



# Consultant Status Report

**Investigatory Stop and Protective Pat Down Settlement Agreement Between the City of Chicago and the American Civil Liberties Union of Illinois**

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## Background

In August 2015, the City of Chicago (City), the Chicago Police Department (CPD), and the American Civil Liberties Union of Illinois (ACLU)—collectively, “the parties”—entered into the Investigatory Stop and Protective Pat Down Settlement Agreement (Agreement). See Appendix A.

To “avoid the burden, inconvenience, and expense of litigation,” the parties “agreed to work together to ensure and validate that CPD’s policies and practices relating to investigatory stops and protective pat downs fully comply with applicable law.”<sup>1</sup> These laws include the Fourth and Fourteenth Amendments to the U.S. Constitution and the Illinois Civil Rights Act (“ICRA”) of 2003.

- The Fourth Amendment requires, among other things, (1) that the police to have reasonable and articulable suspicion of criminal activity to justify an investigatory stop of an individual, and (2) that the police to have reasonable and articulable suspicion that an individual is armed and dangerous to justify a protective pat down.
- The Fourteenth Amendment guarantees equal protection of the laws, regardless of race and ethnicity, and applies to police stops and pat downs of members of the public.
- Finally, ICRA prohibits law enforcement agencies from subjecting a person to discrimination “on the grounds of that person’s race, color, national origin, or gender; or utiliz[ing] criteria or methods of administration that have the effect of subjecting individuals” to such discrimination. 740 ILCS 23/5(a).

The Agreement imposes certain data collection, training, supervision, and auditing requirements on the CPD. For example, the Agreement requires the CPD to document all investigatory stops and protective pat downs. District-level supervisors must review all such documentation for compliance with the law and CPD policy. The Agreement also requires regular headquarters-level audits of investigatory stop and protective pat down practices, including records of supervisors’ review.

The parties jointly selected retired Judge Arlander Keys to serve as the Consultant<sup>2</sup> for the Agreement to (1) review and make recommendations for the CPD’s policies, practices, and training regarding investigatory stops and protective pat downs; (2) audit Investigatory Stop Reports (ISRs) and review aggregate ISR data to assess compliance with the Agreement; and (3) issue semi-annual reports and recommendations.

Judge Keys issued three Reports: (1) a March 23, 2017 report covering January 1 to June 30, 2016; (2) a March 5, 2018 report covering July 1 through December 31, 2016; and (3)

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<sup>1</sup> Agreement at 1–2, Appendix A; also available at <https://www.aclu-il.org/sites/default/files/wp-content/uploads/2015/08/2015-08-06-Investigatory-Stop-and-Protective-Pat-Down-Settlement-Agreeme....pdf>.

<sup>2</sup> Agreement, Section V at 6–7, Appendix A.

an October 17, 2019 report covering calendar year 2017.<sup>3</sup> Judge Keys’s latest report identified concerns with data collection and supervision of the CPD’s stops and pat downs that he believed made an accurate assessment of compliance with the Agreement impracticable.

## Chicago Police Consent Decree

In the meantime, in January 2019, federal Judge Robert M. Dow, Jr. entered a consent decree between the City and the Office of the Illinois Attorney General (OAG) regarding specified aspects of Chicago policing (Consent Decree). The Consent Decree resulted from various federal, state, and local community efforts, including (1) an investigation by the U.S. Department of Justice; (2) two separate community member class-action lawsuits alleging a pattern and practice of civil rights abuses, particularly in the area of excessive force against people of color and people with disabilities; and (3) a lawsuit by the OAG to address the DOJ’s findings and community concerns.<sup>4</sup> The City and the OAG entered into the Consent Decree to ensure the following:

- “that the City and CPD deliver services in a manner that fully complies with the Constitution and laws of the United States and the State of Illinois, respects the rights of the people of Chicago, builds trust between officers and the communities they serve, and promotes community and officer safety”; and

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<sup>3</sup> These reports are available at <https://www.aclu-il.org/en/campaigns/stop-and-frisk>.

<sup>4</sup> In December 2015, the U.S. Attorney General launched a broad civil rights investigation into the CPD’s policing practices. The U.S. Department of Justice released the results of its investigation in January 2017, finding a longstanding, pervasive “pattern or practice” of civil rights abuses by the CPD. DOJ Civil Rights Division and United States Attorney’s Office Northern District of Illinois, *Investigation of Chicago Police Department* (January 13, 2017) at 4, available at <https://www.justice.gov/opa/file/925846/download>. The two separate class-action lawsuits followed: *Campbell v. City of Chicago* and *Communities United v. City of Chicago*. See *Campbell v. Chicago*, N.D. Ill. Case No. 17-cv-4467 (June 14, 2017), and *Communities United v. Chicago*, N.D. Ill. Case No. 17-cv-7151 (October 4, 2017). In August 2017, the OAG sued the City in federal court, seeking a consent decree that would address the DOJ’s findings and recommendations. The case was assigned to federal Judge Robert M. Dow, Jr. The OAG and the City then sought input from community members and Chicago police officers and negotiated the Consent Decree with the City. In March 2018, the parties to the Consent Decree (the OAG and the City) also entered into a Memorandum of Agreement with a “broad-based community coalition committed to monitoring, enforcing, and educating the community about the Consent Decree (‘the Coalition’),” which “includes the plaintiffs in the *Campbell* and *Communities United* lawsuits.” See *Memorandum of Agreement Between the Office of the Illinois Attorney General and the City of Chicago* and *Campbell v. City of Chicago Plaintiffs and Communities United v. City of Chicago Plaintiffs* (March 20, 2018), available at [http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/05/Executed\\_MOA.pdf](http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/05/Executed_MOA.pdf). The OAG and the City then sought proposals for an Independent Monitoring Team after posting a draft consent decree on the Chicago Police Consent Decree website. See *Independent Monitor*, CHICAGO POLICE CONSENT DECREE, <http://chicagopoliceconsentdecree.org/independent-monitor/>. Judge Dow approved and signed a modified version of the Consent Decree on January 31, 2019. The final consent decree is available on the Office of the Illinois Attorney General’s (OAG’s) Consent Decree website. See Resources, CHICAGO POLICE CONSENT DECREE (“Consent Decree Approved by the Court on January 31, 2019”), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

- “that Chicago police officers are provided with the training, resources, and support they need to perform their jobs professionally and safely.”<sup>5</sup>

The Consent Decree requires changes to CPD policies, training, and practices in ten topic areas: (1) community policing; (2) impartial policing; (3) crisis intervention; (4) use of force; (5) recruitment, hiring, and promotions; (6) training; (7) supervision; (8) officer wellness and support; (9) accountability and transparency; and (10) data collection, analysis, and management.

