

**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	:	

**PLAINTIFFS' EIGHTH REPORT TO COURT AND MONITOR
ON STOP AND FRISK PRACTICES: FOURTH AMENDMENT ISSUES**

This Eighth Report to the Court and Monitor provides a Fourth Amendment analysis of stop and frisk practices by the Philadelphia Police Department (“PPD”) for the First and Second Quarters of 2017, and sets forth plaintiffs’ recommendations for enhanced compliance measures by the PPD.¹

I. History of the Case

On June 21, 2011, the Court approved a Settlement Agreement, Class Certification, and Consent Decree (“Agreement”). On February 6, 2012, plaintiffs submitted their First Report which analyzed stop and frisk data for the first two quarters of 2011. The First Report focused on Fourth Amendment issues, and specifically whether there was sufficient cause for the stops and frisks reported by the Philadelphia Police Department (“PPD”). The audits showed that over 50% of stops and frisks were undertaken without reasonable suspicion.

Plaintiffs’ Second Report was submitted in July 2012, and showed continued high rates of stops and frisks without reasonable suspicion (over 40% in both categories). On the issue of racial disparities, plaintiffs’ expert, Professor David Abrams, conducted a

¹ The Eighth Report on Fourteenth Amendment racial disparity issues will be filed separately by December 31, 2017.

series of regression analyses and concluded that the racial disparities in stops and frisks were not fully explainable by non-racial factors. Further, the analysis of marijuana arrests showed even more pronounced disparities, with Blacks and Latinos constituting over 90% of all marijuana arrests.

Plaintiffs' Third Report focused on stop and frisk practices for the first two quarters of 2012. Plaintiffs again found a 40% rate of non-compliance with Fourth Amendment standards, and racial minorities constituted over 90% of arrests for small amounts of marijuana. In response, the City stated that the PPD was providing additional training, issuing revised auditing protocols, and instituting new accountability measures.

The Fourth Report, filed in December, 2013, analyzed stops and frisks in 2012 and 2013, on both Fourth and Fourteenth Amendment grounds. Pedestrian stops were made without reasonable suspicion in 43% of the cases reviewed, and frisks were conducted without reasonable suspicion in over 50% of the cases. There continued to be very low "hit-rates," with only 3 guns recovered in over 1100 stops (0.27%).

The stops and frisks continued to be racially disproportionate with statistically significant disparities that were not explained by non-racial factors (e.g., crime rates, demographics of police districts, age, and gender). The rate of stops without reasonable suspicion for Blacks was 6.5 percentage points higher than the rate for Whites, demonstrating that police were using a higher threshold of "reasonable suspicion" for stops of White suspects.

The Fifth Report covered the first two Quarters of 2014 and showed a rate of stops without reasonable suspicion of 37%. The rate of frisks without reasonable suspicion, or as fruits of an impermissible stop, was 53%. Hit rates remained very low,

with 433 frisks yielding only two firearms. Indeed, where officers stated that a “bulge” justified a frisk, they seized a gun in only 1 of 78 frisks. On the issue of racial impact, the experts for the City and plaintiffs both found statistically significant evidence of racial bias in stops and frisks.

The Sixth Report covered two Quarters in 2015, and showed continuing high rates of stops and frisk without reasonable suspicion, very low “hit-rates” for weapons, and racially biased patterns of stops and frisk practices. In February, 2016, the Court (Dalzell, J.) met with the parties, including the Managing Director, the Police Commissioner and Mayor Kenney’s Criminal Justice Advisor (former Judge Benjamin Lerner) in response to the Sixth Report which showed continued and serious non-compliance with the Consent Decree on both the Fourth and Fourteenth Amendment issues. The City acknowledged the deficiencies in the stop and frisk practices and set forth a plan for internal accountability, including measures long advocated by plaintiffs, to ensure compliance with the Consent Decree. The parties agreed that the data from the Third and Fourth Quarters, 2016 and from 2017 would provide reliable grounds for assessing whether these measures are effective and what additional steps would be necessary to achieve compliance with the Consent Decree.

The Seventh Report (second half of 2016), showed improvements in the PPD stop and frisk practices, including a 35% decrease in the number of stops for 2016 as compared to 2015, and fewer stops and frisks without reasonable suspicion. Thus, in the second half of 2016, stops were supported by reasonable suspicion in 75% of the cases (as opposed to 67% in 2015) and frisks were supported by reasonable suspicion in 59% of the cases (as opposed to 43% in 2015). Nevertheless, the data also showed non-

compliance with both Fourth and Fourteenth Amendment standards, with tens of thousands of persons being stopped and frisked without reasonable suspicion by the PPD on an annual basis. These improvements were the result of internal accountability measures. The parties again met with the Court (Padova, J.) and agreed to further implementation of accountability protocols in 2017.

II. First and Second Quarters, 2017: Fourth Amendment Analysis

In this section, plaintiffs set forth their findings for the First and Second Quarters, 2017 on the Fourth Amendment provisions of the Consent Decree. As in previous audits, in assessing whether reasonable suspicion existed for the stop or frisk, we fully credit the narrative information provided by the officer and, in “close” cases, find reasonable suspicion.

We randomly sampled 4591 pedestrian stops.² 79% were supported by reasonable suspicion and 21% were made without reasonable suspicion. This is an improvement over 2016, where 25% of the stops were without reasonable suspicion. Frisks were reported in 747 stops. Of these, 59% were made with reasonable suspicion, 27% were made without reasonable suspicion, and 14% were preceded by a stop without reasonable suspicion (“fruit of the poisonous tree” category).³ These data are precisely the same as for the second half of 2016 and remain disturbingly high.

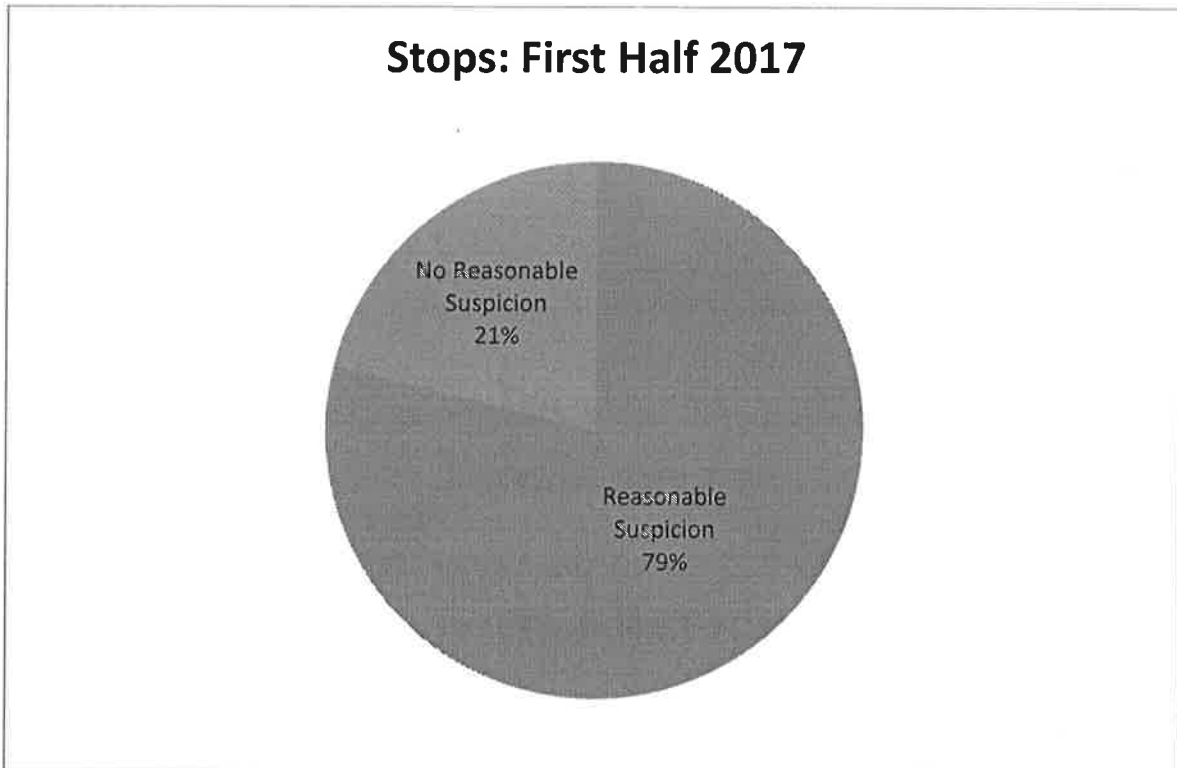
The total number of stops was approximately 56,000. The following charts and graphs provide further data and breakdown of stops and frisks.

