



P.O. Box 32159  
Newark, NJ 07102

Tel: 973-642-2086  
Fax: 973-642-6523

info@aclu-nj.org  
www.aclu-nj.org

August 28, 2014

Mayor Ras J. Baraka  
City Hall  
920 Broad Street  
Newark, NJ 07102

Paul J. Fishman  
United States Attorney, District of New Jersey  
970 Broad Street, Suite 700  
Newark, NJ 07102

Jocelyn Samuels  
Acting Assistant Attorney General  
United States Department of Justice, Civil Rights Division  
950 Pennsylvania Avenue, N.W  
Washington, D.C. 20530

***Re: DOJ-Newark Policing Consent Decree***

Dear Mayor Baraka, U.S. Attorney Fishman, and Acting Assistant Attorney General Samuels:

At this critical moment in Newark's history, we thank you for your commitment to protecting and strengthening the civil rights and liberties of all Newarkers. The findings of the Department of Justice investigation of the Newark Police Department (NPD), released on July 22, 2014,<sup>1</sup> were deeply troubling. The investigation revealed, among other findings, widespread civil rights violations, unconstitutional policing practices, excessive brutality, and an absence of accountability throughout the operations of the Newark Police Department. While many of the findings affirmed the complaints that Newarkers have been making for decades, the extent to which the NPD has been violating the public's trust and rights was disturbing.

With much of the record now clearly established, Newark finds itself at a crossroads. The City has an opportunity that will likely not recur for decades to turn the NPD around and transform it into a force that simultaneously protects public safety, builds close ties and trust with Newark communities, and serves as a model to the state and nation of what urban policing that is respectful of civil rights can look like.

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<sup>1</sup> UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION & UNITED STATES ATTORNEY'S OFFICE DISTRICT OF NEW JERSEY, INVESTIGATION OF THE NEWARK POLICE DEPARTMENT (Jul. 22, 2014), *available at* <http://www.justice.gov/usao/nj/Press/files/pdf/files/2014/NPD%20Findings%20Report.pdf> (hereinafter "DOJ Findings").

As indicated in the “Agreement in Principle” (hereinafter “AIP”) you signed on July 22, 2014,<sup>2</sup> the City and the Justice Department will soon enter into a formal, judicially enforceable consent decree setting forth reforms, best practices, and innovative policies that the NPD will adopt in order to remedy the unconstitutional conduct identified in the Justice Department’s findings and to rebuild trust with Newark communities. You have identified September 15, 2014, as a date to strive for in completing negotiations around the content of the consent decree.

We strongly encourage you to agree on reforms that, while difficult, will fundamentally transform the NPD, and provide Newarkers the opportunity to build the respectful, effective, and accountable police force that the city deserves. While we fully acknowledge that some of the reforms called for here may not be implemented solely by the parties to the consent decree, we hope that the City will work in good faith to pursue these reforms through the relevant channels. In particular, we urge you to include the following in the consent decree:

### **Civilian Review and Community Engagement<sup>3</sup>**

#### *Establish Strong and Independent Civilian Complaint Review Board*

While we hope and expect the period of federal monitorship to be one of significant change for the NPD, it is crucial that Newark seize the opportunity to build sustainable police accountability structures that will outlast any federal oversight. In particular, the consent decree should outline the contours of a new civilian complaint review board (CCRB) for the NPD. In order to gain the trust and confidence of Newark communities, Newark’s CCRB must be truly strong, independent, and *effective*.

Specifically, Newark’s CCRB should have the following features:

- Independent investigatory authority, including the power to subpoena witnesses, testimony, and documents;
- Independent disciplinary authority to hold police officers found to have engaged in misconduct accountable for their actions. Such a process should include strong due process protections for all parties, including police officers;
- Funding necessary for thorough and timely investigations that is tied to a percentage of the police department’s non-capital budget;
- Membership that reflects diversity, expertise, and connections to Newark’s communities;

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<sup>2</sup> CITY OF NEWARK AND UNITED STATES OF AMERICA, CITY OF NEWARK AND UNITED STATES OF AMERICA AGREEMENT IN PRINCIPLE 8 (Jul. 22, 2014), *available at* <http://www.justice.gov/usao/nj/Press/files/pdf/2014/NPD%20Agreement%20in%20Principle.pdf> (hereinafter “AIP”).

