

**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’ ELEVENTH REPORT TO COURT ON STOP AND FRISK
PRACTICES: FOURTH AMENDMENT ISSUES**

This Eleventh Report to the Court provides a Fourth Amendment analysis of stop and frisk practices by the Philadelphia Police Department (“PPD”) for the Third Quarter, 2022, and the First and Second Quarters of 2023, and sets forth plaintiffs’ recommendations for enhanced compliance measures by the PPD.

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, submitted in 2012, showed continued high rates of stops and frisks without reasonable suspicion of over 40%. On the issue of racial disparities, plaintiffs’ expert, Professor David Abrams, conducted a series of regression

analyses and concluded that the racial disparities in stops and frisks reflected patterns of racial bias, as the disparities were not fully explainable by non-racial factors such as crime rates, police deployment, demographics of police districts, age, and gender.

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 2013, analyzed stops and frisks in 2012 and 2013. 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. The rate of stops without reasonable suspicion for Blacks was 6.5% higher than the rate for Whites, demonstrating that police were using a lower threshold of "reasonable suspicion" for stops of Black 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 was 53%. Hit rates remained very low, with 433 frisks yielding only two firearms. Where officers stated that a "bulge" justified a frisk, they seized a gun in only 1 of 78 frisks.

The Sixth Report covering two Quarters in 2015 showed continued high rates of stops and frisk without reasonable suspicion, low hit rates for weapons, and racially biased patterns of stops and frisk practices. In response, in February 2016, the Court met with the parties, including the Managing Director, the Police Commissioner and Mayor Kenney's Criminal Justice Advisor, Judge Benjamin Lerner. 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 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. 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). These improvements were the result of newly implemented internal accountability measures. Nevertheless, tens of thousands of persons were stopped and frisked without reasonable suspicion by the PPD on an annual basis.

The Eighth Report analyzed data from stops made in the first two quarters of 2017. 21% of all stops were without reasonable suspicion. 42% of frisks were without reasonable suspicion. The Ninth Report reviewed data from the first two quarters of 2018. There was continued improvement in stops, 84% with reasonable suspicion, but frisks had a rate of 30% without reasonable suspicion.

The Tenth Report addressed stops occurring in the third and fourth quarters, 2019. Of the randomly selected pedestrian stops made in the second half of 2019, 84% were

supported by reasonable suspicion the same ratio as in 2018. At the same time, only 62% of frisks were made with reasonable suspicion. Most significantly, at this point, the City’s statistical expert agreed with Professor Abrams that the racial disparities which had remained large over the course of the litigation also reflected racial bias. As a result, the parties agreed to two remedial measures designed to reduce racial disparities and racial bias in stops and frisks and to eliminate stops for conduct that over the years almost never yielded firearms and which could be addressed by means short of a forcible stop. These measures, the Pilot program (now city-wide) of a “mere encounter” intervention for certain low-level offenses, and PedStat (more fully discussed in the Eleventh Report, Fourteenth Amendment Issues), were approved by the Court.

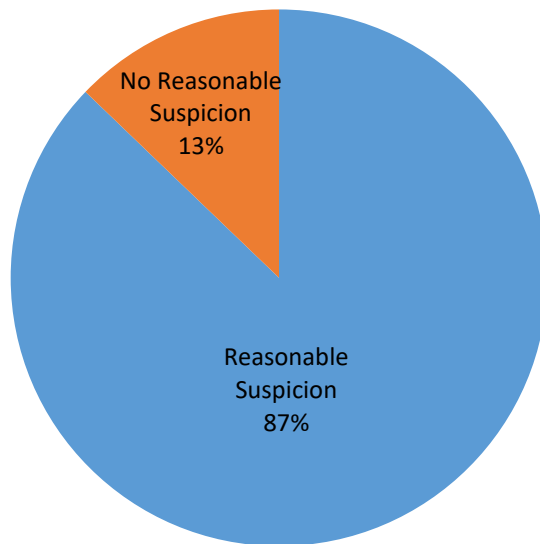
II. Fourth Amendment Analysis: Quarter Three, 2022; Quarters One and Two, 2023

This Report addresses Fourth Amendment compliance issues in the context of the post-COVID-19 return to normal police operations. The following charts and graphs set forth the relevant data:

1. Stop Data

Actual Stops	3245	
Reasonable Suspicion	2829	87.2%
No Reasonable Suspicion	416	12.8%

