (discussing stop-and-frisk, noting that it is "interchangeably labeled an 'investigative detention,' a '*Terry* stop,' or, when coupled with a brief pat-down search for weapons on the suspect's person, a "stop and frisk.").

3 A consent decree is a settlement, but one in which the court keeps control of the case to make sure the parties comply with all of the terms of the agreement and to resolve any disputes that arise during that process.

4 392 U.S. 1 (1968).

5 *Commonwealth v. Jackson*, 302 A.3d 737, 750 (Pa. 2023) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)); see also *United States v. Goodrich*, 450 F.3d 552, 560 (3d Cir. 2006) (recognizing that "an officer cannot conduct a *Terry* stop simply because criminal activity is afoot" and that, "[i]nstead, the officer must have a particularized and objective basis for believing that the particular person is suspected of criminal activity") (emphasis in original).

6 *See Commonwealth v. Burno*, 154 A.3d 764, 781 (Pa. 2017) (quoting *Commonwealth v. Gwynn*, 555 Pa. 86, 723 A.2d 143, 148 (1998) (citing *Beck v. Ohio*, 379 U.S. 89 (1964)).

7 A "frisk" is a "pat-down" of the outside of someone's clothing. See *Commonwealth v. E.M.*, 735 A.2d 654, 659 (Pa. 1999) ("If, during the course of a valid investigatory stop, an officer observes unusual and suspicious conduct on the part of the individual which leads him to reasonably believe that the suspect may be armed and dangerous, the officer may conduct a pat-down of the suspect's outer garments for weapons.") (citing *Terry*, 392 U.S. at 24).

8 *Jackson*, 302 A.3d at 743 & 746 (citations omitted); see also *United States v. Connolly*, 349 F. App'x 754, 757 (3d Cir. 2009) (affirming officers must have "reasonable and particularized suspicion that [an individual] [is] armed and dangerous" to lawfully frisk them).

In other words, officers have reasonable suspicion if they can point to a specific person's actions to suggest that they are breaking the law, have broken the law, or are about to break the law – even if the person barely broke the law or broke a very minor law. For example, if an officer observes a person holding a bottle while carefully covering up the label and that person smells of beer, the officer has reasonable suspicion that the person is carrying an open container of alcohol, which is a crime. The officer may stop and investigate that person.[9]

The average police stop in Philadelphia lasts 13 minutes – long enough to make a person late to wherever they were going. During the stop, police will take the individual's identification and often question them about where they are going or what they are doing. The police run the individual's name through criminal databases, looking for outstanding warrants. If the person resists or argues with the police – and sometimes even when they don't – the situation can escalate into violence. Here and across the country these stops too often result in unjustified force, including deadly interventions by the police.[10]

As explained below, the *Bailey* case was filed in 2010 in reaction to the aggressive stop-and-frisk practices initiated by Mayor Michael Nutter and his Police Commissioner, Charles Ramsey. That program was touted by Nutter in his campaign for mayor as the solution to a spike in gun violence and especially gun homicides. Because the case was never litigated, there was never a judicial finding that the Nutter/Ramsey program violated the law. Instead, as soon as Bailey was filed, the city asked to begin settlement discussions. This led to the creation, in June 2011, of the *Bailey* Consent Decree.

Under that agreement, the city promised that PPD stops would comply with the Terry legal standard and that PPD would not target people for stops on the basis of their race. The fact that the court is still monitoring the Consent Decree means that the city has never kept either promise. As detailed below, PPD has significantly reduced the number of pedestrian stops its officers make, and today, unlike in 2010, PPD officers identify a legal reason for the stop in a large majority of incidents.

But PPD's stop-and-frisk program is still plagued by racial disparities in whom the police target for stops. In 2020, the city finally conceded that statistical analysis of the stops showed racial disparities that could not be explained by non-racial factors. The city's own expert stated "there exists a significant association between detainee race (African-American) and the likelihood of being stopped."[11]

In response to that admission, the court ordered the parties to propose remedies to reduce racial disparities. One of the remedies ordered by the court was the Quality of Life Pilot Program ("Program") wherein PPD officers would simply ask people who are engaged in a number of named petty crimes[12] to stop what they are doing without

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9 Police may also conduct an "investigative stop" of a vehicle. Vehicle stops in the context of the *Bailey* case are discussed below.

10 In 2008, two years before the *Bailey* case was filed, "[t]he Center for Constitutional Rights filed the federal class action lawsuit *Floyd, et al. v. City of New York, et al.* against the City of New York to challenge the New York Police Department's practices of racial profiling and unconstitutional stop and frisks of New York City residents." *Floyd, et al. v. City of New York, et al.*, Center for Constitutional Rights, https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al (last accessed Apr. 29, 2024). Just like the *Bailey* case, "*Floyd* focuses not only on the lack of any reasonable suspicion to make these stops, in violation of the Fourth Amendment, but also on the obvious racial disparities in who is stopped and searched by the NYPD – approximately 85 percent of those stopped are Black and Latino, even though these two groups make up only 52 percent of the city's population – which constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment." *Id.*

11 ECF 113, Supp. to Defs Tenth report.

12 Those quality of life offenses include: sounds from residential properties, sounds created on public right of way, spitting, alcoholic beverages (open containers), public urination or defecation, aggressive conduct on sidewalk (panhandling), gambling, disorderly conduct, obstructing the highway or other passageway, defiant trespass, litter in public places, litter in parks, smoking marijuana in a public space, sound production devices (loud music from cars), and prostitution.

detaining them, asking their name, or writing up a detailed report. Only if a person refuses to comply will police forcibly stop, frisk, and question that individual, or issue them a citation. That pilot was successful and the Program is now city-wide. This change has contributed to a refocus of police resources on violent crime.

Over time, the pressure of the Consent Decree has caused PPD to hugely reduce the number of pedestrian stops it conducts. The COVID-19 emergency accelerated that effect. But today, with gun violence top of mind, officials and residents desperate for answers are resurrecting the idea of using stop-and-frisk more aggressively. Mayor Cherelle Parker is calling for increased use of stop-and-frisk, as well as other aggressive police tactics. We have prepared this paper to provide lawyers and advocates with the lessons learned over more than a decade of monitoring PPD's use of stop-and-frisk.