<sup>3</sup> *See Id.* at § 1.

- Public access that allows Newarkers to file complaints by phone, online, and in-person, including during evening/nighttime hours and on weekends;
- Broad jurisdiction to investigate (may be in the form of an Inspector General) Newark Police Department policies and make recommendations for reforms;
- Transparency, including quarterly reporting to the public of basic data on complaints and dispositions, while protecting the privacy interests of all parties.

While we recognize that there will be challenges to the creation of a strong and independent CCRB (for example, its creation may require both city legislation as well as state legislation), we believe it is critical to ensuring lasting accountability for the Department. Newarkers have been calling for a CCRB since the 1960s. We must seize this moment to establish a CCRB that will serve Newarkers in an effective manner for the next 50 years.

### *Create Community Advisory Boards*

As the DOJ findings indicate,<sup>4</sup> there exist significant gaps in trust and confidence between Newark communities and the NPD. We believe that increased communication and coordination with community members and leaders about policing priorities, challenges, and experiences will help build confidence and make the NPD a more effective police force.

To help facilitate ongoing, productive dialogue between communities and the NPD, we recommend the establishment of “Community Advisory Boards” in each precinct, in which NPD command staff and leadership would regularly meet with community leaders to respond to community concerns, consult on local policing priorities, and address sources of conflict between the police and community on an ongoing basis. NPD leadership should be required by the City to attend these meetings and to respond to community inquiries and concerns. The NPD should also report to the community at Community Advisory Board meetings local data on enforcement activity, including stops, summonses, arrests, and crime statistics. While we recognize that such meetings already happen from time to time, the NPD should formalize this process for community engagement.

### *Establish Community Monitoring of Consent Decree Implementation*

In order to ensure that the final consent decree is implemented with the guidance of and in consultation with the community, we recommend the creation of a board of leaders representing Newark’s diverse communities to help advise the appointed federal monitor and city leaders about implementation decisions and compliance. Although no community organizations are parties to the consent decree, we believe ongoing and established community input into the implementation of the consent decree is critical to its success.

### *Ensure Diversity of Newark Police Department*

Building a police department that reflects the rich diversity of Newark’s communities is an

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<sup>4</sup> See, e.g., DOJ Findings at 1 (“The NPD’s policing practices have eroded the community’s trust . . .”).

important goal for the NPD to pursue. The NPD should strive to recruit and hire a diverse corps throughout the command chain, including specialized units.

### *Incentivize Community Policing Practices*

Building trust and cooperation between the NPD and Newark communities is of utmost importance as the NPD moves forward with these historic reforms. While disincentivizing policing conduct and practices that result in civil rights and liberties violations through training and discipline are critical, the NPD should work to change the culture of policing by creating affirmative incentives and rewards for respectful community policing practices.

In addition to other performance metrics, officers should be evaluated on conduct that builds trust and cooperation with communities, and respects civil rights. For example, the NPD should include in the evaluative and promotional structures incentives for defusing conflict, engaging in community outreach and relationship-building, and reducing civil rights and liberties violations.

### **Stop-and-Frisk, Searches, and Arrest Practices**

The DOJ findings on the NPD's stop, search, and arrest practices found widespread constitutional violations. At least 75 percent of NPD pedestrian stops lack an articulated constitutional basis,<sup>5</sup> black Newarkers are significantly overrepresented in stops and arrests,<sup>6</sup> and NPD search practices may also be unconstitutional.<sup>7</sup> The NPD must overhaul its policies and training for stop, search, and arrests. These practices must comport both with federal constitutional norms *and* New Jersey search and seizure standards.<sup>8</sup>

In addition, we urge the NPD to implement these important stop and search practice reforms:

#### *End Consent Searches*

In light of the DOJ findings of questionable consent search practices, particularly in the narcotics arrests context, the NPD should end the practice of consent searches of individuals following vehicle or pedestrian stops.

