

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**Mahari Bailey, et al.,
Plaintiffs**

v.

**City of Philadelphia, et al.,
Defendants**

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C.A. No. 10-5952

SETTLEMENT AGREEMENT, CLASS CERTIFICATION, AND CONSENT DECREE

I. Introduction

A. Plaintiffs' Claims

This class action was filed on November 4, 2010, and alleges that practices related to stops, frisks, searches, and detentions by the Philadelphia Police Department ("PPD") violate the United States and Pennsylvania Constitutions by (1) depriving class members of their rights to be free from unreasonable searches and seizures under the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution where stops, frisks, or searches are made without the requisite reasonable suspicion or probable cause, and (2) denying class members the equal protection of the laws under the Fourteenth Amendment and the Pennsylvania Constitution where stops, detentions, frisks or searches are impermissibly conducted on the basis of race or ethnic origin. Plaintiffs' claims are based on the facts alleged by the individual named plaintiffs, data analyzed during the course of the litigation in NAACP v. City of Philadelphia, C.A. No. 96-6045 (E.D. Pa.), and PPD data regarding stops and frisks in Philadelphia for the years 2005-2009. Plaintiffs allege that the constitutional violations are systemic and result from the failure of the PPD to properly train, supervise and discipline police officers with respect to these practices. In particular, plaintiffs allege that the City has as a matter of policy increased the number of stop and frisks in Philadelphia, but has failed to properly monitor, audit or supervise these practices since the termination of the NAACP case in 2005, notwithstanding assurances that the City would continue to monitor and supervise these practices.

B. The City's Response

The City of Philadelphia acknowledges that there has been an increase in the number of persons stopped and frisked by the PPD in the period 2008-2010, but denies all allegations regarding systemic violation of the rights of class members under the Fourth or Fourteenth Amendments or the Pennsylvania Constitution, and the City further denies the legal and factual claims made by the plaintiffs. The City asserts that PPD training on and supervision of stop and frisk practices is fully consistent with constitutional standards and that there have not been violations of the constitutional rights of the members of the plaintiff class. Specifically, the City asserts that its practices and procedures related to stops, frisks, searches and detentions by the PPD are fully consistent with constitutional standards and are made with the requisite reasonable suspicion and/or probable cause. In addition, the City denies that the stops, frisks, searches and detentions are, in any way, conducted on the basis of racial or ethnic origin in violation of individuals' constitutional rights. Nevertheless, the City, without admission of any legal or factual claims made by the plaintiffs, agrees that there are appropriate measures that should be implemented as a matter of City policy and practice to ensure that stops and frisks by the PPD are conducted consistent with constitutional mandates.

C. Mutual Recognition of Principles

All parties to this Settlement Agreement and Consent Decree recognize the need for (1) diligent law enforcement in the City of Philadelphia, (2) the proper use and implementation of stop and frisk practices and policies as instrumental in legitimate police practices, and (3) compliance with the requirements and mandates of the Fourth and Fourteenth Amendments to the United States Constitution and to Article I, Sections 1 and 8 of the Pennsylvania Constitution.

Accordingly, the parties have agreed to the following binding provisions of this Settlement Agreement, Class Certification and Consent Decree ("Agreement").

II. Preliminary Discovery, Review of Current Stop and Frisk Practices, and Data Analysis

A. The City has agreed to provide the plaintiffs the following documents and data regarding stop and frisk practices of the PPD:

1. 75-48a forms for the PPD for selected two week periods in the years 2006-2010.
2. PPD directives and related instructional and training materials governing stop and frisk policies and practices, including information as to codes entered on the 75-48a forms.
3. Audits, reports, and data analysis prepared by or for the PPD for the period 2006 to the present regarding stop and frisk practices and policies, including reports and audits prepared by Temple University and the University of Pennsylvania.
4. PPD Compstat and Research and Planning data for the years 2006-2010 regarding (a) arrests, (b) reported crime, and (c) seizures of contraband (guns and/or drugs) pursuant to stops and frisks.
5. Data regarding deployment of PPD officers by district and unit for the years 2006-2010.
6. The parties have also agreed to discuss other disclosures that may be appropriate for proper assessment and monitoring of stop and frisk practices by the PPD.

B. The parties have agreed not to litigate the constitutionality of past stop and frisk practices, and they enter into this Agreement to implement measures to ensure future compliance with constitutional standards. The parties reserve the right to review and analyze 75-48a forms for the years 2006-2010.