² Some of the 75-48 forms involve arrests and searches based on full probable cause and some reflect police activity that is not properly viewed as a stop, as there was no “seizure” of the person (e.g., a “stop” to provide medical assistance or one who turns herself in on an outstanding warrant). Plaintiffs’ analysis excludes those “non-stops,” with the resulting total of 4591 stops.

³ There is good reason to believe that this data understates the problem with frisk practices. As we discuss, *infra*, ____, in a significant number of cases, stops for suspicion of weapons or for violent crimes report *no frisk conducted* which is simply not plausible given police training and actual police practices.

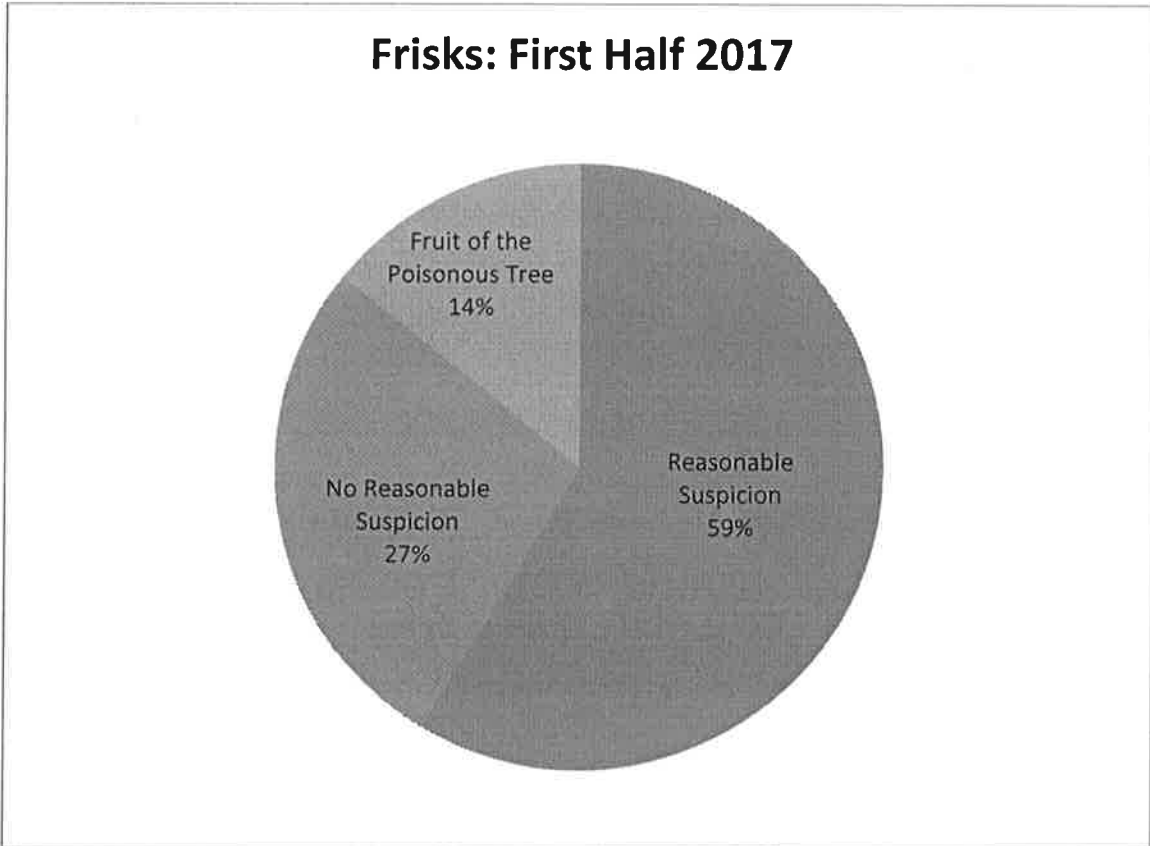
1. Stop Data

Actual Stops	4591	
Reasonable Suspicion	3621	79%
No Reasonable Suspicion	970	21%



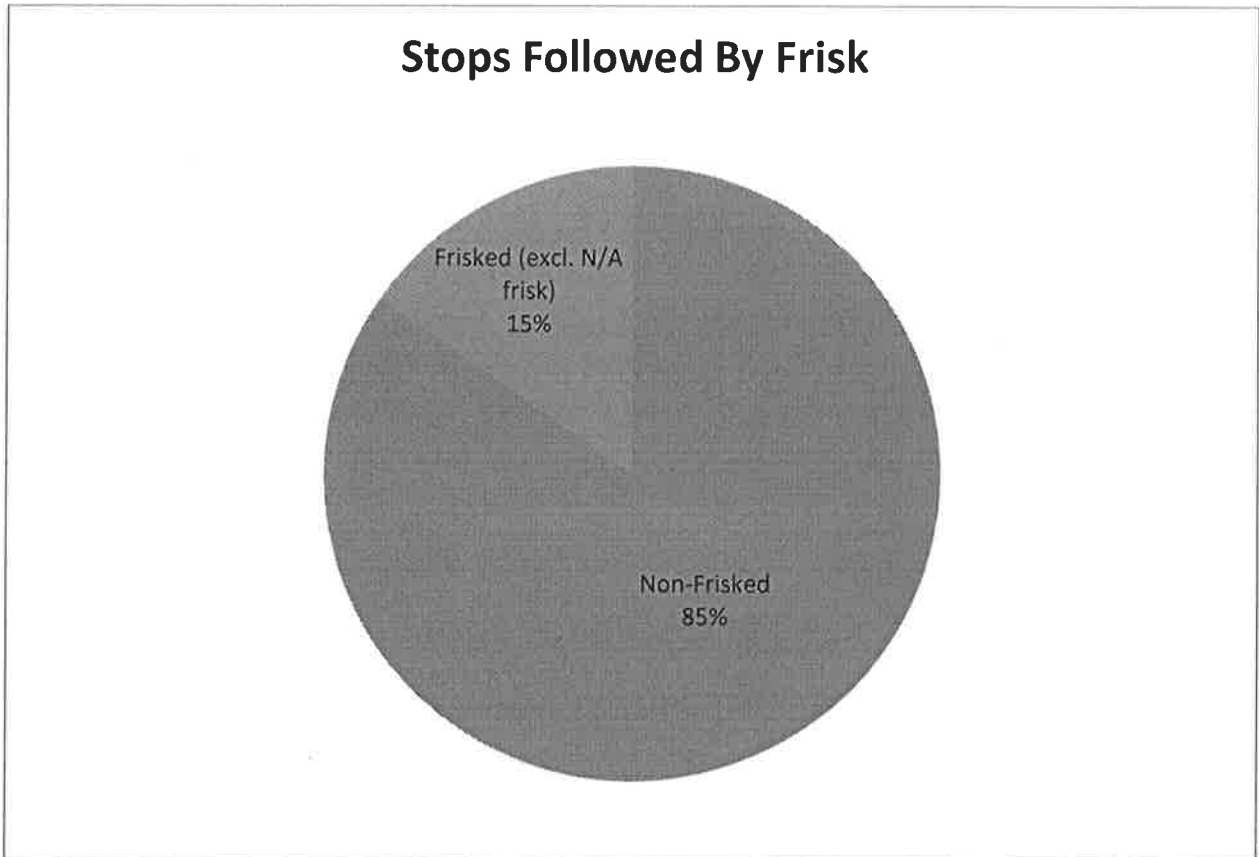
2. Frisk Data

Frisks	747	
Reasonable Suspicion	438	59%
No Reasonable Suspicion	203	27%
Fruit of the Poisonous Tree	106	14%