Before the Lawsuit and What the Suit Sought to Address

The Philadelphia Police Department, as the fourth largest police department[13] and one of the oldest in the United States,[14] has been the subject of numerous academic and government studies.[15] This is because PPD has a long and colorful history of brutality against the poorest and most vulnerable members of the Philadelphia community.[16] In 2007, the soon-to-be Mayor of Philadelphia, Michael Nutter released a whitepaper entitled "THE NUTTER PLAN FOR SAFETY NOW: TEN WEEKS TO A SAFER PHILADELPHIA."[17] In it, Nutter stated that his plan as mayor would be to increase the number and use of surveillance cameras, declare a "crime emergency" in "specified neighborhoods" throughout Philadelphia, "saturate Targeted Enforcement Zones" with officers to employ "aggressive tactics," and "promote and sustain" the use of stop-and-frisk. *Id.*

Upon taking office in January 2008, Mayor Nutter appointed Charles Ramsey as Police Commissioner. Commissioner Ramsey moved quickly to implement many of Nutter's priorities. PPD recorded 216,832 pedestrian stops in 2008, as compared to 136,711 in 2007–a 59% increase

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13 *See About the Department*, Philadelphia Police Department (accessed Nov. 27, 2023), https://www.phillypolice.com/about/index.html.

14 *See* Olivia Waxman, *How the U.S. Got Its Police Force*, Time (May 18, 2019), https://time.com/4779112/police-history-origins/.

15 *See* Philadelphia Police Study Task Force, *Philadelphia and Its Police: Toward a new Partnership*, U.S. Dep't of Justice, Nat'l Institute of Justice (Mar. 1987), https://scholar.harvard.edu/sites/scholar.harvard.edu/files/markmoore/files/philadelphia_police_corruption_towards_a_new_partnership_report.pdf; Jerry H. Ratcliffe, PhD, et al., *The Philadelphia Predictive Policing Experiment: Final report*, National Institute of Justice (Jan. 2018), https://www.jratcliffe.net/_files/ugd/f5df24_6fa2d4c332684547bba445f9f1afafe7.pdf; George Fachner, Steven Carter, *COLLABORATIVE REFORM INITIATIVE, An Assessment of Deadly Force in the Philadelphia Police Department*, U.S. Dep't of Justice COPS (Mar. 2015), https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0753-pub.pdf; Rebecca Rhynhart, *Review and Analysis of the Philadelphia Police Department and Other Related Police Spending*, Philadelphia Office of the Controller (Oct. 2022), https://controller.phila.gov/wp-content/uploads/2022/10/PPD-Review-Final.pdf; Evan Anderson, et al., *Experiences with the Philadelphia Police Assisted Diversion Program: A Qualitative Study*, 100 Int'l J of Drug Policy 103521, (2022), https://www.sciencedirect.com/science/article/abs/pii/S0955395921004394.

16 Philadelphia Police: A History of Brutality, Philly Power Research (Mar. 24, 2022), https://www.phillypowerresearch.org/news/2022/3/23/philadelphia-police-a-history-of-brutality. ; Dan Saint, et al., Black and Blue: 190 Years of Police Brutality Against Black People in Philadelphia, Philadelphia Inquirer (July 10, 2020), https://www.inquirer.com/news/inq/philadelphia-police-brutality-history-frank-rizzo-20200710.html.; *"Both Spectacular and Unremarkable:" A Letter To The United Nations On Police Violence In Philadelphia*, ACLU of Pennsylvania (Dec. 1, 2020), https://www.aclupa.org/en/un-report (a jointly submission by the Andy and Gwen Stern Community Lawyering Clinic of the Drexel University Thomas R. Kline School of Law and the ACLU of Pennsylvania to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the excessive use of force and discrimination by the Philadelphia Police Department in response to Black Lives Matter protests in May and June of 2020).

17 *THE NUTTER PLAN FOR SAFETY NOW: TEN WEEKS TO A SAFER PHILADELPHIA*, Nutter 2007 (2007), http://www.nutter2007.com/images/uploads/Safety_Now_Latest.pdf; archived at *Wayback Machine* (https://web.archive.org/web/20071006133048/http://www.nutter2007.com/images/uploads/Safety_Now_Latest.pdf); citing a capture dated Oct. 6, 2007. ("Nutter Plan for Safety Now.")

in a single year. The number of pedestrian stops peaked in 2009, with PPD recording 253,276 stops that year – an increase of 85% over the pre-Nutter number of stops. Of the 253,333 stops in 2009, over 183,000, or 72.2%, were of Black people, who then made up 44% of the population of Philadelphia. Only 8.4% of the 253,333 stops led to an arrest, with very few resulting in the recovery of guns.[18] These statistics came from PPD data the ACLU obtained through a public records request before the filing of the Bailey suit.

The ACLU also obtained data on vehicle stops by PPD. The Nutter/Ramsey administration conducted a shockingly high number of vehicle stops – almost a quarter of a million stops in 2009 alone. But that did not make the Nutter/Ramsey administration unique. PPD consistently reported in excess of 200,000 vehicle stops per year from 2005 (the earliest year for which the ACLU obtained data) until the onset of the COVID-19 emergency severely cut the number of such stops in 2020. As with pedestrian stops, the vast majority of these stops targeted people of color.

I. The Lawsuit – *Bailey et al., v. the City of Philadelphia*

The ACLU of Pennsylvania and civil rights lawyers David Rudovsky and Paul Messing were concerned about the aggressive tactics being used under the Nutter/Ramsey administration. After Rudovsky and Messing spoke with dozens of Black clients who had stories of frequent and groundless stops by PPD officers, they teamed up with the ACLU, which requested data from PPD on the incidence of stops recorded by PPD. That data supported the experience of the people – mostly Black men – that Rudovsky and Messing had interviewed. The civil rights lawyers obtained additional evidence in depositions of police officers, who essentially confirmed that PPD had instructed patrol officers to increase the number of stops they made without regard to the law, and that PPD intended to, and did, target Black people for these stops.

Eight named plaintiffs, on behalf of themselves and a class of similarly situated individuals, filed a complaint on November 4, 2010. They detailed numerous incidents wherein PPD officers stopped, frisked, seized, searched, and detained them without probable cause or reasonable suspicion to do so.[19] Based on these allegations, the complaint alleged that the city of Philadelphia or PPD itself had a "policy, practice and/or custom of stopping, seizing, frisking, searching and detaining persons in the absence of probable cause or reasonable suspicion, or on the basis of race and/or national origin, in violation of the Fourth and Fourteenth Amendments."[20] The named plaintiffs are "African-American" or "Latino men," and each one had been "subjected to improper stops, frisks, searches and detentions on repeated occasions" by PPD.[21] The class was represented by Mary Catherine Roper from the ACLU of Pennsylvania; Seth Kreimer, a professor from the University of Pennsylvania Law School; and, David Rudovsky and Paul Messing, two attorneys from the firm Kairys, Rudovsky, Messing, Feinberg & Lin, LLP.

