

November 15, 2018

VIA EMAIL AND U.S. MAIL

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Cleveland Division of Police
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Jack Guttenberg
President

J. Bennett Guess
Executive Director

RE: Recommendations for search and seizure GPOs

Dear Chief Williams and Mr. Barge:

We write today to express our support for the CPC's revisions to the Cleveland Division of Police's Search and Seizure, Investigatory Stops, Probable Cause/Warrantless Arrests, Miranda Warning and Waiver, and Strip Searches and Body Cavity Searches GPOs ("search and seizure policies").

Comprehensive reform of CDP's search and seizure policies is long overdue. In December 2012 the ACLU of Ohio was one of several organizations that requested a federal investigation into CDP's excessive use of force arising from police interactions with Cleveland community members. In January 2016 we requested that search and seizure reform be prioritized in the first year of the consent decree. Fundamental changes to CDP's search and seizure policies and practices are crucial to re-building community trust and implementing constitutional policing in all of Cleveland's neighborhoods.

We urge you to adopt *each and every* recommendation, as they are necessary for the policies to conform to nationally-recognized best practices. Some of the most critical changes include:

- Provide guidance for officer interactions with juveniles, including those who have experienced trauma;
- Mandate that trainings on the policies be given by a lawyer with in-depth knowledge of Fourth Amendment law and practices; and
- Allow transgender individuals to choose the gender of the officer to conduct any searches.

Because the success of these policy reforms hinge on their implementation and enforcement, we respectfully request to review the training curriculum in advance of it being finalized.

If you have any questions or would like to discuss further, please don't hesitate to contact us via email or by phone at

Sincerely,



Jocelyn Rosnick
Policy Director
ACLU of Ohio



Emma Keeshin
Advocacy Associate
ACLU of Ohio

Enclosures: December 19, 2012 letter requesting federal investigation of CDP
January 26, 2016 letter regarding search and seizure reforms



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_riv (last visited Dec. 12, 2012).

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SHARES



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 cat 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.

⁷ Stan 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).

⁸ Chuck 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).

⁹ 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. 13, 2012).

¹⁰ Peter 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" and "H".

James L. Hardiman
Legal Director

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



January 26, 2016

Via Email and U.S. Mail

Matthew Barge, Monitor
Cleveland Monitoring Team
c/o Lutheran Metropolitan Ministry
4515 Superior Ave, First Floor
Cleveland, OH 44103
matthewbarga@parc.info

Re: ACLU of Ohio Comments on Draft First Year Monitoring Plan

Dear Matthew,

Thank you for sharing the draft first year Monitoring Plan and soliciting our comments on it. In general, we agree that the Plan is faithful to the Decree's requirements, and that the timetable and steps that it establishes are realistic and appropriate. In terms of the scope of the Plan, however, we do note the absence of two critical areas of reform which should be commenced in the first year.

The Plan provides for no progress towards search and seizure training or towards the police department's review and amendment of its disciplinary matrix. Both of these areas are key to reforming the department and should not wait to be addressed. Both of these types of reform take significant time to conceptualize, to codify, to put in usable form and finally to implement. Our suggestion is that in the first Plan year, the teams be formed (composed of police, civilians and other interested parties) that will be working on these issues, and that a schedule be established for initial meetings to lay the foundation for the work to come.

For searches and seizures, every day that goes by without reform is a day in which old-practice errors can continue to occur. To continue a disciplinary matrix that has been targeted for reform perpetuates confusion and the risk of unfairness as well as a lack of accountability.

Please do not hesitate to contact me if you wish to discuss these comments. Thank you very much.

Sincerely,

Freda Levenson
Legal Director

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