3. Stop/Frisk Ratio

While officers documented frisks in 875 cases, in 128 of these cases, the officers conducted a search, and not a frisk. The 747 frisks are 15% of the 4591 stops.

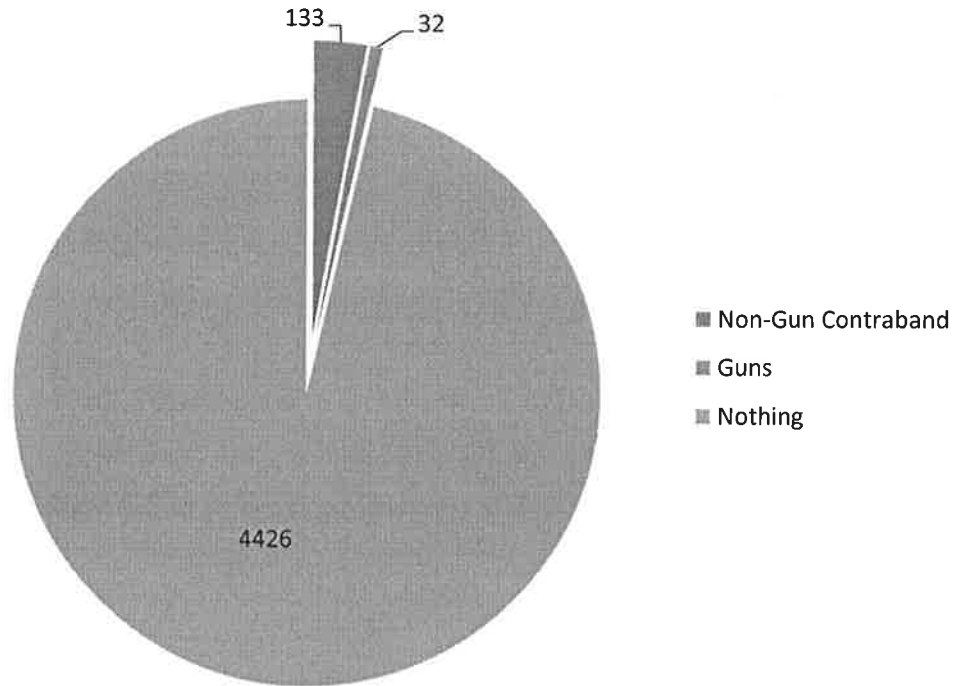


4. Contraband Recovered by Stops

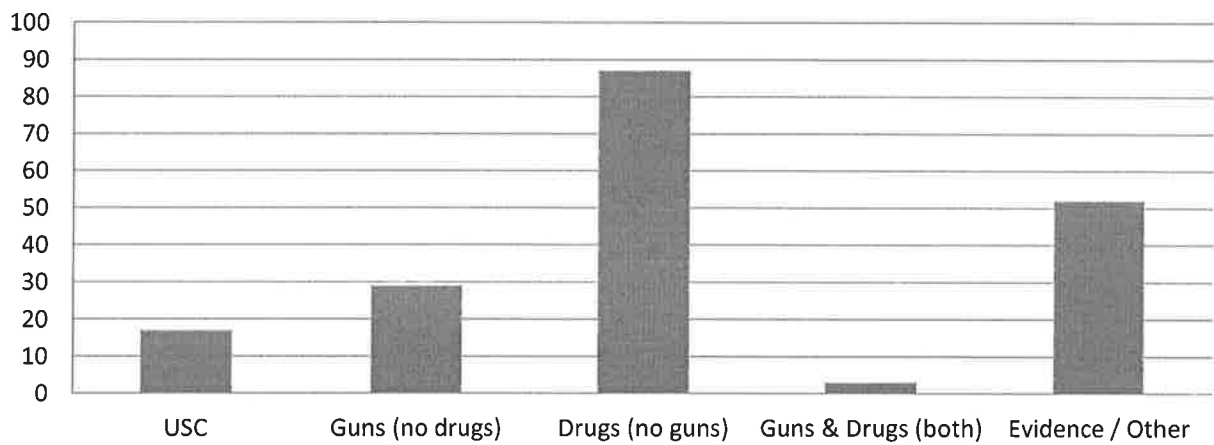
USC	17	0.35%
Guns (no drugs)	29	0.59%
Drugs (no guns)	87	1.78%
Guns & Drugs (both)	3	0.06%
Evidence / Other	52	1.07%

Note: 165 entries noted recovery of contraband, but multiple types of contraband were recovered in 23 of these stops, thus resulting in 188 contraband seizures. Of the 29 guns recovered, 5 were not actual firearms, and at least 6 were properly licensed.

