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REGULATING STOP AND FRISK IN NEW YORK CITY

EDWAR ESTRADA*

I. INTRODUCTION

Imagine you are a college student and decide to help one of your classmates move some of his things out of his grandmother’s house. As you are standing outside of the apartment building, a police officer pulls up to the curb, points a gun in your direction and that of three other people on the sidewalk, and yells “get on the ground! Now!” You lie with your belly on the ground while two other officers approach you with their guns drawn. The officer who initially pointed the gun at you says “[w]e heard someone has a gun;” the officers proceed to search you and the three other people as you all continue to lie face down on the ground. After finding no weapons, the officers ask everyone for identification, write down everyone’s name, and then walk away without saying anything else.¹

This is a typical example of a stop and frisk conducted by New York City police officers in accordance with the New York City Police Department’s (NYPD) stop-and-frisk policy. This example is typical of the denigration experienced by New York City residents who are stopped by the police on a daily basis, particularly African-American² and Latino males between the ages of fourteen and twenty-four.³ The NYPD is most well known for using stop and frisk because in the early 1990s, then-Mayor of New York City, Rudolph Giuliani and his Police Commissioner, William Bratton, instituted pro-active patrolling (also known as a “zero-tolerance policy”) where police officers were to engage persons who they

* J.D., 2014 St. John’s University School of Law.

¹ Complaint at 7-8, Floyd v. City of New York, 08 civ 01034 (SAS) (S.D.N.Y 2008), available at http://ccrjustice.org/files/Floyd_Complaint_08.01.31.pdf [hereinafter Floyd Complaint].

² This term may be limiting; particularly when referring to “African-Americans” in New York City because there is such a diverse population of individuals who are of African descent but do not define themselves as African-Americans.

suspected of violating both minor and serious crimes. The goal was to stop as many citizens as possible for minor crimes (i.e. loitering, public drinking, etc.), with the hope that they would be caught committing more serious crimes (i.e. possession of a deadly weapon, possession of an illegal substance, etc.) while being frisked.

Additionally, the NYPD started a data-driven program called Comparison Statistics ("Compstat") to target high crime areas. Compstat is an electronic computer system that allows the NYPD to map its weekly crime statistics. Precinct commanders use these crime statistics to determine which areas officers are assigned to patrol, often times placing them in areas with large populations of minorities. This led to widespread racial profiling, which continues to exist today.

A recent phenomenon has also added to the complexity of New York City's stop-and-frisk policy. Several NYPD officers have claimed, publicly or through anonymity, they are under daily pressure from their superior officers to make more stops and meet weekly and/or monthly citation quotas. These officers attribute the high number of stops and frisks to this pressure. However, Mayor, Michael Bloomberg, and his police commissioner, Ray Kelly, deny the existence of quotas. Without more than the word of a few police officers, it is difficult to determine whether such quotas exist and whether they are contributing to racial profiling.

Although there is some uncertainty as to why the number of stops NYPD officers make are so astronomical (four million since Mayor Bloomberg took office), what is certain is that a substantially large number of African-Americans and Latinos, particularly males between the ages of fourteen and twenty-four, are stopped and frisked more frequently in comparison to their White counterparts. These reports indicate that even when African-Americans are not the majority population in a particular neighborhood,
they are still two or three times more likely to be stopped by the police than Whites.\textsuperscript{9} To make matters worse, most of these stops do not lead to an arrest and only a very small percentage of frisks lead to the recovery of any weapons.\textsuperscript{10} In these communities, many African-Americans and Latinos do not view police officers as enforcers of the law or protectors of their communities, but rather as agitators and abusers of the law.\textsuperscript{11}

In a recent decision, the United States District Court for the Southern District of New York ordered several reforms be made to New York City's stop-and-frisk policy. In its August 12, 2013 decision, the Southern District: 1) appointed a monitor to oversee the reform process, 2) ordered a revision of the policies and training materials related to the stop-and-frisk policy and racial profiling, 3) ordered changes to critical stop-and-frisk documentation, 4) required changes to supervision, monitoring, and discipline of officers, 5) ordered a joint remedial process that will allow all parties in the litigation to develop remedial measures to improve stop-and-frisk, and 6) required the use of a body-worn camera by one officer in one precinct of each borough for a period of one year.\textsuperscript{12} Although these solutions will help improve the stop-and-frisk policy, more is required to ensure long-term improvements. Additionally, due to a recent appeal by the City,\textsuperscript{13} these reforms may never be implemented.