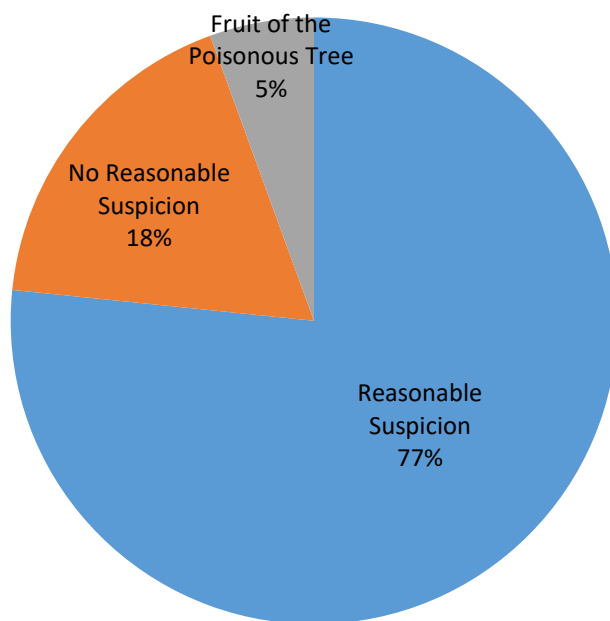
Stops: Reasonable Suspicion



2. Frisk Data

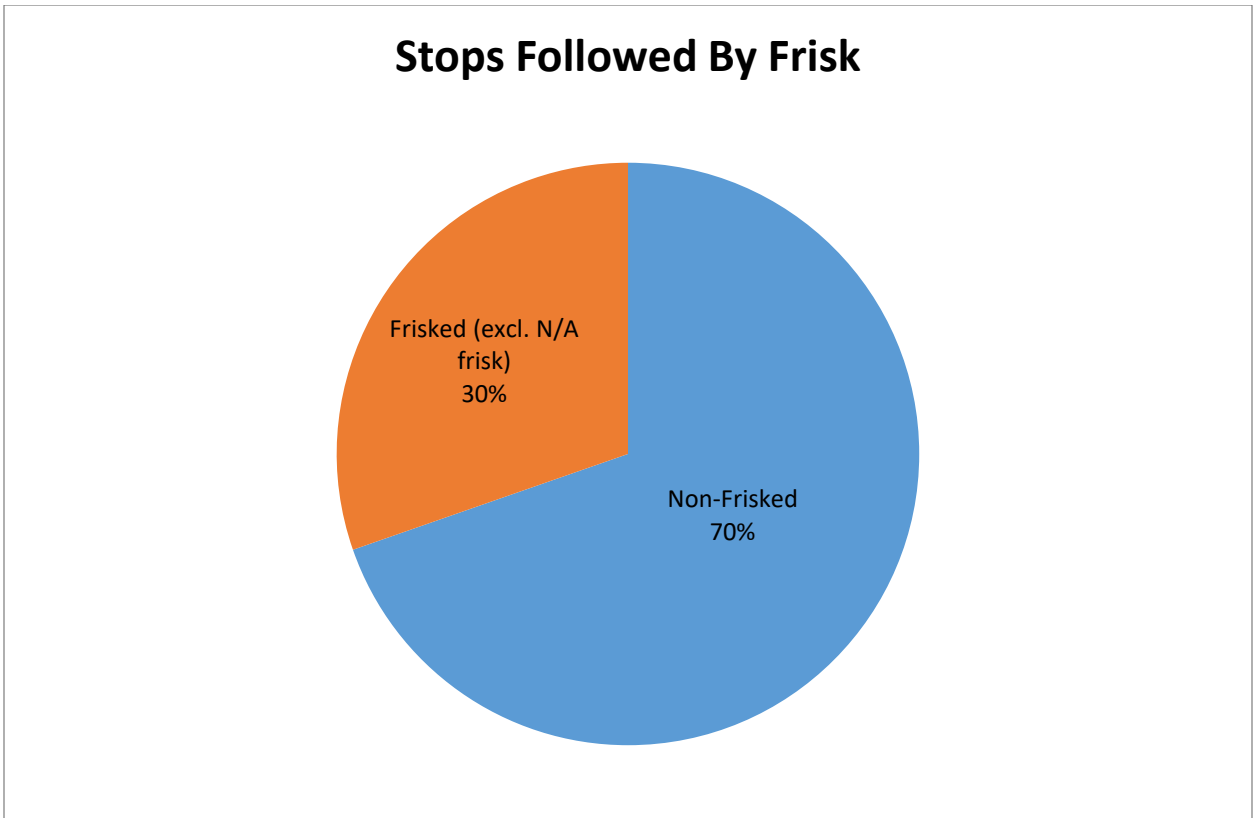
Frisks	971	
Reasonable Suspicion	744	76.7%
No Reasonable Suspicion	173	17.8%
Fruit of the Poisonous Tree	54	5.6%

Frisks: Reasonable Suspicion



3. Stop/Frisk Ratio

While officers documented frisks in 1128 cases, in 157 of these, the officers conducted a search, and not a frisk. The 971 frisks are 30% of the 3245 stops.

