



October 11, 2018

Via Express Mail

The Honorable Robert Dow Jr.
U.S. District Court, Northern District of Illinois
Everett McKinley Dirksen Federal Building
219 South Dearborn Street, 20th floor
Chicago, Illinois 60604

Attn: Clerk of Court

RE: **Written comments on the proposed consent decree in the matter of *State of Illinois v. City of Chicago*, Case No. 17-cv-6260 (N.D. Ill.)**

Dear Judge Dow:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we submit the comments below pursuant to the court's September 19, 2018 Order,¹ requesting oral and written comments to assist it with determining whether the above-referenced proposed consent decree is "lawful, fair, reasonable, and adequate," *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985). The complaint filed in this case, the U.S. Department of Justice's (DOJ) investigation of the Chicago Police Department (CPD), and the city's *Police Accountability Task Force (PATF) Report* all document a decades-old history of police misconduct and violence against the communities CPD officers vowed to protect and serve. A court-enforceable consent decree detailing police reforms that directly address and remedy federal and city government findings that the CPD has engaged in a pattern or practice of unreasonable use of force, particularly against communities of color, is warranted. The proposed consent decree is long overdue and a critical element of public safety reforms in the City of Chicago. We support the approval of this decree and offer recommendations on how to strengthen several of the proposed consent decree's provisions, below. We sincerely urge the court and the parties to review and adopt the recommendations contained herein and to move forward without delay to approve and adopt the consent decree.

¹ Order Setting Public Fairness Hearing and Written Comment Period on Proposed Consent Decree; *State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Doc. No. 114 (N.D. Ill.).



I. Background

For almost 80 years, LDF has utilized the U.S. Constitution and federal and state civil rights laws to pursue equity and justice for African-Americans and other people of color in the areas of education, voting, employment, criminal justice, and housing.² LDF's work to address unlawful and discriminatory policing practices dates back to its inception, when founder Thurgood Marshall represented African-American men who were brutally beaten by police and forced to confess to crimes they did not commit.³ Since then, LDF has advocated for unbiased and responsible policing through litigation and policy advocacy.⁴ Through our Policing Reform Campaign, we have worked closely with attorneys, activists, police executives, and city leaders in Ferguson, Missouri; Baltimore, Maryland; and New York City, New York to develop and implement policing reforms through court-ordered consent decrees.⁵

We have closely monitored policing reform efforts in Chicago since the November 2015 release of the video showing a Chicago police officer fatally shooting 17-year-old Laquan McDonald 16 times as he moved away from officers.⁶ This court's consideration

² In Chicago, LDF also successfully litigated an employment discrimination case on behalf of African-American fire fighter applicants who challenged the city's hiring practice; see *Lewis v. City of Chicago*, 643 F.3d 201 (7th Cir. 2011) *aff'g* 2005 WL 693618 (N.D. Ill. 2005) (not reported), *rev'd* 528 F.3d 488 (7th Cir. 2008), *rev'd*, 560 U.S. 205 (2010).

³ See, e.g., *Shepherd v. Florida*, 341 U.S. 50 (1951); see generally Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America* (HarperCollins 2012).

⁴ See, e.g., Complaint, *Davis, et al. v. City of New York, et al.*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y. Jan. 28, 2010) (challenging the unlawful stopping, questioning and arresting of African-American and Latino public housing residents and their guests by New York City Police Department officers), <http://www.naacpldf.org/update/court-approves-final-settlement-federal-class-action-lawsuit-challenging-police-practices-nyc>; see also, *Tolan v. Cotton*, Case No. 13-5551, Motion for Leave to File U.S. Supreme Court Amicus Brief, <http://www.naacpldf.org/case-issue/tolan-v-cotton> (alleging excessive use of force by the Bellaire, Texas Police Department); Sherrilyn Ifill, Statement by the NAACP Legal Defense and Educational Fund, Inc. before the President's Task Force on 21st Century Policing (Jan. 13, 2015), http://www.naacpldf.org/files/case_issue/Sherrilyn%20Ifill%20TestimonyTask%20Force%20on%2021st%20Century%20Policing.pdf.