Although New York City is best known for its use of the stop-and-frisk policy, police departments across the country use this same tactic. However, these other police departments do not have the high volume of stops and frisks New York City has. Nonetheless, Philadelphia is a city that, in the last five years, received media attention after its newly elected mayor, Michael Nutter, adopted the high-volume and aggressive approach as seen in New York City.\textsuperscript{14} After Mayor Nutter took office, stops nearly doubled to more than 200,000 from 2007 to 2008.\textsuperscript{15} Similar to stops made in New York City, Philadelphia stops were thought to be mostly

\textsuperscript{9} See RACIAL DISPARITIES, supra note 8.
\textsuperscript{10} Id.
\textsuperscript{12} Floyd v. City of New York, 959 F. Supp. 2d 668, 675-687 (S.D.N.Y. 2013).
\textsuperscript{15} Id.
determined based on race. In 2009, 72 percent of the stops made in Philadelphia were stops of African Americans.\textsuperscript{16}

Nevertheless, in 2011, the City of Philadelphia and the Philadelphia Police Department (PPD) agreed to modify Philadelphia’s stop-and-frisk policy. Several plaintiffs, their attorneys, and the American Civil Liberties Union of Pennsylvania brought a class action lawsuit against Philadelphia and its police department in \textit{Bailey v. Philadelphia}, alleging violations of plaintiffs’ constitutional rights under the Fourth and Fourteenth Amendments.\textsuperscript{17} As a result of this litigation, the City of Philadelphia and its police department agreed to improve stop and frisk practices by: (1) eliminating furtive movement, loitering, acting suspiciously, and being in a high crime area as legally permissible reasons to make a stop, (2) implementing periodic reviews of stop-and-frisk to see if there are any procedures that may allow stops based on race, (3) creating an electronic database that allows the City, police department, and the plaintiffs’ attorneys to monitor any racial discrepancies in the stops being made by police officers, and (4) hiring a court-appointed monitor to recommend any measures that are appropriate or necessary to ensure stop and frisk practices comply with the Fourth and Fourteenth Amendments and the Pennsylvania Constitution.\textsuperscript{18}

This Note posits that the NYPD stop-and-frisk policy does not hold police officers sufficiently accountable for the stops and frisks they make and that the policy has a disparate effect on African-American and Latinos as compared to Whites. Therefore, this Note proposes that, in addition to adopting the reforms ordered in \textit{Floyd v. City of New York}, New York City and the NYPD give electronic database access to civil rights groups that represent victims of illegal stops and frisks to ensure stops and frisks are conducted legally. This Note also proposes the City create an outside disciplinary body to regulate officers who are carrying out stops and frisks with less than reasonable suspicion or to discipline commanding officers who put pressure on officers to make more stops.

Part II of this Note explains New York City’s stop-and-frisk policy and the problems that have arisen as a result of it. Part III analyzes the


II. NEW YORK CITY STOP AND FRISK

A. STOP-AND-FRISK PROCEDURES

Stops in New York City begin with a form called “Unified Form 250” but known to NYPD officers as a “250.” This form is a “Stop, Question, and Frisk Report Worksheet” that officers are required to fill out every time they make a stop. The form lists several circumstances where an officer has reasonable suspicion to believe a suspect has committed or is about to commit a crime and where an officer has reasonable suspicion to believe a suspect is armed or presently dangerous. According to the form, an officer has reasonable suspicion to make a stop when a suspect: (1) is carrying objects in plain view used in the commission of a crime, (2) fits the description of a suspect wanted by the police, (3) exhibits actions that are indicative of casing a victim or location, (4) exhibits actions that are indicative of acting as a lookout, (5) has a suspicious bulge or object, (6) exhibits actions indicative of engaging in a drug transaction, (7) exhibits furtive movement, (8) exhibits actions indicative of engaging in a violent crime, (9) is wearing clothes or disguises commonly used in the commission of a crime, or (10) is engaged in other criminal activity.

Officers use this list of circumstances to determine which individuals they should stop. Officers can stop individuals on the street and also have the authority to stop individuals in public and private apartment buildings. During a stop, officers are supposed to question suspects based only on their reasonable suspicion to determine if a crime has been or is about to be committed. Additionally, during a stop, the police officer may have

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20 Id.
22 N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2013).
reasonable suspicion the suspect is armed or dangerous.

Additionally, NYPD officers also use Unified Form 250 to determine when to carry out frisks. Unified Form 250 lists various circumstances where police officers have reasonable suspicion to make a frisk. According to the form, an officer has reasonable suspicion to make a frisk when a suspect: (1) is wearing inappropriate attire possibly concealing a weapon, (2) makes verbal threats of violence, (3) has prior criminal violent behavior officers are aware of, (4) uses force or weapon against police, (5) exhibits furtive movement, (6) exhibits actions indicative or engaging in violent crimes, (7) refuses to comply with officer's directions leading to reasonable fear for safety, (8) is suspected of a violent crime, (9) has a suspicious bulge or object, or (10) displays any other reasonable suspicion of having a weapon.23 The officers' reasonable suspicion that any of these situations is occurring gives them authority to frisk the suspect to ensure the officers' safety.24 If the officers ultimately determine a crime has been committed, they have authority to carry out a warrantless arrest.25

B. PROBLEMS WITH STOP-AND-FRISK IN NEW YORK CITY

The problem with New York City's stop-and-frisk policy is best illustrated in statistics. In 2011, the NYPD made 685,724 stops, a 14 percent increase from 2010 and a more than 600 percent increase since Mayor Michael Bloomberg took office in 2002.26 Of those 685,724 stops, 574,483 (86.6 percent) were of African-Americans and Latinos, who according to the latest U.S. Census Bureau only make up 54.1 percent of New York City's population.27 Some argue that these figures reflect the NYPD's presence in "high crime" areas, which are mostly populated by African-Americans and Latinos. However, in 70 out of the NYPD's 76 precincts, African-Americans and Latinos made up more than 50 percent of stops and, in 33 precincts they accounted for more than 90 percent of stops.28 Furthermore, African-Americans and Latinos accounted for more than 70 percent of stops in 6 of the 10 precincts where their population was at its lowest.29 The substantial number of stops made of African-Americans