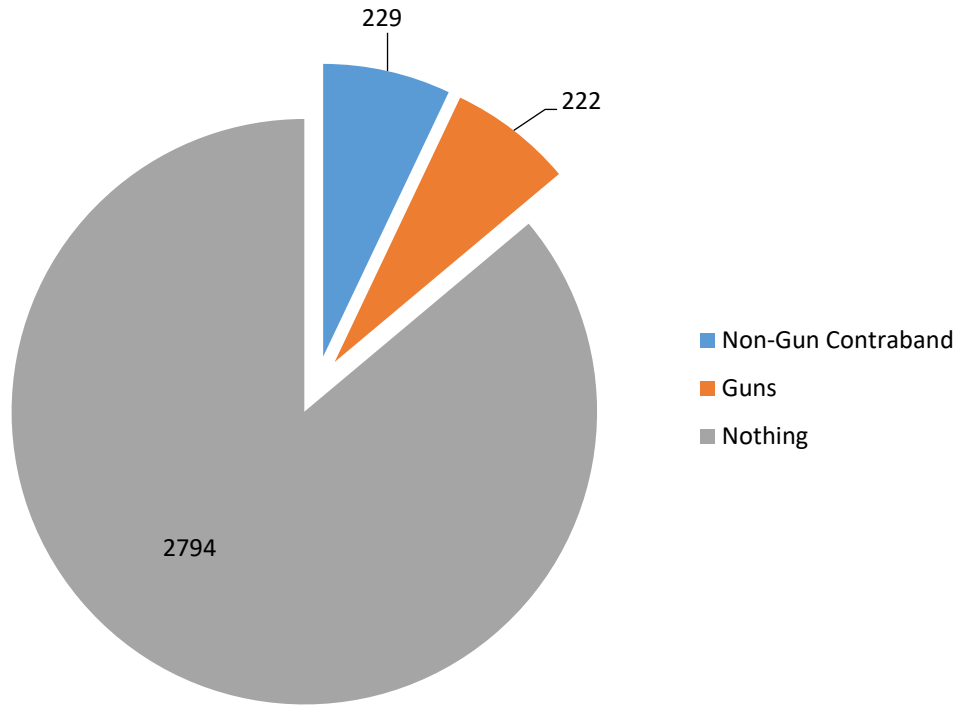


4. Contraband Recovered by Stops

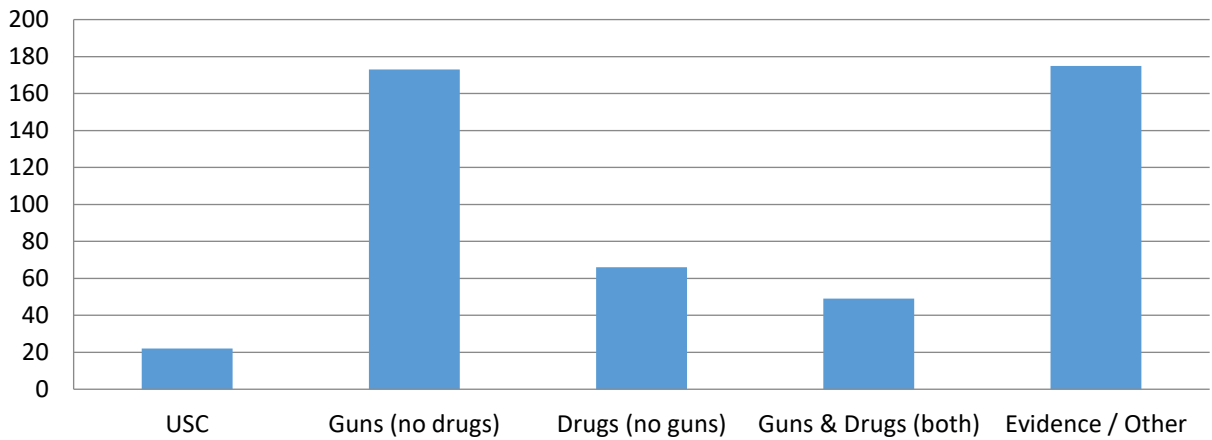
USC	22	0.7%
Guns (no drugs)	173	5.4%
Drugs (no guns)	66	2.1%
Guns & Drugs (both)	49	1.5%
Evidence / Other	175	5.5%

Note: 451 entries noted recovery of contraband, but multiple types of contraband were recovered in 34 of these stops, thus resulting in 485 instances of contraband seizure. Of the 222 total gun recovery stops, two instances yielded three guns and four others found two. Nine guns were found to be air rifles and three were properly licensed. In several instances, a single gun was attributed to multiple stop/arrest records: duplicates have been removed from the analysis.