⁵ For more information about LDF's Policing Reform Campaign, please visit <https://www.tminstituteldf.org/advocacy/campaigns/policing-reform/objectives-strategies/>.

⁶ See, e.g., Press Release, LDF, *Stinging DOJ Report Details Entrenched Racial Bias in Chicago Police Department, Systematic Violation of Residents' Constitutional Rights* (Jan. 1, 2013), <http://www.naacpldf.org/press-release/stinging-doj-report-details-entrenched-racial-bias-chicago-police-department-systematic>; Press Release, LDF, *LDF Statement on Chicago's Police Accountability Task Force Report* (Apr. 15, 2016), <http://www.naacpldf.org/press-release/ldf-statement-chicago%E2%80%99s-police-accountability-task-force-report>; Press Release, LDF, *LDF Statement on Department of Justice's Civil Rights Probe of the Chicago Police Department* (Dec. 7, 2015),

of the proposed consent decree comes only days after Chicago police officer Jason Van Dyke's second-degree murder conviction for the death of young Laquan.⁷ During the four years residents waited for officer Van Dyke to be held accountable for unjustifiably killing Laquan, Chicago police reform advocates, city and state officials, and the DOJ worked diligently to raise public awareness that Laquan's death, at the hands of Chicago police, was only one example of CPD's continuous police violence and abuse. When it became clear that the DOJ was no longer committed to requiring systemic policing reforms in Chicago to address the plethora of civil rights violations uncovered in its investigative report,⁸ we welcomed the Attorney General's law suit in this case as well as those of private litigants, such as plaintiffs in the case of *Campbell v. City of Chicago*.⁹

Now, according to news reports, the DOJ will submit comments opposing the approval of the proposed consent decree.¹⁰ The DOJ's position, while not surprising, is disturbing and contradictory. After taking office, U.S. Attorney General Jefferson Sessions indicated in a memo to Justice Department officials that:

The Federal government alone cannot successfully address rising crimes rates, secure public safety, *protect and respect the civil rights of all members of the public*, or implement best practices in policing. These are,

<http://www.naacpldf.org/press-release/ldf-statement-department-justices-civil-rights-probe-chicago-police-department>; Press Release, LDF, LDF Statement on the Laquan McDonald Case and Minneapolis Shootings (Nov. 25, 2015), <http://www.naacpldf.org/press-release/ldf-statement-laquan-mcdonald-case>.

⁷ See Mitch Smith, Timothy Williams, and Monica Davey, '*Justice for Laquan!*' Demonstrators Chant, as Chicago Officer Is Convicted of Murder, NEW YORK TIMES, Oct. 5, 2018, <https://www.nytimes.com/2018/10/05/us/van-dyke-guilty-laquan-mcdonald.html>.

⁸ See, e.g., Sari Horwitz, Mark Berman, and Wesley Lowery, *Sessions orders Justice Department to review all police reform agreements*, WASHINGTON POST, Apr. 3, 2017 https://www.washingtonpost.com/world/national-security/sessions-orders-justice-department-to-review-all-police-reform-agreements/2017/04/03/ba934058-18bd-11e7-9887-1a5314b56a08_story.html?utm_term=.02e3c3f0ab51; Kim Bellware and Ryan J. Relly, *Trump DOJ And Chicago May Reach A Police Reform Deal With 'No Teeth'*, HUFFINGTON POST, June 9, 2017, https://www.huffingtonpost.com/entry/chicago-doj-police-reform_us_593af1cde4b0b13f2c6a36bc; and Bill Ruthhart, *Justice Department: No agreement with Chicago on police reform*, CHICAGO TRIBUNE, June 7, 2017, <http://www.chicagotribune.com/news/local/politics/ct-department-of-justice-chicago-police-reform-20170607-story.html>.

⁹ See Amended Complaint, *Campbell v. City of Chicago*, Case No. 1:17-cv-04467, Doc. No. 83 (N.D. Ill.).