The city did not fight the suit. Instead, in June 2011, the city signed an agreement to reform its stop-and-frisk practices and to remain under the supervision of a federal judge until PPD was no longer violating the law.

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18 PPD officers had been required to fill out a detailed report, known as a 75-48a, for both pedestrian and vehicular stops, since the City settled a 1996 lawsuit alleging racial bias in policing, *NAACP v. City of Philadelphia*, 96-cv-06045 (E.D. Pa. 1996). Prior to the Bailey litigation, PPD aggregated basic demographic data from each 75-48a in an internal data set, from which these numbers were produced in response to a Right to Know Law request. Pursuant to the *Bailey* Consent Decree, PPD developed a full database of the information recorded by police on the 75-48a.

19 *See* 11-4-10 Compl. ¶¶ 29-56.

20 *Id*. at ¶ 20.

21 *Id*. at ¶ 26.

II. The Consent Decree at work – Plaintiffs use the Consent Decree to force PPD to comply with the *Terry* standard.

A. Under the Nutter/Ramsey administration, PPD made very little progress toward bringing stop-and-frisk into compliance with the law

On June 21, 2011, the *Bailey* court issued an order that certified the class and approved a Consent Decree. Order, ECF 14; *see* Consent Decree, ECF 16. The court-approved Consent Decree is based on three principles to which both sides of the dispute mutually recognize and agree: that there is a "need for (1) diligent law enforcement in the city of Philadelphia, (2) the proper use and implementation of stop-and-frisk practices and policies as instrumental in legitimate police practices, and (3) compliance with the requirements and mandates of the Fourth and Fourteenth Amendments to the United States Constitution and to Article 1, Sections 1 and 8 of the Pennsylvania Constitution." Consent Decree, § I-C (pg. 2). Plaintiffs agreed "not to litigate the constitutionality of past stop-and-frisk practices." Consent Decree, § II-B (pg. 3). In exchange, PPD and the city of Philadelphia agreed to intense monitoring and a good faith effort to change and improve their practices. Both parties must "analyze and review this data and documentation" to measure "compliance with … constitutional standards" and submit reports to the court "on a semi-annual basis" (Consent Decree § IV-D (pg. 6). Unfortunately, the city, under former Mayor Nutter, maintained an aggressive stance towards stop-and-frisk, which was reflected in the lack of progress made during the first few years of the settlement agreement.[22]

Starting even before the final signing of the Consent Decree, the plaintiffs' attorneys were reviewing thousands of 75-48a forms to quantify the scope of the problem. The 75-48a is the form that PPD officers use to record a stop, the reason for it, and what happened during the stop. The form is highly detailed and records the location of the stop, the identity of the officers, the time and duration of the stop, the name, address, and demographic information of the person stopped, and more. Most importantly, the form contains a narrative box in which the officer must describe the reason for a pedestrian stop. Plaintiffs' attorneys reviewed the reasons provided for stops by PPD officers and judged whether they met the Terry reasonable suspicion standard. Plaintiffs' attorneys were very familiar with PPD forms and conventions and shorthand, and would read the forms as the officers would, often giving them the benefit of the doubt. Naturally, the attorneys could only judge what was written on the form, and did not try to verify whether the officer had seen the things they wrote down as justification. It should be remembered throughout this discussion that the veracity of PPD officers' written reasons for conducting stops has never been tested.

While the 75-48a itself provided evidence of PPD's failure to meet the Fourth Amendment standard set forth in *Terry*, it was more difficult to address the Fourteenth Amendment question: whether the disparities in who was stopped were the result of racial profiling or bias. The city contended that more Black people were stopped as the result of legitimate law enforcement priorities: there was more crime in majority Black neighborhoods, so that was naturally where the police conducted more stops. From early on, plaintiffs sought to demonstrate, through statistical reports, that the disparities in who was stopped could not be explained by neutral factors such as local crime rates or non-racial demographic factors such as the age of the person stopped. But until 2020, the city disputed that evidence. In the meantime, plaintiffs hoped that by bringing down the number of illegal stops, and the number of stops overall, there would be a reduction in racial disparities as the police shifted to a focus on potentially illegal conduct rather than race. Unfortunately, as explained below, PPD's improvement in meeting Fourth Amendment standards never led to a reduction in racial disparities.

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22 *See* Nutter Plan for Safety Now, *supra*.

All of the plaintiffs' reports focussed on pedestrian stops. As noted above, PPD also conducted "investigative stops" of drivers, and recorded those interactions on the same form, the 75-48a form. In Philadelphia, an officer conducting a vehicle stop would fill out a different portion of the 75-48a form than an officer conducting a pedestrian stop. For a vehicle stop, the officer is required to state that they observed a violation of a specific section of the Vehicle Code.

That violation could be an expired inspection sticker, an object hanging from the rearview mirror, or an observation that the driver changed lanes without signaling, was moving back and forth in the lane, or a thousand other potential traffic violations. The recording of an observed Vehicle Code violation meant that every single vehicle stop was supported by a statement that satisfied the reasonable suspicion standard of *Terry*. That claimed violation might not be true, of course, and, even if true, it could well be a pretense to cover up racial profiling. But that was not something that the plaintiffs could determine from the paper record, unlike the way that they could identify violations of the Terry standard for pedestrian stops from the paperwork filled out by PPD. For that reason, plaintiffs chose to focus, first, on pedestrian stops in their analysis and reports to the Court.

1. *First Report*[23]

In February of 2012, plaintiffs submitted their first report to the court, which was not made part of the public record because it analyzed stops that had occurred during the first half of 2011, before the Consent Decree was finalized. The first report focused on Fourth Amendment issues, and specifically whether the 75-48a form showed sufficient cause for the stops, frisks, and searches reported by PPD. The audits showed that over 52% of stops and 56% of frisks were done without reasonable suspicion. Only 4% of stops led to police recovering contraband and only 1% to recovering weapons.

2. *Second Report*[24]

Plaintiffs' second report was submitted to the court in July 2012, and again not made public because it analyzed stops made during 2011, before PPD had an opportunity to change its practices. The second report included (1) a Fourth Amendment analysis of the 2011's third quarter (July to September 2011) stop-and-frisk data, (2) a racial analysis of the data for the first half of 2011, and (3) a racial analysis of possession of marijuana arrests for the period September 15-November 15, 2011. Over 52% of the stops and 56% of the frisks reviewed were conducted without reasonable suspicion. Contraband was recovered in 5.8% of stops and guns were recovered at less than 0.1% of stops. The last figure was particularly important because the Nutter/Ramsey administration had pushed increased stop-and-frisk as a way to combat a surge in gun violence.

