



February 5, 2015

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Vanita Gupta
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RE: DOJ-Cleveland Policing Consent Decree

Dear Mayor Jackson, U.S. Attorney Dettelbach, and Acting U.S. Assistant Attorney General Gupta:

After many years and countless reports of problems between law enforcement and community members, the U.S. Department of Justice has chronicled systemic failures in its investigation, released December 4, 2014.¹ While these findings are deeply disappointing, they are validation for the residents of Cleveland and civil rights activists who have pointed to these issues for decades.

In light of these findings, the city of Cleveland and the DOJ have signed a Statement of Principles and agreed to negotiate a consent decree with a court-

¹ UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION & UNITED STATES ATTORNEY'S OFFICE NORTHERN DISTRICT OF OHIO, INVESTIGATION OF THE CLEVELAND POLICE DEPARTMENT (Dec. 4, 2014), available at http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf

appointed monitor in the hopes of enacting meaningful reforms within the Cleveland Police Department.²

If Cleveland is to achieve true police reform, it must be done with the full cooperation of community members, law enforcement, civil rights organizations, elected officials, the DOJ, and other community leaders. We know that police reform can be achieved, though it may be a challenging, and even painful process. Now is the time to adopt transformational reforms that will change the course of policing in our city. In particular, we ask you to consider these recommendations:

Ongoing Oversight of the Cleveland Police Department

This is not the first DOJ intervention in Cleveland. Only ten years ago, the DOJ entered into an agreement with the city after a pattern of abuses was found in the police department. Unfortunately, that agreement was short-lived and we find ourselves once again seeking massive changes to the culture and practices of the Cleveland Police Department. Whatever reforms the DOJ and city agree to, they must be with the understanding that strict oversight is needed for at least five (5) years, and preferably longer, until the changes have been properly integrated into every facet of policing in Cleveland. We also urge the DOJ to consult with stakeholders who were part of the previous agreement, in order to understand its shortcomings and what could be changed so that we are not simply in the same position again ten years from now.

Community Engagement and Public Accountability

Establish Community Advisory Boards

In order to help facilitate stronger ties between law enforcement and community members, we recommend the establishment of Community Advisory Boards in each precinct within the city of Cleveland. These boards will be charged with meeting regularly to discuss issues impacting neighborhoods, address concerns between law enforcement and residents, and engage community leaders on their ideas to strengthen policing practices in the neighborhood. These Community Advisory Board meetings should also serve as forums for law enforcement to deliver vital public information to the public, including number of traffic stops, uses of force, arrests and crime statistics.

² CITY OF CLEVELAND AND UNITED STATES OF AMERICA, JOINT STATEMENT OF PRINCIPLES BY THE UNITED STATES DEPARTMENT OF JUSTICE AND CITY OF CLEVELAND REGARDING THE CLEVELAND DIVISION OF POLICE (DECEMBER 4, 2014), *available at* <http://www.justice.gov/usao/ohn/brochures/4%20CDP%20Statement%20of%20Principles%20Executed.pdf>

Implement and Invest in Community Policing Practices

Community policing has been widely regarded as a strategy that can help strengthen police-community relationships, lower crime rates, and improve the quality of life in neighborhoods. These methods should be prioritized in funding and training within the Cleveland Police Department. In particular, we recommend that the CPD:

- Require its officers to patrol neighborhoods on foot to the extent possible, rather than always remaining in their vehicles;
- Partner with neighborhood groups or individual residents to establish non-law enforcement activities geared toward community well-being, such as social, educational, or civic initiatives;
- Provide cultural competence training for CPD staff to equip them to work more effectively with individuals of various racial, ethnic, and religious backgrounds, as well as those from different ability, sexual orientation, or gender identity groups;
- Utilize data to identify underlying problems that can lead to greater crime in particular neighborhoods, and partner with stakeholders to address the root causes of those problems; and
- Train officers on de-escalation and problem-solving techniques that can be implemented in the field.

Include Community Policing Practices on Performance Reviews

Although it is important to hold law enforcement officers accountable when they do not abide by department policies and violate the rights of Cleveland residents, it is as important to recognize those officers who honor community policing standards. This not only provides a positive incentive for police to use community policing tactics, but is also helps promote officers who are using these standards and makes them leaders and role models within the department.

In addition to normal performance metrics, reviews should also include an evaluation on officers' actions to build community trust. For example, this might include incentives for defusing conflict, avoiding unnecessary arrests, engaging in community outreach and relationship building, and reducing grievances and violations of civil rights and liberties.

Reform the Civilian Police Review Board

If the DOJ consent decree brings accountability to the Cleveland Police Department, the parties to this agreement must still take this opportunity to establish lasting mechanisms for the public to air grievances. Cleveland currently

has a Civilian Police Review Board, but the current board simply does not serve this purpose.

Residents of Cleveland have long pointed to serious deficiencies with the Board, including a lack of fair and due process, unresponsive or uncompassionate officials, and little to no transparency in the grievance process. This must be reformed in order to engender trust between community and police. Additionally, a strong and objective Civilian Police Review Board will not only hold accountable those officers who violate peoples' rights, it will also exonerate law enforcement officials who are wrongfully accused of such acts.