Stops Resulting In Recovery Of Contraband

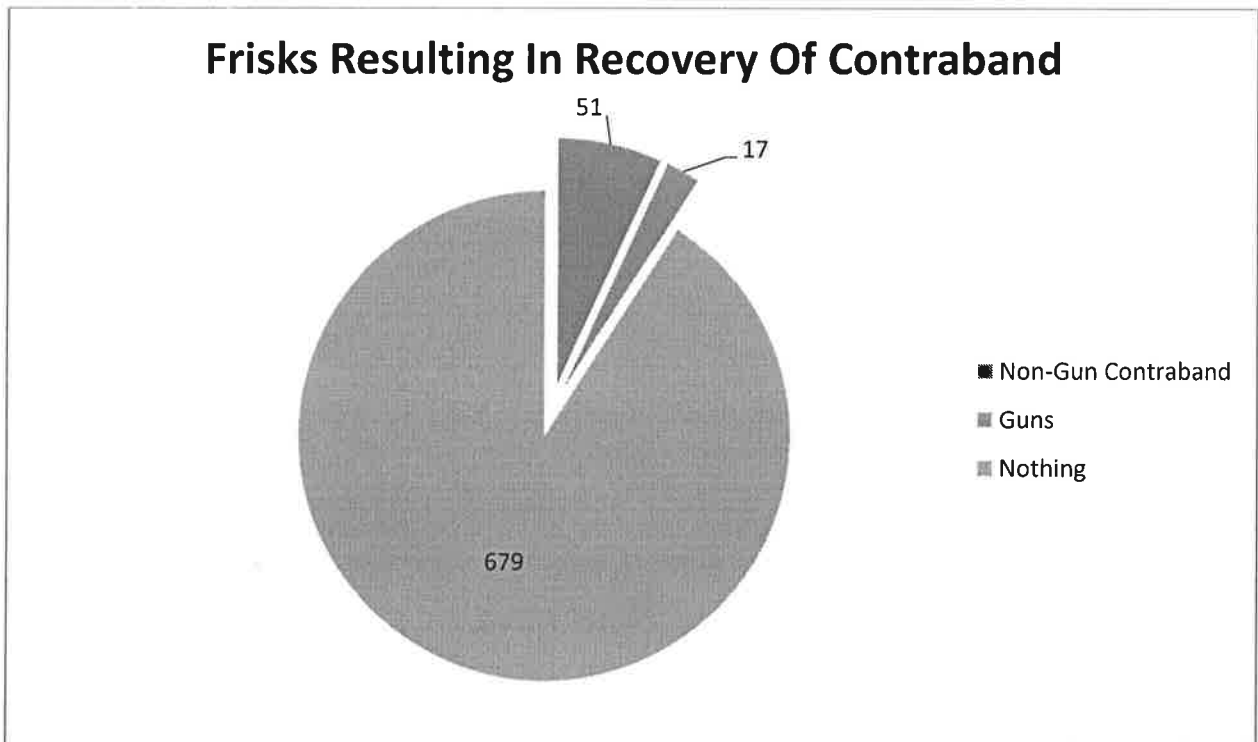


Stops: Items Recovered



5. Contraband Recovered by Frisks

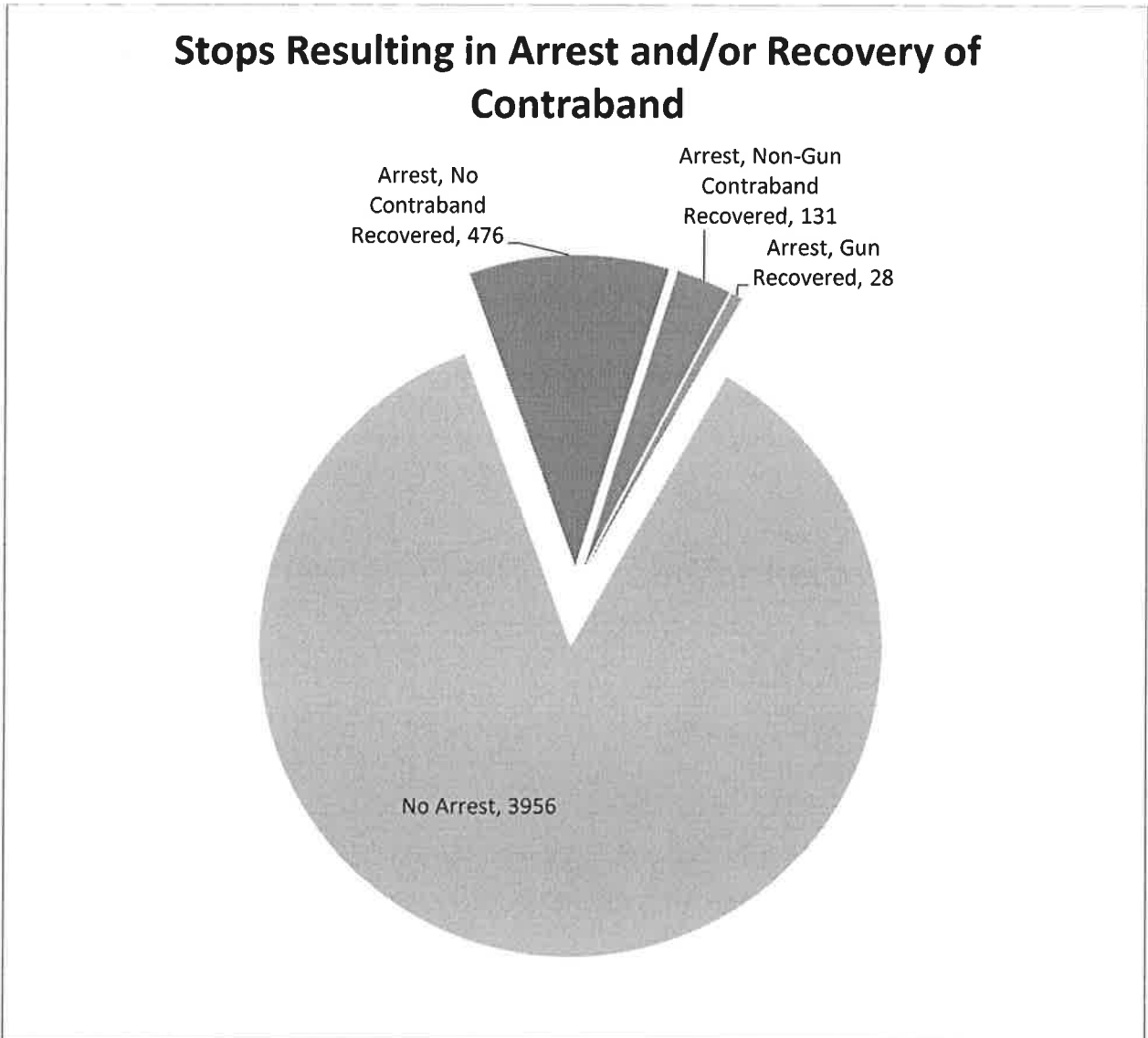
Non-Gun Contraband	51
Guns	17
No contraband	679
Total Frisks	747



6. Contraband Recovered By Frisks, With and Without Reasonable Suspicion

Reasonable Suspicion	48
No Reasonable Suspicion	14
Fruit of the Poisonous Tree	6

7. Arrests and Contraband Recovered



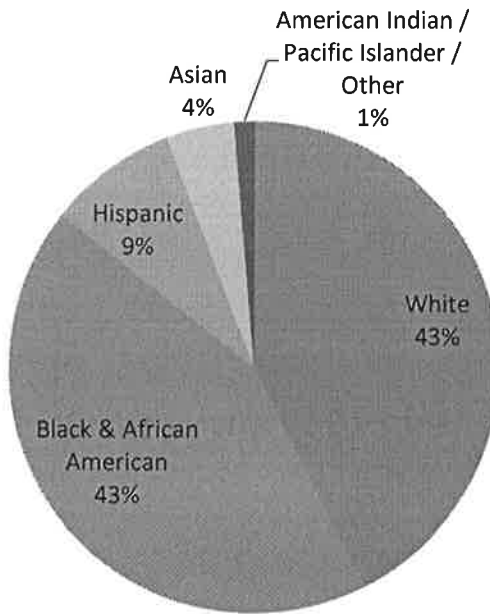
Arrest, No Contraband Recovered	476
Arrest, Non-Gun Contraband Recovered	131
Arrest, Gun Recovered	28
No Arrest	3956
Total Stops	4591

8. Racial Composition of Philadelphia
 (2010 Census)

1517550 (total)