Absent a clear prohibition on consent searches, the NPD should only permit officers to seek consent for a search when predicated on a reasonable and articulable suspicion that the search would reveal evidence of criminal wrongdoing, as New Jersey law currently requires for vehicle consent searches.<sup>9</sup> Newark should also require officers to obtain proof of consent for such searches. For searches beyond frisks that are not pursuant to a warrant, incident to an arrest, or supported by probable cause, officers should be required to indicate to the intended subject of a

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<sup>5</sup> See DOJ Findings at 9 (“In approximately 75% of these remaining Reports, the officers failed to articulate reasonable suspicion to justify the stop, as required by NPD policy.”).

<sup>6</sup> See *Id.* at 16 (“[B]lack people in Newark have been stopped and arrested at a significantly higher rate than their white and Hispanic counterparts.”).

<sup>7</sup> See *Id.* at 15 (“[T]he proportion of narcotics arrests in Newark that did not require a search is markedly high.”).

<sup>8</sup> See NEW JERSEY CONSTITUTION, ART. I § 7.

<sup>9</sup> See *State v. Carty*, 170 N.J. 632 (2002).

search that the person is being asked to voluntarily consent to a search and that he or she has the right to refuse consent.<sup>10</sup> The officer should be required to create an audio, or written and signed record of the person's consent, including a statement that the person understands he or she may refuse consent, that the person is voluntarily providing consent, that the person understands he or she may withdraw consent, the time and date of the search, the names and badge numbers of any law enforcement officers involved in the search, the reasonable and articulable suspicion that created the lawful authority for the search, if any, and the make and registration number of the vehicle to be searched, if applicable.<sup>11</sup> A copy of this consent form should be provided to the individual who consented to the search.

### *Ban Pretextual Stops*

A pretextual stop occurs when a police officer stops a pedestrian or a driver for a violation of the law, minor or otherwise, for the purpose of allowing that officer to investigate a separate and unrelated suspected criminal offense. Such actions often result in bias-based profiling and must be greatly limited. For example, Newark should ban law enforcement from using violations of the traffic laws as a pretext for stopping a motor vehicle for other reasons.

As police officers have complained and the DOJ investigation noted,<sup>12</sup> stop-and-frisk overuse and hyper-aggressive enforcement of low-level offenses are often strategies to obtain identification from an individual in order to check to see if that individual has any outstanding bench warrants. If Newark does not prohibit pretextual stops as a whole, Newark should ban officers from conducting a warrant check during a pretextual stop.

### *End De Facto Quota Systems*

As indicated in the DOJ Findings, there is a widespread belief among an array of stakeholders that a formal or informal quota system exists within the NPD “to encourage officers to increase the number of citations issued.”<sup>13</sup> Conditioning overtime eligibility or plum work assignments on issuing a prescribed number of “Quality of Life” citations leads directly to ineffective policing, abuses of power, and the further breakdown in trust between the community and the police. The NPD should take proactive steps to end any formal or informal arrest, citation, or stop-and-frisk quota that may exist within the force.

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<sup>10</sup> See *State v. Johnson*, 68 N.J. 349 (1975) (requiring that in New Jersey, unlike under federal law, consent be “knowing”).

<sup>11</sup> Consent forms have long been recognized in New Jersey search-and-seizure jurisprudence. See *State v. Alexander*, 170 N.J. Super. 298, 306 (Law Div. 1979) (sign consent form is factor indicating voluntariness, but not sufficient in itself in face of other evidence of duress).