Specifically, a reformed Civilian Police Review Board must have:

- Independent investigatory authority, including the ability to subpoena witnesses, testimony, and documents;
- Independent disciplinary authority to hold officers accountable for illegal and unconstitutional acts;
- Adequate funding to ensure that investigations are timely and thorough, with funding dollars tied to a fixed percentage of Cleveland's non-capital budget;
- Membership that reflects equity, inclusion, expertise, and leadership in the community;
- Broad access to the public that allows Clevelanders to report grievances in-person, by phone, or electronically, including during weekend and evening hours;
- Quarterly reports regarding Board activities, including the number of complaints received and substantiated, that are posted on the Board's website and otherwise made publically available;
- Broad power to investigate Cleveland Police Department policies and make recommendations for reforms. This could include the appointment of an Inspector General, and would position the Board to address systemic problems uncovered through the complaint process.

Include Community Monitoring and Feedback as Part of Consent Decree Implementation

While no community members are parties to the consent decree, it is still critical to engage residents in its implementation. We recommend the parties establish a board of community leaders that represent Cleveland's diversity to help guide and advise city officials and federal monitors during the implementation process.

Provide Necessary Technology to Law Enforcement

Law Enforcement Need Communication Devices

In the wake of the DOJ investigation, reports have surfaced that many police officers in Cleveland do not have proper technology to communicate with colleagues. In some cases, officers must rely on their own personal cell phone to pass along vital communications to others. This is unacceptable and must be remedied.

CPD Use of Body-Worn Cameras

We are very concerned with reports that the Cleveland police are moving forward with the use of body-worn cameras before the consent decree has been negotiated and before adequate policies and procedures have been established. While the ACLU supports the use of body-worn cameras to aide police accountability, they must only be implemented with strong policies in place that respect the privacy rights of officers and civilians and the public's right to know, and provide appropriate sanctions for police misconduct.

The proposed policy for Cleveland's body-worn cameras is far too broad. It provides wide loopholes for law enforcement to capture information that it may not typically be entitled to, and it gives far too much leeway for officers to decide when a camera may be turned on or off. Additionally, the ACLU has concerns with how these recordings will interact with state public records laws, privacy of law enforcement and those whom they encounter, discipline for misuse, retention schedules and officer access to recordings.

We believe the Department of Justice should intervene and slow the implementation of Cleveland's body-worn cameras to ensure an adequate policy is in place.

Stops, Searches, and Seizures

Given the concerns noted by DOJ regarding the unconstitutional use of stops, searches, and seizures by the Cleveland Police Department, we recommend the consent decree include:

- A ban on consent searches;
- A directive from CPD leadership discouraging the use of pretextual stops; and,
- A requirement that officers provide individuals with the reason they are being searched, inform individuals of their right to *not* consent to the search if there is no warrant, and give the individual a document at the end of the

search with the officer's identification and instructions on how the person may file a complaint.

Transparency of the Police Department

Secrecy only breeds distrust among the public, so it is in the interest of the Cleveland Police Department to increase the access to critical information for residents, media, and advocacy groups.

Increase Collection and Reporting of Data, Policies, Commands, and Orders

In addition to the data already collected by the police department, the CPD should begin to report the following:

- Arrest and summons data: The police department should regularly report aggregate data on how many arrests and summonses are made or issued, including the offense charged, the race, gender, ethnicity, and age of the arrestee or summons recipient, the location of arrests or summonses, and whether the arrest or summons came in response to a specific report or complaint made by a person to the Cleveland Police Department or 911 system;
- Use of force and discharge of firearm data: This information should be collected and reported at least annually to the public.

The Cleveland Police Department can also increase its transparency and the public knowledge of their work by providing all policies or other important departmental documents to the public.

We encourage the Cleveland Police Department to utilize its website for distribution, as well as providing copies of reports to recreation centers, senior centers, public libraries, and police districts for residents to obtain.³

Changes in Hiring and Review of Law Enforcement

As evidenced by revelations regarding officers involved in past uses of force, the Cleveland Police Department need new policies for how police are recruited, hired, reviewed, and promoted. CPD should have a standing practice of communicating with all previous employers regarding an applicant's background and suitability for law enforcement. Additionally, law enforcement officers should receive substantial opportunities for mental health counseling, especially if they have been a party to use of force situations or other tense or potentially traumatic scenarios. Peer support systems should be established in which colleagues can support officers who

³ CPD should be reminded that any public records requests seeking such information must be responded to in a prompt timeframe, in accordance with Ohio law.

may be showing signs of mental and emotional distress and need intervention with superiors. These policies, however, must respect the medical privacy of officers while still protecting public safety.

Cleveland Police Department Training

The DOJ investigation uncovered numerous instances in which Cleveland Police Department training was insufficient, incorrect, or unconstitutional. A wholesale review of CPD's training is greatly needed. Areas of special concern include de-escalation tactics (or the lack thereof), use of force, implicit bias, Fourth Amendment violations, data collection and retention, community policing, mental health and addiction, and interactions with young people and people with disabilities. Once finalized, the content of the revised training, the names of the trainers, and the frequency of training should be made available to the public.

We urge you to include the reforms outlined above in the final consent decree. These reforms are challenging and expansive, but they are greatly needed to reform the Cleveland Police Department into one that enforces the law in a constitutional and effective manner, while remaining accountable to all of the communities they are sworn to serve and protect.

Please feel free to contact us via email at the addresses listed below, or by phone at (216) 472-2220, if you need any additional assistance or have questions about these recommendations.

Sincerely,



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