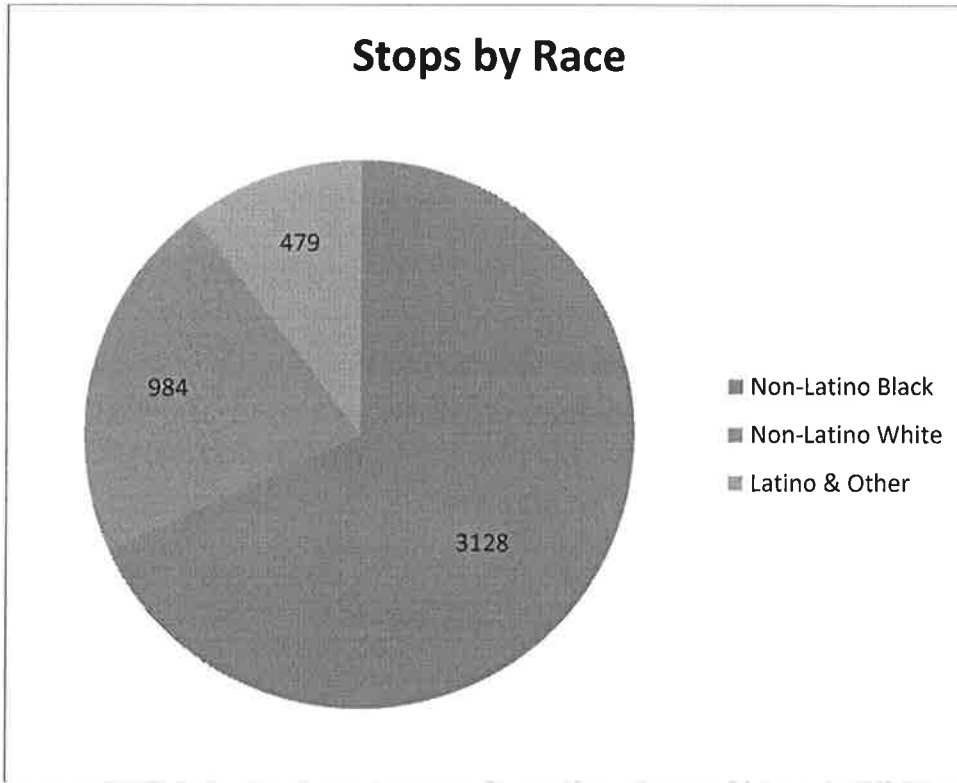
White	644395	42.46%
Black & African American	655824	43.22%
Hispanic	128928	8.50%
Asian	67654	4.46%
American Indian / Pacific Islander / Other	20749	1.37%

Racial Composition of Philadelphia



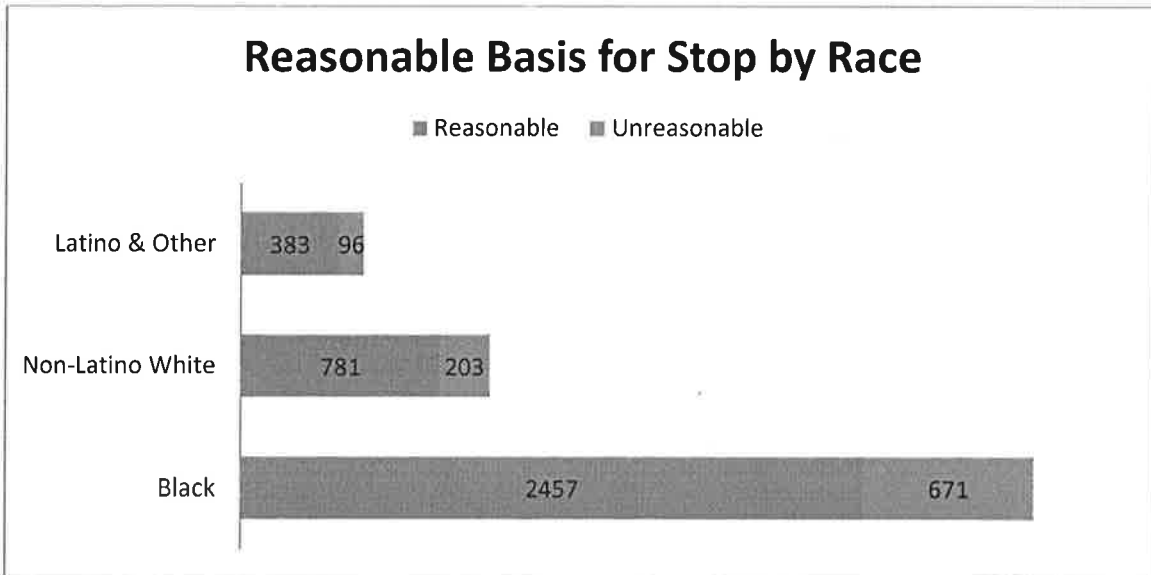
9. Stops by Race

Black	3128	68.13%	78.57% minorities
Non-Latino White	984	21.43%	
Latino	479	10.43%	
Total	4591		



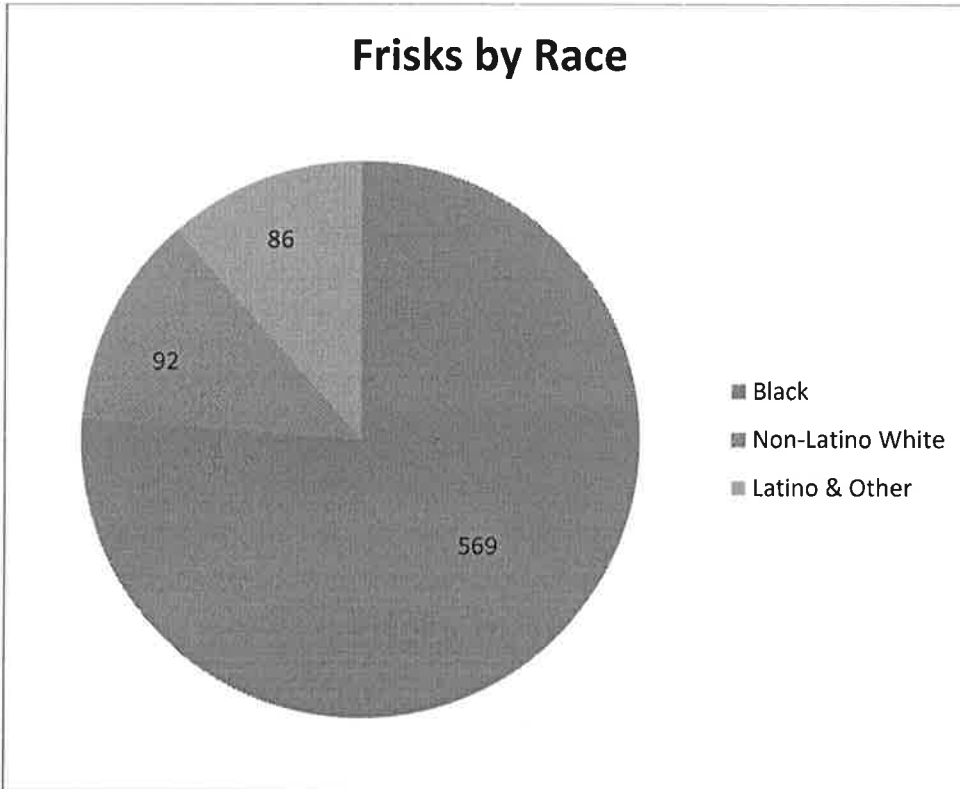
10. Stops by Race and Reasonable Suspicion

	Reasonable	Unreasonable	Reasonable %
Black	2457	671	78.55%
Non-Latino White	781	203	79.37%
Latino & Other	383	96	79.96%
Total	3621	970	4591
	78.87%	21.13%	