24 N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2013).
25 N.Y. CRIM. PROC. LAW § 140.05 (McKinney 2013).
27 See id. at 5; see also U.S. CENSUS BUREAU, STATE AND COUNTY QUICKFACTS, available at http://quickfacts.census.gov/qfd/states/36/3651000.html.
28 2011 REPORT, supra note 3 at 5.
29 Id. at 5-6.
and Latinos is possible because African-Americans and Latinos are often stopped on multiple occasions; in fact, African-Americans and Latinos between the ages of fourteen and twenty-four are often the targets of a hugely disproportionate number of stops. Though they constitute only 4.7 percent of New York City’s population, African-American and Latino males between the ages of fourteen and twenty-four made up 41.6 percent of stops. On the other hand, White males between the ages of fourteen and twenty-four made up 2 percent of the City’s population and only 3.8 percent of stops. This disproportionality also existed in frisks conducted by officers after a stop was made.

In 2011, the NYPD conducted frisks in 381,704 stops or in 55.7 percent of stops. Under Terry v. Ohio, officers need reasonable suspicion that a person is armed or presently dangerous to frisk him or her. Yet, only 1.9 percent of frisks conducted by the NYPD in 2011 turned up a weapon. This suggests officers are conducting frisks with less than reasonable suspicion. Statistics also indicated African-Americans and Latinos who were stopped were more likely to be frisked than Whites who were stopped. Of African-American and Latinos who were stopped, 57.5 percent were frisked, while only 44.2 percent of Whites who were stopped were frisked. However, only 1.8 percent of African-Americans and Latinos frisked were found in possession of a weapon, as compared to 3.8 percent of Whites frisked were found in possession of a weapon. These numbers are a strong indication that race is a factor when officers are determining whether they should conduct a frisk.

Despite the clear racial disparity in stops and frisks, some argue that these tactics are justified by the crimes prevented. However, the numbers do not support this theory. In 2011, weapons were found in less than 0.5 percent of stops. Of the 685,724 people stopped, 605,328 people, or 88.3 percent, were innocent, as evidenced by the fact that they were neither issued a summons nor arrested. Of the 574,483 African-Americans and

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30 Id. at 7.
31 Id.
32 Id.
33 Id. at 8.
34 See generally Terry v. Ohio, 392 U.S. 1 (1968).
35 2011 REPORT, supra note 3, at 8.
36 Id. at 10.
37 Id.
38 Id.
39 Id. at 14.
40 2011 REPORT, supra note 3, at 15.
Latinos stopped, 507,641 people, or 88.4 percent, were not found to be committing any crime.\footnote{Id. at 15, 17.}

Furthermore, 2012 NYPD data show that a decrease in stops will not necessarily lead to an increase in crime. New York City’s murder rate is at an all-time low since the 1960s and its shootings are down by 8.5 percent from 2011, all while 30 percent fewer people were stopped.\footnote{See New York City Murder Rate 2012: NYPD Says Number of Homicides This Year on Pace To Reach Historic Low, HUFFINGTON POST, (Dec. 26, 2012, 5:43 PM), http://www.huffingtonpost.com/2012/12/26/new-york-city-murder-rate-2012-nypd-homicides-historic-low_n_2366852.html; see also New York City Gun Violence And NYPD Stop-And-Frisks Both See Decline In 2012, HUFFINGTON POST, (Dec. 26, 2012, 12:02 PM), http://www.huffingtonpost.com/2012/12/26/new-york-city-gun-violence-nypd-stop-and-frisks_n_2364869.html?utm_hp_ref=new-york.}

These numbers are a strong suggestion that excessive stops and frisks, unjustifiably targeting African-Americans and Latinos, are not leading to the recovery of more weapons or to more arrests. Instead, these stops and frisks are leading to the large-scale denigration of African-Americans and Latinos throughout the City.