¹⁰ See Lynn Sweet, Jon Seidel, and Frank Main, *Trump's Justice Department to oppose pending Chicago police consent decree*, CHICAGO SUN TIMES, Oct. 10, 2018, <https://chicago.suntimes.com/news/donald-trump-justice-department-oppose-pending-chicago-police-decree/>.

first and foremost, tasks for state, local, and tribal law enforcement. By strengthening our longstanding and productive relationships with our law enforcement partners, we will improve public safety for all Americans.¹¹ (Emphasis added).

But, instead of supporting the Illinois Attorney General and Chicago elected officials who have spent a year negotiating the terms of the proposed consent decree—which seeks to protect and respect the civil rights of Chicago residents—the DOJ has decided to spend taxpayers’ dollars opposing an agreement that is fully consistent with the objectives it set forth above because it does not agree with consent decrees.¹² The DOJ cannot have it both ways; it must not hinder remedies to civil rights violations now, when it had the ability to address these very violations previously, but purposefully failed to do so.¹³

This is not the first time the DOJ has tried to hinder local efforts to advance policing reforms, despite local residents and law enforcement executives supporting those reforms. Prior to the approval of the consent decree in Baltimore, the DOJ attempted to delay and restart the process. In that case, though the DOJ was a party, the Judge denied its 11th hour request.¹⁴ Even then however, the DOJ’s actions in Baltimore did not amount to the DOJ’s broad and unsubstantiated opposition to the proposed consent decree at issue here.

The proposed consent decree contains many promising provisions which, if followed, will create policies, training, and supervisory structures that will help eliminate the use of excessive or lethal force by Chicago police officers as well as racially biased-policing practices. LDF provided comments on an initial draft of the consent decree¹⁵ and

¹¹ Office of Attorney General, *Memorandum for Heads of Department Components and United States Attorneys*, March 31, 2017, available at <https://www.justice.gov/opa/press-release/file/954916/download>.

¹² See Merrick J. Bobb, *Jeff Sessions thinks consent decrees increase crime. He's just plain wrong*, LOS ANGELES TIMES, Apr. 25, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-bobb-consent-decrees-work-20170425-story.html>; see also Andrew Kaczynski, *Attorney General Jeff Sessions: Consent decrees 'can reduce morale of the police officers,'* Apr. 14, 2017, <https://www.cnn.com/2017/04/14/politics/kfile-sessions-consent-decrees/index.html>.

¹³ See Law Enforcement Misconduct Statute, 42 USC § 14141 (2017) (re-codified as 34 USC §12601 (2017)).

¹⁴ See *U.S. v. Police Department of Baltimore*, Case No. 17-cv-0099, Doc. No. 23 (D. Md.) (denying the DOJ’s Motion for Continuance of Public Fairness Hearing and noting that the DOJ’s efforts were “highly unusual”).

¹⁵ See Press Release, LDF, NAACP Legal Defense Fund Submits Comments on Chicago Police Consent Decree (Aug. 17, 2018), <http://www.naacpldf.org/press-release/naacp-legal-defense-fund-submits-comments-chicago-police-consent-decree>.

acknowledge the parties' incorporation of several of our recommendations, including provisions that ensure: members of the public have an opportunity to provide input into the development of policing policies; and the accurate collection and reporting of use of force data, such as police pointing a firearm at a person. After reviewing the latest proposed consent decree, we have identified a number of provisions where revisions are needed to clarify direction and intention, and to support the kind of reform necessary to dismantle the systemic and longstanding unconstitutional policing practices of the CPD.

Accordingly, we provide below recommendations to strengthen the proposed consent decree's provisions relating to impartial policing, use of force, officer misconduct, school police, and monitoring and implementation of the consent decree.

II. Recommendations

A. Address racially-biased arrest practices by requiring CPD officers to utilize the least restrictive response to low-level offenses

The "Impartial Policing" section of the proposed consent decree requires the CPD to: assess the frequency and demographic disparities of misdemeanor arrests and administrative notices of violation made by officers; identify and address any biased policing practices; and release the underlying data to the public.¹⁶ These are important first steps; however, the consent decree must also provide guidance to the CPD on how to eliminate bias in arrest and citation practices, and not rely solely on the agency to correct itself.