While nothing in the Consent Decree “alters or incorporates any provision” in the Agreement,<sup>6</sup> investigatory stops and protective pat downs by the CPD implicate many of the reforms required by the Consent Decree in its ten areas of focus.

On March 1, 2019, the effective date of the Consent Decree, and after a competitive selection process, Judge Dow appointed Maggie Hickey, a partner in the Schiff Hardin law firm, as the Independent Monitor.<sup>7</sup> As the Independent Monitor, Maggie leads the Independent Monitoring Team, which includes over 20 experts and attorneys.

## **Temporary Stay of the Review of Statistically Representative Sample of Investigatory Stop Reports**

Between 2017 and 2019, certain of the CPD’s data and supervision processes related to Judge Keys’s concerns about making an accurate assessment of compliance with the Agreement did not change. Therefore, on September 26, 2019, the parties agreed to a Temporary Stay<sup>8</sup> of certain provisions of the Agreement and agreed to take additional steps to move forward with accomplishing the goals of the Agreement. *See* Appendix B.

Specifically, the parties agreed that the Consultant would not analyze 2018 and 2019 investigatory stop reports for Fourth Amendment compliance while the CPD undertook a review and assessment of changes to its data collection, supervision, and auditing systems related to stops and pat downs. The Temporary Stay requires the CPD to identify improvements for these processes by January 1, 2020, and to develop a project management plan concerning these improvements by March 1, 2020. The Temporary Stay also contemplates a June 15, 2020 Consultant Report describing the progress toward these deliverables.

The Temporary Stay anticipates resumption of the Consultant’s analysis of investigatory stop reports based on data collected between June 1, 2020 and December 31, 2020, and requires the parties and the Consultant to confer on a date for resumption of the Consultant’s reporting pursuant to the Agreement.

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<sup>5</sup> Consent Decree ¶12.

<sup>6</sup> Consent Decree ¶1712.

<sup>7</sup> Ms. Hickey, as the Independent Monitor, reports directly to Judge Dow.

<sup>8</sup> Temporary Stay of the Review of the Statistically Representative Sample of ISRs (Section V(d-f) of the Agreement), Appendix B; *also available at* [https://www.aclu-il.org/sites/default/files/temporary\\_stay\\_of\\_the\\_review\\_of\\_the\\_statistically\\_representative\\_sample\\_of\\_isrs\\_.pdf](https://www.aclu-il.org/sites/default/files/temporary_stay_of_the_review_of_the_statistically_representative_sample_of_isrs_.pdf).

The Temporary Stay requires the City, the ACLU, and the Consultant to confer about the Consultant’s methodology for conducting Fourth Amendment compliance assessments and addresses issues related to the CPD’s use of multi-version investigatory stop reports. The City and the ACLU also agreed that “the Consultant may (1) assume, solely for the purposes of determining CPD’s legal compliance under the Agreement, that a prima facie showing under ICRA based on disparate impact on the basis of race has been satisfied and (2) forgo that analysis.” The Temporary Stay recognizes that this assumption “does not constitute an admission of any fault or liability whatsoever on the part of the City or CPD and does not extend outside of determining a compliance methodology for this Agreement.”

## Transitions in the Consultant Team

Since the parties agreed to the September 26, 2019 Temporary Stay, the parties recognized significant overlap between the City’s responsibilities under the Agreement and those under the Consent Decree.<sup>9</sup> As a result, in the summer of 2020, the parties agreed that the Consultant work required by the Agreement would transition from Judge Keys to Maggie Hickey and her team (members of which are identified below), collectively the Consultant Team. While the deadlines under the Temporary Stay have passed, the Temporary Stay agreement remains in effect and the Consultant Team is assisting the parties in resolving the issues it identifies. The Consultant Team will then resume the review of investigatory stops under the Agreement.

The Consultant Team is designed to ensure that its efforts benefit from the knowledge of the Consent Decree’s Independent Monitoring Team and Judge Keys’s work. Specifically, the Consultant Team includes overlap with Judge Keys’s team and the Independent Monitoring Team to provide an efficient transition and ensure progress under the Agreement. Thus, the Consultant Team is directly associated with the Consent Decree and public efforts to bring Chicago’s policing into compliance with best practices and become a national standard for other cities and departments. As the Consultant Team, we are bound to the terms of the Agreement and Temporary Stay, and we will integrate our knowledge of Chicago and the CPD, as appropriate. Ultimately, we are committed to a collaborative and cost-effective approach that achieves the goals and objectives of the Agreement.

Our team represents a diverse, multidisciplinary group of policing experts, attorneys, and researchers with robust experience in oversight, change management, and community relationships. Specifically, the Consultant Team is led by Consultant Maggie Hickey, Deputy Consultant Chief Rodney Monroe (Ret.), and Deputy Consultant Chief Theron “T” Bowman (Ret.), who will help the parties create the organizational change the CPD needs to achieve better outcomes in constitutional policing and rebuild the trust of Chicago’s diverse communities as it relates to police stops and protective pat downs.

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<sup>9</sup> See, e.g., Consent Decree ¶¶49–51, 53, and 79–82.

## Consultant Leadership



Maggie Hickey  
Consultant



Chief Rodney Monroe (Ret.)  
Deputy Consultant



Chief Theron Bowman (Ret.)  
Deputy Consultant

**Maggie Hickey, JD**, Partner at Schiff Hardin LLP, will serve as Consultant for this project. As Consultant, Ms. Hickey will bear ultimate responsibility for overseeing the City and the CPD's efforts to achieve compliance with the Agreement. Ms. Hickey, along with Deputy Consultants Chief Monroe and Chief Bowman, will be the principal liaison to the parties. She will also be the primary public spokesperson for the team, lead most public meetings, and act as the final team arbiter on all compliance issues.