African-Americans and Latinos experience belittling from the NYPD on a daily basis. Some are stopped in their neighborhood and questioned, frisked, humiliated, and disrespected by the police.\footnote{See Ross Tuttle & Erin Schneider, The Hunted and the Hated: An Inside Look at the NYPD’s Stop-and-Frisk Policy, THE NATION, (Oct. 8, 2012), http://www.thenation.com/article/170413/stopped-and-frisked-being-fking-mutt-video.} Officers will often require citizens to place their hands on their head, place their hands on a vehicle, stand against a wall, or lay on the ground as they conduct a search,\footnote{See Floyd Complaint at 17-23; see also Complaint at 12-18, Davis v. City of New York, 10 Civ 0699 (S.D.N.Y. 2010), available at http://www.naacpldf.org/case/davis-vs-city-new-york.} demeaning African-Americans and Latinos who are innocent of any crime. Police also commonly use force during these stops.\footnote{See 2011 REPORT, supra note 3, at 11; see also Secret Recording of Stop-and-Frisk Makes it to Federal Court, Francis Reynolds, THE NATION, (Aug. 13, 2012), http://www.thenation.com/blog/175728/secret-recording-stop-and-frisk-makes-it-federal-court.} In 2011, far more African-Americans and Latinos had force used against them than did Whites.\footnote{2011 REPORT, supra note 3, at 12.} Force usually involves a police officer placing his or her hands on a suspect to restrain him or her. However, force can also be defined as the use of a weapon against a suspect. In 2011, police officers used force against African-Americans and Latinos in 129,590 stops; force was only used in 9,765 stops of Whites.\footnote{Id.} The victims are then let go with no explanation of why they were stopped or frisked.\footnote{See Tuttle & Schneider, supra note 43.} Some are stopped in
their own apartment buildings and asked to show identification, often multiple times in one day.\textsuperscript{49} Visiting family members and friends are stopped in apartment building lobbies, asked to show identification, questioned about their presence in the building, sometimes frisked, and then given a summons for trespassing.\textsuperscript{50} The New York City stop-and-frisk policy has created resentment for police throughout the City, particularly in African-American and Latino communities.\textsuperscript{51} Rather than embrace police presence, these communities detest it and often times fear it.\textsuperscript{52}

Another problem with New York City's stop-and-frisk policy is that Unified Form 250 gives officers too much discretion in determining when it is appropriate to make a stop or frisk and does not hold them accountable once they have made such stops or frisks. Several items on the 250-form are vague or not sufficiently limiting. The most compelling example is the use of the term "furtive movement." According to the 250-form, an officer has reasonable suspicion to stop and/or frisk someone if that person exhibits "furtive movement." However, the form does not define "furtive movement." Instead, officers individually determine what they believe to be "furtive movement." This lack of clarity gives officers the authority to not only to define "furtive movement," but also to change their definition based on the circumstances; furtive movement in one neighborhood might not be considered furtive movement in another neighborhood. Officers can adjust their definition to justify illegal stops and frisks. In 2011, furtive movement was the most common reason identified by police officers for making a stop, appearing in 351,739 out of the 658,724 (51.3\%) stops made.\textsuperscript{53} The magnitude of these numbers suggests that officers find "furtive movement" is the easiest way to justify more than half the stops they make. Without any guidelines of what is a legal stop as a result of "furtive movement," officers can continue to make a high volume of stops based on their own definition of the term.

The 250-form is also problematic because officers are not required to explain every stop or frisk they make. The 250-form requires officers only

\textsuperscript{49} See generally Complaint at 7-30, Ligon v. City of New York, 2012 WL 1031760 (S.D.N.Y).
\textsuperscript{50} See id.
\textsuperscript{53} 2011 REPORT, supra note 3, at 4 (2012).
to “(Describe)” a “Suspicious Bulge/Object” and to “(Specify)” when they made a stop or frisk based on “Other Reasonable Suspicion Of Criminal Activity.” In every other instance, officers merely have to check off a box without any explanation of why that box was checked off. In turn, officers are not accountable if they make illegal stops or frisks because they do not have to explain what actions led them to check off a particular circumstance. Without such a requirement, officers have the authority to stop and frisk someone for legal reasons, discriminatory reasons, or for no reason at all. These problems have led many citizens and civil rights groups to question the constitutionality of the stop-and-frisk policy.

III. CONSTITUTIONALITY OF STOP AND FRISK

A. FOURTH AMENDMENT

The Fourth Amendment to the United States Constitution states that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Analysis of the constitutionality of the stop-and-frisk policy focuses on an interpretation of the first clause (“reasonableness clause”) of the Fourth Amendment because the policy is based on warrantless searches and seizures. The second clause (“warrant clause”) applies only in instances where officers had a warrant or were required to get a warrant. The essential purpose of the first clause is to “impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials, including law enforcement agents, in order ‘to safeguard the privacy and security of individuals against arbitrary invasions.’” The Fourth Amendment’s reasonableness clause is intended to create limitations assuring an individual’s “reasonable expectation of privacy is not ‘subject to the discretion of the official in the field.’” In Terry v. Ohio, Chief Justice Earl Warren, in his opinion for the Court, set standards of

54 Floyd Complaint at 27-28.
55 Id.
56 U.S. CONST. amend. IV.
59 Prouse, 440 U.S. at 655 (quoting Camara v. Municipal Court, 387 U.S. 523, 532 (1967)).
evaluating stops and frisks to ensure that officers did not unreasonably intrude upon citizens' security and privacy.\textsuperscript{60}