Specifically, the parties should revise paragraph 80 of the proposed consent decree to require CPD to, as appropriate under the circumstances, use the least intrusive response possible when addressing minor, non-violent, and/or quality of life offenses. For example, CPD officers should use verbal warnings and counseling instead of a citation, and a citation instead of arrest.¹⁷ This affirmative obligation to consider the least intrusive response is currently required under the Baltimore Police Department's

¹⁶ Consent Decree at paras. 79-80, *Illinois v. City of Chicago*, Case No. 17-cv-6260 (July 27, 2018) [hereinafter Proposed Consent Decree].

¹⁷ See Baltimore Consent Decree at para. 62, *U.S. v. Police Dep't of Baltimore*, Case No. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017) (requiring officers to use the "least intrusive response appropriate under the circumstances"), <https://www.justice.gov/opa/file/925056/download> [hereinafter Baltimore Consent Decree].

consent decree,¹⁸ as it establishes a concrete way to reduce officers needlessly arresting individuals, particularly people of color, for minor and non-violent offenses.¹⁹

Additionally, the proposed consent decree should state that if CPD's assessment reveals its officers routinely make misdemeanor arrests without probable cause, then CPD should create and implement a policy requiring officers to seek approval from a supervisor before making certain misdemeanor arrests.²⁰ This method, also used by the Baltimore Police Department, will allow supervisors to identify rank-and-file officers who require additional training or discipline for failing to comply with legal requirements and CPD policy.

B. Ensure that CPD engages in nondiscriminatory policing practices by requiring impartial policing instruction in all training courses

The complaint in this case, the PATF report,²¹ and DOJ investigative report²² all concluded that the CPD engaged in a pattern or practice of unlawful stops, arrests, and excessive uses of force, in a manner that disproportionately impacted Black and Latinx communities.²³ To address this problem, the proposed consent decree appropriately requires the CPD to create policies and practices that prohibit discrimination based on race, color, sex, gender identity, age, religion and other protected classes under federal,

¹⁸ *Id.* (“BPD will enforce its policy instructing officers that, for Quality of Life Offenses, that the appropriate response is the *least intrusive response appropriate under the circumstances* as reasonably understood by the officer at the time. In other words, a verbal warning and counseling is preferable to a Citation, and a Citation is preferable to a custodial Arrest.”) (emphasis added).

¹⁹ The proposed consent decree requires CPD to use alternatives to arrest, but it is limited to officer interactions with youth and children; see Proposed Consent Decree, *supra* note 16, at para. 33.

²⁰ Baltimore Consent Decree, *supra* note 17, at paras. 61-66 (stating in part that “BPD will require that a permanent rank supervisor approve or disapprove the officer's request to make an Arrest for Quality of Life Offenses and BPD will ensure that its supervisors ensure that any Arrest is based on the existence of probable cause and that the officer adhered to BPD policy when determining when to verbally warn and counsel, issue Citations, or Arrest individuals for Quality of Life Offenses.”).

²¹ See CHICAGO POLICE ACCOUNTABILITY TASK FORCE, RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE, https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf (2016) [hereinafter PATF REPORT].

²² See U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download> [herein after DOJ CHICAGO REPORT].

²³ See Complaint, *State of Illinois v. City of Chicago*, Case No. 1:17-cv-6260 (N.D.Ill. Aug. 29, 2017), at paras. 3-12 [hereinafter Illinois Complaint]; PATF REPORT, *supra* note 21, at 6, 8-9, and 14; DOJ CHICAGO REPORT, *supra* note 22, at 15, 22.

state and local law.²⁴ However, after acknowledging that training is “a necessary component of impartial policing,” the proposed consent decree only requires CPD to “integrate the concept of impartial policing into related CPD training courses when appropriate”²⁵ All public servants are required to deliver services in a nondiscriminatory manner. Therefore, every training course provided by CPD officers should include instruction on how to provide bias-free services—this is especially true given CPD’s history of discriminatory policing at all levels. Accordingly, we recommend revising paragraph 72 of the proposed consent decree as follows:

The Parties recognize that training is a necessary component of impartial policing. CPD *will train CPD members on impartial policing in all subjects and courses*, including, but not limited to, *anti-bias*, use of force, weapons training, and Fourth Amendment courses. (proposed revisions are *italicized*).

