

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

MICHAEL LEDFORD, JR., and
KAREN LYNN LEDFORD, individually
and on behalf of all persons similarly
situated, Plaintiffs,

v.

THE CITY OF HIGHLAND PARK, Defendant.

Judge William T. Hart
No. 00 C 4212

CONSENT DECREE

Plaintiffs Michael Ledford, Jr. and Karen Lynn Ledford, on behalf of themselves and all persons similarly situated, and defendant the City of Highland Park, through their respective counsel, have agreed to enter into this Consent Decree.

I. HISTORY OF THE LITIGATION

1. Plaintiffs Michael Ledford, Jr. and Karen Ledford are residents of the City of Highland Park, Illinois. They are African-American. They brought this suit on behalf of themselves and all persons similarly situated.
2. Simultaneously with the parties' joint submission of this Consent Decree, plaintiffs have filed their Complaint against defendant pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 2201 and 2202 seeking declaratory and injunctive relief for alleged violations of the Fourth Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and the administrative regulations of the United States Department of Justice effectuating Title VI, 28 C.F.R. § 42.101 et seq.
3. In their Complaint, plaintiffs allege that defendant has maintained policies, practices, and customs which have the result of or require officers of the Highland Park Police Department ("HPPD") to target persons for surveillance, stops, detentions, interrogations, requests for consent to search, and searches on the basis of race or ethnicity.
4. On July 27, 2000, the Court certified a plaintiff class based upon allegations of racial profiling set forth in the Complaint. The plaintiff class defined by the Court consists of the following persons:

All persons who (a) have in the past and are likely in the future to be and (b) all persons who will in the future be, subjected to any policy, practice or custom which has the result of or requires Highland Park Police Department officers to target persons for surveillance, stops, detentions, interrogations, requests for consent to search, and searches on the basis of race or ethnicity.

5. Defendant the City of Highland Park is a duly constituted municipal corporation under the laws of the State of Illinois. The City operates the Highland Park Police Department.

6. Defendant the City of Highland Park denies that the City, or any of its employees, representatives, or officers has engaged in any racial profiling or any other discriminatory law enforcement practices, or that the City has adopted, approved or condoned a policy, practice or custom that requires its law enforcement officers to target persons for surveillance, stops, detention, interrogations, requests for consent to search, or searches on the basis of race or ethnicity. Without limiting the generality of the foregoing, the City of Highland Park categorically denies that the City, or any of its employees, representatives, consultants, or officers has engaged in racial profiling or any other discriminatory law enforcement practices with respect to plaintiffs Michael Ledford, Jr., and Karen Lynn Ledford.

7. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331 and 1343(a). Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) because all of the events giving rise to the claims in the Complaint occurred within the Northern District of Illinois.

II. RESOLUTION OF DISPUTED CLAIMS

8. This Consent Decree is a compromise and settlement of disputed claims, and does not constitute a determination of entitlement or liability with respect to the claims of racial profiling asserted in the complaint. Nothing herein shall be interpreted or construed as any weakness of proof on the part of the plaintiffs concerning their claims of racial profiling by the City of Highland Park. Nothing herein shall be interpreted or construed as an acknowledgement, admission, or evidence of liability on the part of the City of Highland Park with respect to the plaintiffs' claims or any other claims of discriminatory law enforcement practices, nor shall this Consent Decree be interpreted or construed as an acknowledgement, admission, or evidence of any violation of applicable law or the existence of a policy, custom or practice by the City's enforcement officials that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. Nor shall this Consent Decree be interpreted or construed as a waiver of any defenses or immunities available to the City of Highland Park and its elected and appointed officials, representatives and officers under the Constitutions and laws of the United States and the State of Illinois. This Consent Decree shall not be used by any plaintiff, plaintiff class member or other party as evidence in any other proceeding, claim, case, or lawsuit.

9. The parties enter into this Consent Decree for the purpose of avoiding the risks, burdens and expense of litigation. This Consent Decree is in the public interest because it promotes effective, non-discriminatory law enforcement within the City of Highland Park, and avoids the diversion of resources to adversarial litigation.

10. This Consent Decree and Judgment shall constitute a final resolution of all claims arising out of the incidents alleged in the Complaint, whether asserted therein or not. Without limitation, such claims hereby resolved include requests by the named plaintiffs and the plaintiff class for: (i) declaratory relief, (ii) injunctive relief, and (iii) costs and expenses, including expert and consulting fees, and attorney fees pursuant to 42 U.S.C. § 1988 or any other law or act cited therein. This Consent Decree and Judgment shall be binding upon plaintiffs Michael Ledford, Jr. and Karen Lynn Ledford and the plaintiff class, and upon the defendant and its officers, agents, employees, and successors in office. However, this Consent Decree has no effect on any unnamed class member's right to bring a suit for damages.