Professor David Abrams of the University of Pennsylvania Carey Law School provided a statistical analysis for the racial component of the report. He conducted a series of regression analyses and concluded that the racial disparities in stops and frisks (numbers by race compared to census data[25]) were not fully explainable by non-racial factors. Further statistical analysis showed that approximately 40% of stops with a Black or Latine detainee led to a frisk, considerably more than the 17% rate for white detainees. Black and Latine people were also searched at a substantially higher rate than white people, about 20% of the time versus 12%. Likewise, while only 12.0% of white people stopped were arrested, 19.3% of all Black people and 17.9% of Latine people stopped were

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23 Data from this section comes from the Pls. First report.

24 Data from this section comes from the Pls. Second report.

25 According to U.S. Census Data in 2010 the racial composition of Philadelphia County is 43.4% African American, 36.9% White, 12.3% Latino, 6.3% Asian, and 1.1% other. See 2010 Census of Population and Housing, Summary Population and Housing Characteristics, CPH-1-40, Pennsylvania, U.S. Census Bureau, (2012) pg. 260-61, https://www2.census.gov/library/publications/2012/dec/cph-1-40.pdf.

arrested. An analysis of marijuana arrests revealed even more pronounced disparities showing 83.4% of those arrested were Black, 8.2% were Latine, and 7.4% were white. This is despite the fact that white people are more likely to use cannabis than Black people.[26]

3. *Third Report*[27]

The third report was the first that was filed as part of the public record in the *Bailey* case. It focused on stop-and-frisk practices for the first half of 2012, and included an analysis of PPD's marijuana arrests for the period from September 15 to November 15, 2012. In the third report, plaintiffs found that approximately 45% of PPD's pedestrian stops and frisks were being made without reasonable suspicion – with justified frisks resulting from unjustified stops, or "fruit of the poisonous tree" frisks, accounting for an additional 20%.[28]

Along with the troubling fact that reasonable suspicion was present for only about a third (37%) of all pedestrians frisked, 76% of the stops and 85% of frisks were of Black and Latine individuals. Hit rates, again, were very low with only 1.5% of all stops resulting in contraband of any kind being recovered and less than 1% resulting in guns being recovered. A high number of stops and frisks continued to take place for reasons that are not justified under the Consent Decree or case law. PPD's listed reasons to stop people included non-offenses like loitering, panhandling, or sitting on steps or porch of "abandoned" property, or even just being in a "high crime area." The reasons given for frisks were often officer protection, narcotics investigation, and, again, because the individual stopped was in a "high crime" or "high drug" area. These are not legal reasons for a frisk because they do not identify a reason to believe the person has a weapon.

Continuing the trend, 84.4% of the arrests for marijuana possession were of Black individuals, (up 1 percentage point compared to 2011), 8.6% were of Latine individuals (up from 8.2% in 2011), and 5.8% were of white individuals (down from 7.4% in 2011). Such a disparity in marijuana-related arrests, when compared to population levels, could not be explained by non-racial factors. In response, the city stated that PPD was providing additional training, issuing revised auditing protocols, and instituting new accountability measures.

4. *Fourth Report*[29]

The fourth report, filed in December, 2013, analyzed stop-and-frisk practices for the first quarter of 2013, and contained a racial analysis of stops and frisks from the first two quarters of 2012. Pedestrian stops were made without reasonable suspicion in 43% of the cases reviewed, and frisks were conducted without reasonable suspicion in over 54% of the cases—with "fruit of the poisonous tree" frisks accounting for an additional 7%. There continued to be very low "hit-rates" with contraband of any kind being recovered in less than 3% of the stops and guns being recovered just under 0.3% (only 3 guns recovered in over 1100 stops) of the time. Again, a high number of stops and frisks continued to take place, and PPD officers continued to use reasons that were not justified under the Fourth Amendment or the Consent Decree.

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26 See Ezekiel Edwards, et al., *The War on Marijuana in Black and White*, American Civil Liberties Union (June 2013), https://saltonverde.com/wp-content/uploads/2017/09/23-the_war_on_marijuana.pdf.

27 Data from this section comes from the Pls. Third report. See ECF 44. Plaintiff's Third report analyzed stops and frisks during the first half of 2012 for Fourth Amendment issues (i.e., legality of police encounters) and the third quarter of 2012 for Fourteenth Amendment related issues (i.e., racial bias). *Id.*

28 Though "fruit of the poisonous tree" frisks were briefly mentioned in the Second report, the Parties did not begin to keep track of this specific number until the Third report. *See* ECF 44.

29 Data from this section comes from the Pls. Fourth report. *See* ECF 48.

In this report, plaintiffs note that PPD's data collecting system at the time was not sophisticated enough to properly track officers' actions, making it difficult to put effective accountability measures in place. However, PPD was slated to get a new electronic data system by 2014 and plaintiffs "expect[ed] significant improvements," but were clear that they would "seek sanctions from the court" if those improvements were not present.

Black and Latine people accounted for 76% of those stopped and 79% of those frisked during the first half of 2012. The statistical analysis also showed that in this time period Black and Latine people were significantly more likely to be stopped, searched, and arrested than white people. Approximately 17% of the Black and Latine people stopped were frisked, but only 11% of white people; 9.9% of Black people and 12.7% of Latine people stopped were searched, but only 5.7% of white people; and, 8.8% of Black people and 12.7% of Latine people stopped were arrested but only 5.3% of white people. All numbers listed were significant in that they showed, even when other factors (e.g., age, police district, crime rates, etc.) are controlled for, officers were using a higher threshold of "reasonable suspicion" for stops of white suspects.

5. Fifth Report[30]

Submitted on February 24, 2015, the fifth report presented "compelling evidence" that "the city ha[d] failed to adequately remedy the serious flaws that existed (and continue to exist) in PPD's stop and frisk practices." Examining the first two quarters of 2014, data showed that 37% of stops were conducted without the requisite reasonable suspicion, and 80% of those stopped were Black or Latine. Similarly, 39% of frisks were conducted without the requisite reasonable suspicion with another 14% of "fruit of the poisonous tree" frisks (53% total), and 89% of those frisked were Black or Latine. The "hit rate" for stops during this time was, again, very low, with 2.5% of all stops yielding contraband and 0.2% yielding guns; likewise, 4.4% of frisks yielded contraband and only 0.46% of frisks (2 out of 433 sampled) yielded guns. Again, officers gave the same reasons – e.g., single person "obstructing" the sidewalk, panhandling, high crime or high drug area, officer protection, etc. – to justify their unlawful stops and frisks.