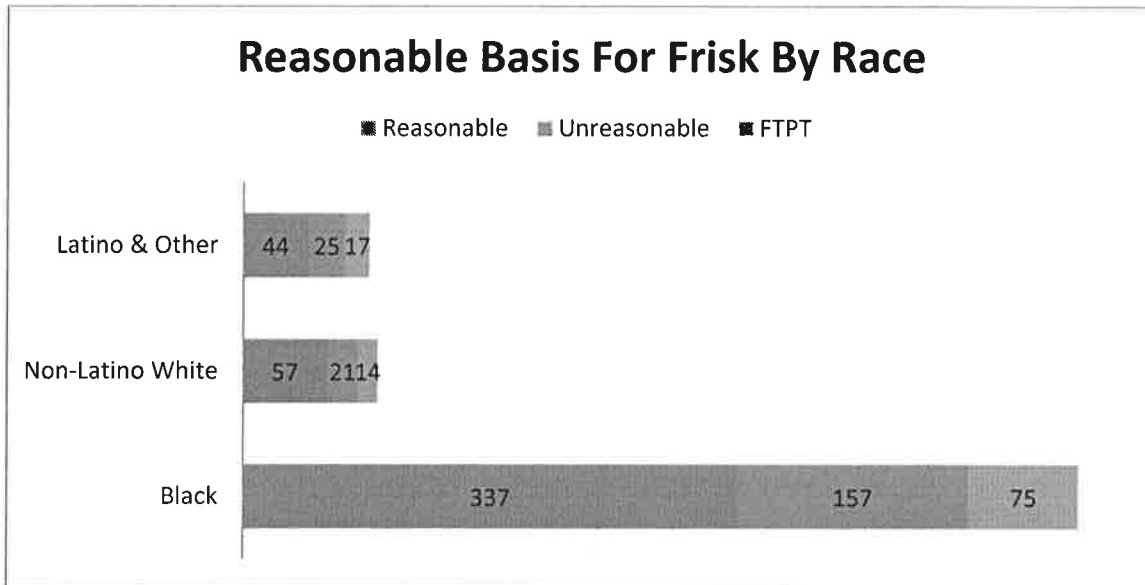
11. Frisks by Race

Black	569	76.17%	87.68% minorities
Non-Latino White	92	12.32%	
Latino	86	11.51%	
Total	747		



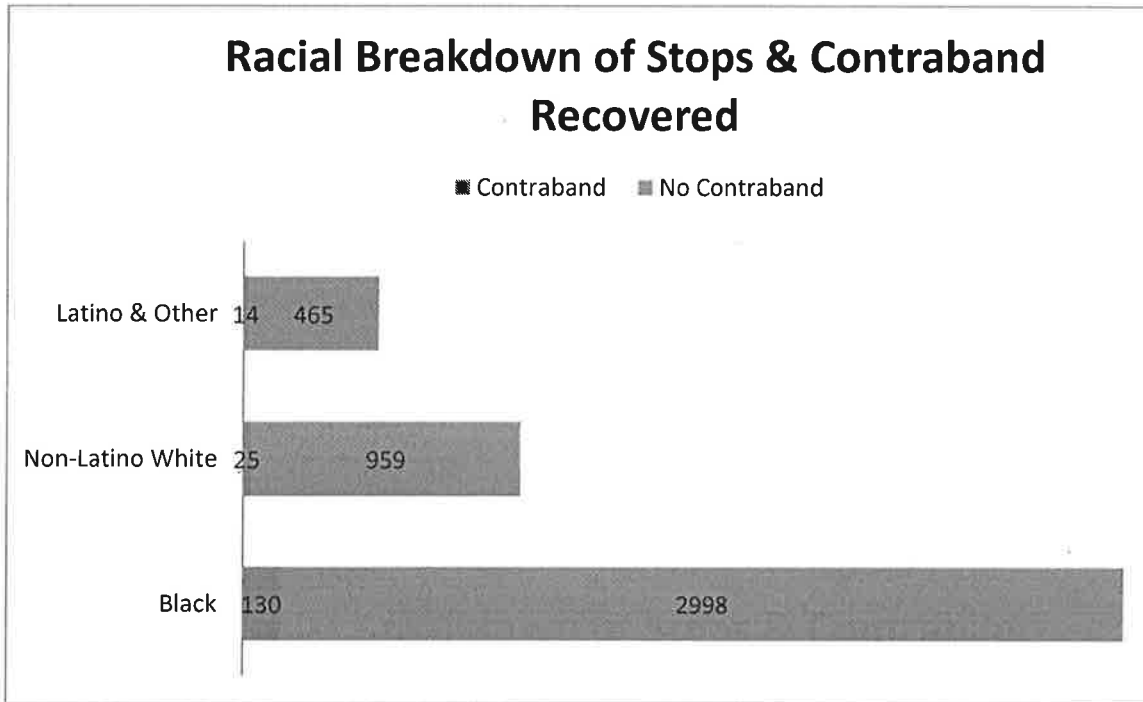
12. Frisks by Race and Reasonable Suspicion

	Reasonable	Unreasonable	FTPT	Reasonable %
Black	337	157	75	59.23%
Non-Latino White	57	21	14	61.96%
Latino	44	25	17	51.16%
Total	438	203	106	747
	58.63%	27.18%	14.19%	



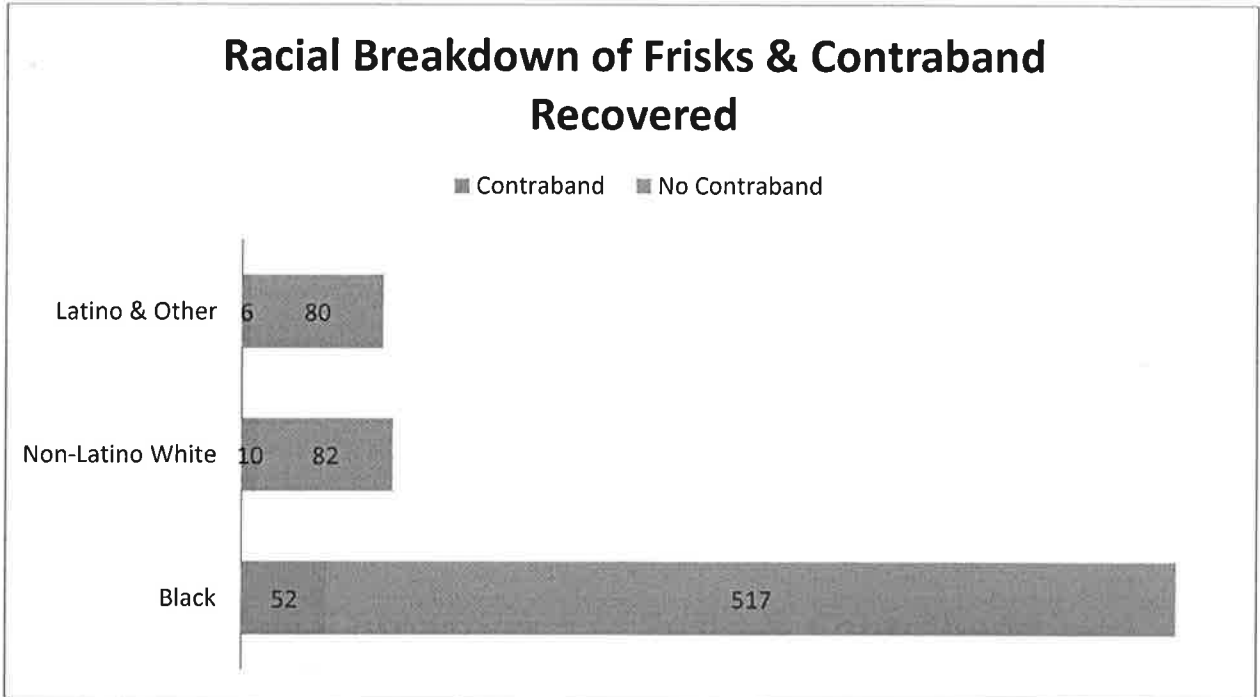
13. Stops by Race and Contraband Recovery

	Contraband	No Contraband	Total	Contraband %
Black	130	2998	3128	4.16%
Non-Latino White	25	959	984	2.54%
Latino & Other	14	465	479	2.92%
	169	4422	4591	
	3.68%	96.32%		



14. Frisks by Race and Contraband Recovery

	Contraband	No Contraband	Total	Contraband %
Black	52	517	569	9.14%
Non-Latino White	10	82	92	10.87%
Latino	6	80	86	6.98%
	68	679	747	
	9.10%	90.90%		



III. Commentary on Fourth Amendment Issues

1. 21% of all stops were made without the requisite reasonable suspicion. The PPD audits for these periods show slightly lower rates of stops without reasonable suspicion (approximately 17%). Even using the PPD analysis, in light of the approximately 56,000 pedestrian stops for the first half of 2017, over 9,000 persons were stopped without reasonable suspicion.