<sup>12</sup> See, e.g., James Queally, *Newark leaders say they welcome federal monitor for police department*, NEWARK STAR-LEDGER (Feb. 10, 2014), available at [http://www.nj.com/essex/index.ssf/2014/02/newark\\_leaders\\_say\\_they\\_welcome\\_federal\\_monitor\\_for\\_police\\_department.html](http://www.nj.com/essex/index.ssf/2014/02/newark_leaders_say_they_welcome_federal_monitor_for_police_department.html) (James Stewart Jr., president of the Newark Fraternal Order of Police stated: “[T]he pressure to bring in numbers, leads our cops to frequently stop people for record checks, which often leads to arrests for open bench warrants. That is also what contributes to that divide that our community activists so often talk about . . . They become afraid to approach the cop on the street out of fear of being arrested”); DOJ Findings, *supra* note 1, at 9 (“Officers also routinely stopped and ran warrant checks for individuals solely for being present in high-crime areas, near scenes of suspected or reported crimes, or simply ‘in areas.’”).

<sup>13</sup> See DOJ Findings, *supra* note 1, at 21.

Further, the NPD should take additional steps to end its focus on enforcement of low-level, non-criminal behavior (whether in the name of “broken windows policing” or not), and prioritize crime and violence reduction strategies.

*Require officers to identify themselves and issue “receipts” following a stop*

In order to protect Newarkers and the police, officers should, upon initiation of law enforcement activity, identify themselves to the subject(s) of the law enforcement activity by providing their full name, rank and command, and provide the reason for the law enforcement activity. At the conclusion of such activity that does not result in further legal action, officers should provide individuals stopped with a receipt or business card that includes the officers’ names and badge numbers, the time and location of the stop, and a brief explanation of the reason for the stop. This straightforward policy change would build trust between officers and the community, help develop a culture of respect, and provide Newarkers with a record of their encounter with police to enhance accountability.

*Prevent NPD Stop-and-Frisk Database Expansion*

Stop-and-frisk data collection and reporting should serve the purpose of helping the public and the NPD itself, not building dossiers or databases on innocent Newarkers. The NPD should establish strict protections to ensure that innocent Newarkers do not end up in police databases simply because they came into contact with an NPD officer. In particular, the NPD should ensure that no personally identifying information of an individual who has been stopped, questioned and/or frisked by an officer, such as a name or address, shall be recorded in any database if that individual is released without any further legal action, such as an arrest or summons. Further, no personally identifying information about an individual should be maintained in any NPD database if, following a stop, question, and/or frisk, further legal action such as an arrest or summons occurs but that individual is subsequently cleared of any wrongdoing.

**End Bias-Based Profiling in Newark<sup>14</sup>**

Although the DOJ Findings did not look into whether or not the racial disparities in NPD enforcement, particularly stops and arrests, were intentional, there should be an affirmative ban in Newark on bias-based profiling by the NPD and a private right of action to enforce such a ban.

In particular, the City should prohibit the practice of an NPD officer relying *to any degree* on an individual’s actual or perceived race, ethnicity, religion, national origin, age, gender, gender identity or expression, sexual orientation, immigration status, disability, or housing status in initiating law enforcement action against an individual, except when a specific suspect description includes information on the above protected categories and that information is taken in conjunction with other information or circumstances that link a specific person to suspected criminal activity. Individuals should have a private right of action to establish claims of intentional bias-based profiling, as well as claims against NPD actions that have a disparate impact on any of the protected categories listed above. Individuals should be able to seek a remedy of injunctive or

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<sup>14</sup> See AIP, *supra* note 2, at § 9.

declaratory relief.

Newark should ensure that its residents are empowered to challenge bias-based profiling by the NPD, whether in the form of intentional discrimination or in the form of actions that have the effect of discrimination, through enforcement of their rights.

### **NPD Video and Audio Recording Equipment<sup>15</sup>**

We believe the deployment of video cameras to all marked patrol cars and “body cameras” on all officers can be a powerful and impactful police accountability tool. Such cameras can serve to both protect the public from misconduct, and also protect officers from false accusations of misconduct. However, the deployment of this technology must be accompanied by strong protections against abuses, including clear and enforceable regulations covering when cameras may be turned on or off, who has access to recorded footage and how long that footage is stored within the NPD, when recordings are accessible to the public under New Jersey’s Open Public Records Act, equipment maintenance, penalties for tampering with recorded video, and more. This technology must not become a tool for police surveillance of lawful activities and to intimidate and suppress First Amendment protected speech. The NPD should engage in a thoughtful dialogue with Newark communities on how dashboard and body cameras will be deployed before crafting policy.

