

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.)	
)	<u>MOTION TO APPROVE CLEVELAND</u>
CITY OF CLEVELAND)	<u>DIVISION OF POLICE BIAS-FREE</u>
)	<u>POLICING POLICY</u>
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

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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

EXHIBIT A



CLEVELAND DIVISION OF POLICE

GENERAL POLICE ORDER



EFFECTIVE DATE:	CHAPTER: 1 – Administrative	PAGE: 1 of 5	NUMBER: 1.07.08
SUBJECT: BIAS-FREE POLICING			
CHIEF:			

PURPOSE: To provide guidance to ensure that police services are delivered equitably, respectfully, and free of bias in a manner that promotes broad community engagement, trust, and confidence in the Cleveland Division of Police.

POLICY: The Cleveland Division of Police is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair and equitable manner based on mutual trust and respect with Cleveland's diverse groups and communities. Bias-based policing is strictly prohibited. Bias-based policing degrades the public's confidence in the Division and is detrimental to effective law enforcement because it fosters distrust in the community and undermines the Division's ability to enforce the law.

The Division will integrate bias-free policing principles into its management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.

DEFINITIONS:

Bias-Based Policing: When a CDP member takes a law enforcement action or makes a decision to provide or not provide police services, and that action or decision is motivated by discrimination on the basis of an individual's demographic category.

Bias-Free Policing: Policing that is accomplished without the selective enforcement or non-enforcement of the law, including the selection or rejection of particular policing tactics or strategies, based on the subject's membership in a demographic category. Bias-free policing is free of discriminatory effect as well as discriminatory intent.

Demographic Category: Race, ethnicity, national origin, age, gender, gender expression or identity, sexual orientation, disability, religion or limited English proficiency.

Implicit Bias: Attitudes that affect understanding, actions, and decisions in an unconscious and unintentional manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control.

Investigatory Stop or Investigatory Detention: A temporary restraint, based upon reasonable suspicion, where the subject of the stop or detention reasonably believes that he or she is not free to leave within the meaning of Terry v. Ohio. An investigatory stop or detention may be a pedestrian, vehicle or bicycle stop.

Office of Professional Standards (OPS): The city entity responsible for the intake and investigation of civilian allegations of officer misconduct.

PAGE: 2 of 5	SUBJECT: BIAS-FREE POLICING	NUMBER: 1.07.08
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Probable Cause: Facts and circumstances which would support a reasonable belief that a crime has been committed and that the person to be arrested committed the crime. Probable cause involves an examination of all the facts and circumstances known to the member at the time of an event.

Procedural Justice: Four central principles designed to build public confidence in the police by 1) treating people with dignity and respect; 2) giving individuals a chance to be heard during encounters; 3) making decisions fairly and transparently, based on facts; 4) conveying goodwill and trustworthiness.

Reasonable Suspicion: The standard of proof necessary for a police officer to engage in a temporary investigatory detention of an individual. While reasonable suspicion is a lesser standard than probable cause, it must be supported by specific and articulable facts for suspecting a person of criminal conduct.

PROCEDURES:

I. Guidelines for Bias-Free Policing

A. Members shall:

1. Treat everyone with courtesy, professionalism, dignity, respect, and equality;
2. Make all decisions related to law enforcement activities based upon observed behavior, reasonable suspicion, and/or probable cause;
3. Ensure bias-free encounters by relying on information that is accurate, specific, and free from bias while developing reasonable suspicion and/or probable cause;
4. Conduct law enforcement activities, including any decision to engage in an investigatory stop or investigatory detention of a motorist or pedestrian, without discrimination on the basis of an individual's demographic category;
5. Interact with the public using the principles of procedural justice. Examples of this type of interaction include but are not limited to the following:
 - a. When safe and feasible, slow situations down and gather more information in order to minimize any possible effects of implicit or unintentional bias;
 - b. Introducing yourself and stating the reason for the interaction, as soon as practical, unless providing this information will compromise officer or public safety or impede an ongoing investigation;
 - c. Ensuring that detentions are no longer in duration than is lawfully necessary;
 - d. Wherever time and circumstances permit, explaining what the member is doing and why;