C. Require CPD officers to use de-escalation tactics prior to using force, expand the categories of reportable use of force to include Tasers, and adopt a foot pursuit policy

The proposed consent decree states that officers should use de-escalation techniques when it is “safe and feasible” to do so, suggesting that the use of de-escalation tactics is discretionary.²⁶ Because de-escalation is a core principle of CPD,²⁷ LDF recommends that the parties revise the second sentence of paragraph 161 of the proposed consent decree by replacing it with language used in the Baltimore consent decree²⁸ as follows: “CPD recently adopted de-escalation as a core principle. CPD officers must use de-escalation techniques to prevent or reduce the need for force *whenever possible using techniques that may include but are not limited to . . .*” (emphasis added.)

The proposed consent decree lists various CPD de-escalation tactics.²⁹ To ensure officers use these tactics, the consent decree should include a provision making clear that officers are encouraged to and will not be penalized for using de-escalation tactics. And critically, the proposed consent decree should specify that officers who witnesses another officer using unnecessary, illegal, and/or excessive force should take measures to de-

²⁴ Proposed Consent Decree, *supra* note 16, at para. 53.

²⁵ *Id.* at para. 72.

²⁶ Proposed Consent Decree, *supra* note 16, at paras. 153 and 156.

²⁷ *Id.* at para. 161.

²⁸ Baltimore Consent Decree, *supra* note 17, at para. 125.

²⁹ Proposed Consent Decree, *supra* note 16, at para. 161.

escalate the fellow officer's wrongful use of force.³⁰ Accordingly, we recommend the following italicized and strikethrough revisions:

- Paragraph 176: “CPD officers ~~must recognize and act upon the~~ *have a duty to intervene and attempt to de-escalate the situation*, on the subject's behalf when another officer is using *unnecessary, illegal, and/or excessive force. Officers are encouraged to and will not be penalized for using de-escalation tactics.*”
- Paragraphs 183 and 214: “CPD will require officers to issue a verbal warning prior to the use of any reportable force, including the use of firearms, *whenever possible, it is safe and feasible to do so. After giving the verbal command, the officer must allow a subject a reasonable amount of time to comply with a warning prior to using or continuing to use a firearm/impact weapon.*”³¹

Further, ensuring officers clearly understand which types of force are reportable is critical to holding accountable officers who use excessive force. While the proposed consent decree requires CPD officers to report each time they point a firearm at a person “in the course of effecting a seizure,” we believe that the reporting requirement should apply to any instance in which an officer points a gun at someone, regardless of whether the officer is effecting a seizure. Accordingly, we recommend deleting this quoted language.

Additionally, pointing a Taser should be included as a reportable use of force.³² The DOJ's investigative report found that CPD officers often used Tasers against children and youth for minor violations.³³ Recent data shows that from September 1, 2007 to September 14, 2017, CPD used Tasers against 751 children and youth.³⁴ This is unacceptable. To address this problem, in addition to reporting each time a Taser is discharged, the consent decree must also require CPD officers to report each time they point a Taser at individuals.

³⁰ Baltimore Consent Decree, *supra* note 17, at paras. 124(f) and 170-75.

³¹ The underlined language here is the same that the Proposed Consent Decree uses when addressing Tasers (para. 200) and OC devices (para. 209); *see* Proposed Consent Decree, *supra* note 16.

³² Compare Proposed Consent Decree, *supra* note 16, at paras. 190 and 196 (noting that pointing a firearm at someone is a reportable use of force) *with* Proposed Consent Decree paras. 197-206 (omitting the requirement that CPD should report when it points a Taser at someone).

³³ DOJ CHICAGO REPORT, *supra* note 22, at 34.

³⁴ INDEPENDENT POLICE REVIEW AUTHORITY, THIRD QUARTER 2017 AGENCY OPERATIONS AND FINAL REPORT 22, 24, https://www.chicagocopa.org/wp-content/uploads/2017/10/Q32017_IPRA_Final_Report.pdf (2017) [hereinafter INDEPENDENT POLICE REVIEW].