1. The Establishment of Stop-and-Frisk Under the Fourth Amendment

\textit{Terry} was the first Supreme Court case to hold that stops and frisks were subject to the limitations of the Fourth Amendment's reasonableness clause. A "stop" is brief and serves the purpose of investigating criminal behavior,\textsuperscript{61} while a "seizure" requires probable cause because it is typically an arrest.\textsuperscript{62} A "frisk" is a limited search of the outer clothing in attempt to discover weapons that might be used to assault an officer,\textsuperscript{63} while a "search" requires probable cause because it is more intrusive.\textsuperscript{64} Prior to \textit{Terry}, states argued that the smaller degree of intrusiveness in stops and frisks as compared to arrests (or seizures) and searches meant that individuals were not entitled to Fourth Amendment protection when subjected to stops and frisks.\textsuperscript{65} However, in \textit{Terry}, Chief Justice Warren, writing for the Court, eliminated this notion by holding that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."\textsuperscript{66} Additionally, Chief Justice Warren failed to see why a "frisk" would not receive the same Fourth Amendment protection as a "search," asserting that a frisk was a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly."\textsuperscript{67} The Court held that the distinctions in Fourth Amendment protection made between "stop", "seizure", "frisk" and "search" were not only incorrect but also dangerous.\textsuperscript{68} The Court declared that these distinctions "isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen" and "obscure the utility of limitations upon the scope ... of police action as a means of constitutional regulation."\textsuperscript{69} Therefore, the Court rejected the notion that the Fourth Amendment is not applicable to a "stop" or "frisk" simply because police conduct stops "short

\textsuperscript{60} See \textit{Terry}, 392 U.S. 1.
\textsuperscript{61} Id. at 22.
\textsuperscript{62} See id.
\textsuperscript{63} Id. at 30.
\textsuperscript{64} See id.
\textsuperscript{65} See e.g., id. at 10; see also People v. Rivera, 14 N.Y.2d 441 (1964).
\textsuperscript{66} \textit{Terry}, 392 U.S. at 16.
\textsuperscript{67} Id. at 17.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
of something called a ‘technical arrest’ or a ‘full-blown’ search.” 70

Although the Terry court held that individuals were entitled to Fourth Amendment protection from stops and frisks, it also indicated that officers were permitted to make stops and frisks under specific circumstances. Specifically, the Court declared that the general interest in effective crime prevention and detection underlie the recognition that an officer can make a stop “for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.”71 Moreover, the immediate interest of police officers in taking steps to assure that the person they are dealing with is not armed with a weapon that could unexpectedly and fatally be used against them is sufficient to allow officers to conduct frisks.72 However, stops and frisks must still be reasonable under the “reasonableness clause” of the Fourth Amendment.

The Court in Terry created standards under which the reasonableness of stops and frisks should be evaluated. The Court did not create limitations for stops and frisks, but rather stated that those limitations would have to be developed “in the concrete factual circumstances of individual cases.”73 In determining whether a stop or frisk is unreasonable, a court’s inquiry is two-fold: “whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.”74 In justifying a stop or frisk under the Fourth Amendment’s “reasonableness clause,” an officer must be able to point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”75 Courts must use an objective standard to determine whether “the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief that the action taken was appropriate?’”76 An officer’s inarticulate or inchoate suspicions or hunches will not suffice to meet this standard.77

Despite the court’s willingness to give police officers the constitutional power to seize and search citizens with less than probable cause, the Court acknowledged the potential negative effects. It recognized that the police often initiate street encounters and some times those encounters are

70 Id. at 19.
71 Id. at 22.
72 Terry, 392 U.S. at 23.
73 Id. at 29.
74 Id. at 20.
75 Id. at 21.
76 Id. at 21–22.
77 Terry, 392 U.S. at 22, 27.
unrelated to a desire to prosecute crime. It further acknowledged that some police field interrogation tactics violate the Fourth Amendment and are used to harass minority groups, particularly “Negroes.” However, Chief Justice Warren, in his opinion, stated that restricting officers from using the stop-and-frisk policy would “deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.” On the other hand, he stated that under Terry “courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which entrenches upon personal security without the objective evidentiary justification which the Constitution requires.” Although Chief Justice Warren understood the potential ramifications of granting police officers more power to “harass” individuals, he thought the governmental interest coupled with the standards set for stops and frisks outweighed those ramifications.

2. Fourth Amendment Analysis of New York City’s Stop-and-Frisk Policy

Due to the fact-specific nature of the standard set by Terry, it appears that New York City’s stop-and-frisk policy cannot, on its face, be tested for its constitutionality under the reasonableness clause of the Fourth Amendment. According to Terry, a court would need the specific facts of a stop or frisk to determine whether the stop or frisk was reasonable. For example, Terry requires courts to decide whether an officer’s actions were justified at its inception. A court would not be able to determine whether an officer’s actions were justified simply by looking at the New York State statute for stop-and-frisk (§140.50 of the Criminal Procedure Law (“CPL”)) or Unified Form 250. Neither §140.50 of the CPL nor the 250-Form provides specific facts that would assist a court in determining if an officer in a particular stop or frisk was justified, at its inception, in making that specific intrusion. Therefore, despite the disparity in the amount of stops and frisks, it appears that a court would have to do a case by case analysis to determine if this disparity is due to violations of rights protected

78 Id. at 13–15 (Terry was decided in 1968, during an era when the term “Negroes” was used when referring to African-Americans. The more conventional term in 2013 is “African-Americans”).
79 Id. at 14.
80 Id. at 15.
81 Id. at 20.
82 N.Y. CRIM. PROC. LAW § 140.50 (McKinney 2013) (This statute guides stop-and-frisk policies in New York State while Unified Form 250 guides the NYPD’s stop-and-frisk policy).
by the Fourth Amendment.