C. No later than January 1, 2012, the PPD will begin entering all new 75-48a forms into an electronic data base that provides the parties with access to digitized information that is sufficient to enable the parties to conduct electronic data analysis with respect to legality of the stops and frisks. The data base shall have the capability to retrieve information by DC number, district, date, race, officer's actions, and other relevant characteristics necessary to effective monitoring of stop and frisk practices. To ensure that this data base provides the necessary information regarding stops and frisks, the parties will confer on the need for any changes to the 75-48a form and the design and structure of the electronic data base, including the nature and scope of the information to be entered. If there are any unresolved differences between the parties as to this process, the Court shall have the authority to enter an appropriate Order.

Further, the City shall train PPD officers with respect to the electronic data base system and their responsibilities to record the relevant information for each stop and frisk.

D. The Plaintiffs and the City will review current PPD training, supervision, and discipline policies to determine whether any changes are necessary or appropriate to ensure that stops are conducted only where there is reasonable suspicion of criminal conduct and that frisks are made only where there is reasonable suspicion that the person stopped is armed and dangerous. Where appropriate, new directives, regulations or other policy statements will be issued by the PPD, or ordered by the Court pursuant to Sections IV(E) and (F).

E. Stops and frisks shall not be permissible, without limitation, where the officer has only anonymous information of criminal conduct, or because the person is only "loitering" or engaged in "furtive movements," or is acting "suspiciously," or for the purpose of "investigation of person," or on the basis of non-articulated "flash information," or only because the person is in a "high crime" or "high drug" area. These restrictions are not exclusive and the parties agree that stops and frisks shall not be made without the requisite reasonable suspicion under the Fourth Amendment and Pennsylvania Constitution.

F. The City agrees to implement policies and practices to ensure that stops and frisks are not conducted on the basis of the race or ethnic origin of the suspect, except where the law permits race or ethnic origin to be considered in determining whether a person shall be stopped or frisked (e.g., where a suspect has been described by his race).

G. By January 1, 2012 the City shall establish and enforce policies and procedures governing supervisory review and audits on agreed upon periodic basis of stop and frisk practices that include (1) review by police district or unit supervisors of selected 75-48a forms to determine whether they state legal grounds for a stop or frisk, (2) reviews and audits by PPD supervisory officials of relevant data to determine whether there are impermissible racial disparities in stops and frisks, (3) the establishment of triggering thresholds for re-training, enhanced supervision, or discipline of officers who engage in unconstitutional stops and frisks or who violate PPD policies or procedures governing these practices, and (4) department wide audits and assessments of stop and frisk practices that include PPD stop and frisk documents,

civilian complaints, internal complaints, use of force forms and data, community surveys, and other relevant PPD data or documentation. There shall be written documentation of all re-training, enhanced supervision, or discipline of officers who are reviewed under the triggering thresholds. These reviews and audits shall be made available to the parties, Monitor, and the Court.

III. Class Certification

The parties agree to the following Class Certification pursuant to Rule 23(b)(2), F.R.Civ.P.:

All persons, including pedestrians and operators or passengers in motor vehicles, who were or will be stopped, frisked, detained and/or searched by Philadelphia police officers on or after November 4, 2008 without legal justification as required by the Fourth Amendment and Pennsylvania Constitution, or on legally impermissible considerations of race or national origin in violation of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d).

IV. Monitoring and Compliance

A. By June 21, 2011, the Court shall appoint a Monitor after considering the recommendation(s) of the parties. The Monitor shall have the authority to recommend to the parties and to the Court practices, policies and other measures that are appropriate or necessary to ensure that PPD stop and frisk practices and policies are in compliance with the Fourth and Fourteenth Amendments and the Pennsylvania Constitution. The Monitor shall be provided with all relevant and necessary information, data analysis, and documents and may conduct an independent analysis and review of stop and frisk practices as a basis for the Monitor's Reports and Recommendations. The Monitor may seek the advice and assistance of police practices and statistical experts in the formulation of reports or recommendations to the parties and the Court. The Court retains the power to ensure that the Monitor is provided with all necessary and relevant information and documents.

B. For the period of time preceding full implementation of the electronic data base of 75-48a information, see Section II(C), on a quarterly basis the City shall provide to the plaintiffs, the Monitor, and the Court relevant data regarding stops and frisks, including the information and documents listed in Section II(A). In this regard, the City shall provide all 75-48a forms that are part of the City's audits of stop and frisk

practices (under the supervision of Police Department Inspectors), as well as other relevant forms and data.

C. Upon implementation of the 75-48a electronic data base, the digitized information in this data base shall be provided to plaintiffs' counsel and the Monitor on a monthly basis.