11. The City of Highland Park shall not be required to pay the plaintiffs Michael Ledford, Jr., and Karen Lynn Ledford money damages (both compensatory and punitive), nor shall the City of Highland Park be

required to pay said plaintiffs or their counsel attorneys fees, costs or expenses as a result of any of the matters alleged in the Complaint.

12. Plaintiffs acknowledge that the City of Highland Park has agreed to enter into this Consent Decree based, in part, on the adoption and continued effectiveness of a resolution by the Board of Governors of the RBF declaring the RBF's intention that it will not sponsor or file any other claims of racial profiling, as defined in this Consent Decree, against the City of Highland Park arising from events occurring on or prior to the date of filing of the Complaint in this case.

III. IMPLEMENTATION PROVISIONS

13. NOW, THEREFORE, upon consent of the parties and approval of this Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

A. Definitions

14. The term "HPPD" means the Highland Park Police Department.

15. The term "RBF" means the Roger Baldwin Foundation of ACLU, Inc.

16. The term "officer" means any law enforcement officer employed by the HPPD, who is on duty or otherwise acting or purporting to act in his official capacity, including any supervisor.

17. The term "civilian" means any person who is not an officer.

18. The term "incident" means all contact between an officer and a civilian that involves a surveillance, stop, detention, interrogation, request for consent to search, or search. 19. The term "racial profiling" means the consideration by an officer, in any fashion or to any degree, of the race or ethnicity of any civilian in deciding whether to surveil, stop, detain, interrogate, request consent to search, or search any civilian; except when officers are seeking to detain, apprehend or otherwise be on the lookout for a specific suspect sought in connection with a specific crime who has been identified or described, in part, by race or ethnicity and the officer relies, in part, on race or ethnicity in determining whether reasonable suspicion exists that a given individual is the person being sought.

20. The term "surveillance" means the intentional visual observation of a civilian in a moving vehicle for two minutes or longer by an officer in a moving vehicle. The circumstance of an officer in a moving vehicle being in close proximity to the vehicle of a civilian solely as a consequence of the regular flow of traffic shall not constitute surveillance.

21. The term "stop" means every stop of a civilian in a vehicle by an officer.

22. The term "detention" means every encounter between a civilian and an officer in which a reasonable civilian would have believed that he or she was not free to leave, whether the civilian is on foot or in a vehicle.

23. The term "interrogation" means the questioning of a civilian during a stop by an officer concerning matters not reasonably related to the circumstances that justified the stop in the first instance.

24. The term "search" means every search by an officer of a civilian or a civilian's vehicle or other property, whether or not contraband is found.

25. The term "contraband" means any item the possession of which is prohibited by local, state, or federal law.

26. The term "target" means select.

27. All references to collecting, reporting, or analyzing information by "race or ethnicity" mean collecting, reporting, or analyzing information using the following categories: White, Black, Hispanic, Asian, and American Indian.

28. The term "complaint" includes any allegation by a civilian or officer that an officer engaged in any form of misconduct.

29. The term "complainant" means any person who makes a complaint against an officer or the HPPD.

B. Consideration of race

30. Officers shall not engage in racial profiling. Officers may not consider in any fashion or to any degree the race or ethnicity of any civilian in deciding to surveil, stop, detain, interrogate, request consent to search, or search any civilian, except as provided in paragraph 31 of this Consent Decree.

31. Where officers are seeking to detain, apprehend, or otherwise be on the lookout for a specific suspect sought in connection with a specific crime who has been identified or described in part by race or ethnicity, officers may rely in part (but not solely) on race or ethnicity in determining whether reasonable suspicion exists that a given individual is the person being sought.

C. Documentation of incidents

32. For every incident involving a stop, detention, interrogation, and/or search, the officer involved shall document the incident and record:

- (a) the name and identification number of the officer(s) involved;
- (b) the date, time, and location of the incident;
- (c) the name and address given by the civilian(s) involved;
- (d) the gender and race or ethnicity of the civilian(s) involved;
- (e) whether a vehicle was involved, and if so a description of the vehicle, the state of the vehicle's license plate, and the state in which the driver is licensed to drive;
- (f) the basis for the stop or detention;
- (g) whether a civilian was frisked, and if so the basis for the frisk;
- (h) whether consent to search was requested, and whether consent was granted;
- (i) whether a non-consensual search was performed, and if so the basis for the search;
- (j) whether a drug-detection canine was deployed, and if so the basis for the deployment, the identity of

the canine, and whether an alert occurred; and

(k) whether contraband was discovered, and if so the nature of the contraband.