On the basis of the fifth report, plaintiffs again threatened the city that they would seek sanctions from the court for the city's failure to make progress required by the Consent Decree. But soon after the filing of the fifth report, James Kenney won the Democratic primary for mayor, meaning that he was nearly guaranteed to be elected in the November 2015 election. Kenney had campaigned on a promise to "end" stop-and-frisk in Philadelphia. Representatives from the Kenney campaign and from the city asked the plaintiffs to hold off on any request for sanctions until the Kenney administration could take over and address stop-and-frisk in a new way. Plaintiffs agreed to hold off on requesting sanctions.

On the issue of racial impact, statistical analysis of stop-and-frisk practices from the first half of 2014 told a familiar story. Of those stopped, 72% were Black, 9% were Latine, and 20% were white; likewise, of those frisked, 79% were Black, 10% were Latine, and 11% were white. About 19% of Black and Latine people stopped were frisked, compared with only 10% of white people; about 6% of Black people and 6.9% of Latine people stopped were searched, but only 4.1% of white people; and, about 6% of Black people and 8.8% of Latine people stopped were arrested, but only 4.9% of white people. These numbers were statistically proven to be significant, even after controlling for non-racial factors like the crime rate of the neighborhood.

In October 2014, the Philadelphia City Council passed, and Mayor Nutter signed into law, an ordinance which provides that "possession of under 30 grams of marijuana is to be treated as a Civil Code Violation punishable by a small fine and, in most circumstances, the offender is not subject to arrest and prosecution."[31]

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30 Data from this section comes from the Pls. Fifth report. *See* ECF 50.

31 Philadelphia Code, Chapter 10-2100. This ordinance was initially proposed by then-Council Member James Kenney who would

6. Sixth Report[32]

The sixth report, submitted March 22, 2016, was similar to prior reports and showed, for the first half of 2015, 33% of all stops and 42% of all frisks were without reasonable suspicion – with an additional 14% of frisks occurring after a stop without reasonable suspicion. While stops without reasonable suspicion went down 4% when compared to the same time period in 2014, frisks went up 4% from their 2014 numbers. The data showed that about 15.5% of all Black people stopped, 17.8% of all Latine people stopped, and 6.6% of all white people stopped were frisked. Of all stops, about 68.3% of the suspects were Black, 8.7% were Latine, and 22.9% were white; and, of all frisks, about 77.6% of the suspects were Black, 11.3% were Latine, and 11.0% were white. Contraband was recovered in about 1.5% of stops and guns were recovered in only about 0.25% of stops, and about 4.6% of frisks yielded contraband and 1.2% yielded guns.

Though these numbers indicated progress was *very* slow moving, at best, the 2014 ordinance that made possession of under 30 grams of marijuana a civil code violation seemed to have drastically reduced the number of marijuana-related arrests. From March 1 to May 15, 2015, there were 203 possession of marijuana arrests. To compare, the second and third reports noted that there were 785 and 798 cannabis-related arrests from the same time period (September 15 to November 15) in 2011 and 2012, respectively. Though the number of people arrested fell dramatically, racial disparities persisted with Black and Latine individuals making up over 90% of all people arrested, and with no arrests in several predominantly white police districts.

B. In 2016, under a new administration, PPD and the City began to take active strides to address their high percentage of illegal stops and frisks.

In January 2016, then-incoming-Mayor James Kenney began his new role and inherited a police department that was oppositional to the *Bailey* consent decree. The sixth report was the final report from then-outgoing-Mayor Nutter's administration; the seventh report would be the first under Kenney's administration. This was the perfect moment for plaintiffs to make good on their promise to petition the court to intervene because, after about five years of monitoring, the city had yet to make the significant improvements needed to make PPD's tactics lawful – let alone fair. Plaintiffs' attorneys did just that and, after viewing the sixth report which showed continued and serious noncompliance with the Consent Decree on both the Fourth and Fourteenth Amendment issues, the court ordered the parties to convene in chambers.

In a March 2016 meeting attended by the new police commissioner, Richard Ross, the city acknowledged the deficiencies in their stop-and-frisk practices and set forth a plan for internal accountability, including measures for which plaintiffs had long advocated, to ensure compliance with the Consent Decree. For example, in January 2016, the Kenney administration began implementing more frequent and stringent review of PPD's data collection; directing the Audits and Inspections Unit to retrain PPD personnel at all levels; requiring every officer to "complete a week long training course on legal issues and changes in the law concerning law enforcement;" updating department policy to be in line with developing case law; providing "Roll Call Training" on new policies and procedures; and, meeting with plaintiffs' attorneys to further discuss their recommendations.[33] Then-Mayor Kenney had campaigned on "ending" stop-and-frisk and took some heat from advocates when he did not, literally, end the use of stop-and-frisk. However, unlike former Mayor Nutter, Mayor Kenney was willing to put his political might behind complying

later become Mayor after Nutter. *See* Pls. Sixth report (ECF 55).

32 Data from this section comes from the Pls. Sixth report. *See* ECF 55.

33 *See* ECF 63, City's Seventh report.

with the Consent Decree. The parties agreed that the data from the second half of 2016 and from 2017 would provide reliable grounds for assessing whether these measures had been effective and what additional steps would be necessary to achieve compliance with the Consent Decree.

7. Seventh Report[34]

Submitted on May 2, 2017, the seventh report analyzed data from the second half of 2016 and showed notable improvements in PPD stop-and-frisk practices, including a 35% decrease in the number of stops for 2016 as compared to 2015 – and fewer stops and frisks without reasonable suspicion. In the second half of 2016, 25% of stops were made without reasonable suspicion, as opposed to 33% in 2015; but, 70% of those individuals stopped were Black, 7% were Latine, and 23% were white, which is similar to the numbers in 2015. 27% of frisks were made without reasonable suspicion, versus 42% in 2015, with "fruit of the poisonous tree" frisks remaining at about 14% of all frisks with no major change. Additionally, 77% of those frisked were Black, 8% were Latine, and 14% were white, which is, again, similar to what was observed in 2015. Continuing the trend, there was a low hit rate wherein only 5% of stops yielded contraband and only 0.43% yielded weapons. These numbers meant PPD stopped and frisked tens of thousands of individuals without reasonable suspicion, and the data still showed statistically significant racial disparities that, in almost all respects, are not explainable by non-racial factors.