D. The parties shall analyze and review this data and documentation under agreed upon benchmarks for measuring compliance with Fourth and Fourteenth Amendment and Pennsylvania constitutional standards and, on a semi-annual basis, shall submit their reports and recommendations to the Monitor and the Court. The benchmarks shall include, but need not be limited to, those developed by the parties in NAACP v. City of Philadelphia.

E. The City shall implement policies, practices and other measures that the parties agree will foster PPD compliance with constitutional standards. If the parties disagree on such practices and policies, they shall separately set forth their positions in a Report to the Monitor. The Monitor shall discuss the matter with the parties and, if agreement is not reached between the parties, shall issue a formal Report and Recommendation. The recommendations shall be implemented unless a party objects by filing Objections with the Court.

F. Upon the filing of such Objections, the Court shall determine whether the recommendations are appropriately designed to ensure that stop and frisk practices are consistent with constitutional standards. The Court has the authority under this Agreement to order specific policies, practices and/or other measures that are necessary or appropriate to ensure compliance with constitutional standards.

G. Upon a showing of non-compliance with its Orders or of a pattern of violations of the constitutional rights of the plaintiff class, the Court shall have the power to issue contempt or other sanctions.

H. In determining whether the City is in compliance with constitutional standards with respect to stop and frisk policies and practices, the Monitor and the Court may consider among other factors, (1) the number and nature of stops and frisks that do not comply with constitutional standards under the Fourth Amendment or Pennsylvania Constitution, (2) all information regarding the reasons provided for stops and frisks, the resultant "hit-rates," including arrest data, seizures of evidence, and information resulting

from audits and surveys conducted by the parties, (3) racial disparities in stop and frisk practices under appropriate criteria and benchmarks and under professionally established statistical protocols and analysis. Non-compliance under the Fourth Amendment and Pennsylvania Constitution may be found where there are a significant number of unconstitutional stops and/or frisks. Non-compliance under the Fourteenth Amendment and Pennsylvania Constitution may be found where the evidence proves that there are significant racial disparities in stop and frisk practices that are not explained by non-racial factors for such disparities, including but not limited to crime rates, suspect-descriptions in stop and frisk cases, police deployment patterns, or other non-racial factors.

V. Fees and Costs

- A. The City shall be responsible for reasonable costs and fees of the Monitor.
- B. The City shall pay counsel fees and costs to the plaintiffs' attorneys David Rudovsky, Paul Messing, Mary Catherine Roper (ACLU of Pennsylvania), and Seth Kreimer, and their expert, Professor David Abrams on an agreed upon hourly basis and subject to an agreed upon annual cap for time spent to date and for all time spent in the monitoring phase of the litigation. Counsel shall submit invoices for their time and costs on a semi-annual basis. Any disputes over fees and costs shall be adjudicated by the Court.
- C. Plaintiffs agree to waive fees for work done in the investigation and negotiation of the individual damage claims of the named plaintiffs.

VI. Miscellaneous

- A. The parties shall attempt to negotiate the individual claims of the named plaintiffs. The Court shall have the authority to resolve these claims by mediation or trial.
- B. Members of the plaintiff class may sue for damages for alleged stop and frisk violations and any such claims shall be considered "related" for purposes of Local Rule, Civ. P. 40.1(c)(1), or other later cognate rules.
- C. This Agreement shall remain in effect until the Court, upon motion of a party, determines that the provisions regarding data disclosure and analysis, document production, Monitor Reports and

Recommendations, and Court review are no longer necessary to ensure that the PPD stop and frisk policies and practices are consistent with constitutional standards.

D. Reports and recommendations of the parties and the Monitor and any Orders of the Court shall be filed of public record with the Court. All filings will redact personal information regarding persons subject to stop and frisks and the parties agree to keep information regarding the identities of persons stopped or frisked confidential.

E. Neither this Agreement nor any act taken in furtherance of this Agreement by the City or any City officials or employees is or may be deemed an admission or evidence of the validity of any claims made by the plaintiffs in the Complaint in any civil, criminal, or administrative proceeding.

F. The Monitor shall not be retained by any party to this litigation in a claim or suit against the defendants, or any of their officers, employees, or agents. The Monitor shall not testify on behalf of any party in any new claim or suit against the defendants, their officers, employees, or agents, but may testify in this action on issues relating to the Monitor's duties or responsibilities. The Monitor shall notify the defendants upon receipt of a subpoena and/or request for documents and materials that relate to the Monitor's duties and responsibilities under this Agreement.

It is so agreed.

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Approved by the Court:



Honorable Stewart Dalzell
United States District Judge

June 21, 2011