Stops Resulting In Recovery Of Contraband

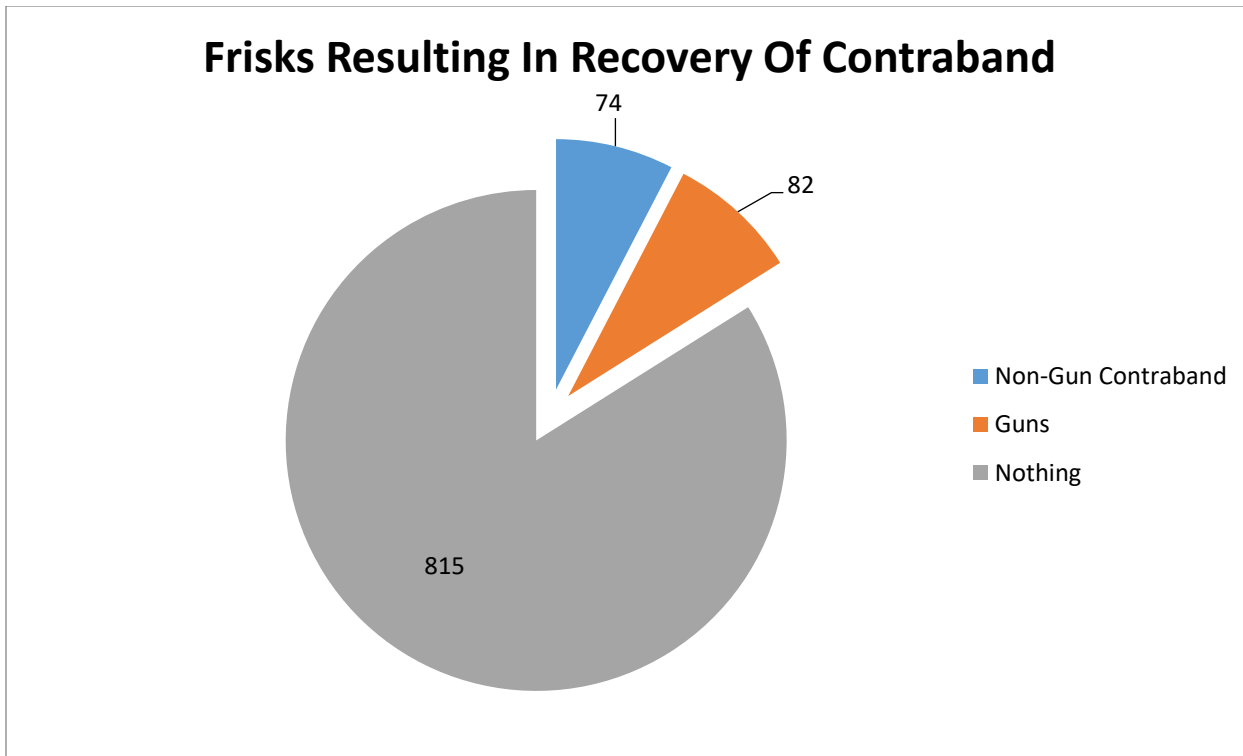


Stops: Items Recovered



5. Contraband Recovered by Frisks

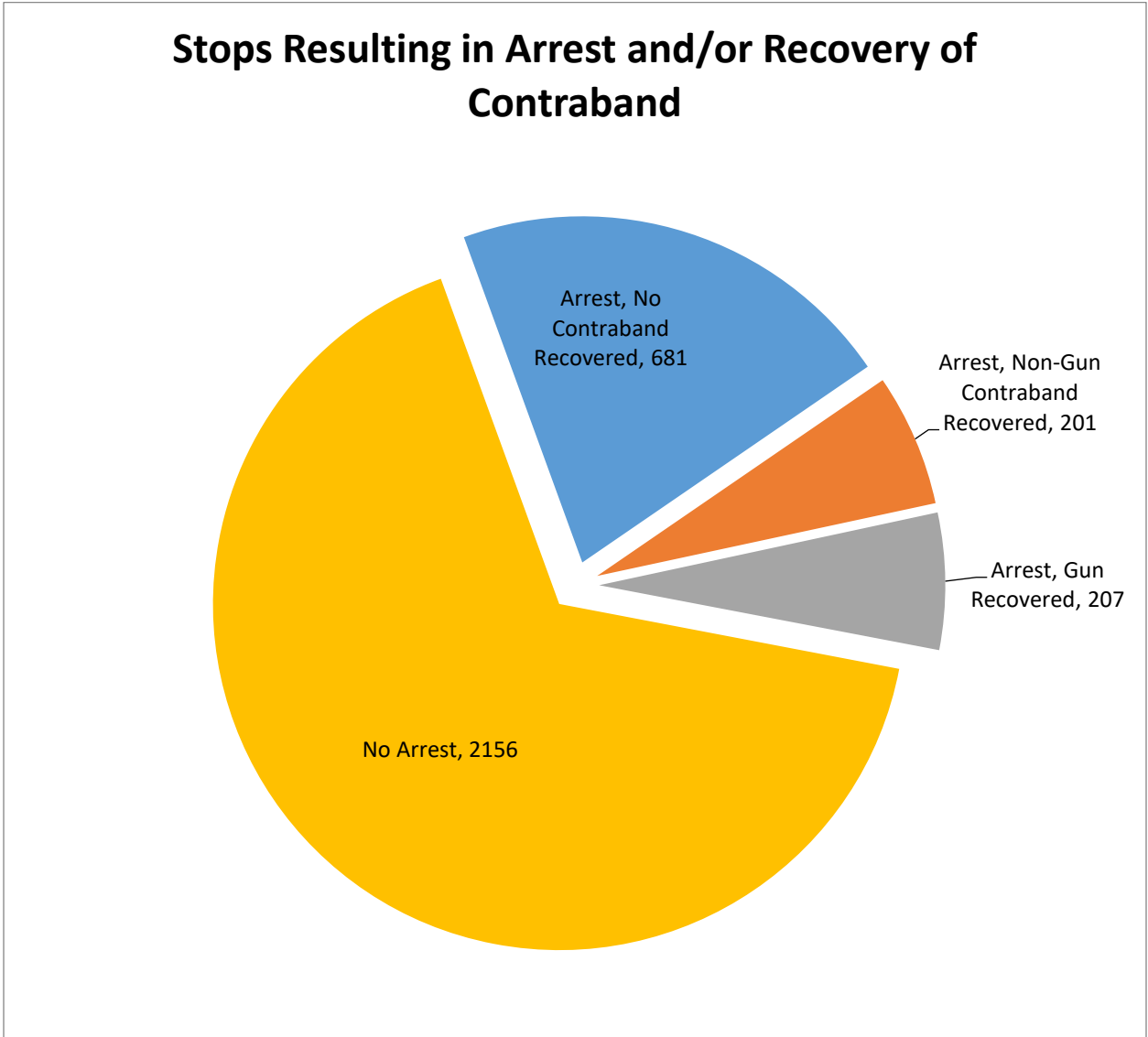
Non-Gun Contraband	74
Guns	82
No contraband	815
Total Frisks	971



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

Reasonable Suspicion	126
No Reasonable Suspicion	20
Fruit of the Poisonous Tree	10

