

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:15-CV-01046
	)	
Plaintiff,	)	
	)	JUDGE SOLOMON OLIVER, JR.
vs.	)	
	)	<b><u>MOTION TO APPROVE CLEVELAND</u></b>
CITY OF CLEVELAND	)	<b><u>DIVISION OF POLICE BIAS-FREE</u></b>
	)	<b><u>POLICING POLICY</u></b>
Defendant.	)	
	)	
	)	

Pursuant to Paragraphs 35 through 44 of the Consent Decree and the Revised Second-Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP,” “CPD,” or “Division”), submitted a proposed Bias-Free Policing General Police Order 1.07.08 (“Proposed Bias-Free Policing Policy” or “Proposed Policy”) to the Monitor, attached hereto as Exhibit A.

The Monitoring Team has carefully reviewed the Proposed Bias-Free Policing Policy. It has determined that the Proposed Policy provides sufficiently clear guidelines around, among other things: (1) the Division’s expectations for its members around bias-free policing; (2) the principles of procedural justice in police-civilian interactions; and (3) protocols to report bias-based policing.

Further, it advances equitable and bias-free policing principles that will support both the Division and the communities that the Division serves.

For the reasons set forth below, the Monitoring Team concludes that the Proposed Policy is consistent with the requirements of the Consent Decree. The Monitor therefore recommends that the Court approve CDP's Proposed Bias-Free Policing Policy in its entirety.

**I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING BIAS-FREE POLICING**

The Consent Decree requires CDP to “deliver police services with the goal of ensuring that they are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in CDP.” Dkt. 7-1 at ¶ 35. Under the Decree, bias-free policing principles will be integrated into the Division's “management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.” *Id.* at ¶ 36. Further, “CDP will administer all activities without discrimination on the basis of race, ethnicity, national origin, religion, gender, disability, age, sexual orientation, or gender identity.” *Id.* at ¶ 37.

The Decree specifically requires the Division to “develop a bias-free policing policy that incorporates, as appropriate, the recommendations developed by the [Cleveland Community Policing] Commission . . . and that provides clear guidance to officers that biased policing, including deciding to detain a motorist or pedestrian based solely on racial stereotypes, is prohibited.” *Id.* at ¶ 38.

The Decree also requires that CDP “develop training that incorporates the principles of procedural justice and that is designed to ensure that police services are delivered free from bias.” *Id.* at ¶¶ 39-40. Further, supervisors must undergo training to, among other things, “identify biased

police practices when reviewing investigatory stop, arrest, and use of force data[.]” “respond to a complaint of biased police practices[.]” and “evaluate complaints of improper pedestrian stops[.]” *Id.* at ¶ 41.

## **II. PROCEDURAL HISTORY**

Work on the bias-free policing policy began early on in the Decree’s implementation. Under the Court-approved First-Year Monitoring Plan, the Cleveland Community Police Commission (“CPC” or “Commission”) was tasked to “conduct an assessment of CPD’s bias-free policing policies, practices, and training and make recommendations for improvements or changes.” Dkt. 43 at 4.

Thus, well before CDP started to draft its new bias-free policing policy, the CPC spearheaded a substantial effort to involve the Cleveland community in the drafting process. Between December 2015 and March 2016, the CPC, led by its Bias-Free Policing Work Group, convened twelve town hall meetings across the city to solicit community feedback on bias-free policing. These meetings were designed to gather the concerns and lived experience of Cleveland’s communities of color, faith, LGBTQ, youth, and homeless. The CPC gathered a significant volume of community feedback throughout the process. Not long after completing the town halls, the Commission completed its Bias-Free Policing Recommendations Report in May 2016 (“May 2016 Recommendations”). The report contained numerous recommendations on CDP’s interactions with citizens of varying backgrounds and demographics, organizational culture, recruitment, training, and reporting.

After receiving the Commission’s May 2016 Recommendations, CDP began to draft a new General Police Order to provide guidance around bias-free policing. Informed by the CPC’s recommendations, the first draft was sent to the Monitoring Team and the Department of Justice

on June 3, 2016. The Parties and the Monitoring Team then began revising the draft, negotiating various definitions and provisions in the General Police Order.

In August 2017, having made progress on the text of the bias-free policing policy, CDP sent the latest draft of the policy (the “August 2017 Draft Policy”) to the CPC. The CPC held two additional town hall meetings in September for community members to review and discuss the August 2017 Draft Policy. To ensure that CPC feedback was representative of the broader Cleveland community, one meeting was held on the city’s east side, while the other was held on the west side. After completing the two additional town hall meetings, in October 2017, the CPC sent its final set of recommendations for the bias-free policing policy to City representatives (“October 2017 Recommendations”).

A variety of community groups—including the American Civil Liberties Union (ACLU) of Ohio and Showing Up for Racial Justice (SURJ) Northeast Ohio—voiced their support of the October 2017 Recommendations, in some instances providing additional feedback. After receiving the October 2017 Recommendations, the Division again considered revisions to the bias-free policing policy.

Following further discussion, the Division circulated the Proposed Bias-Free Policing Policy to the Parties and the Monitoring Team on January 21, 2018. The Department of Justice has reviewed and approved the Proposed Policy.

### **III. STANDARD OF REVIEW**

The Monitoring Team’s role is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Team here is to determine whether the

Proposed Bias-Free Policing Policy submitted to the Monitoring Team on January 21, 2018 complies with the Consent Decree's requirements.