Finally, the DOJ investigative report revealed that CPD officers regularly “engage in tactically unsound and unnecessary foot pursuits, and that these foot pursuits too often end with officers unreasonably shooting someone—including unarmed individuals.”³⁵ Yet the proposed consent decree states that the Monitor will assess CPD data and determine “whether CPD should adopt a foot pursuit policy (emphasis added).”³⁶ This provision should be replaced with a statement requiring CPD to create a sound foot policy that will be approved by the Monitor. The foot pursuit policy should emphasize the inherent danger in such pursuits and require officers to weigh the importance of apprehending a suspect with the likelihood of danger to the public and CPD members.

D. Underscore and specify CPD’s obligation to solicit and incorporate community input during the development and review of CPD policies, trainings and practices

The proposed consent decree appropriately includes provisions requiring CPD to solicit community input, recognizing that best policing practices require both officer and community input in the development and evaluation of police policies and practices. Indeed, the *Final Report of the President’s Task Force on 21st Century Policing* provides:

if police are to carry out their responsibilities according to established policies, those policies must reflect community values. Law enforcement agencies should collaborate with community members . . . to develop policies and strategies . . . by improving relationships, increasing community engagement, and fostering cooperation. . . . All policies and aggregate data should be made publicly available to ensure transparency.³⁷

While paragraph 633 requires CPD to ensure its officers and the public have a meaningful opportunity to review and comment on CPD policies and procedures, this requirement is only specified for those policies with “material changes.”³⁸ “Material changes” is not defined within the proposed consent decree, effectively leaving CPD to determine when a change is material and thus, when community input should be solicited. To ensure that the parties receive extensive and definite community input on policy changes, we recommend deleting the term “material changes.”

³⁵ DOJ CHICAGO REPORT, *supra* note 22, at 5.

³⁶ Proposed Consent Decree, *supra* note 16, at para. 172.

³⁷ U.S. DEPT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 2, (2015), <https://ric-zai-inc.com/Publications/cops-p311-pub.pdf>.

³⁸ Proposed Consent Decree, *supra* note 16, at para. 633.

Also, to ensure community members and officers have enough time to review and comment on policies and procedures, the consent decree should require a 30-day comment period for all policies, plans, and procedures, before they are finalized. Accordingly, we recommend the following *italicized* and strikethrough revisions to paragraph 633:

CPD will ensure that its officers and the public have a meaningful opportunity to review and comment on ~~material changes to~~ *new or revised* CPD policies, *plans*, and procedures required by this Agreement. CPD will publish upcoming opportunities for CPD member and/or community input, involvement, or engagement that relate to the material requirements of this Agreement. After the Monitor and OAG comment on a proposed policy, *plan*, or procedure, or all work out a proposed policy or procedure, or all workout period processes described above have been completed, CPD will, *with the assistance of community members and stakeholders*, undertake significant efforts to inform the public that new or revised policies, plans, and procedures will be available on CPD's website for public review and comment. CPD will then post all proposed policies, *plans*, and procedures on its public website and provide its officers and the public with an opportunity to comment for a period of not less than 30 days.³⁹ *After the comment period, CPD will repost the final policies, plans, and procedures so CPD members and the public can understand the extent to which their feedback was incorporated. Before any policy, plan, or procedure is finalized or training begins, community members will be able to present their concerns, if any, on the final draft policies, plans, and revisions to the Court.*⁴⁰ There will be

Without wide-ranging and effective solicitation of community input, a designated mechanism for CPD, the OAG, and the Monitor to receive and evaluate such input, and incorporation of that input into all policies, practices, plans, and trainings, the community is again, unheard on the very issues that they have experienced firsthand. Thus, in addition to the recommendations above, we recommend the following *italicized* and strikethrough revisions:

³⁹ *Id.* at para. 640 (describing a similar 30-day review and comment period for the Monitor and OAG).

⁴⁰ This revision ensures community members have a sufficient comment period and an established method to verify that the issues most important, and expressed in their comments, are received.