7. Arrests and Contraband Recovered

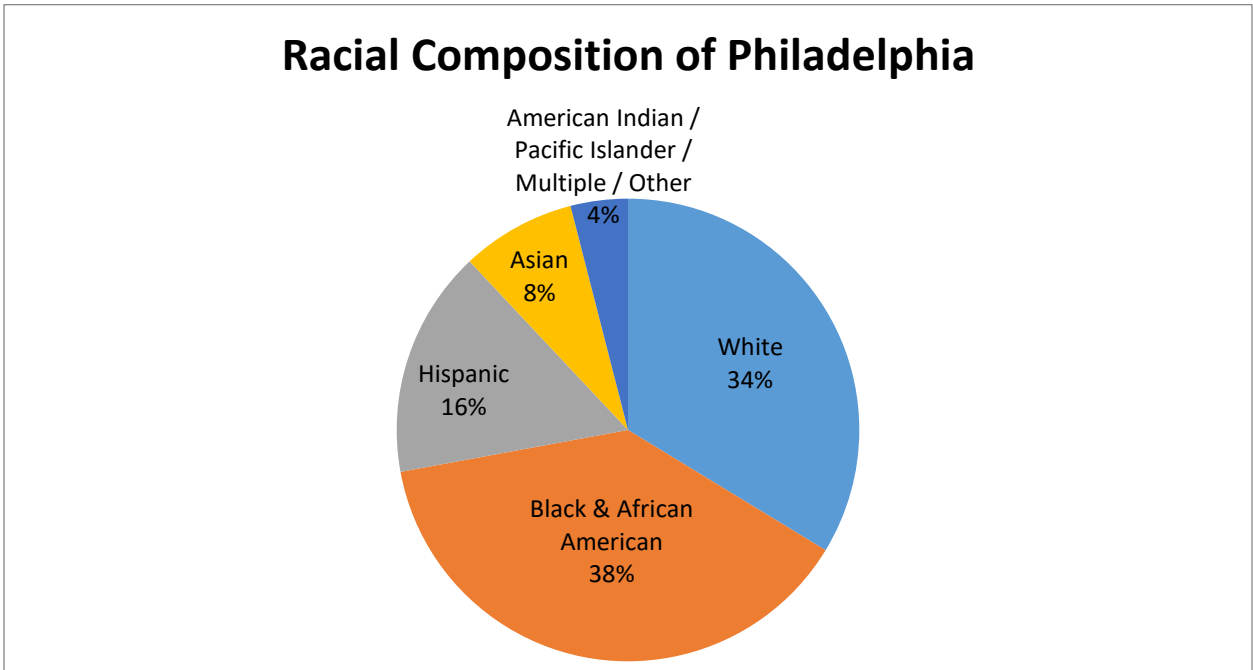


Arrest, No Contraband Recovered	681
Arrest, Non-Gun Contraband Recovered	201
Arrest, Gun Recovered	207
No Arrest	2156
Total Stops	3245

8. Racial Composition of Philadelphia

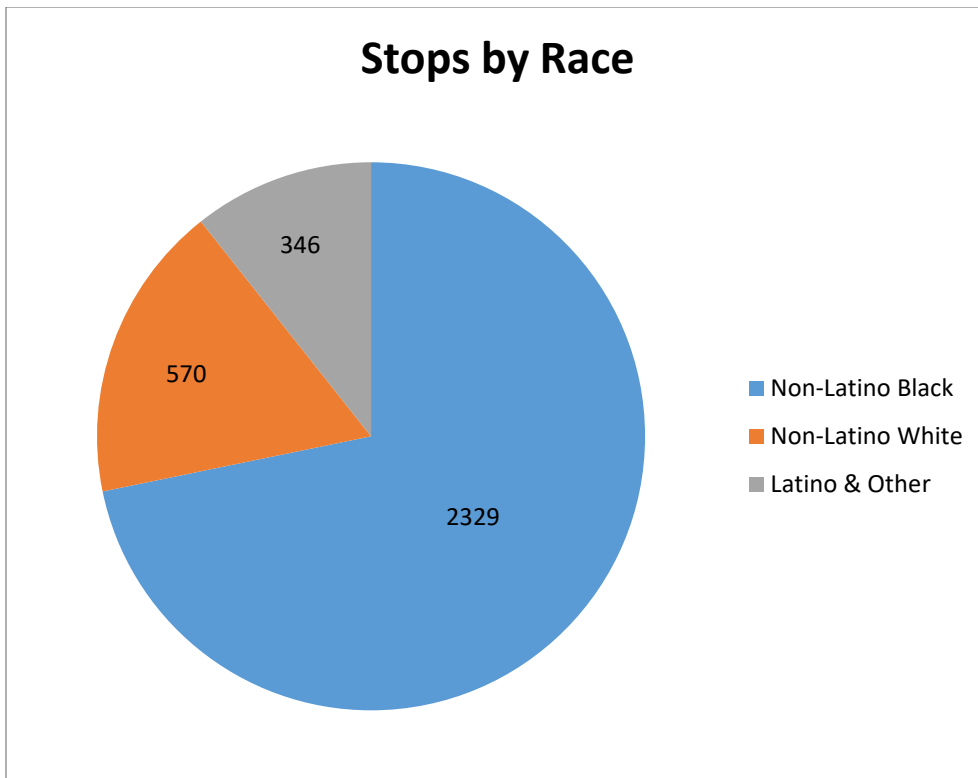
Census Bureau July 2022 Estimate 1576251 (total)

White	531197	33.7%
Black & African American	605280	38.4%
Hispanic	250624	15.9%
Asian	126100	8.0%
Native American / Pacific Islander / Multiple / Other	63050	4.0%