Ms. Hickey is a highly skilled attorney and consensus builder with a long and notable career in government. She has a wealth of experience in internal investigations, compliance programs, police operations, sexual harassment issues in the workplace, and ethics training. In 2015, she was appointed Executive Inspector General for the Agencies of the Illinois Governor, an independent executive branch state agency that ensures accountability across the state government, nine state public universities, and four Chicago-area regional transportation boards. Ms. Hickey's experience spans a range of legal issues and positions in Springfield and Chicago, Illinois, and Washington, DC. Before becoming Executive Inspector General, she was the Executive Assistant U.S. Attorney for the Northern District of Illinois for more than five years. She spent five years as an Assistant U.S. Attorney (AUSA) in the Criminal Division, Financial Crimes, and Special Prosecution sections investigating and prosecuting complex and sensitive matters. Ms. Hickey also served as chief of staff and chief legal counsel to U.S. Senator Peter Fitzgerald, and she began her career with the U.S. Senate as the Investigative Counsel for the Committee on Government Affairs. Ms. Hickey was also an AUSA in the Criminal Division for the Southern District of West Virginia. During her tenure as Executive Inspector General, Ms. Hickey was chair of the Illinois Health Care Fraud Elimination Task Force, a comprehensive effort to

prevent and eliminate fraud, waste, and abuse in state-administered health care programs. In addition to her practice, Ms. Hickey remains active in several community service and pro bono legal initiatives. In 2018, Ms. Hickey was tapped by the Board of Education of the City of Chicago to lead an independent review of the school district's policies and procedures following the Chicago Tribune investigation that revealed cases of sexual abuse by Chicago Public School employees.

**Chief (Ret.) Rodney Monroe**, Senior Policing Advisor for CNA, will serve as Deputy Consultant. Mr. Monroe also serves as Deputy Monitor for the federal Consent Decree, overseeing Consent Decree topic areas including training; use of force; recruitment, hiring, and promotion; supervision; accountability and transparency; and officer wellness and support. Mr. Monroe brings extensive experience organizing communities and developing meaningful partnerships with residents, businesses, and faith-based organizations to increase trust, respect, and legitimacy while reducing crime, improving quality of life, and reducing the public's fear of crime. Mr. Monroe was also appointed by a federal judge as the Independent Monitor to oversee a settlement agreement for the Meridian Police Department. In that role, Mr. Monroe leads an auditing team to work with Meridian Police Department (MPD) personnel, the Meridian community (particularly youth), and U.S. Department of Justice (DOJ) personnel to ensure MPD's compliance with the agreement. Meridian has achieved substantial compliance with all areas of the settlement agreement. Chief Monroe also has experience with the DOJ Community Oriented Policing Services' (COPS) Collaborative Reform Initiative, working with the North Charleston Police Department following the police shooting of Walter Scott.

Chief Monroe also brings expertise in reviewing critical incidents. For example, he provided subject matter expertise and technical assistance in the critical incident review of the November 15, 2015, shooting of Jamar Clark by Minneapolis police officers, which explored a wide range of critical policing issues. Chief Monroe is a recognized leader, innovator, and practitioner of community policing and has more than 30 years of experience in law enforcement. He was chief of the Charlotte-Mecklenburg Police Department (CMPD), nationally recognized for its excellence in community policing. Under his leadership, the department refocused its efforts on crime fighting and crime prevention through a more accountable organizational structure, new technology, and an enhanced community policing strategy. Before joining CMPD, Chief Monroe served as chief in Macon, Georgia, and in Richmond, Virginia. While serving in Richmond, his efforts led to the lowest number of homicides in 25 years. Chief Monroe also worked in a variety of leadership positions within the Washington, DC, Metropolitan Police Department.

**Chief (Ret.) Theron Bowman, Ph.D.**, is the current Independent Monitoring Team's Associate Monitor for Recruitment, Hiring, and Promotion and Training for the federal Consent Decree. Dr. Bowman began his public service career in 1983 as an officer with the Arlington, Texas, Police Department, and served in numerous positions before becoming chief in 1999. He later served for five years as Arlington's Deputy City Manager and Director of Public Safety before retiring in 2017.

Dr. Bowman has led, managed, and participated in police practices investigations and audits in multiple locations, including Albuquerque, New Mexico; Baltimore, Maryland; Battle Creek, Michigan; Chicago, Illinois; Cleveland, Ohio; Los Angeles County, California; Maricopa County, Arizona; Newark, New Jersey; New Orleans, Louisiana; and Seattle, Washington.

Dr. Bowman is also a federal court-appointed consent decree deputy monitor in Baltimore and a multidisciplinary law enforcement expert on the New Orleans and Memphis, Tennessee, monitoring teams. Dr. Bowman has received much recognition throughout his career, including being named the African American Peace Officer Association of Arlington "Officer of the Year," receiving Proclamation of Achievement from the Texas State Senate and the U.S. House of Representatives, and being designated a University of Texas at Arlington "University Scholar and Distinguished Alumni."

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Consultant Leadership will also oversee other experts and attorneys, including the following:

### Associate Consultants



Matthew Barge  
Associate Consultant



Sodiqa Williams  
Associate Consultant  
& Community Liaison



Joseph Hoereth  
Associate Consultant  
& Community Liaison

**Matthew Barge, JD**, is a police practices and civil rights expert with more than 15 years of experience working with law enforcement agencies, city governments, and communities on public safety challenges. He served as the lead police practices expert to Judge Keys under the Agreement. From 2015 through 2019, Mr. Barge served as the federal court-appointed Monitor overseeing a federal consent decree involving the police in Cleveland, Ohio. He is a lead subject matter expert on the federal monitoring team overseeing a consent decree in Baltimore. He is also a Senior Consultant with the Policing Project at N.Y.U. School of Law.

**Sodiqa Williams, JD**, is a highly respected advocate who works to support the interests of the Chicago community. She serves as the Vice President of External Affairs and General Counsel at the Safer Foundation, an organization well-known as an experienced advocate and provider of workforce and support services exclusively for people with arrest and conviction records in the greater Chicago area.