### **Policing Transparency<sup>16</sup>**

Though it is an old maxim, it is as true today as it always has been: “Sunshine is said to be the best disinfectant.”<sup>17</sup> Greater transparency by the NPD is essential to strengthening accountability and confidence in the police force.

#### *Comply with NPD Transparency Policy<sup>18</sup>*

Improved transparency must begin with compliance with the NPD’s own internal Transparency Policy. Although issued more than a year ago, as of its July 2014 Transparency Data report, the NPD has still not provided an array of required data to the public about its stop-and-frisk practices, including information about the reasons for NPD stops, frisks, and searches;<sup>19</sup> the number of frisks and searches resulting in the discovery of contraband, and the specific contraband found;<sup>20</sup> offenses for which persons stopped are issued summonses; offenses for which persons stopped are arrested;<sup>21</sup> and data on the number of persons stopped with limited English proficiency,<sup>22</sup> among other missing elements.

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<sup>15</sup> *Id.*

<sup>16</sup> *See* AIP § 1(d).

<sup>17</sup> Louis D. Brandeis, *What Publicity Can Do*, HARPER’S WEEKLY (Dec. 20, 1913), available at <http://www.law.louisville.edu/library/collections/brandeis/node/196>.

<sup>18</sup> *See* NEWARK POLICE DEPARTMENT GENERAL ORDER 2013-03 (July 8, 2013).

<sup>19</sup> *Id.* at § V(A)(6).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at § IV(A)(9).

<sup>22</sup> *Id.* at § V(A)(3).

### *Increase Data Collection and Reporting*

In addition to the data already required to be collected by the NPD under its Transparency Policy, the NPD should also collect and report to the public the following data on its website in an easily-accessible, machine-readable format:

- **Low-level arrest and summons data:** The NPD should regularly report aggregate data on how many arrests and summonses are made or issued, including the offense charged, the race, gender, ethnicity, and age of the arrestee or summons recipient, the location of arrests or summonses, and whether the arrest or summons came in response to a specific report or complaint made by a person to the Newark Police Department or 911 system;
- **Weekly Compstat Data:** The NPD should post on its website the regularly collected aggregate Compstat data to help Newarkers understand the scope of enforcement activity.

### *Improve Collection and Reporting on Hispanic/Latino Enforcement Data*

As indicated in the DOJ Findings, the NPD's stop-and-frisk data did not include ethnicity information until January 2014. Approximately 34 percent of Newark's population identifies as Hispanic or Latino. While we are pleased the NPD responded to community requests and began collecting Hispanic/Latino stop data in January 2014, anecdotal evidence suggests that the number of Latino stops reported by the NPD is lower than is in fact occurring on Newark's streets.<sup>23</sup> The NPD should research and develop best practices for training NPD officers to make ethnicity data collection and reporting as accurate as possible.

### **Use of Force Documentation<sup>24</sup>**

The AIP provides that "all NPD officers who are involved in or witness a reportable use of force shall document their own accounts of the incident, describing in detail the sequence of events surrounding the use of force, including the resistance encountered, the force used in response, and whether the force was effective in obtaining compliance from the subject."<sup>25</sup>

Use-of-force documentation is critically important to ensure there is accountability and transparency when police use force or violence, the most powerful tools available to them, and the tools with some of the greatest potential for abuse. We believe that not only must officers who are involved with or who witness a reportable use of force document their accounts, but officers who "otherwise are informed of a reportable use of force" shall also be required to document their understanding of the incident.

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<sup>23</sup> For example, the NPD's June 2014 transparency data reports 71 percent of stops were of Black Newarkers, 21 percent of stops were of White Newarkers, and only 8 percent of stops were of Hispanic or Latino Newarkers. See [https://www.aclu-nj.org/download\\_file/view\\_inline/1496/950/](https://www.aclu-nj.org/download_file/view_inline/1496/950/).