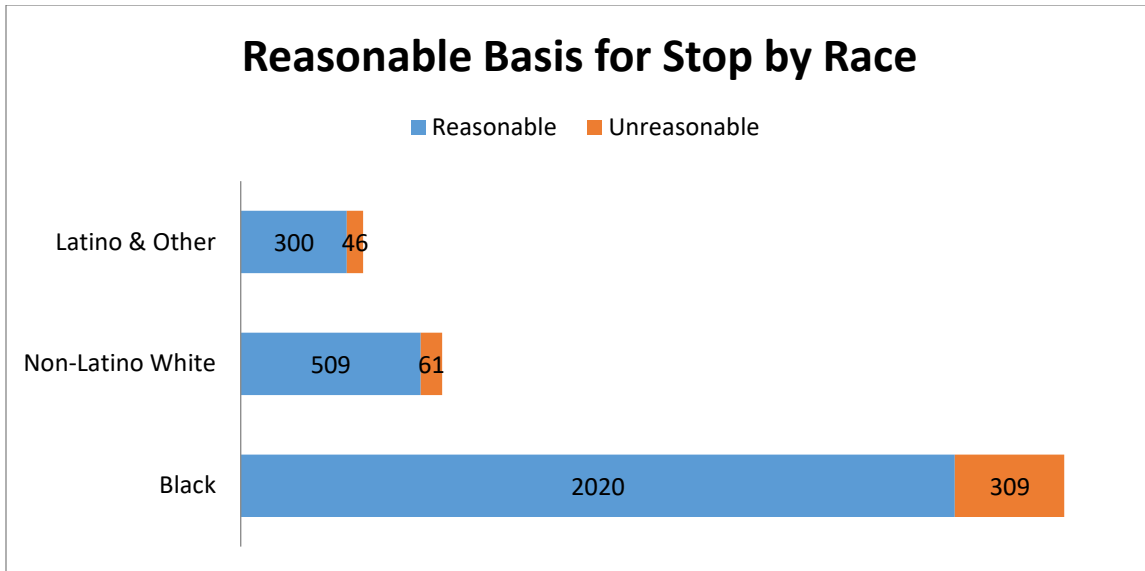
9. Stops by Race

Black	2329	71.8%	82.4% Minorities
Non-Latino White	570	17.6%	
Latino	346	10.6%	
Total	3245		



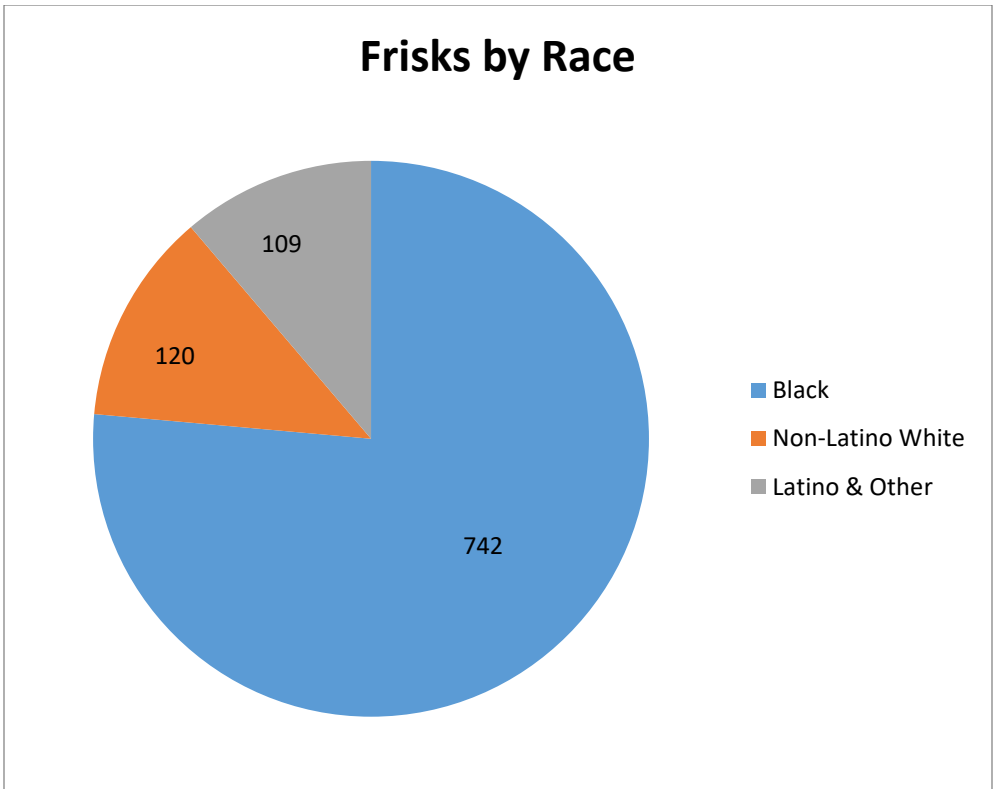
10. Stops by Race and Reasonable Suspicion

	Reasonable	Unreasonable	Reasonable %
Black	2020	309	86.7%
Non-Latino White	509	61	89.3%
Latino & Other	300	46	86.7%
Total	2829	416	3245
	87.2%	12.8%	



11. Frisks by Race

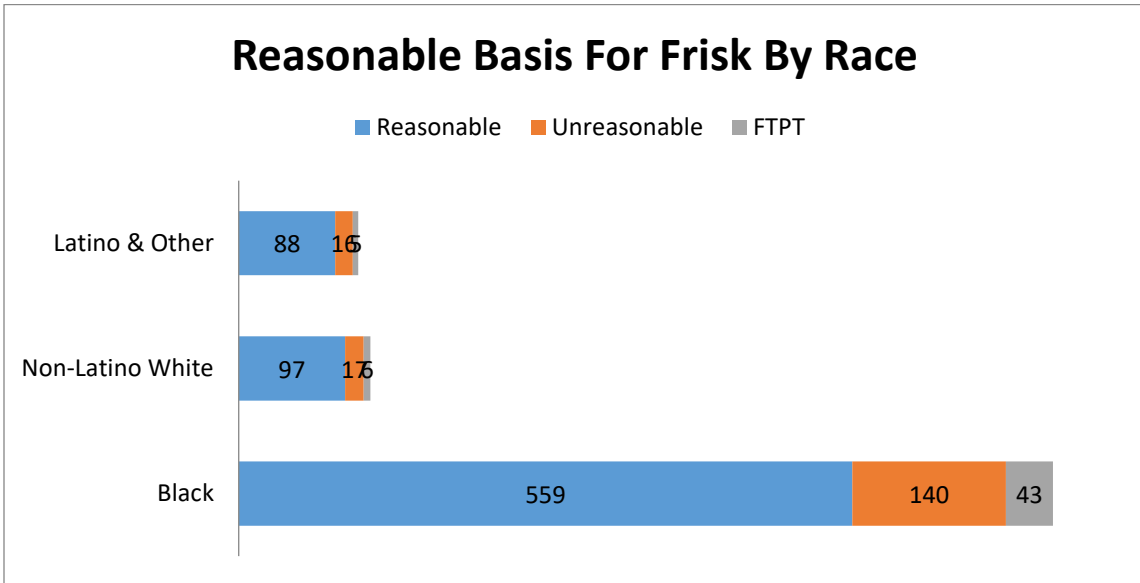
Black	742	76.4%	87.6% Minorities
Non-Latino White	120	12.4%	
Latino	109	11.2%	
Total	971		



