

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

Mahari Bailey, et al.,	:	
Plaintiffs	:	C.A. No. 10-5952
	:	
v.	:	
	:	
City of Philadelphia, et al.,	:	
Defendants	:	

ORDER

And now, this 2nd day of June, 2021, upon consideration of the Plaintiffs’ Motion to Mandate Racial Bias Remedial Measures, the Defendants’ Response, the agreement in part between the parties as to certain provisions of this Order, and the full record of this case, it is hereby **ORDERED**:

1. No later than August 1, 2021, the PPD shall implement in one police district, a pilot project modifying enforcement policies and practices on quality of life offenses (“QOL”).¹ The pilot project shall be implemented in the police district identified by the City of Philadelphia during the telephone conference held with counsel on May 27, 2021.

2. In this pilot project, officers who observe or respond to reports of QOL offenses shall first conduct “mere encounters,” advising the individual(s) involved to refrain

¹ We acknowledge that Plaintiffs do not agree with the City of Philadelphia that this pilot project should be implemented in just one police district. Nonetheless, we have concluded that this pilot project should initially be implemented in only one police district based largely on Police Commissioner Outlaw’s representation in her Confidential Declaration that “[b]y allowing PPD to concentrate training and oversight on one police district . . . the pilot program will have the necessary foundation to ensure its efficient and effective implementation and operation.” (Confid. Decl. ¶ 3.d.)

from the prohibited conduct and/or to move from the area in which the alleged offense has occurred. These encounters shall not involve a “stop” of the individual(s) as currently defined by PPD directives on investigative detentions or the completion of a PPD 75-48A form. Nor shall a mere encounter include obtaining the identification of the pedestrian or running an NCIC background check. The encounter shall be recorded in a manner prescribed in the policy. If the individual(s) do not comply with the directive to cease the offending conduct or to move from the area, the officer may conduct an investigative detention consistent with current PPD Directives that require reasonable suspicion or probable cause of criminal conduct. In such circumstances, the officer will then complete a 75-48A form as set forth in police directives.

3. No later than June 30, 2021 the parties shall agree on a detailed protocol for this pilot project including a list of all QOL offenses, a definition of exigent circumstances that will justify stops of individuals for QOL offenses without first engaging in a mere encounter, and a recording process and protocol for the encounters. Absent an agreement on these issues, the Court, on motion of the parties, shall Order appropriate guidelines for the QOL pilot project.

4. The pilot project shall be for a period of three (3) months, during which the PPD and counsel for plaintiffs shall review and audit all mere encounters and stops of QOL offenses, and all related documents, including civilian complaints or resident complaints or inquiries regarding the pilot project.

5. At the conclusion of the three-month pilot project, the parties shall discuss the results of their respective audits, reviews, and assessment of the pilot QOL policing policies and practices. Within thirty (30) days from the end of the three-month period, the parties shall

submit to the Court plans for the expansion, modification, cancellation, or other changes to the QOL policies. Absent an agreement on these issues, the Court, on motion of the parties, shall Order appropriate guidelines for expansion, modifications, and/or cancellation of the QOL policies.

6. No later than September 10, 2021, the PPD shall submit to the Court and the Plaintiffs a plan and protocols for (a) internal accountability and discipline of officers and supervisors for violations of the *Bailey* Consent Decree provisions prohibiting racial bias in stop and frisk practices and (b) incentivization of policing practices consistent with the *Bailey* Consent Decree provisions (the “Plan”).

7. The Plan referenced in para. 6 shall include relevant metrics and benchmarks for assessing racially biased stops by individual officers and for the failure of supervisors and Commanders to correct and prevent racially biased stops or frisks, all based on past and ongoing data analysis. The Plan may also be informed by the ongoing data review by the experts for the parties and by the provisions of a PPD planned Early Intervention System.

8. The parties shall agree on the relevant metrics and benchmarks with respect to the Plan no later than August 15, 2021. Absent an agreement on the metrics and benchmarks, the Court, on motion of the parties, shall Order appropriate guidelines for the Accountability and Discipline Plan.

9. Following the submission of the Plan, the parties shall consult on a final PPD Accountability directive or other regulation that incorporates the agreed upon provisions, including benchmarks and metrics that reflect factors that are incorporated in the Early Intervention System, and implementation dates and process. Absent an agreement among the parties on these provisions, the Court shall consider the issues and enter appropriate Orders.

10. No later than July 1, 2021, the PPD shall assign specially trained Accountability Officers to five Police Districts designated by the parties. The Accountability Officers shall be assigned to the District Captains and shall be charged with the responsibility of using real time data in evaluating and addressing patterns of stops and frisks without reasonable suspicion and evaluating and addressing racial disparities and racial bias in stops and frisks within their areas of command. The Accountability Officer review shall include, but not necessarily be limited to (a) the racial breakdown of stops by officer in comparison to other officers in the district or division (including officers in tactical squads or units); (b) the racial breakdown by stops and frisks with and without reasonable suspicion by all officers in the district or division, including tactical squads and units; (c) officers with very high numbers of stops (and their racial breakdown); and (d) stops for QOL offenses. The metrics and scope of reviews shall be stipulated by the parties no later than June 8, 2021. Absent an agreement on the metrics and scope of the reviews and evaluations by the Accountability Officers, the Court, on motion of the parties, shall Order appropriate guidelines for the Accountability Officers.

11. No later than November 1, 2021, the parties shall evaluate the work of the Accountability Officers and agree on an expansion of Accountability Officer assignments and/or alternative procedures for ensuring PPD compliance with the Consent Decree. Absent an agreement among the parties on these provisions, the Court shall consider the issues and enter appropriate Orders.

12. The PPD shall provide *Bailey*-specific training in the annual MPOETC training that will include detailed instructions on the Consent Decree and the Fourth and Fourteenth Amendment standards that govern stop and frisk practices. These sessions shall include specific examples of legal and illegal stops and frisks and on the findings in *Bailey* of patterns of racially

biased stops. All members of the PPD shall be advised that they will be held accountable by the PPD and the *Bailey* Court for stops or frisks that violate the Consent Decree. All members of the PPD shall also be informed that the PPD will be engaged in random reviews of body worn camera videos and other PPD data to ensure compliance with the Consent Decree.

13. The PPD will continue with its implicit bias training and training on officers in compliance with the ABLE initiative.

14. No later than July 1, 2021, the PPD shall implement a Command level review of randomly selected 75-48A stops forms and corresponding Body Worn Camera video (“BWC”) in five designated Police Districts. At a minimum, the review process shall include ten randomly selected videos of pedestrian stops that have been documented by 75-48A forms or a review process agreed upon by the parties. Each set of Command level reviews shall be made in writing by the PPD Official responsible for the Command level review and the results of the first three months of BWC analyses shall be shared with Plaintiffs’ counsel. Thereafter, the parties shall evaluate the BWC process and agree upon an expansion of the BWC reviews to other Police Districts and/or the implementation of alternative BWC reviews that ensure PPD compliance with the Consent Decree. Failing an agreement on these provisions, the Court shall consider the issues and enter appropriate Orders.

15. The parties shall by November 1, 2021, if feasible and operational by use of existing technology, implement a pilot BWC project that identifies stops where 75-48A forms were not recorded by officers. If the PPD determines that such a project is not feasible, it shall submit its reasons to the Court and Plaintiffs, including projected dates for implementation of the pilot project.

16. No later than July 1, 2021, the parties shall provide to the Court any further agreements on reporting and evaluation of compliance requirements relating to this Order.

IT IS SO ORDERED:

/s/ John R. Padova

John R. Padova, J.