PAGE: 3 of 5	SUBJECT: BIAS-FREE POLICING	NUMBER: 1.07.08
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- e. Wherever time and circumstances permit, listening to the individual and answering any reasonable questions that the individual has relating to the interaction;
 - f. Providing individuals with the member's name, rank, and badge number when asked.
6. Provide OPS complaint forms to individuals upon request.
- B. Members **shall not**:
- 1. Engage in, ignore or condone bias-based policing;
 - 2. Use harassing, intimidating or derogatory language verbally, in writing, or by gesture concerning any demographic category;
 - 3. Determine reasonable suspicion or probable cause based upon a demographic category, except when the characteristic is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors;
 - 4. Determine reasonable suspicion or probable cause based only on an individual's criminal history;
 - 5. Delay or deny police services based on an individual's demographic category.

II. Reporting Bias-Based Policing

- A. If an individual indicates to a member that they would like to make a complaint about bias-based policing, the member shall:
- 1. Immediately request their supervisor respond to the scene;
 - 2. Explain to the individual that a supervisor will be responding. Members may not extend detention solely to await the arrival of a supervisor;
 - 3. Remain at the location until the supervisor arrives, unless the supervisor has communicated that he or she is unable to respond to the scene;
 - 4. If the individual does not want to wait for the supervisor to arrive or the supervisor is unable to respond, the member shall explain the option to file a complaint with the OPS and provide a complaint form to the individual. (See GPO 1.07.04 Public Complaints of Police Misconduct.)
- B. Supervisors shall respond to the scene in which an individual indicates to a member that they would like to make a complaint about bias-based policing. Upon arrival the supervisor shall:
- 1. Address the concern in accordance with the procedures for responding to misconduct complaints, and at a minimum conduct a preliminary investigation of

PAGE: 4 of 5	SUBJECT: BIAS-FREE POLICING	NUMBER: 1.07.08
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- the complaint in order to preserve key evidence and identify/interview potential witnesses (See GPO 1.07.04.);
2. If the individual has left the scene before the supervisor's arrival, make attempts to contact the individual by the end of their tour of duty;
 3. Provide the individual a copy of the completed OPS complaint form if the individual completes the form on scene or a blank complaint form if the individual wishes to complete the form at a later time;
 4. Refer the individual to OPS; and
 5. If the supervisor believes that an internal complaint should be generated, he or she shall report internal complaint information to the Internal Affairs Unit in accordance with GPO 1.07.05 Reporting Internal Misconduct and shall notify the individual of such.
- C. Members who are aware of or who have observed bias-based policing shall 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, to a supervisor or directly to the Internal Affairs Unit.
- D. Members shall not discourage any individual from filing a formal complaint.
- E. Any member or individual who provides, files, or investigates information about incidents shall be protected from retaliation, discouragement, intimidation, coercion or adverse action. (See GPO 1.07.09 Retaliation Prohibited.)
- F. No member shall retaliate against, discourage, intimidate, coerce, take an adverse action, or attempt to take any such action against any person; including other members of CDP, who has initiated or provided information or testimony related to an investigation, prosecution, OPS complaint, litigation, and/or administrative hearings or processes, because of such person's participation as a victim, witness, investigator, decision-maker, or reviewer. (See GPO 1.07.09.)

III. Discipline

- A. Members who engage in, ignore or condone bias-based policing shall be subject to discipline.
- B. Members who fail to report observed or alleged bias-based policing shall be subject to discipline.
- C. Supervisors who fail to address complaints of bias-based policing will be subject to discipline.

PAGE: 5 of 5	SUBJECT: BIAS-FREE POLICING	NUMBER: 1.07.08
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IV. Training

- A. Members shall 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.
- B. Supervisors shall receive special training that is adequate in quality, quantity, type, and scope, including but not limited to, 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.