	Stops	Frisks	Frisked %
Black	2329	742	31.9%
Non-Latino White	570	120	21.1%
Latino & Other	346	109	31.5%
Total	3245	971	29.9%

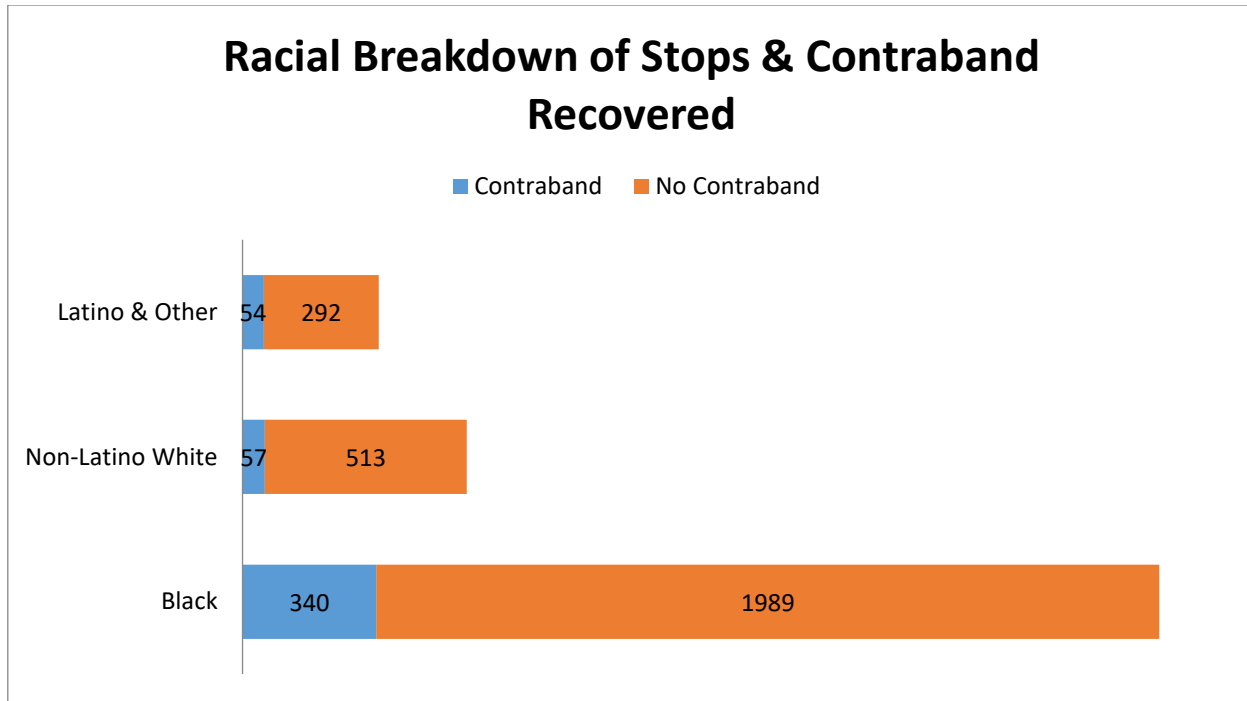
12. Frisks by Race and Reasonable Suspicion

	Reasonable	Unreasonable	FTPT	Reasonable %
Black	559	140	43	75.3%
Non-Latino White	97	17	6	80.8%
Latino	88	16	5	80.7%
Total	744	173	54	971
	76.6%	17.8%	5.6%	