33. Whenever an officer documents the race or ethnicity of a civilian pursuant to paragraph 32, he or she must do so on the basis of the officer's perception of the civilian's race or ethnicity, and may not do so by asking the civilian to identify his or her race or ethnicity.

34. For every incident referred to in paragraph 32, the officer shall record the required data, whether or not the officer issues a citation or written warning to the civilian.

35. The HPPD will facilitate the collection of the data required above by providing appropriate written forms to its officers. The information specified in paragraph 32(j) may be recorded on a form separate from the other information specified in paragraph 32.

36. The HPPD shall facilitate the analysis of the data required above by recording and storing the data on a computerized data system.

D. Video and audio equipment

37. The HPPD shall equip with audio and video equipment every marked HPPD patrol vehicle, except two-wheel vehicles (motorcycles) and four-wheel, all-terrain vehicles (ATV's) and every other HPPD vehicle regularly used to enforce traffic laws. The exception of motorcycles and ATV's is based expressly upon the City's representation that such vehicles are not regularly used to enforce traffic laws. The HPPD shall begin installing this equipment within six months, and shall complete the installation process within one year.

38. The HPPD shall train all officers operating a patrol vehicle on the proper use of the audio and video equipment, and shall ensure the equipment is regularly inspected, maintained, and repaired.

39. Officers shall use the video and audio equipment to record every stop - and every detention, interrogation, and/or search conducted during a stop - in which they participate. The recording shall begin when the stop commences, or when the officer arrives at the scene of an ongoing stop. The recording shall continue until the civilian or the officer departs, whichever occurs first.

40. The video and audio equipment mandated in paragraphs 37 through 39 shall be used in a manner consistent with the Illinois Eavesdropping Act, 720 ILCS 5/14-1 et seq., as may be amended from time to time.

E. Supervision

41. The City shall develop and implement an effective program for reviewing documentation of incidents and any associated audio and video recordings obtained in accordance with paragraphs 32 and 39 hereof to evaluate compliance with Section III(B) of this Consent Decree. The HPPD supervisory personnel shall be responsible for reviewing such documentation and recordings regularly. Whenever supervisory review reasonably indicates a possible violation of Section III(B) of this Consent Decree, the HPPD shall refer any incident for investigation by the HPPD internal investigative unit. Appropriate investigation and disposition by the internal investigative unit shall be made.

42. The City shall develop and utilize a protocol for analyzing the computer data set forth in paragraph

36 in such a manner as to assure compliance with Section III(B) of this Consent Decree. Such analysis shall be performed and documented on at least an annual basis. The protocol shall include specific numerical or statistical benchmarks by which compliance with Section III(B) of this Consent Decree by individual HPPD officers will be evaluated.

F. Civilian Complaints

43. The City shall develop and implement an effective program to inform civilians that they may make complaints or provide other feedback regarding the performance of any officer, including a complaint that an officer's conduct during any incident was motivated by the civilian's race or ethnicity.

44. The City shall require all officers to inform civilians who object to an officer's conduct that civilians have a right to make a complaint. The City shall prohibit officers from discouraging any civilian from making a complaint.

45. Civilians may initiate a complaint either in person, by mail, by telephone, by facsimile, or over the internet. The City shall accept and investigate complaints filed by civilians other than the alleged victim of misconduct. The City shall not require that a complaint be submitted in writing to initiate a misconduct investigation.

46. The City shall assign and record a case number for each complaint.

47. In every complaint investigation, the City shall make findings based on a "preponderance of the evidence" standard.

48. In every misconduct investigation, the City shall consider circumstantial evidence, as appropriate, and make credibility determination, if feasible. There shall be no automatic preference for an officer's statement over a civilian's statement, or for a civilian's statement over an officer's statement. There shall be no automatic judgment that there is insufficient information to make a credibility determination where the only or principal information about an incident is the conflicting statements of the involved officer and civilian.

49. Subject to and in conformance with the terms of the HPPD collective bargaining agreement, the HPPD shall initiate disciplinary proceedings against any officer who is the subject of a substantiated misconduct adjudication.

50. The HPPD shall require officers to report, based on personal knowledge, any conduct by other officers involving civilians that reasonably appears to constitute:

- (a) a violation of Section III(B) of this Consent Decree;
- (b) an intentional failure to follow any of the documentation requirements of this Consent Decree; or
- (c) the intentional provision of false information in a misconduct investigation.

