



December 19, 2012

Jonathan Smith
Chief of Special Litigation Section
Office for Civil Rights
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Re: Request for Federal Investigation regarding the Cleveland Police
Department

Dear Mr. Smith:

As you are aware, the American Civil Liberties Union of Ohio Foundation, ("ACLU of Ohio") is the Ohio Affiliate of the national ACLU, with hundreds of thousands of members nationwide and over 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans.

We write regarding a recent incident that took place in Cleveland, Ohio on November 29, 2012, in which two people were killed as a result of Cleveland police officer gunfire. Although the investigation is on-going, the facts of this incident as they have been released to the media include:

- there was a high speed chase initiated by the Cleveland Police Department ("CPD") leading to pursuit of a vehicle by numerous police departments and vehicles, including CPD, at speeds exceeding 100 miles per hour;
- various CPD policies regarding high speed chases were ignored; and,
- the pursuit ended in a hail of gunfire with 137 rounds being fired into a vehicle, resulting in the death of two, apparently unarmed, occupants.¹

This incident appears to be a case of excessive use of force by the CPD that amounts to police misconduct in violation of 18 USC § 242. Further, documented reports reveal that this incident is the most recent in a series of events revealing a "pattern or practice" of excessive use of force by CPD that pursuant to 42 U.S.C. §

¹ Marvin Fong, The Plain Dealer, *Cleveland, East Cleveland officials seek answers after police chase ends with 13 officers firing 137 shots, 2 people dead*, http://www.cleveland.com/metro/index.ssf/2012/11/cleveland_east_cleveland_offic.html#ihcart_river (last visited Dec. 12, 2012).

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14141, deprives the citizens of the city of Cleveland and this state of the "[r]ights, privileges, or immunities secured or protected by the Constitution or laws of the United States." Therefore, we ask the Department of Justice to intervene in the current criminal investigation being conducted in this matter, and to use its authority to conduct a civil investigation to seek and obtain appropriate equitable and declaratory relief to eliminate any such pattern or practice within the CPD.

There has been an outcry for justice by the local community as a result of this incident.² Although the local county prosecutor has taken the initiative to create a "three party taskforce" to investigate this matter, the taskforce consists of members from various police departments that were involved in the chase.³ This gives the investigation, at the least, the appearance of potential conflicts of interest within the taskforce. Perhaps of greater concern is the fact that this incident is only the most recent in a series of well-documented cases of excessive use of force by CPD. The pattern and practice of excessive use of force by CPD led to a previous investigation by the Department of Justice ("DOJ") that resulted in an agreement between DOJ and CPD in 2004 requiring CPD to overhaul its "Use of Deadly Force Policy."⁴

Since 2004, numerous incidents of excessive use of force by CPD have shown that this policy is blatantly disregarded. Below are just a few examples since 2004:

- In 2005, a fifteen-year-old robbery suspect named Brandon McCloud was shot ten times in his own bedroom by police officers after a radio dispatcher's suggestion that the police, "shoot to kill."⁵
- Jay-walker Marlando Williams was chased down on foot and then shocked with a Taser gun in 2010.⁶ Williams was pursued by police because they believed he "looked familiar."
- On New Year's Day 2011, Edward Henderson was beaten by a group of police officers. Henderson, who had a history of mental illness, allegedly got "too close" while driving by an officer making a traffic stop. He fled

² James W. Wade III, Call and Post, *Fudge, Norton call feds to investigate shooting*, <http://callandpost.com/index.php/news/metro/3139-fudge-norton-call-feds-to-investigate-shooting> (last visited Dec. 12, 2012).

³ Fong, *supra* note 1.

⁴ *DOJ Investigation of Cleveland Division of Police*, Civil Rights Litigation Clearinghouse, <http://www.clearinghouse.net/detail.php?id=5535> (last visited Dec. 13, 2012).

⁵ Terry Gilbert, *Anatomy of an Injustice*, Cleveland Scene, <http://www.clevescene.com/cleveland/anatomy-of-an-injustice/Content?oid=1797005> (last visited Dec. 12, 2012).

⁶ Chuck Crow, The Plain Dealer, *6 Cleveland police officers accused of brutality have used force on 39 suspects since 2009*, http://blog.cleveland.com/metro/2011/05/cleveland_police_officers_accu.html (last visited Dec. 12, 2012).

when officers knocked on his window at a red light. Police arrested him after a chase that ended when he crashed his van. After he was handcuffed, he was held down by police, kicked and kned in the head. He suffered a detached retina, broken eye socket and broken nose.⁷

- Also in 2011, and currently the subject of a pending lawsuit, was an incident involving a young boy with down-syndrome who was “mistaken” by police for an older, almost one foot taller, heavier boy. The police tackled and slammed the boy to the ground claiming they were in pursuit of a suspect alleged to have stolen someone’s wallet.⁸

These are just a few examples among dozens of incidents. There have been a number of media investigations regarding CPD use of force since the implementation of the 2004 policy. These reports reveal that CPD officers have been involved in numerous physical altercations, with at least 39 suspects since 2009. All but one of these suspects was unarmed, 14 of the 39 suspects were never convicted of any crime, and eight were never charged.⁹ In 2007, prompted by the death of eight individuals, including an infant, Cleveland Police Chief McGrath was forced to implement changes in police policy regarding car chases.¹⁰ Unfortunately, those policies do not seem to have made much of an impact on the safety of the community if recent events are any indication.

The police car chase on November 29, 2012 that ended in a barrage of gunfire, and the death of the two occupants of the car being pursued, is yet another example of the failure of CPD to follow its own policies regarding pursuit and the use of force. This behavior is indicative of a greater problem within the CPD and requires an objective and thorough investigation. We believe this investigation will show the failure of CPD to follow its own policies and a pattern and practice of use of excessive force. Therefore, we respectfully request the Department of Justice to initiate an investigation into this matter as soon as possible.

⁷Stan Donaldson, The Plain Dealer, *Four Cleveland police officers are charged with assaulting Edward Henderson on New Year's Day*, http://blog.cleveland.com/metro/2011/03/four_cleveland_police_officers.html (last visited Dec. 12, 2012).

⁸Chuck Crow, The Plain Dealer, *Family sues Cleveland police officers, claims teen son with Down syndrome was attacked*, http://blog.cleveland.com/metro/2011/07/family_sues_cleveland_police_o.html (last visited Dec. 12, 2012).

⁹Chuck Crow, The Plain Dealer, *6 Cleveland police officers accused of brutality have used force on 39 suspects since 2009*, http://blog.cleveland.com/metro/2011/05/cleveland_police_officers_accu.html (last visited Dec. 13, 2012).

¹⁰Peter Zicari, The Plain Dealer, *Death, injuries spur changes in Cleveland police chase policy*, http://blog.cleveland.com/pdextra/2008/01/death_injuries_spur_changes_in.html (last visited Dec. 12, 2012).

We look forward to your prompt response, and can be reached by phone at (216) 472-2220 should you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Hardiman". The signature is written in a cursive style with a large initial "J".

James L. Hardiman
Legal Director

Cc: Steven M. Dettlebach, United States Attorney, Northern District of Ohio