**Joe Hoereth, PhD**, is an urban planner who regularly engages with Chicago communities through his position as Director of the Institute for Policy and Civic Engagement (IPCE) at the University of Illinois at Chicago (UIC). Dr. Hoereth creates opportunities for scholars, community members, students, and the government to participate in public discourse and educational programs addressing current policy issues and social trends. Dr. Hoereth has expertise in community development research and evaluation, having previously worked for university research centers, non-profit organizations, and private consulting firms.

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When needed, the Consultant Team will also draw from the expertise of a pool of additional subject matter experts and attorneys. All Associate Consultants, subject matter experts, and attorneys will work closely with Ms. Hickey, Chief Monroe, or Chief Bowman. Our legal team will support the consultants and subject-matter experts with data collection, data analysis, legal analysis, reporting, and general administrative support. This approach ensures the greatest efficiency and effectiveness in working toward the objectives of the Agreement.

## Status Update

In the time since the Temporary Stay was put into place, Chicago and the country experienced a pandemic, an economic crisis, a social justice movement, widespread protests, and large-scale unrest. While the Temporary Stay remains in place, none of the deadlines set forth in the Temporary Stay have been met. Pursuant to the Temporary Stay, the City, the ACLU, and the Consultant are conferring about the Consultant Team's methodology for conducting Fourth Amendment compliance assessments and addressing issues related to the CPD's use of multi-version investigatory stop reports. The parties and the Consultant Team are also conferring to jointly determine an appropriate and timely date on which the Consultant will resume reporting pursuant to the Agreement. The Temporary Stay indicates that the Consultant's review of investigatory stop reports as described in Section V(d-f) of the Agreement will resume with a review of data collected between June 1, 2020 and December 31, 2020.

In the meantime, the Consultant Team has taken steps to move forward under the Temporary Stay and advance the goals of the Agreement. First, the Consultant Team worked with statistical experts who identified new data collection and analysis concerns. Second, the Consultant Team proposed a community engagement component to guide the parties' efforts to improve the CPD's policies and practices under the Agreement. Third, the Consultant Team reviewed and provided recommendations on the CPD's policies, documentation, and training relating to investigatory stops and protective pat downs.

## Statistical Analysis

The Consultant Team was first engaged in the summer of 2020. During that time, we worked with statistical experts who helped us identify and understand additional concerns with the CPD's data collection and analysis that had not been previously identified. The statistical experts examined data regarding traffic stops and investigatory stop reports from 2014 to 2019. Moving forward, the Consultant Team will engage a statistical expert or experts to fulfill the requirements of the Agreement once the Temporary Stay is lifted.

## Community Engagement

While the parties' Temporary Stay agreement requires the CPD to conduct focus groups with its members to inform revisions to its policies and the Investigatory Stop Report (ISR) form, we recognized that community engagement was missing from the process. Therefore, we recommended a robust, multi-tier approach to engage the community in improving the CPD's processes and policies. The three tiers include (1) Stakeholder Workshops, (2) Focus Groups, and (3) Surveys. We also recommended that community engagement have both near- and long-term components. The parties support our recommendation

for robust community engagement involving people from Black and Latino<sup>10</sup> communities most directly impacted by Chicago police stops and pat downs.

We will work with the CPD to develop and initiate the community engagement process, but expect the CPD to drive the effort over the long term. In December 2020, we outlined a plan to implement our recommendations. The goals of the plan include the following:

- Forming a group of community stakeholders and working directly with them throughout the decision-making process to incorporate their expertise and experiences in reviewing the investigatory stop and pat down process, documentation, and policies.
- Creating long-term partnerships among participants and community groups that will create a mechanism for providing feedback and evaluating how the new policies are working in practice.

In the near term, the Stakeholders Workshops will be involved in identifying research questions, providing responses, and recruiting members from the community for focus groups. We will consider the Stakeholders Workshops' feedback on the way the CPD currently conducts and documents investigatory stops—including the CPD's current policy—as the parties and Consultant Team work to develop and revise new policies. The Stakeholders Workshops will include an initial education component, and the participants will receive clear direction as to their objectives. The Consultant Team will collect and analyze data from the Stakeholders Workshops, share the findings, and propose policy changes based on the findings.

Long-term community engagement will build on the relationships and infrastructure established in the near term to evaluate the operationalization of the new policies over time. A key goal will be informing the public and inviting feedback through focus groups about the new policies to foster community buy-in and higher levels of community support and ownership.

The Consultant Team will continue to draw on the expertise of the Stakeholder Workshops to identify focus group participants. We will collect and analyze focus group data with the goal of better understanding the lived experience of community members most affected by stop and pat down practices.

In both the near- and long-term, we will use surveys to capture the views of broader segments of the public.

While the strategic plan for community engagement is still in development, we look forward to working directly with the public in the near future.

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<sup>10</sup> We understand that some people may prefer “Latinx” or “Hispanic” to “Latino.” For the purposes of this report, we followed the Agreement, the United States Census Bureau, and the DOJ's investigation of the Chicago Police Department. See Agreement at 2, Appendix A; see also *About Race*, US Census Bureau (last revised October 16, 2020), <https://www.census.gov/topics/population/race/about.html> and DOJ Civil Rights Division and United States Attorney's Office Northern District of Illinois, *Investigation of Chicago Police Department* (January 13, 2017), available at <https://www.justice.gov/opa/file/925846/download>.

## Policy and Documentation Recommendations

The Consultant Team reviewed the CPD's existing policy on investigatory stops and protective pat downs—Special Order S04-13-09, *Investigatory Stop System*—and the Investigatory Stop Report (ISR) used to document investigatory stops and related pat downs and searches. We also reviewed other CPD policies, including Special Order S04-14-09, *Illinois Traffic and Pedestrian Stop Study*—which establishes a separate mechanism for documenting traffic stops—and other policies on Fourth Amendment searches and seizures.

On October 16, 2020, drawing on the Consultant Team's police practice experts' knowledge and experience, as well as our assessment of the issues that existed before our engagement and issues identified by our statistical experts, we made two initial recommendations to improve the CPD's existing policy on investigatory stops and protective pat downs.