However, in the August decision *Floyd v. City of New York*, a stop-and-frisk lawsuit challenging the policy’s constitutionality, the United States District Court for the Southern District of New York found New York City’s stop-and-frisk policy unconstitutional under the Fourth Amendment based on the disparities of stops and on New York City’s and the NYPD’s indifference to those disparities.\(^83\) In *Floyd*, the plaintiffs, a group of Blacks and Latinos who were stopped by the NYPD, claimed that the NYPD’s use of stop-and-frisk violated their constitutional rights under the Fourth and Fourteenth amendments.\(^84\) From the outset of its decision, the *Floyd* Court determined that this case was “not primarily about the nineteen individual stops that were the subject of testimony at trial. Rather, this case is about whether the City has a policy or custom of violating the Constitution by making unlawful stops and conducting unlawful frisks.”\(^85\)

In finding that New York City’s stop-and-frisk policy violated the Fourth Amendment, the *Floyd* Court relied on the expert testimony of plaintiff’s expert, Dr. Fagan.\(^86\) Dr. Fagan analyzed the NYPD’s 250-Form database of 4.4 million stops to evaluate how often stops lacked reasonable suspicion.\(^87\) Based on Dr. Fagan’s findings, 6 percent of stops, approximately 200,000 stops, lacked reasonable suspicion.\(^88\) Dr. Fagan’s results were due in large part to NYPD officers’ use of “Furtive Movement” and “High Crime Area” as stand-alone justifications for carrying out stops.\(^89\) Additionally, statistics demonstrated that stops made due to “Furtive Movement” and “High Crime Area” frequently did not result in a summons or arrest.\(^90\) The Court concluded that Dr. Fagan underestimated the number of unjustified stops and the NYPD’s 250-Form database was limiting because it only provided statistics of stops recorded.\(^91\)

Although the Court believed Dr. Fagan’s testimony of the stop-and-frisk statistics demonstrated that the policy violated the Fourth Amendment, it also evaluated institutional evidence of intentional indifference. A 1999 Attorney General Report highlighting the disparities in stops and a variety

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\(^83\) *Floyd*, 959 F. Supp. 2d at 557, 558 (2013 action).

\(^84\) Id. at 556.

\(^85\) Id.

\(^86\) Id. at 588-89.

\(^87\) Id. at 578.

\(^88\) Id. at 559, 579.

\(^89\) Id. at 580.

\(^90\) Id.

\(^91\) See id. at 560-561 (S.D.N.Y. 2013); see also *Floyd v. City of New York*, 861 F. Supp. 2d 274, 278 (S.D.N.Y. 2012).
of evidence demonstrating pressure placed on officers to increase stops were offered by the plaintiffs as institutional evidence of New York City's and the NYPD's intentional indifference to Fourth Amendment violations. The Court found this evidence to be persuasive and concluded that pressure on commanders and officers, asking officers to target minorities, inadequate monitoring and supervision, partially inadequate training, and inadequate discipline, led to an increase in stops without reasonable suspicion. Therefore, the Court found the City's stop-and-frisk policy to be unconstitutional under the Fourth Amendment.

B. FOURTEENTH AMENDMENT

1. Opening the Door for Race-Based Discriminatory Claims

Although stop-and-frisk is typically considered a Fourth Amendment issue, the Fourteenth Amendment is also applicable. The relevant portion of the Fourteenth Amendment as discussed in this section states that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Historically this has meant an individual may not be denied protection under the law based on his or her race, color, religion, sex, or national origin. When the stop-and-frisk policy was first upheld as constitutional in Terry v. Ohio, the Court expressed some concerns of "wholesale harassment" of minority groups that may occur as a result of the policy. However, some of the first cases to analyze race-based discrimination in the stop-and-frisk policy did not do so under the Fourteenth Amendment. Rather, the issue was analyzed under the Fourth Amendment’s reasonableness standard. Nevertheless, these Fourth Amendment cases opened the door for Fourteenth Amendment challenges of the stop-and-frisk policy because claimants asserted that race rather than reasonable suspicion was the reason for a stop and/or frisk.

In 1975, United States v. Brignoni-Ponce was one of the first cases that examined the use of race as a justification to make a stop. In that case, two Border Patrol officers pulled over a vehicle on the highway near the U.S.-Mexican Border with three occupants that appeared to be of Mexican

92 See Floyd, 959 F. Supp. 2d at 560-61.
93 Id. at 562.
94 U.S. CONST. amend. XVI.
descent. The officers later admitted they pulled over the vehicle only because its three occupants appeared to be of Mexican descent, which led the officers to believe they were illegal aliens. After questioning the three occupants, officers learned that two of them were in the U.S. illegally. All three men were arrested and the respondent was charged with two counts of knowingly transporting illegal immigrants. In determining whether the stop was valid, the court evaluated whether the officers had "reasonable grounds to believe that the three occupants were aliens." The Supreme Court concluded that the stop violated the Fourth Amendment because the officers did not have reasonable suspicion to believe that "criminal activity may be afoot." Although this decision did not allow race alone to meet the standard of reasonable suspicion to justify a stop, it did not exclude race as a factor. In fact, the Court held "Mexican appearance" could be a relevant factor where a high likelihood exists that any given person of Mexican Ancestry is an alien.