8. Eighth Report[35]

The eighth report, filed December 7, 2017, analyzed data from the first half of 2017 and found that 21% of stops and 27% of frisks were made without reasonable suspicion, with an additional 14% of frisks following an unjustified stop. Though the percentages of unlawful frisks remained nearly the same, the percentage of unlawful stops improved when compared to 2016's numbers. Of all individuals stopped, 68.1% were Black, 10.4% were Latine, and 21.4% were white, and about 2.9% of stops yielded contraband and 0.7% yielded guns. Of all individuals frisked, 76.2% were Black, 11.5% were Latine, and 12.3% were White, and about 6.9% of frisks yielded contraband and 2.3% yielded guns. These numbers showed that, though more accountability measures had been implemented and seem to have positively affected stops, substantially more had to be done to address the lack of progress on frisks.

9. Ninth Report[36]

The ninth report analyzed data from the first half of 2018 and found that 16% of stops (down from 21% in 2017) and 21% (down from 27% in 2017) of frisks were made without reasonable suspicion, with an additional 9% (down from 14% in 2016 and 2017) of frisks following an unjustified stop. However, the number of reported frisks was low (as it had been in years prior) and, by some measures, it is possible that as many as 15% of frisks were not properly reported. Of all individuals stopped, 69.8% were Black, 10.5% were Latine, and 19.6% were white. About 4.4% of stops yielded contraband and 0.5% yielded guns – which is very similar to, if not marginally worse than, 2017's numbers. Likewise, of all individuals frisked, 76.8% were Black, 10.7% were Latine, and 12.6% were white, and about 7.8% of frisks yielded contraband and 1.4% yielded guns. Plaintiffs called for PPD to impose sanctions against officers who disregard explicit training, and urged the court to issue specific orders regarding internal accountability measures and compliance standards under the Consent Decree.

III. Focus on racial disparities – In the Tenth round reports, the city admits "that there exists a significant association between

34 Data from this section comes from the Pls. Seventh report. *See* ECF 62 & 68.

35 Data from this section comes from the Pls. Eighth report. *See* ECF 73 & 75.

36 Data from this section comes from the Pls. Ninth report. *See* ECF 82 & 84.

detainee race (African-American) and the likelihood of being stopped."[37]

The year 2020 will go down as one of the most monumental years the world has ever known because of the COVID-19 pandemic and global protests in support of a racial reckoning. During the initial lockdown period of the COVID-19 emergency, PPD ordered its officers to suspend their use of stop-and-frisk, except if the officer had information that a person posed an immediate risk to public safety. PPD recorded about 76,000 pedestrian stops in 2019; the total for 2020 was less than 13,000. PPD's use of pedestrian stops remained very low through the end of 2023. At the same time, perhaps influenced by the racial justice awakening following the murder of George Floyd in Minneapolis, the city for the first time acknowledged what plaintiffs had contended for years – that, statistically, it was clear that PPD officers were targeting people for stops because of their race. That acknowledgement changed the trajectory of the *Bailey* Consent Decree.

10. The Tenth Report[38] and the Resulting Changes

Plaintiffs' tenth report on Fourth Amendment issues, filed on April 20, 2020, analyzed data from the second half of 2019 and found that 16% of stops were made without reasonable suspicion. Since approximately 40,000 people were stopped in the second half of 2019, that means over 5,000 were stopped in violation of the Fourth Amendment. The report noted that over 40% of stops were for "quality of life" offenses – e.g., marijuana possession, open containers, minor noise disturbances, curfew or after-hours in parks, littering, etc. – which are often more about criminalizing poverty than improving public safety.[39] Of all individuals stopped, 70.4% were Black, 7.7% were Latine, and 21.8% were white. About 2.9% of stops yielded contraband and 0.7% yielded guns. During the same time period, 32% of frisks were made without reasonable suspicion, with an additional 6% of frisks following an unjustified stop, which is a significant increase from 2018 where 21% of frisks were done without reasonable suspicion and 9% were preceded by an unjustified stop. Of all individuals frisked, 80.2% were Black, 8.7% were Latine, and 11.8% were white. About 8.9% of frisks yielded contraband and 1.4% yielded guns.

Simultaneously, plaintiffs filed a report on Fourteenth Amendment issues. That report showed, through statistical analysis, that Black people were over 50% more likely to be stopped without reasonable suspicion and over 40% more likely to be frisked without reasonable suspicion than white people. As with prior Fourteenth Amendment reports, the tenth report included tables that compared the Black population in each Police Service Area (PSA) with the Black share of stops in that PSA. The report showed that Black people had a higher share of stops than their share of the population in almost every PSA. The exceptions were majority-Black PSAs (where their share of stops was dominant, but at least mirrored their share of the population), and in one majority white PSA, where most of the police activity is focused on the opioid drug market. The report highlighted the problem of so-called "out of place" stops: while Black people had a larger share of stops than their share of the population in every PSA, the disparity was most extreme in

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37 ECF 113, Supp. to Defs Tenth report.

38 Data from this section comes from the Pls. Tenth report. *See* ECF 104 & 106.

39 See Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 00 American Sociological Review 0, 1-32 (2019) https://static1.squarespace.com/static/5b391e9cda02bc79baffebb9/t/5d73e7609b56e748f432e358/1567876975179/complaint-oriented+policing_ASR.pdf; Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. Crim. L. & Criminology 643 (2008-2009), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7330&context=jclc; Tony Robinson, *No Right to Rest: Police Enforcement Patterns and Quality of Life Consequences of the Criminalization of Homelessness*, 55 Urban Affairs Review 1, 41-73 (2019), https://journals.sagepub.com/doi/epub/10.1177/1078087417690833; Maurice Baynard, *Overcriminalization of Low-Level Offenses: Perpetuating Poverty and Racial Disparities in the Misdemeanor Criminal Justice System*, Master's project, Duke University (2021), https://dukespace.lib.duke.edu/server/api/core/bitstreams/260dcc36-14a3-4607-ac5e-bdae415243bd/content.

PSAs where Black people made up less than 10% of the population. The tenth report on Fourteenth Amendment issues also showed that majority-Black PSAs reported an outsized number of stops as compared with other PSAs.

The plaintiffs' tenth report on Fourteenth Amendment issues was similar in both format and content to every Fourteenth Amendment report previously filed by plaintiffs. Over the course of the Consent Decree, the city generally would respond to these reports with a report from a statistical expert who would take issue with Dr. Abrams' methods and state that they could not replicate his findings. Several times, this would result in post-report meetings between Dr. Abrams and the city expert, in which they would supposedly work out agreed methodology and assumptions to be used in future analyses. But when the next Fourteenth Amendment analysis came up, there would be another round of objections to the methodology, which meant that there could never be an apples-to-apples comparison of the experts' analyses.