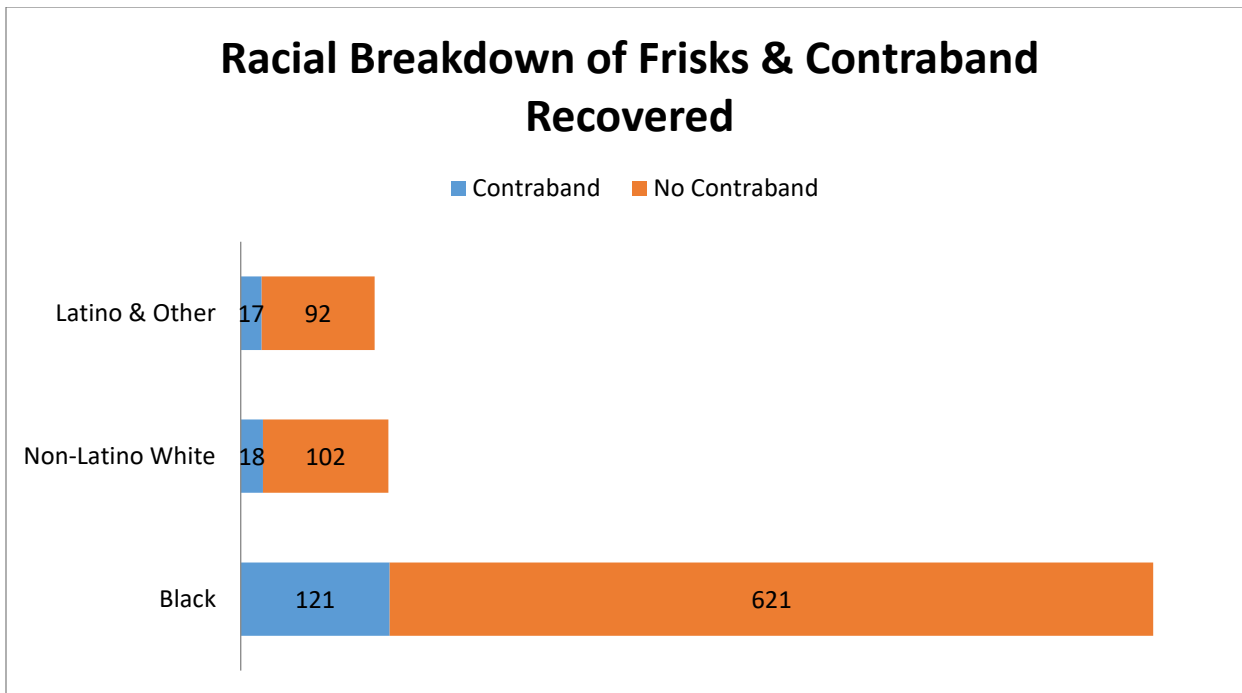
13. Stops by Race and Contraband Recovery

	Contraband	No Contraband	Total	Contraband %
Black	340	1989	2329	14.6%
Non-Latino White	57	513	570	10.0%
Latino & Other	54	292	346	15.6%
Total	451	2794	3245	
	13.9%	86.1%		



14. Frisk Contraband Recovery

	Contraband	No Contraband	Total	Contraband %
Black	121	621	742	16.3%
Non-Latino White	18	102	120	15.0%
Latino	17	92	109	15.6%
	156	815	971	
	16.1%	83.9%		



III. Commentary on Fourth Amendment Issues

1. 87.2% of stops were made with reasonable suspicion, a rate that is a significant improvement over the 40-50% rates in the first several years of monitoring. 77% of frisks were made with reasonable suspicion, an improvement over the 2019 rate of 68%. However, the case is now in its 13th year of monitoring, and with the rate of unjustified frisks of nearly one in four, and stops for the past several years still short of substantial compliance, there is a need for more targeted training and discipline to ensure that stops are made only where there is reasonable suspicion of criminal conduct and that frisks are made only where there is reasonable suspicions that the suspect is armed and dangerous.

3. The hit rates for stops and frisks are improved, due mainly to an overall reduction in stops that are less likely to yield firearms. In the period covered by this Report, 214 firearms were seized in 3245 stops, a hit rate of 6%. However, hit rates for

weapons based on stops is an imprecise measure regarding the efficacy of stops, as many stops are for conduct that do not justify a frisk, as it is highly unlikely that the person is armed. In addition, the 214 seizures include 132 *searches* (based on probable cause for a search that developed during the stop, e.g., for an outstanding arrest warrant), and several of the firearms were seized without reasonable suspicion and/or were legally possessed by the suspect.

By contrast, the hit rate for firearms seized pursuant to a frisk is 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 would be made in a significant number of these cases if the officers are accurately reporting facts that establish reasonable suspicion which must be based on more than a hunch or speculation. Among courts and commentators, there is general agreement that for stops and frisks there should be at least a 15-20% rate of underlying criminal conduct and for seizure of weapons. In this context, the hit rate for this reporting period, which is approximately 8.4% for all frisks (but only 6% of all *legal* frisks), while a welcome improvement over the 1% hit rate at the time of the Consent Decree, is still too low. The improved hit rates do show that PPD monitoring, training, and discipline are effective tools in achieving compliance.

To further this analysis, we set forth below the data (drawn from frisks for the Second Quarter, 2023 only) that shows the rate of seizures of firearms by reason for the frisk. Even with an improvement of overall hit rates, many so-called “predictive factors” continue to yield very few firearms.

	RS	No RS	FTPT	Total	Fire- arm
Bulge	24	6	1	31	7
Furtive movements	18	6	0	24	2
Incident to arrest	28	4	2	76	6
Lack of cooperation	31	9	1	41	2
Officer protection/safety	72	11	3	86	3
Suspected weapon in plain view or admitted by subject	24	4	0	28	3
Violent crime or other reason for stop that creates weapon suspicion	77	7	0	84	8
Other	8	13	1	22	2
Totals	282	60	8	392	33

4. Analyzing improper stops and frisks by category, there continue to be higher incidents of stops without reasonable suspicion in cases where:

- Stops are conducted for alleged weapons offenses in violation of *Commonwealth v. Hicks*, 208 A.3d 196 (Pa. 2019) (impermissible to stop for firearm possession without cause to believe that suspect does not have a license to carry or is using firearm in connection with criminal activity).
- Stops are made on “flash” information, but no factual information provided.
- Stops of persons are made on report of a “disturbance,” “verbal dispute,” or panhandling.
- Stops and frisks based on “suspicion” of narcotics activity, but without a factual basis.

IV. Conclusion

The parties agree that internal accountability is the key to compliance with the terms of the Consent Decree. In this regard, the remedial measures for stops (re-training and discipline for repeat offenders) and for frisks (“non-stop” pilot and PedStat) have led

to higher levels of compliance. Nevertheless, there is not yet substantial compliance with the Constitution and Consent Decree and the PPD should be exploring further initiatives to come into compliance with the Consent Decree.

Respectfully submitted,

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