Another significant Supreme Court case that analyzed race-based discrimination in the stop-and-frisk policy under the Fourth Amendment was Whren v. United States. In that case, plainclothes officers were patrolling a "high drug area" area in an unmarked vehicle when a dark Pathfinder truck and its young occupants caught the officers' attention. The truck remained at a stop sign for an "unusual" amount of time as the driver looked down at the lap of the passenger in the front seat. When the officers made a U-turn to head back toward the truck, the truck turned suddenly to its right, without signaling, and took off at an "unreasonable" speed. The officers caught the Pathfinder and pulled it over. After introducing himself and asking the driver to place the car in park, one of the officers immediately observed two plastic bags of crack cocaine in petitioner Whren's lap. Petitioners were arrested and several drugs were...
found in the vehicle. The petitioners argued the officers did not have probable cause or reasonable suspicion to believe they were engaged in illegal-drug activity and the "asserted ground for approaching the vehicle—to give the driver a warning concerning traffic violations—was pre-textual." Petitioners relied on a District of Columbia traffic regulation, which permits plainclothes officers in unmarked vehicles to make traffic stops "only in the case of a violation that is so grave as to pose an immediate threat to the safety of others," to demonstrate that a reasonable plainclothes officer would not have made the stop. Petitioners, who were both African-American, also contended that officers should not have the power to select who to stop based on race, and the traffic stop test should be "whether a police officer, acting reasonably, would have made the stop for the reasons given." The Court disagreed with the petitioners, holding that a traffic violation arrest and a post-arrest search would not be deemed invalid because an officer had an ulterior motive to make the traffic stop. Furthermore, the Court stated "subjective intent alone... does not make otherwise lawful conduct illegal or unconstitutional." In other words, simply because an officer's intent did not have legal justification for his actions "does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." This means that an officer could stop someone solely because of his or her race, without violating the person's Fourth Amendment right to be secure from "unreasonable search and seizures," as long as the officers actions, viewed objectively, have a legal justification.

The Court went on to say that the "Constitution prohibits selective enforcement of the law based on considerations such as race" and objections of such "discriminatory application of laws" should be made under "the Equal Protection Clause, not the Fourth Amendment." This

111 Whren, 517 U.S. at 809.
112 Id. at 810.
113 Id. at 808.
114 Id. at 815.
115 Id. at 810.
116 Id. at 813.
117 Whren, 517 U.S. at 813.
118 Id.
119 U.S. CONST. amend. IV.
120 Whren, 517 U.S. at 813.
decision made it difficult for stops and frisks to be deemed unconstitutional under the Fourth Amendment based on race but opened the door for race-based discriminatory claims under the Fourteenth Amendment.

Since Whren, many federal courts, but not the Supreme Court, have reviewed the constitutionality of the stop-and-frisk policy under the Fourteenth Amendment. These federal courts have not deemed the stop-and-frisk policy per se unconstitutional under the Fourteenth Amendment but have found that a state or city may violate the Equal Protection Clause of the Fourteenth Amendment by using race as the sole reason for a stop or frisk. These cases have provided some guidelines for determining when the implementation of the stop-and-frisk policy violates citizens’ right to Equal Protection under the law.

2. Equal Protection Clause and Stop-and-Frisk

The Equal Protection Clause of the Fourteenth Amendment prohibits law enforcement officials from targeting certain groups when conducting stops and frisks. This protection starts even before a person is stopped because “a law enforcement officer would be acting unconstitutionally were he to approach and consensually interview a person of color solely because of that person’s color, absent a compelling justification.” This protection also prohibits officers from investigating a person based solely on race. These limitations make the courts available as a remedy to those groups that may be targeted by law enforcement.

To succeed in litigation, a person or group, who was targeted for an unreasonable stop and frisk, must prove “that the defendants ‘[or government official(s)]’ actions had a discriminatory effect and were motivated by a discriminatory purpose.” The burden of proof is on the party that suffered the discriminatory effect to prove the government official(s) were motivated by a discriminatory purpose. Discriminatory purpose implies that “the [decision maker] . . . selected or reaffirmed a particular course of action at least in part ‘because of’ . . . its adverse effects upon an identifiable group.” A person or group targeted by such discrimination must prove, by a preponderance of the evidence, “that a police officer decided to approach [or pursue] him or her because of his or

121 United States v. Avery, 137 F.3d 343, 352-53 (6th Cir. 1997).
122 Id. at 353.
123 Id. at 354.
124 Chavez v. Ill. State Police, 251 F.3d 612, 635-36 (7th Cir. 2001).
125 Avery, 137 F.3d at 356.
126 Chavez, 251 F.3d at 645 (quoting McCleskey v. Kemp, 481 U.S. 279,298 (1987)).
her race.”