In response to the tenth report on Fourteenth Amendment issues, the City filed a report from its statistical expert, Robert Kane, in June 2020. Like other reports that had been filed by city experts, this report took issue with Dr. Abrams' methodology and stated that Dr. Kane could not confirm Dr. Abrams' analysis. But Dr. Kane did acknowledge the data that showed that majority-Black PSAs had extremely high numbers of stops as compared with other PSAs, and also acknowledged, for the first time in a city report, the so-called "out of place" stops in white majority PSAs. His report suggested that racial disparities might exist only in these "outlier" PSAs and that the city-wide data, with those PSAs excluded, would be a more accurate analysis. Plaintiffs promptly filed a response challenging this strange approach to the data, and that triggered supplemental filings by the city that conceded that the racial disparities in stops by PPD could not be explained by factors other than race. The city *finally* admitted that "there exists a significant association between detainee race (African-American) and the likelihood of being stopped," and that this association could be found "city wide." *See* ECF No. 113.

With the city acknowledging that PPD officers target Black people in Philadelphia because of their race, the next question was what to do about it. The court ordered the parties to propose a plan to address the acknowledged racial disparities. This was a new endeavor, one for which there was not a ready model; as such, the court and both parties recognized the importance of this development.On November 12, 2020, the court ordered[40]:

- PPD to conduct a comprehensive review into racial bias patterns in stop-and-frisk practices based on plaintiffs' tenth report;
- The city and PPD to develop an action plan that details the data to be reviewed, investigation methods, analysis methods, and the goals of PPD's internal review and investigation;
- All PPD members (including officers, supervisors, and commanders) be re-trained on the Fourth and Fourteenth Amendment requirements, and prohibitions set forth in the Bailey Consent Decree;
- PPD to issue an updated directive (and corresponding disciplinary sanctions) requiring all officers and supervisors to (a) intervene when another officer engages in unlawful conduct, (b) report misconduct and other unlawful behavior, and (c) fully cooperate in any investigation related to that incident;
- PPD to deploy body-worn cameras city-wide and regular footage audits to ensure proper use of said cameras;
- PPD to implement the fruits of their implicit bias training; hire a Diversity and Inclusion Manager to review all department policies through an equity lens; and, request technical assistance regarding recruitment and retention from the International Association of Chiefs of Police (IACP).

The following summer, to complement the reforms listed above, on June 2, 2021, the Court ordered PPD to implement the Program that would reduce PPD's use of so-called "quality of life" stops

40 See ECF 120.

and require officers to have a mere encounter with people who commit any of a number of minor offenses, and only institute a formal stop if the individual does not heed officers' verbal warning.[41] It expanded – adding five districts in the spring of 2022 and then five more in the summer and fall of 2022[42] – until, on May 15, 2023, the Program became active in each of Philadelphia's 23 police districts. Around the same time, Philadelphia passed a "Driving Equality" law that was intended to prevent police from pulling over drivers for technical violations unrelated to safety, on the presumption that many such stops are simply cover for racial profiling. See Councilmember Thomas' Driving Equality Is Law, In Council News, Isaiah Thomas, March 3, 2022, available at https://phlcouncil.com/councilmember-thomas-driving-equality-is-law/.

In addition to the Program, on December 10, 2021, the court ordered the implementation of a real-time data system, called PedStat, that allows PPD's supervisors to more easily determine which officers are not complying with the *Bailey* Consent Decree and address the issue in real-time. Plaintiffs believe that the PedStat tool *can be* a powerful and useful tool to force PPD to contend with racial disparities because it produces targeted, district-level data that will enable plaintiffs to push for accountability and response.

Quickly, the City's enthusiasm for addressing racial disparities faded. Despite early promises from the City, there has been no "root cause" analysis of the circumstances that produce racial disparities in who is stopped, either at a district or PSA level. It's important that such an analysis occur because it is clear that different dynamics are at play in different parts of Philadelphia. For instance, there is an obvious problem in PSAs with a majority white population with Black people being stopped for, basically, being "out of place." But no one knows whether or by how much such stops are driven by officers themselves or by residents' calls and complaints. The answer to that question determines how to address the phenomenon. Separately, plaintiffs noticed a handful of officers are responsible for a great percentage of the stops in some PSAs; but, in other PSAs, most of the patrol officers report stops. Again, these two scenarios suggest the need for different approaches to address racial disparities.

11. The Eleventh Reports[43] and the first check on reforms from 2020

Plaintiffs' eleventh set of reports – one addressing Fourth Amendment issues and one addressing Fourteenth Amendment issues – were filed on November 13, 2023. Those reports analyzed data from the the third quarter of 2022 and the first half of 2023, making them the first reports to gauge the effectiveness of the numerous aforementioned reforms. They are also the first reports to examine PPD stops after the COVID crisis and the new approach to minor offenses, both of which brought about a significant reduction in the overall number of stops.

Plaintiffs' eleventh report on Fourth Amendment issues found that 12.8% (less than 4% lower than the Tenth report) of stops were conducted without reasonable suspicion; and, of all individuals stopped, 71.8% were Black, 10.6% were Latine, and 17.6% were white[44]. These numbers suggest not much has changed given that, when compared to

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41 See ECF 136. The following are all the quality of life offenses included in the order: sounds from residential prop., sounds created on public right of way, sound production devices (loud music from cars), alcoholic beverages (open containers), smoking marijuana in a public space, litter in public places, litter in public parks, obstructing the highway or other passageway, defiant trespass, spitting, public urination or defecation, aggressive conduct on sidewalk (panhandling), gambling, disorderly conduct, and prostitution.

42 ECF 145 ("The Quality-of-Life Pilot, which was Ordered by the Court on June 2, 2021, and which currently is in place in six police districts, shall be expanded to five additional police districts in the Philadelphia Police Department ("PPD") by November 1, 2022.").

43 Data from this section comes from the Pls. Eleventh reports. *See* ECF 153 & 154.

44 According to U.S. Census Data in 2023 the racial composition of Philadelphia County is 43.0% African American, 33.9% White,

plaintiff's tenth report, the percentage of unlawful stops decreased by only 3.2 percentage points and the racial disparities were mixed – with the change in percentage of those stopped increasing by 1.4 and 2.9 percentage points for Black and Latine people, respectfully, and decreasing by 4.2 percentage points for white people. Plaintiffs' eleventh report also found that 17.8% of frisks were made without reasonable suspicion (down drastically from 32% in the tenth report), with an additional 5.6% of frisks following an unjustified stop (down very slightly from 6% in the tenth report). Of all individuals frisked, 76.4% were Black, 11.2% were Latine, and 12.4% were white (very slightly improved compared to the tenth report).