First, we recommended that the CPD adopt a single system to record investigatory stops and traffic stops, along with pat downs and searches attendant to each type of stop, so that the same form would be used for all involuntary contacts short of citation or arrest. Similarly, the Consultant Team recommended a single policy to cover the documentation of such contacts, supervisory review of the documentation, and auditing and retention responsibilities for the documentation and data.

Second, we recommended that the CPD adopt a standalone policy on the substantive legal framework governing a range of CPD members' contacts with the public, from voluntary contacts to arrests. That policy would provide guidance on when and how to make such contacts, and could serve as a hub to other, more specific policies (including policies on how to document such contacts).

When providing our October 16, 2020 recommendations, we also provided draft policies to assist the CPD in implementing our recommendations.

On November 9, 2020, the ACLU provided comments on the Consultant Team's proposals and suggestions. The CPD responded to our recommendations and draft policies on January 21, 2021, which has fostered ongoing discussions about our recommendations and the steps that the CPD is taking to address them.

On February 25, 2021, the City and CPD provided a preliminary draft of a Stop Report form for the Consultant Team and the ACLU to review. The proposed form would be used to document both investigatory stops and traffic stops, as well as associated protective pat downs and searches. On March 11, 2021, we and the ACLU each sent initial comments and recommendations on the preliminary draft. We will seek community input as the development of the form and corresponding policies continue, as described above.

## Training Recommendations

The Consultant Team reviewed a draft of the CPD's Fourth Amendment training lesson plan, and on November 25, 2020, we provided written feedback on its substance and pedagogy. Once a determination is made regarding how to revise the CPD's policies and

forms, we will provide recommendations as to how the CPD trains its officers to document investigatory stops and pat downs and its supervisors to review such documentation.

## Conclusion

We look forward to working with the ACLU, the City, the CPD, our experts, and the community to create more robust CPD policies and reporting systems regarding investigatory stops and protective pat downs. While the Temporary Stay remains in place, we will continue to focus on recommending improvements to the CPD's policy, documentation, and training. We will also further prepare to resume the statistics-assisted review of ISRs suspended during the stay. We are thankful for the opportunity to work toward more reliable data analysis and help to achieve better outcomes in constitutional policing—which will promote public trust and accountability—under the Agreement.

# **Appendix A - Investigatory Stop and Protective Pat Down Settlement Agreement**

## **INVESTIGATORY STOP AND PROTECTIVE PAT DOWN SETTLEMENT AGREEMENT**

WHEREAS, in April 2014, the Chicago Police Department (“CPD”) issued revised General Orders and directives to ensure that its policies and practices relating to investigatory stops and protective pat downs comply with applicable law, including the United States and Illinois Constitutions and the Illinois Civil Rights Act (“ICRA”). In connection with that effort, and prior to finalizing the revised General Orders and directives, CPD provided such orders and directives to the American Civil Liberties Union of Illinois (“ACLU”) for their review and comment.

WHEREAS, in early 2015, CPD commenced a further review of its policies and practices relating to investigatory stops and protective pat downs. In March 2015, while CPD’s review was pending, the ACLU issued a report entitled “Stop and Frisk in Chicago” that raised concerns about CPD’s policies and practices. On May 30, 2015, Senate Bill 1304 passed both houses of the Illinois General Assembly. If signed by the Governor, Senate Bill 1304 will impose new documentation requirements relating to investigatory stops and/or protective pat downs.

WHEREAS, pursuant to CPD’s continuing evaluation of its policies and practices relating to investigatory stops and protective pat downs, and in response to the ACLU report and Senate Bill 1304, CPD is in the process of further revising its policies and practices. CPD intends to have the revised policies and practices finalized and implemented on or before December 31, 2015, and to complete its training of its officers and supervisors with respect to the revised policies and practices on or before March 1, 2016.

WHEREAS, CPD believes that its policies and practices relating to investigatory stops and protective pat downs have been and will continue to be fully compliant with all applicable laws. Nevertheless, the ACLU has raised concerns about CPD’s policies and practices and has informed the City of Chicago of its intention to file a lawsuit challenging them.

WHEREAS, to avoid the burden, inconvenience, and expense of litigation, the City of

Chicago, CPD, and the ACLU (“the parties”) have agreed to work together to ensure and validate that CPD’s policies and practices relating to investigatory stops and protective pat downs fully comply with applicable law.

Accordingly, the parties agree as follows:

**I. Data Collection**

1. CPD will document all investigatory stops and all protective pat downs, including those that lead to an arrest, an Administrative Notice of Violation (“ANOV”), or other enforcement action, into an electronic digitized database. CPD’s current database documents all investigatory stops and protective pat downs that do not lead to either an arrest or an ANOV. As soon as reasonably possible thereafter, the database will be modified to also include investigatory stops and protective pat downs that lead to an arrest or an ANOV. For each investigatory stop and/or protective pat down, the electronic digitized database shall include:

a) the name and badge number of the officers who conducted the investigatory stop and/or protective pat down;

b) the race/ethnicity of the person stopped, selected from the following list:  
American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino,  
Native Hawaiian or Other Pacific Islander, or White;

c) the gender of the person stopped;

d) all of the reasons for the stop;

e) the location of the stop, including the address, beat, and district;

f) the date and time of the stop;

g) whether or not a protective pat down was conducted of the person, and if so, all of the reasons that led to the protective pat down and whether it was with consent or by other means;

h) whether or not contraband was found during the protective pat down, and if so,

the type and amount of contraband seized;

i) whether or not a search beyond a protective pat down was conducted of the person or his or her effects, and if so, all the reasons that led to the search, and whether it was with consent or by other means;

j) whether or not contraband was found during any search beyond a protective pat down, and if so, the type and amount of the contraband seized;

k) the disposition of the stop, such as a warning, an ANOV, or an arrest; and

l) if an enforcement action was taken (i.e., an arrest or ANOV), a record of the violations, offenses, or crimes alleged or charged.