G. Training

51. The HPPD shall train all recruits and officers in cultural diversity, which shall include training on interactions with persons from different racial, ethnic, and religious groups; communication skills; and integrity and ethics, including the duties of truthfulness and reporting misconduct by fellow officers, the

importance of avoiding misconduct, professionalism, and the duty to follow civilian complaint procedures and to cooperate in misconduct investigations. This training shall be reinforced through mandatory annual in-service training covering these topics.

52. The HPPD shall train all officers regarding their respective duties under this Consent Decree.

H. Inspection of records

53. Except as provided in Paragraph 55, and subject to any and all restrictions imposed upon law enforcement agencies by the Illinois State Police and the Department of Justice governing the availability, use, or dissemination of LEADS or NCIC data or other information, the HPPD shall make the following documents and records available for inspection by attorneys of the RBF:

- (a) all reports of incidents involving stops, detentions, and/or searches, as set forth in paragraph 32;
- (b) all data recorded and stored on a computerized data system, as set forth in paragraph 36;
- (c) all protocols and analysis required to be developed and performed as set forth in paragraph 42; and
- (d) all complaints by citizens concerning allegations of racial discrimination in law enforcement as well as the City's investigation and disposition of such complaints, as set forth in paragraphs 43 through 50, except that the City shall have no obligation to disclose the names of any complainants who expressly withhold their consent to the disclosure of their names.

54. Inspection of records and documents pursuant to paragraph 53 shall occur on a quarterly basis, upon request of attorneys at the RBF.

55. Notwithstanding paragraph 53, the HPPD may not disclose to attorneys at the RBF:

- (a) any civilian complaint subject to an ongoing investigation; or
- (b) any law enforcement record or juvenile court record that must be maintained as confidential pursuant to Sections 1-7 and 1-8 of the Illinois Juvenile Court Act (705 ILCS 405/1-7, 1-8).

56. With advance notice to the City's Corporation Counsel, attorneys at the RBF may disclose information contained in the materials specified in paragraph 53 to the Court. In addition, RBF attorneys may disclose to the public any information from said materials that does not identify any particular civilian(s) or officer(s). However, nothing herein shall preclude the City from seeking a protective order limiting the scope of disclosures to the public of information contained in the materials specified in paragraph 53.

I. Resolution of disputes

57. The parties to this Consent Decree seek to encourage voluntary discussions of disputes concerning compliance with this Consent Decree in order to avoid unnecessary Court intervention. Accordingly, it is agreed that the following procedure for resolving claims of non-compliance with the decree shall be established:

- (a) In the event of any claims that defendants have failed to comply with the decree, members of the plaintiff class shall implement the following procedure:

(i) Any member of the plaintiff class, either individually or by counsel, shall request a meeting with representatives of the City. Such meeting shall be held within seven (7) days of such request. At such a meeting, the parties thereto may attempt to resolve the dispute without recourse to this Court.

(ii) Prior to or at such meeting, the member of the plaintiff class may request that the City produce documents relevant to the dispute.

(b) Upon receipt of a claim of violation of any provision of the Consent Decree, the City shall:

(i) advise plaintiffs' counsel of such claim; and

(ii) advise the person making such claim that they are entitled to counsel at the meeting provided for in subsection (a) of this paragraph.

(c) The procedures provided in this paragraph shall be in addition to any other remedies available to members of the plaintiff class. More particularly, the members of the plaintiff class retain their right to enforce this decree at any time, prior to its termination, upon motion before this Court. Notwithstanding the foregoing, the named plaintiffs and their counsel agree to provide the defendant City with 10 days notice, within which time the City may cure any alleged noncompliance, prior to the filing of any such motion.

(d) Any failure by plaintiffs or defendants to seek Court intervention to enforce or modify the decree after the discussions provided for in this paragraph will not constitute a waiver of the parties' rights in subsequent proceedings to seek relief from or to enforce the Consent Decree.

IV. RETENTION OF JURISDICTION

58. The Court retains jurisdiction of this action for all purposes.

59. This Consent Decree shall terminate five years after its date of entry; provided, however, this Consent Decree shall terminate three years after its date of entry if both of the following conditions are met:

(a) The HPPD is in compliance, as of the third anniversary of the date of entry of this Consent Decree, with all provisions and obligations set forth in Sections III(B), III(C), III(D), III(E), III(F), III(G), and III(H) of this Consent Decree; and

(b) Either (i) the documents and records required to be made available for review pursuant to this Consent Decree reveal no incidence of racial profiling during the term hereof, or (ii) in the event that there has been an allegation of racial profiling during the term hereof, there has been an investigation and response by the HPPD that the plaintiffs and their attorneys at the RBF consider to be effective, timely and adequate.

SO ORDERED this ____ day of _____, 2000.

By:

United States District Court Judge

Approved:

One of plaintiffs' attorneys

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