- Paragraph 18: The City will establish and coordinate regular meetings, at minimum quarterly, with representatives from City departments, sister agencies, *community members and stakeholders*, and CPD to collaborate on developing strategies for leveraging City resources to effectively and comprehensively address issues that impact the community’s sense of safety, security, and well-being.”⁴¹
- Paragraph 26: CPD’s Office of Community Policing will designate CPD members, ~~as needed~~, to serve as points of contact for organizations to assist with access to police services, including those serving communities that have experienced previous challenges with access to police services, such as *racial and ethnic minorities*, LGBTQI individuals, religious minorities, immigrants, individuals with disabilities, homeless individuals, and survivors of sexual assault and domestic violence.⁴²
- Paragraph 52: In developing or revising policies and training referenced in this section, CPD will seek *and incorporate* input from members of the community and community-based organizations ~~with relevant knowledge and experience through~~ community engagement efforts.⁴³
- Paragraph 196: The City will ensure that all documentation and recordation of investigatory stop or arrest occurrences in which a CPD member points a firearm at a person, including OEMC data, is maintained in *an effective and transparent* manner that allows the Monitor, CPD, OAG, *COPA*, and *community members* to review and analyze such occurrences.
- Paragraph 445: The City will use best efforts to initiate and undertake a process with the CCSAO, United States Attorney’s Office, Cook County Public Defender’s Office, *COPA*, and the Federal Defender’s Office to share information on at least a quarterly basis regarding any affirmative judicial findings made during the

⁴¹ The meetings referenced in paragraph 18 directly address issues that affect the community’s sense of safety, yet community members were not listed as a group that should be consulted.

⁴² CPD routinely exerts excessive force and other unconstitutional policing practices in neighborhoods of Chicago’s most vulnerable residents, *see* DOJ CHICAGO REPORT, *supra* note 22, at 1, 15.

⁴³ We recommend removing the phrase “with relevant knowledge and experience through community engagement efforts” because community members, simply by living in Chicago and being at the whim of a police department that has so boldly ignored civil rights and devalued its residents, already have the “relevant knowledge and experience” to comment on policies outlining how the community will and should be policed. Their input as members of the community is valuable; no additional experience or training is needed.

course of criminal proceedings that a CPD member was untruthful, including any findings made at suppression hearings. Upon receipt of information from the CCSAO, United States Attorney’s Office, Cook County Public Defender’s Office, *COPA*, and the Federal Defender’s Office that may suggest misconduct *COPA* will initiate the intake process.

- The parties boldly deleted from the initial draft of Paragraph 561, the requirement that the Deputy PSIG’s annual reports on CPD diversity and inclusion issues—some of CPD’s most critical issues—be made available to the “*public, COPA, CPD, the Police Board, and the City.*” We strongly recommend this provision be restored.

E. Body camera provisions should require discipline of officers who intentionally fail to comply with CPD policy

As the proposed consent decree itself notes, “[a] robust and well-functioning accountability system in which CPD members are held to the highest standards of integrity is critical to CPD’s legitimacy Eradicating racial discrimination in CPD operations begins with transparency and public accountability.”⁴⁴ Accordingly, we recommend the following *italicized* and strikethrough revisions to Paragraph 238(i): “specify that officers who knowingly fail to comply with the [body camera] policy ~~may~~ *will* be subject to progressive discipline, training, or other remedial action.

F. Expressly protect the rights of children and youth, including in schools.

Research shows that CPD’s presence in schools often leads to excessive force and frequent arrests of young students of color, often for minor disciplinary infractions that would normally be handled within the school disciplinary system.⁴⁵ For example, in 2011 alone, CPD made 4,600 arrests of children and youth; 86% of these arrests were for minor misdemeanors and disproportionately affected students of color.⁴⁶ More alarming, from

⁴⁴ Proposed Consent Decree, *supra* note 16, at para. 420.

⁴⁵ DOJ CHICAGO REPORT, *supra* note 22, at 34 (listing examples of CPD excessive force and arrests of children, including an example of a teenaged girl arrested after having her cell phone in school, against school policy, and refusing to leave the school. The CPD officer Tasered the teenager).