## **II. Training and Supervision**

1. CPD will provide training for officers and supervisors directed at ensuring that investigatory stops are conducted only where there is reasonable suspicion of criminal conduct and that protective pat downs are performed only where there is reasonable suspicion that the person stopped is armed and dangerous. Further, CPD shall train officers with respect to the electronic digitized database and their responsibilities to record all the relevant information for each investigatory stop and protective pat down. Where appropriate, new or revised General Orders and/or other directives will be issued by the CPD. CPD expects to issue such new or revised General Orders and/or other directives by December 31, 2015, and to complete the training of its officers and supervisors with respect to such General Orders and/or other directives, by March 1, 2016.

2. CPD will implement training policies and practices to ensure that investigatory stops and protective pat downs are conducted consistent with the following guidance provided by the U.S.

Department of Justice:

In making routine or spontaneous law enforcement decisions, such as ordinary sidewalk and traffic stops, Chicago Police Department officers may not use race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, marital status, parental status, or military discharge status, except that officers may rely on the listed characteristics in a specific suspect description.

3. By January 1, 2016, CPD shall establish and enforce policies providing for continuous district-level supervisory review and quarterly or semi-annual department-level audits of CPD's investigatory stop and protective pat down practices. The CPD shall provide these policies and procedures to the Consultant (identified in Section V.1, below) and the ACLU for their review and comment, prior to their finalization. These policies and procedures shall include:

a) Continuous review by police district supervisors of all individual Investigatory Stop Reports to determine whether they state legal grounds for the investigatory stop and/or any protective pat down.

b) Quarterly or semi-annual audits by CPD headquarters staff of CPD investigatory stop and protective pat down practices. These audits shall include examination of: (i) the narrative sections of a statistically representative sample of individual Investigatory Stop Reports to determine whether they state legal grounds for the investigatory stop and/or protective pat down; (ii) records of supervisory corrections or rejections of Investigatory Stop Reports to identify officers who repeatedly fail to document investigatory stops and/or protective pat downs, or who conduct investigatory stops and/or protective pat downs without the requisite reasonable suspicion; and (iii) CPD documentation of civilian and internal complaints relating to investigatory stops and/or protective pat downs.

c) The establishment of re-training, enhanced supervision, or discipline of officers who engage in unlawful investigatory stops and/or protective pat downs or who violate CPD policies or procedures governing these practices. There shall be written documentation of all such re-training, enhanced supervision, or discipline.

### **III. Release of Data and Documents**

1. Within 10 days of the execution of this agreement, all of the digitized information in CPD's electronic digitized database, including but not limited to the enumerated fields in Section I.1, shall be provided to the Consultant and the ACLU. Thereafter, the data shall be provided to the Consultant and the ACLU on a monthly basis on the first of the month. This information, and the information described in paragraphs 4 through 6 below, shall be kept confidential by the Consultant, the ACLU, and the persons identified in Section III.3 on an "attorneys eyes only" basis and shall not be disclosed by the Consultant, the ACLU, or the persons identified in Section III.3 for any purpose whatsoever other than to the extent the information is included in the Consultant's Reports and Recommendations described in Section V.2(f) below.

2. This agreement does not in any way limit the ACLU's rights under the Illinois Freedom of Information Act (FOIA). Moreover, if the ACLU receives information under this agreement that the ACLU believes it would be entitled to obtain under FOIA, the parties will work in good faith to seek agreement about whether that information would in fact be subject to release under FOIA. If the parties reach agreement, the confidentiality provision set forth in III.1 shall not apply. Any dispute about whether information disclosed pursuant to this agreement would be subject to release under FOIA shall be resolved by the Consultant.

3. Under the "attorneys eyes only" restrictions, the Consultant and ACLU may only allow the following categories of people to review the information: (1) counsel for the ACLU and employees of counsel who have responsibility for the execution of this agreement; (2) contractors specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents; (3) consultants or experts provided for in Section V.3 (the Consultant's experts); (4) consultants or experts employed by the ACLU to assist in the execution of this agreement, and (5) other persons only by written consent of the City. Prior to sharing the information with any outside consultants, experts, or others, the ACLU and/or the Consultant will obtain from that individual a signed agreement to abide by the confidentiality provisions set forth herein. The

ACLU and/or the Consultant will promptly provide the City with a copy of all such agreements.

4. CPD shall provide the Consultant and the ACLU all current and future training, policy materials, and supervisory materials described in Section II.

5. CPD shall provide the Consultant and the ACLU the quarterly or semi-annual audits conducted by CPD headquarters staff of CPD's investigatory stop and protective pat down practices described in Section II.

6. CPD shall provide the Consultant and the ACLU with all additional documents necessary to conduct an independent analysis and review of CPD's investigatory stop and protective pat down practices.

7. Absent the permission of the subject of the stop, the Consultant will redact all personal identifying information about the subject of stops from the Consultant's Reports and Recommendations. The redacted information shall be kept confidential consistent with Section III.1, above.

#### **IV. Compliance with the United States and Illinois Constitutions and ICRA**

1. CPD shall conduct investigatory stops and protective pat downs in compliance with the United States Constitution, the Illinois Constitution, and ICRA.

2. CPD shall be in substantial compliance with this agreement if any violations of its requirements are neither systemic nor serious. If a serious violation occurs, CPD shall be in substantial compliance if it promptly identifies the violation and develops and implements a timely and appropriate remedy that results in compliance.

3. After reviewing the data for the six-month period commencing January 1, 2016 and ending June 30, 2016, the ACLU and the City will work together to seek agreement on standards for substantial compliance with ICRA. If the ACLU and the City cannot agree, the Consultant will review the data and determine such standards after considering the respective views and submissions of the parties.