<sup>24</sup> See AIP at § 5.

<sup>25</sup> *Id.*



For example, although an NPD employee responsible for transporting an individual who has been subject to a reportable NPD use-of-force incident to a medical facility did not directly witness the incident, he or she has valuable information to provide and should be required to document injuries and any information the individual provides to that officer about the incident and the events that led to it. Indeed, unless such a requirement is instituted, use of force reports will lack complete and accurate information.

### **Establishment of a Comprehensive Early Warning System for Police Misconduct<sup>26</sup>**

We strongly support the establishment of a robust early warning system to identify problematic or unconstitutional enforcement practices, promote good policing, and build trust and confidence within the community.

In addition to the list of data points described in the AIP to be included as part of the early warning system, the system should also incorporate information including:

- all motions to suppress granted in criminal proceedings following arrests or summonses;
- all prosecutorial downgrading or declinations based on the strength of a search or seizure;
- all claims of civil litigation against officers for misconduct;
- all Notices of Tort Claim filed against officers;
- aberrational numbers of pedestrian or vehicle stops by officers.

### **NPD Training<sup>27</sup>**

The DOJ findings reported on numerous areas in which NPD training was incorrect,<sup>28</sup> insufficient,<sup>29</sup> or unconstitutional.<sup>30</sup> A wholesale reevaluation of training content, methods, and schedules is important to ensuring constitutional and respectful policing practices in the future. In addition to the trainings referenced in the DOJ findings, including trainings on constitutional stop and arrest practices, use of force, community engagement, documentation and data collection, internal affairs, discipline, body and dashboard cameras, and supervision, the NPD should also train officers on (1) racial, ethnic, religious, sexual orientation, and gender identity sensitivity; and (2) the public's right to film or photograph police officers.

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<sup>26</sup> See *Id.* at § 11.

<sup>27</sup> See AIP at § 3.

<sup>28</sup> See, e.g. DOJ Findings, *supra* note 1, at 10 (“The lack of clarity in NPD policies effectively promotes a view that living or simply being in a high-crime area is criminally suspicious. This violates the Fourth Amendment[. . .].”).

<sup>29</sup> See, e.g. *Id.* at fn. 20 (“During the site visit, members of the NPD command staff lacked a sufficient understanding and sophistication about issues related to mental illness and disabilities, highlighting the need for training on these issues.”).

<sup>30</sup> See, e.g. *Id.* at 22 (“The pattern and practice of unreasonable force both results from and is evidenced by failures in policy, supervision, investigation, training and discipline.”).

We urge you to include the reforms proposed above in the final consent decree. While the scope of reforms is expansive, we believe they are necessary to help build the effective, accountable, and constitutional police force that Newarkers deserve.

Sincerely,



Udi Ofer  
Executive Director  
American Civil Liberties Union of New Jersey

On behalf of:

1199SEIU Healthcare Workers East  
American Friends Service Committee  
Garden State Equality  
NAACP New Jersey State Conference  
Newark LGBTQ Community Center  
Newark Unit NAACP  
New Jersey Communities United  
New Jersey Institute for Social Justice  
New Jersey Working Families Alliance  
People's Organization for Progress

cc: Karen Brown, Corporation Counsel, City of Newark  
Council President Mildred C. Crump  
Councilman Augusto Amador  
Councilwoman Gayle Chaneyfield-Jenkins  
Councilman Carlos Gonzalez  
Councilman John Sharpe James  
Councilman Eddie Osborne  
Councilman Joe McCallum  
Councilman Luis Quintana  
Councilman Anibal Ramos, Jr.  
Senator Ronald L. Rice  
Senator M. Teresa Ruiz  
Assemblywoman Grace Spencer  
Assemblywoman Cleopatra Tucker  
Assemblyman Ralph Caputo  
Assemblywoman Eliana Pintor Marin  
Congressman Donald Payne, Jr.  
United States Senator Robert Menendez  
United States Senator Cory Booker