⁴⁶ Yana Kunichoff, *Police in Chicago public schools operate with no special training and little oversight*, CITY BUREAU, Feb. 1, 2017, <https://www.citybureau.org/stories/2017/2/7/police-in-chicago-public-schools-operate-with-no-special-training-and-little-oversight>; *see also* HANDCUFFS IN HALLWAYS, THE STATE OF POLICING IN CHICAGO PUBLIC SCHOOLS, <http://povertylaw.org/files/docs/handcuffs-in-hallways-final.pdf> (2017) [hereinafter *Handcuffs in Hallways*] (noting that African-American children comprised only 40% of the CPS student population,

September 1, 2007 to September 14, 2017, CPD shot and killed 35 children and youth and, as mentioned above, used Tasers against 751 children and youth—predominately children and youth of color.⁴⁷ CPD presence in schools, without proper oversight, policies, and transparency, will continue to disproportionately target children of color, feeding them into the juvenile and criminal justice systems.

The proposed consent decree provides that Chicago Public Schools (CPS) and CPD will create screening criteria for officers in CPS.⁴⁸ We recommend that the screening requirements include a review of officers' personnel and disciplinary files and complaint records. Officers with pending investigations, misconduct, or a history of abuse to children or youth should not be allowed to work within schools.⁴⁹ Therefore, we recommend the following *italicized* revisions to paragraph 39:

Before the 2019-2020 school year begins, in consultation with CPS and considering input from CPD members, including officers assigned to work in CPS schools, school personnel, families, students, and community stakeholders, CPD will develop and implement screening criteria to ensure that all officers assigned to work in CPS schools have the qualifications, skills, and abilities necessary to work safely and effectively with students, parents and guardians, and school personnel. *The screening criteria should be publicized on CPD and CPS' website and must require a thorough review of each officer's past complaints, disciplinary file, and personnel file as part of the application process.* Only CPD officers who satisfy the screening criteria will be assigned to work in CPS schools.

but were the subject of 75% of CPD school arrests in 2011 and 2012 and over 60% of CPS's law enforcement referrals and school-related arrests in 2013).

⁴⁷ INDEPENDENT POLICE REVIEW, *supra* note 34, at 22.

⁴⁸ Proposed Consent Decree, *supra* note 16, at para. 39.

⁴⁹ *See* HANDCUFFS IN HALLWAYS, *supra* note 46, at 11-12 (noting that in April 2016, 67% of CPD officers in Chicago Public Schools had Independent Police Review Authority complaints lodged against them, 31% had three or more complaints lodged against them, and 11% have ten or more complaints).

G. Extend the time for Court’s monitoring and implementation of the consent decree

The consent decree provides that the City will attempt to achieve full compliance with the consent decree within five years of the effective date.⁵⁰ However, given the significant level of well-documented police violence and abuse within the CPD, five years is simply not enough time. To ensure appropriate implementation of the consent decree, oversight of CPD should last ten years, like the consent decree between the DOJ and the Commonwealth of Puerto Rico.⁵¹

III. Conclusion

The terms of any final consent decree must hold the promise of transforming the CPD into an agency of sworn officers and civilians who seek to serve and protect communities without regard to race, ethnicity, gender, age, or socio-economic status. This promise must be carried out in a manner consistent with the U.S. Constitution, state and federal laws, and departmental policies. We appreciate the opportunity to comment on the proposed consent decree and look forward to continued participation in the collaborative effort to reform the CPD and ensure Chicago’s residents are policed in a constitutional, respectful, and transparent manner.

Sincerely yours,



Sherrilyn A. Ifill
President and Director Counsel

Monique L. Dixon
Deputy Director of Policy and
Senior Counsel

Katurah Topps
Policy Counsel

⁵⁰ Proposed Consent Decree, *supra* note 16, at para. 690.

⁵¹ See Puerto Rico Consent Decree at para. 300, *U.S. v. Puerto Rico*, Case No. 3:12-cv-2039-GAG (D. Pr. July. 17, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2013/07/17/prpd_agreement_7-17-13.pdf.