2. 27% of all frisks were made without reasonable suspicion, and an additional 14% were made in cases where the stop itself was not supported by reasonable suspicion (“fruit of the poisonous tree”). Thus, 41% of all frisks violated the Fourth Amendment, the same percentage as in 2016. The PPD audits for these Quarters show frisks without reasonable suspicion at a rate of 30%, but the PPD did not provide a separate analysis of frisks that followed an illegal stop. Accordingly, plaintiffs’ data analysis is more accurate.

3. The number of reported frisks, 747 (16% of stops), continues to be quite low. As before, there is good reason to believe that officers have not been reporting many frisks. In stops based on suspicion of gun possession or a violent crime, the police frequently report no frisk of the suspect. In our review, there were approximately 90 “no-frisks” which means that close to 10% of all frisks are not being reported. See, Exhibit A (examples of stops with no-frisk recorded where frisk was highly likely).

4. There continues to be a very low “hit-rate” for stops and frisks. Only 32 guns were seized (0.7 % of all stops) and several of these seizures were the result of searches incident to a probable cause arrest, not frisks. Contraband of any kind was recovered in 165 stops, or a 3.6% seizure rate. We recognize that a significant number of

legitimate stops are not likely to disclose contraband or lead to an arrest, but such low hit-rates are still troubling as they reflect stops of entirely innocent persons.

By contrast, hit-rates for weapons on frisks are a highly reliable metric as officers must have *reasonable suspicion that the suspect is armed and dangerous* before a frisk can be conducted. Thus, it is fair to expect that seizure of weapons or other contraband would be made in a significant number of these cases if the officers are accurately reporting facts that establish reasonable suspicion. Yet, the rate of recovery is vanishingly small. Of 747 frisks, only 14 firearms were seized; thus, over 98% of all frisks yielded no weapons. Contraband other than weapons was seized in 51 frisks. Indeed, it is highly likely that the hit-rates for weapons are even lower (less than 1%), given the fact that police reported no frisks in more than 90 stops involving violent crimes or reports of weapons. See Exhibit A.

As before, even aside from the disturbing fact of high numbers of frisks without reasonable suspicion, this data raises serious questions as to (1) whether the justifications that were provided for the frisks are fair predictors of weapon possession and (2) whether the police are accurately reporting their reasons for frisks. For example, in 125 stops where the officer cited a “bulge” in a pocket as grounds for a frisk, 3 guns were seized. “Bulges” inevitably turn out to be cell phones or wallets. Very low hit-rates (indeed, zero for some categories of frisks) are reported for frisks based on anonymous information (less than 5%); “body blading” or other “furtive” movements (52 reports, *no guns seized*); suspicion of drug related activity (66 reports, 1 gun); hands in pocket and/or lack of cooperation (138 reports, 1 gun); high crime/high drug area (14 reports, 0 guns); officer protection/safety (91 reports, 1 gun). Indeed, even the most productive factor, where the

person stopped volunteers that he is in possession of a weapon—a factor reported 13 times--resulted in the seizure of 3 guns, 2 of which were legally possessed, 9 knives, and 1 screwdriver.

5. Analyzing improper stops and frisks by category, there continue to be a significant number of cases in which the reasons provided by the officer fail to state reasonable suspicion under established legal standard. These include:

- Stops made on “flash” information, but no such information provided by officer;
- Stops of single person “obstructing” the sidewalk;
- Stops and frisks made on anonymous information (e.g., man with gun; man with drugs);
- Stops of persons involved in a “disturbance,” “verbal dispute” or for panhandling;⁴
- Stops and frisks based on “suspicion” of narcotics activity, but without a factual basis;
- Stops based on an open container (not alcohol);
- Frisks made for narcotics; and
- Frisks made for “officer safety.”

6. The parties agree that internal accountability is the key to compliance with the terms of the Consent Decree. The Police Department delayed implementation of the accountability process until 2016 (following establishment of the electronic data base, re-training of officers with respect to stop and frisk practices, and the institution of an internal auditing process). These accountability measures are set forth in the Department’s Directive on stop and frisk practices (currently Directive 12.11, Appendix B), and include:

⁴ We credit reports of “domestic” disputes.

1. Under Section 7, patrol supervisors must review each 75-48a, send incomplete forms back to the officer, and note what actions were taken where the officer did not provide sufficient reasons for the stop or frisk.
2. Under Section 8, Commanding Officers must take necessary actions to correct errors in stop and frisk practices including the identification of officers who fail to state reasonable suspicion, and they are accountable for officers and their supervisors who repeatedly engage in impermissible stops or frisks. The Commanding Officers must submit memorandum on a periodic basis detailing corrective actions taken.
3. Under Section 9, Special Unit Inspectors must complete audits of randomly selected stop and frisk reports, provide Commanding Officers under their supervision and command with memorandum detailing errors and deficiencies in these reports, review responses by the Commanding Officers as to remedial actions taken by the Commanding Officers, and to forward all findings and actions taken to the Chief Inspector, Office of Standards and Accountability.
4. Under Section 9, the Office of Standards and Accountability must ensure departmental compliance with stop and frisk procedures under the Directive (including reports on any racially biased or other discriminatory patterns), and provide quarterly audits of stop and frisk reports to various officials and offices within the Police Department, including the Police Commissioner, Deputy Police Commissioner and all Inspectors.

At the 2017 conference with Judge Padova, the City agreed to full implementation of these policies. The modest improvements regarding stops for the first half of 2017 are the result of these accountability measures, but the lack of progress on frisks shows that substantially more must be done. Most significantly, the reports generated pursuant to this accountability process for the first half of 2017 show a large number of cases in which supervisors fail to properly review stop forms. See Exhibit B (85 stops in which there was no reasonable suspicion for stop and/or frisk, but no record of any supervisory intervention). Indeed, in this sample, there were 20 stops and frisks made on the basis of anonymous and unverified information of a person with weapon, a category of stops and frisks that has been plainly unconstitutional since 2000. *See Florida v. J.L.*, 529 U.S. 266 (2000). That officers continue to believe that such stops and frisks are legal, and that

their supervisors regularly fail to correct these practices demonstrates the need for comprehensive accountability measures. Without such comprehensive and credible supervisory review, officers are not informed that their stops/frisks were improper and, further, there is no re-training or discipline imposed in these cases.

To ensure accountability, Sergeants must (as required by the PPD Directive) review all stops and advise officers in every case where the stop and frisk was without reasonable suspicion. Further, the PPD Audit Division should, in every case in which it finds a stop or frisk without reasonable suspicion, determine from the assigned supervisor (including Sergeants, Captains and Commanders) what review was conducted and the results of that review. As required by the Department's Directives, these measures must include a comprehensive and effective process for identifying officers (or their supervisors) who repeatedly engage in stops or frisks without reasonable suspicion *and* specific retraining, increased supervision, or other remedial, disciplinary action for these practices.