#### **IV. ANALYSIS OF THE PROPOSED BIAS-FREE POLICING POLICY**

The Proposed Bias-Free Policing Policy sets forth critical guidelines for the delivery of police services within the Cleveland Division of Police. It contains clear definitions of a number of important terms, including "Bias-Based Policing," "Bias-Free Policing," "Implicit Bias," and "Procedural Justice." *See* Ex. A. at 1. The policy further outlines the Division's expectations for bias-free policing, stating that all CDP members shall "[t]reat everyone with courtesy, professionalism, dignity, respect, and equality" and shall "[m]ake decisions related to law enforcement activities based upon observed behavior, reasonable suspicion, and/or probable cause." *Id.* at 2.

The Proposed Policy similarly provides that CDP members shall not "[u]se harassing, intimidating or derogatory language" or "determine reasonable suspicion or probable cause based upon a demographic category [unless part of an actual and credible suspect description] . . . [or] only based on an individual's criminal history." *Id.* at 2-3. CDP members further shall not "[d]elay or deny police services based on an individual's demographic category." *Id.* at 3.

Moreover, the Proposed Policy includes protocols for the reporting of bias-based policing. For example, if an individual indicates to a CDP member that he or she would like to make a complaint about bias-based policing, the member must "[i]mmediately request their supervisor [to] respond to the scene[.]" and "[r]emain at the location until the supervisor arrives" unless the supervisor is unable to do so. *Id.* Once at the scene, supervisors must "[a]ddress the [bias-based policing] concern in accordance with the procedures for responding to misconduct complaints[.]" *Id.* CDP members who are "aware of or who have observed bias-based policing" must report the

incident “as soon as practicable but no later than the end of the member’s tour of duty in which they observed or became aware of the incident[.]” *Id.*

Additionally, under the Proposed Policy, CDP members who “engage in, ignore, or condone bias based policing” or who “fail to report observed or alleged bias based policing” shall be subject to discipline. *Id.* at 4. Supervisors who “fail to address complaints of bias-based policing” shall also be subject to discipline. *Id.*

The Proposed Policy further states that all Division members will receive “annual in-service training on bias free policing that is adequate in quality, quantity, type and scope including but not limited to implicit bias, procedural justice, constitutional and legal requirements, and cultural competency.” *Id.* at 4. Supervisors are required to undergo “special training” that includes “training on how to identify biased police practices; respond to and evaluate complaints of biased policing; and supervisors’ responsibilities ensuring that CDP members engage in bias-free policing.” *Id.* The Division is currently developing its bias-free policing training curriculum.

Consistent with the Decree’s requirements, *see* Dkt. 7-1 ¶¶ 17, 38, the CPC was substantially involved in the development of the Proposed Bias-Free Policing Policy. The CPC’s efforts to gather feedback from a broad spectrum of the Cleveland community were considerable, with 14 total town hall meetings held across the city. Both sets of the Commission’s recommendations (May 2016 and October 2017) reflected the community’s concerns and included sensible, pragmatic feedback.

As submitted to the Court, the Proposed Policy reflects several of the CPC’s October 2017 Recommendations. For example, CDP added language further addressing that CDP members shall treat everyone with equality, ensure that detentions are no longer than lawfully necessary, and shall not determine reasonable suspicion or probable cause only based on an individual’s criminal

history. CDP also added language pertaining to a requirement for officers to introduce themselves when interacting with a civilian. *See* Ex. A. at 2-3.

While the Division might have incorporated additional CPC recommendations into the Proposed Policy, it is clear to the Monitoring Team that the concerns and experiences of the Cleveland community were heard, discussed, and considered by the Division. CDP was responsive in articulating to the Monitoring Team and the Department of Justice why it chose not to incorporate some of the CPC's recommendations. In some instances, CDP committed to incorporate the recommendations in other Division policies, such as in the forthcoming Search and Seizure policies. Further, although some CPC recommendations were not adopted verbatim, the Parties and the Monitoring Team believe the spirit of those recommendations is still conveyed in the Proposed Bias-Free Policing Policy. This process of community involvement reflects the kind of upfront, democratic engagement of the community on substantive policing policies that the Consent Decree envisions—where policies and expectations for officers are actively discussed across Cleveland's communities before and as they are formulated.

Reviewing the final policy provisions, the Monitoring Team is confident that they are consistent with and may help ensure that the Division “deliver[s] police services with the goal of ensuring that they are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in CDP.” Dkt. 7-1 at ¶ 35. For that reason, the Monitoring Team concludes that the provisions of the Proposed Bias-Free Policing Policy represent substantial progress toward meeting the Consent Decree's requirements around bias-free policing.

Finally, the Monitoring Team observes that no one policy or piece of paper can, by itself, address concerns, experiences, or histories involving inequity, discrimination, bias, or disparate

treatment. The Division is not considering this policy to be a “magic pill.” Instead, the Proposed Policy exists as one building block that sets forth clear expectations about CDP’s values and rules of conduct. Training on these policies, including instruction on implicit bias, procedural justice, and cross-cultural communication, is another important element. The ongoing work on internal investigation and accountability mechanisms also relate to the Division’s expressed commitment to promote a culture in which adherence to the Proposed Policy’s principles is rigorously observed and fiercely valued.

**V. CONCLUSION**

The task of the Monitoring Team is to duly consider whether the City’s Proposed Bias-Free Policing Policy satisfies the terms of the Consent Decree. The Monitoring Team concludes that the Proposed Policy meets the terms of the Consent Decree. Accordingly, the Team approves the Proposed Bias-Free Policing Policy in its entirety and requests that this Court order it effective immediately.

Respectfully submitted,

/s/ Matthew Barge

MATTHEW BARGE  
Monitor  
234 5th Avenue, Suite 314  
New York, New York 10001  
Tel: (202) 257-5111  
Email: matthewbarge@parc.info



**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2018, I served the foregoing document entitled Motion to Approve Cleveland Division of Police Bias-Free Policing Policy via the court's ECF system to all counsel of record.

/s/ Matthew Barge  
MATTHEW BARGE