#### **V. The Consultant**

1. The Parties have jointly selected retired Judge Arlander Keys to serve as the Consultant of this agreement.

2. The duties of the Consultant are to:

a) Review and validate CPD's policies, practices, and orders regarding investigatory stops and protective pat downs, including but not limited to, CPD's training regarding investigatory stops and protective pat downs, CPD's method of supervisory review of investigatory stops and protective pat downs, and CPD's method of auditing investigatory stops and protective pat downs.

b) Recommend to the parties changes to CPD's policies, practices, and orders regarding investigatory stops and protective pat downs that are reasonable and necessary to comply with the law, including the United States Constitution, the Illinois Constitution, and ICRA. The Consultant shall consult with the parties before making such recommendations.

c) Review any other documents the Consultant determines are necessary to assess CPD's investigatory stops and protective pat downs, including but not limited to civilian complaints and disciplinary files regarding investigatory stops and protective pat downs (subject to any limitations contained in federal and state law and collective bargaining agreements).

d) On a semi-annual basis, commencing with the six month period starting January 1, 2016 and ending June 30, 2016, identify to the parties and review a statistically representative sample of Investigatory Stop Reports and assess whether the narratives state sufficient facts to establish the requisite reasonable suspicion for the investigatory stop and for any protective pat down.

e) On a semi-annual basis, commencing with the six month period starting January 1, 2016 and ending June 30, 2016, review aggregate Investigatory Stop Report data to determine whether the standards for substantial compliance set forth in Section IV.2 have been met.

f) On a semi-annual basis, commencing with the six month period starting January 1, 2016 and ending June 30, 2016, provide to the parties a written Report and Recommendations based on his or her review of the above materials. These Reports and Recommendations will include an assessment

of whether the CPD is in substantial compliance with this agreement. The Reports and Recommendations will also identify any further practices, policies and other measures that the Consultant recommends are needed to ensure that CPD investigatory stop and protective pat down practices and policies are in compliance with the United States Constitution, the Illinois Constitution, ICRA, and this agreement. The parties will have 30 days to serve each other and the Consultant with objections to each Report and Recommendations. The Consultant will then have 30 days to make any revisions to the Report and Recommendations before making it public.

3. The Consultant may seek the advice and assistance of police practices and statistical experts in formulating the Reports and Recommendations. The City shall compensate the Consultant and any experts he or she shall retain for their professional services and reasonable expenses. Any experts utilized by the Consultant will be subject to the confidentiality provisions set forth in Section III.1.

## **VI. Other Terms**

1. The parties acknowledge that this agreement is not an admission of liability on the part of the City and/or the City's future, current, or former officers, agents, and employees, and shall not serve as evidence of the validity or invalidity of any claims that have been or might be brought in litigation against the City and/or the City's future, current, or former officers, agents, and employees.

2. In consideration of this agreement, the ACLU agrees not to either file as a party or join as a party any lawsuit challenging CPD's policies or practices relating to investigatory stops and/or protective pat downs while this agreement remains in effect.

3. This Agreement shall remain in effect until June 30, 2017, upon a finding by the Consultant of substantial compliance as defined in Sections IV.2 and .3 for one year preceding that date. If the Consultant finds at that time that CPD has not been in substantial compliance, this agreement shall be extended until the Consultant finds that CPD has been in substantial compliance with this agreement for one year. Any party may terminate this agreement at any time.

4. Any dispute as to the meaning or interpretation of this agreement will be resolved first by the Consultant. If, after an interpretation by the Consultant, either party wishes, they also may seek interpretation in the Circuit Court of Cook County.

5. This agreement contains the entire agreement between the parties and the parties mutually agree that this agreement shall be binding upon and inure to the benefit of the parties, due consideration having been given and may be enforced like any other contract. The parties agree that in the event of a breach of this agreement, there will be no adequate remedy at law and that this agreement may be enforced through a suit for specific performance.

6. The person signing the agreement represents and warrants that he or she is authorized to sign on behalf of the party for which he or she is signing and that the agreement as signed is binding on that party.

  
\_\_\_\_\_  
Harvey Grossman  
Legal Director  
The American Civil Liberties Union of Illinois  
180 North Michigan Avenue, Suite 2300  
Chicago, Illinois 60601

8/6/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Garry F. McCarthy  
Superintendent  
Chicago Police Department  
3510 South Michigan Avenue  
Chicago, Illinois 60653

8/5/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Stephen R. Patton  
Corporation Counsel  
City of Chicago, Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602

8/5/15  
\_\_\_\_\_  
Date

# **Appendix B - Temporary Stay of the Review of the Statistically Representative Sample of ISRs (Section V(d-f) of the Agreement)**

**Temporary Stay of the Review of the Statistically Representative Sample of ISRs (Section V(d-f) of the Agreement)**

1. The Consultant's report on his review of 2017 Chicago Police Department ("CPD" or "Department") Investigatory Stop Report ("ISR") data identifies concerns with data collection and supervision which he believed made an accurate assessment of Fourth amendment compliance, as required by the Agreement, impracticable. Certain data and supervision processes related to the Consultant's concerns have not changed since 2017. The parties agree that the Consultant will not review a statistically significant sample of ISRs for 2018 and 2019 for Fourth Amendment compliance. Nothing in this agreement constitutes an admission by the City or CPD of noncompliance with the Investigatory Stop and Protective Pat Down Settlement Agreement dated August 6, 2015 ("2015 Agreement"), nor any agreement on their part with the specific findings of the Consultant. However, in the interest of accomplishing the goals of the Agreement, the parties have agreed to the following actions.
2. The parties agree to place a stay on the review of a statistically significant sample of ISRs (Section V(d-f) of the Agreement) while the Department undertakes review of and assesses any changes to its systems of data collection, supervision, and auditing (collectively, the "investigatory stop system"), as described in Appendix A. This stay does not otherwise alter the terms of the 2015 Agreement.
3. During this stay, the role of the Consultant will be limited to assisting the CPD in identifying improvements to the investigatory stop system, as described in Appendix A, and monitoring the implementation of the Department's implementation plan, as described below and in Appendix A.
4. As described in Appendix A, by January 1, 2020, the Department will identify improvements to the investigatory stop system through a process of research, focus groups, and consultation with the ACLU, the Consultant, and the Consultant's independent police practices expert.
5. The police practices expert will provide consultation with sufficient time for the Department to create the implementation plan described below and in Appendix A. If the police practices expert raises questions or concerns about the investigatory stop system, or makes recommendations to improve the system, the Department will share information with the expert in response and/or incorporate the expert's recommended changes into the implementation plan.
6. By March 1, 2020, the Department will develop a project management plan, in consultation with the ACLU, the Consultant, and the Consultant's police practices expert, to implement improvements they have jointly identified ("project management plan" or "implementation plan"), to be completed by June 1, 2020.