The eleventh report on Fourth Amendment issues found a significantly higher rate of recovery of firearms than in the past, "due mainly to an overall reduction in stops that are less likely to yield firearms." In the period covered by this report, 214 firearms were confiscated in 3245 stops, a hit rate of 6%. However, several of the stops that yielded firearms were conducted illegally (i.e., without reasonable suspicion) and/or the people stopped were legally carrying the confiscated firearms.

The hit rate for firearms seized pursuant to a *frisk* is a more reliable metric because officers must have reasonable suspicion that the suspect is armed and dangerous before a frisk can be conducted. Thus, it is fair to expect that seizure of weapons[45] would be made in a significant number of these cases. The report states that, "[a]mong courts and commentators, there is general agreement that for stops and frisks there should be at least a 15-20% rate of underlying criminal conduct and for seizure of weapons." Unfortunately, PPD does not meet that benchmark since they recovered guns in approximately 8.4% of all frisks (but only 6% of all legal frisks). Though this is a welcome improvement over the 1% hit rate at the time of the Consent Decree, and a drastic improvement compared to the 0.7% found in plaintiffs' tenth report on Fourth Amendment issues, this number is still *far* too low. The improved hit rates do show that PPD's additional monitoring, training, and discipline are effective tools, as they have improved. However, more such efforts are needed.

The eleventh report on Fourteenth Amendment issues (racial disparities) is more disappointing. In short, PPD's reforms to date have not moved the needle on racial disparities. Once again, Professor Abrams began by breaking down, for each PSA, the share of the population that is Black or Latine and comparing that to the share of stops in that PSA of Black and Latine pedestrians. Once again, in all but four PSAs, the percentage of Black people stopped is higher than the area's Black population percentage (Table 4A column 4); indeed, Black people are stopped at a rate over five times their share of the population in several PSAs. For example, in PSA 91 (which includes Center City, west of Broad Street), the population is 5% Black, but 76% of people stopped were Black. Likewise, in PSA 12 (Packer Park and Navy Yard area), the population is 3% Black; yet, 57% of people stopped were Black. By contrast, in PSA 192 (Overbrook and other parts of West Philadelphia), where Black people make up about 93% of the population, the ratio comparing the Black population to the percentage of people stopped is nearly 1:1. Professor Abrams then, as he had in all previous Fourteenth Amendment reports, conducted a series of regression analyses to test whether these disparities could be explained by the age of people stopped, or by local crime rates, or by other factors PPD and academic experts have identified as factors in who is targeted for stops. The result of each of these analyses confirmed the racial disparities apparent in the population-to-stop comparison. PPD is clearly still targeting pedestrians on the basis of race.

The eleventh reports do not display the type or amount of progress plaintiffs hoped would come

16.1% Hispanic/Latino, 8.2% Asian, 1.0% Native American/Alaskan Native, 0.2% Native Hawiian/Pacific Islander, and 3.0% Two or more races. *See Quickfacts: Philadelphia County, Pennsylvania*, U.S. Census Bureau (last accessed Apr. 19, 2024), https://www.census.gov/quickfacts/fact/table/philadelphiacountypennsylvania#.

[45] ECF 153 at 18.

from the laundry list of accountability measures ordered by the Court in 2021 and 2022. But PPD improved, even if that improvement was minimal. Additionally, the drastic increase in contraband and guns confiscated during frisks may indicate that the Program is deterring officers from criminalizing low-level non-violent offenses, affording officers the opportunity to get more weapons off the street. Regardless, only more data, and time, will tell plaintiffs and Philadelphia residents whether the Parker administration, as well as PPD leadership and its officers are willing to seriously address and actually correct their constitutionally deficient practices.

IV. Looking forward: the Bailey Consent Decree under the Parker/Bethel Administration.

Mayor Parker and Police Commissioner Bethel have made clear that they favor more aggressive policing in response to chronic crime problems, large and small. Whether the issue is gun violence or the congregation of people with opioid use disorder in Kensington, officials' rhetoric seems to suggest that police officers will play an outsized role. Although Mayor Parker regularly says that she wants PPD to follow the law, history and experience show that, when given the chance, PPD officers, like officers elsewhere[46], will use stop-and-frisk to target Black and Latine men above all others and will substitute racial profiling for the type of fact-gathering required by the *Terry* standard.

At this point, a great number of the measures that have forced PPD into greater compliance with the *Terry* standard are embedded in both PPD policy and in court orders. If the new administration attempted to dismantle those structures and procedures, that would quickly become apparent to plaintiffs, who receive quarterly reports from PPD documenting their internal review and correction system for stops. Additionally, those standards are simply replicas of the standards present throughout Fourth Amendment jurisprudence. The city could petition the court to revoke its orders mandating those processes, but that would probably not succeed, at least with the current supervising judge.[47]

One question about the future of the *Bailey* Consent Decree that remains is whether we will see progress in reducing racial disparities. The PedStat program is still new, and we have not yet seen it used effectively to investigate and address racial disparities. For it to live up to its promise, the Parker administration, Commissioner Bethel, and the rest of PPD leadership team need to want the tool to be used that way. The last group of policing leaders and decision makers did not use PedStat to its fullest potential, and we are yet to see whether the new commissioner is committed to addressing racial disparities in PPD's practices or how he would do so. If PPD leadership does not proactively seek to address racial disparities in officers' use of stop-and-frisk, and all other tactics they employ, it will be difficult if not impossible to make further progress. Plaintiffs intend to keep the Court focused on the pervasive issue of racial disparities in PPD's practices and data generated by PedStat with the hope of securing real commitments for real change from city leadership.

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[46] The New York Civil Liberties Union noted that "[w]hile there's no evidence to suggest that stopping thousands more people creates safer streets, there is reason to believe that increased stop activity leads to more police misconduct. Complaints of NYPD officer abuse have skyrocketed under Adams as stops have spiked." *NYPD Stops are Skyrocketing Under Mayor Adams*, NYCLU (Mar. 22, 2024), https://www.nyclu.org/commentary/nypd-stops-are-skyrocketing-under-mayor-adams.

[47] One danger, of course, is that the current supervising judge, Judge Padova, could retire and the case could be reassigned to a judge who is less interested in seeing the success of the Consent Decree.

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