IV. Conclusion

Plaintiffs recognize the improvements in the Fourth Amendment aspects of PPD stop practices, but while the comparative analysis with prior years is encouraging, there are still too many stops and far too many frisks without reasonable suspicion. The PPD must take aggressive steps to reduce improper stops and frisks in order to come into compliance with the Consent Decree. Our recommendations as to accountability measures are made to help facilitate that process.

Respectfully submitted,

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EXHIBIT A

Sample Stops With No Frisk Recorded

Sequence/ D.C. Number	Facts Indicating High Likelihood of Frisks
• 4966162	Stopped for an alarm for a hold up robbery
• 4964632	Person with a gun who was disarmed
• 4961267	Report of kid with a gun
• 4902656	Stop for a founded shooting
• 4903726	Police saw suspect with a gun
• 4913212	Stop for a robbery
• 4933938	Suspect seen with a gun
• 4950200	Suspect seen with a gun
• 4928908	Stop of stabbing suspect
• 4962403	Stop of suspect who shot weapon
• 201716023227	Stopped for resembling male wanted for AA with gun
• 201706022735	Stop for robbery point of gun
• 201739031800	Matched flash for robbery in progress
• 201718029858	Stop for fitting flash for a shooting
• 201714026066	Suspect observed with butt of gun
• 201715051598	Stop for matching flash of a robbery
• 201725053718	Stop for report of person with a gun
• 495442156	Gun turned over; no further frisk
• 4930351	Report of robbery
• 4935820	Report of robbery
• 4884122	Report of robbery
• 4875138	Report of robbery
• 4936687	Suspect involved in stabbing
• 4941609	Suspect checked for weapons
• 4890050	Man with knife
• 4961466	Report of robbery
• 4899534	Report of robbery
• 4888312	Person with gun
• 4875882	Person with gun
• 4949256	Report of robbery
• 4966232	Report of person with gun
• 4885571	Person with firearm
• 4937737	Report of robbery
• 4950476	Report of robbery
• 4888312	Report of person with gun
• 4875535	Report of burglary
• 4969518	Report of robbery
• 4942011	Report of person with gun

- 4953036 Report of person with gun
- 4908118 Report of person with gun
- 4897236 Report of person with gun
- 4843099 Report of person with gun
- 4905692 Report of burglary
- 4931966 Report of gun and drugs
- 4897231 Report of robbery
- 4943765 Report of person with weapon
- 4913747 Report of person with gun
- 4906776 Report of person with weapon
- 4886505 Report of robbery
- 4896667 Report of person with knife
- 4924436 Report of sexual assault
- 4885300 Report of gun shots
- 4893581 Report of persons with gun
- 4954379 Report of robbery
- 4892102 Report of person with gun
- 4926258 Report of burglary
- 4855319 Report of person with gun
- 4817864 Report of person with gun
- 4805737 Report of person with gun
- 4836727 Report of person with gun
- 4809808 Report of sexual assault in progress
- 4815470 Report of stabbing
- 4796972 Report of person with gun
- 4818272 Report of person with gun
- 4841613 Report of person with gun
- 4822010 Report of person with weapon
- 4801766 Report of person with weapon
- 4796929 Report of person with weapon
- 4836607 Report of person with weapon
- 4786498 Report of person with weapon
- 4836050 Report of person with gun

EXHIBIT B

Sample Stops and Frisks Without Reasonable Suspicion and no Sergeant Comment

Sequence/D.C. Number	Facts
• 4883537	No facts to connect suspect to reported crime
• 4905354	Unverified person with gun call
• 4888914	Suspected marijuana possession; no grounds for frisk
• 4905196	Suspected marijuana possession; no grounds for a frisk
• 4920927	Suspect simply walking around
• 4957102	No facts to connect suspect to reported crime
• 4953904	Stop of companion of probation violator
• 4901735	Stop of companion of person urinating in public
• 4901791	No flash description provided
• 4961232	No facts to connect suspect to the crime
• 4910220	Frisk based on odor of marijuana
• 4890421	Panhandling
• 4891546	Stale information; no description provided
• 4914723	Person in alleyway
• 4915557	No flash information provided
• 4961544	Anonymous call of person with gun; no flash information
• 4879741	Person in alley
• 4904846	Unverified call of person with weapon; no flash info
• 4899236	Panhandling
• 201725028131	Anonymous (not verified) person with gun call
• 201719031770	Frisk based on suspected marijuana possession
• 201725044511	Frisk based on suspected marijuana possession
• 201718040076	Disturbance
• 201724044797	Anonymous (not verified) person with gun call
• 201703023114	Panhandling
• 201718029858	No flash information provided
• 201716018775	standing on the corner at the time of the actual stop
• 201718025341	Person with gun call – no flash, unverified
• 201715038530	Frisk based on suspected narcotics possession
• 201714037160	Prostitution stop for woman standing at location
• 201715051598	No flash information provided
• 201725027551	No description or information about suspect
• 201712030133	No flash information provided (C-72)
• 201709014912	Frisk based on “officer safety)
• 201714045407	Frisk for contraband
• 201726018545	No description or information about suspect
• 201725053718	Anonymous (unverified) person with gun call
• 201722028069	No flash description provided

- 201719035916 Frisk for suspected narcotics
- 4960350 No flash information provided
- 4889616 Unverified man with gun call
- 4880858 No flash information provided
- 4953132 Open energy drink container
- 4905826 Open soda container
- 4901290 Open energy drink container
- 4952963 Unverified man with gun call
- 4961609 Unverified man with gun call
- 4963403 Unverified man with gun call
- 4885720 Unverified man with gun call
- 4914895 Unverified man with gun call
- 4887770 Unverified man with gun call
- 4938425 Unverified man with gun call
- 4883377 Unverified man with gun call
- 4923614 Unverified man with gun call
- 4880864 No flash information provided
- 4945064 No flash information provided
- 4880075 Resting in car
- 4886326 Frisk for contraband
- 4956419 No flash information provided
- 4968592 Unverified man with gun call
- 4920235 No flash information provided
- 4903694 Frisk based on marijuana possession
- 4948660 Frisk for narcotics
- 4877013 Disperse from highway
- 4899199 Frisk based on marijuana possession
- 4955986 Frisk based on marijuana possession
- 4883866 Unverified man with gun call
- 4945173 Man wandering in City Hall
- 4960596 Rear alley of CVS
- 4915129 Frisk based on marijuana smoking
- 4916865 Dancing on one's roof
- 4910816 Unverified man with gun call
- 4843099 Unverified man with gun call
- 4933642 Suspect in alleyway
- 4941071 Suspect in alleyway
- 4943765 Unverified call, man with weapon
- 4962161 Unverified man with gun call
- 4950146 causing a disturbance
- 4876925 Unverified man with gun call
- 4913747 Unverified man with gun call
- 4906776 Unverified man with gun call
- 4941054 No flash information provided

- 4886505 No flash information provided
- 4940154 Unverified man with gun call
- 4924789 No flash information provided
- 4894691 No flash information provided
- 4904224 Frisk for officer safety
- 4942767 panhandling call
- 4836609 No flash information provided
- 4813276 No flash information provided
- 4841969 Investigating robbery; no further information
- 4791748 Frisk based on stop for marijuana possession
- 4819475 No flash information provided
- 4836727 Unverified man with gun call
- 4811042 No flash information provided
- 4795240 No flash information provided
- 4801576 No flash provided; man with gun call
- 4807795 Frisk for open container
- 4780661 No flash information provided
- 4844182 Unverified man with gun call
- 4786498 Unverified man with gun call