7. From September 16, 2019 through June 1, 2020, the City and Department will have bi-weekly calls with the Consultant, the police practices expert, and the ACLU to provide updates on the progress of the items addressed above and in Appendix A.
8. By June 15, 2020, the Consultant will publish a public report describing the progress of the items discussed above and in Appendix A and CPD's implementation of the project management plan.
9. The Consultant's review of a statistically significant sample of ISRs as described in Section V(d-f) will resume with a review of the data collected between June 1, 2020 and December 31, 2020. The parties and Consultant will confer and jointly determine an appropriate and timely date on which the Consultant's reporting pursuant to the 2015 Agreement will resume.

#### **Fourth Amendment Review of 2018-2019 Data**

10. The Consultant's statistical expert shall receive and conduct a preliminary review of the data for 2018 and 2019. The expert will advise on whether and, if applicable, when it is appropriate to publish limited statistical analyses for the purpose of assessing Fourth Amendment compliance and disparate impact. When publishing the report described in Par. 8 above, the Consultant may include these simple statistical analyses.

#### **Prospective Fourth Amendment Review**

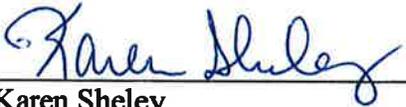
11. By July 1, 2020, the City, ACLU, and Consultant will confer about the Consultant's methodology for conducting Fourth Amendment compliance assessments. If the Department continues the use of multi-version ISRs, the methodology will include a review of the use of multi-version ISRs, including supervisors' documentation of rejections and corrections.
12. If the Department continues the use of multi-version ISRs, an expert will review and provide advice on which ISR versions the Consultant should review and under what circumstances (e.g., whether the Consultant should review only the first version or final versions of the ISRs) in assessing Fourth Amendment compliance within a statistically significant sample of ISRs. If the expert advises that the Consultant should review only the first version, the parties do not object to that review.
13. If the Department continues the use of multi-version ISRs, the Department will create an explanation of the appropriate employment and purposes of the multi-version forms and make it available to officers, supervisors, auditors, and others who receive or are entitled to receive the forms.

#### **Disparate Impact Compliance Methodology**

14. For the purposes of negotiating agreement under Section IV.3 of the Agreement, the City agrees that the Consultant may (1) assume, solely for purposes of determining CPD's

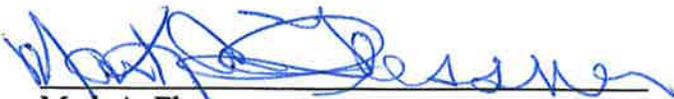
legal compliance under the Agreement, that a prima facie showing under ICRA based on disparate impact on the basis of race has been satisfied and (2) forego that analysis. This agreement to address and discuss disparate impact does not constitute an admission of any fault or liability whatsoever on the part of the City or the CPD and does not extend outside of determining a compliance methodology for this Agreement; this agreement shall not be interpreted as an admission of any fault or liability by the City or the CPD.

15. Consistent with Section III of the 2015 Agreement, the City agrees to furnish the ACLU and the Consultant's policing practices expert with all CPD policies necessary for ICRA analysis, and any information required to devise any remedies under ICRA analysis. Such information includes, but is not limited to, access to all relevant data and, for the policing practices expert, interviews of members of the Department conducted and selected by the expert.
16. Consistent with Section V of the 2015 Agreement, if applicable, the Consultant will recommend to CPD any remedies the Consultant identifies pursuant to the ICRA analysis.



Karen Sheley  
Director, Police Practices Project  
ACLU of Illinois  
150 North Michigan Avenue, Suite 600  
Chicago, Illinois 60601

9/26/2019  
Date



Mark A. Flessner  
Corporation Counsel  
City of Chicago Department of Law  
121 N. LaSalle, Suite 600  
Chicago, IL 60602

9/27/19  
Date

## **Appendix A:**

### **Investigatory Stop System Revision Plan**

1. The City and CPD seek to promote accuracy and transparency when forms are completed and reviewed. Thus, by January 1, 2020, CPD, in consultation with the Consultant, the Consultant's policing expert and the ACLU, CPD will:
  - a. determine what adjustments CPD, the Consultant, the Consultant's policing expert, and the ACLU jointly agree are needed to the ISR application (i.e., the electronic forms that both officers and supervisors fill out) to promote accurate reporting; and
  - b. review and determine appropriate revisions to the ISR special order and any related guidance documents to provide clarity and consistency with the revised investigatory stop system.
2. In so doing, CPD will conduct research, including but not limited to conducting focus groups with CPD members and reviewing best practices in other jurisdictions, to identify improvements in the Department's investigatory stop system that promote the Department's goals of accurate and transparent reporting.
3. Currently, all CPD officers receive training on the investigatory stop system and Fourth Amendment, the curriculum for which was reviewed and approved by the ACLU and Consultant. CPD also provides targeted remediation training based on the Department's review of ISRs. By January 1, 2020, CPD will review its training methods and frequency and will determine, with assistance from the police practices expert, whether additional training is necessary, including whether additional targeted remediation training is appropriate for certain members.
4. To improve the accountability of CPD's auditing of ISRs and respond to the Consultant's report on this issue, CPD's Integrity Unit has been moved under the Department's new Auditing Unit, which now directly supervises the ISR auditing process. Further, by January 1, 2020, CPD will, in consultation with the Consultant, policing expert and the ACLU:
  - a. summarize and report on the work and findings of the Integrity Unit from 2016-2019;

- b. **determine appropriate adjustments to the specific methodologies of the Department's ISR audits conducted to provide transparency and consistency, including district-level executive audits, including whether review of body-worn camera footage would be helpful or appropriate;**
  - c. **develop criteria for a standardized audit template, including for district-level executive audits;**
  - d. **review and determine any appropriate revisions to the Department's Standard Operating Procedures (SOP) for conducting ISR audits;**
  - e. **determine whether additional or revised training is appropriate for the Department's ISR reviewers and auditors.**
4. **By March 1, 2020, CPD will develop a plan to implement all agreed-upon processes.**