To prove discrimination, the targeted party must demonstrate that he or she is a member “of a protected class, that [he or she is] otherwise similarly situated to members of the unprotected class, and that [he or she was] treated differently from members of the unprotected class.” Discrimination can be proven through direct evidence, inferences gathered from statistical evidence of disparate impact, or other circumstantial evidence. However, statistical evidence, without any other proof, is not enough to prove discrimination. Additionally, “statistics proffered must address the crucial question of whether one class is being treated differently from another class that is otherwise similarly situated.” Once race discrimination has been proven through statistical evidence, the government would then have to provide an alternate explanation for its actions or a compelling governmental reason for its race-based seizures.

Due to the high volume of stops against African-Americans and Latinos in New York City, it is critical to evaluate the stop-and-frisk policy under the rubric of the Fourteenth Amendment. African-Americans and Latinos are members of a protected class that is treated differently due to the color of their skin. African-Americans and Latinos were stopped nine times more often than all other racial groups in New York City in 2011. The racial disparity of stops is an indication that at least some police officers are racially profiling. It is highly unlikely that police officers are not racially profiling where the percentage of African-Americans and Latinos stopped is much higher than the percentage of African-Americans and Latinos living in New York City. The existence of discrimination becomes more apparent when looking at statistics of the precincts with the highest percentage of stops. The five precincts with the largest percentage of stops were the seventy-third, twenty-third, eighty-first, forty-first, and twenty-fifth precinct, respectively. The population of African-Americans and Latinos in those precincts were 96.3 percent, 75.6 percent, 92.7

127 Avery, 137 F.3d at 355 (quoting United States v. Travis, 62 F.3d 170, 174 (6th Cir. 1995)).
128 See Chavez, 251 F.3d at 636; see also Greer v. Amesqua, 212 F.3d 358, 370 (7th Cir. 2000), cert. denied, 531 U.S. 1012, 121 (2000); see also Johnson v. City of Fort Wayne, Ind., 91 F.3d 922, 944-45 (7th Cir. 1996).
129 Avery, 137 F.3d at 355.
130 Id. at 356.
131 Chavez, 251 F.3d at 638.
132 Avery, 137 F.3d at 356.
133 2011 REPORT, supra note 3, at 5.
134 Id. at 4.
135 Id.
percent, 96.9 percent, and 87.8 percent, respectively.\footnote{136} Conversely, the precincts with the lowest percentage of stops were the nineteenth, sixty-second, sixty-eighth, one hundred twenty-third, and sixty-sixth, respectively.\footnote{137} The percentage of African-Americans and Latinos in those neighborhoods were 9.0 percent, 14.1 percent, 15.8 percent, 9.4 percent, and 15.3 percent.\footnote{138} Additionally, African-Americans and Latinos accounted for more than 70 percent of stops in six of the ten precincts where their population was at its lowest.\footnote{139} These statistics demonstrate that New York City's stop-and-frisk policy targets African-Americans and Latinos and African-American and Latino neighborhoods for most of its stops. Furthermore, the majority of African-Americans and Latinos (88.4 percent) who were stopped in 2011 were innocent of any crime,\footnote{140} and only 1.8 percent of those who were frisked were rarely found in possession of a weapon.\footnote{141}

As a result of the astonishing nature of these statistics, the Court in \textit{Floyd v. City of New York} held that the New York City stop-and-frisk policy violated the Fourteenth Amendment.\footnote{142} In \textit{Floyd}, plaintiffs claimed that African-Americans and Latinos were stopped more frequently than they would be if police officers did not discriminate based on race when deciding whom to stop.\footnote{143} To determine the validity of the plaintiffs' claims, the court compared rates of African-American and Latino stops to "a standard, or point of reference, against which those statistics can be compared, assessed, measured or judged," also known as a benchmark.\footnote{144} The court chose the plaintiffs' benchmark, local population data and local crime rates, as its benchmark.\footnote{145} The court held that this was the best benchmark because local population data reflected who was available for officers to stop and local crime rates reflect the fact that more stops are likely to occur in high crime areas.\footnote{146} The court, in turn, rejected the defendant's benchmark of suspect race description data because it was based on the faulty premise that officers' decisions to stop individuals...
could not be swayed by conscious or unconscious racial bias.\textsuperscript{147}

Based on the use of the plaintiffs' benchmark to analyze the data, the court concluded that: 1) the NYPD carried out more stops in African-American and Latino neighborhoods, 2) regardless of the racial composition of an area, African-Americans and Latinos were more likely to be stopped than whites, 3) "for the period 2004 to 2009, [African-Americans] who were subject to law enforcement action following their stop were 30 percent more likely than whites to be arrested (as opposed to receiving a summons) after a stop for the same suspected crime," 4) "for the period 2004 through 2009, after controlling for suspected crime and precinct characteristics, [African-Americans] who were stopped were about 14% more likely—and [Latinos] 9% more likely—than whites to be subjected to the use of force," and 5) for the period 2004 through 2009, the odds that a stop will result in further enforcement action was 8 percent lower if the person stopped was African-American than if the person was White.\textsuperscript{148} The court ruled that these statistical findings and the institutional evidence of defendants' indifference to those findings were sufficient to conclude that New York City's stop-and-frisk policy violated the Fourteenth Amendment.\textsuperscript{149}

\textbf{IV. PHILADELPHIA STOP-AND-FRISK}

\textit{A. STOP-AND-FRISK PROCEDURES}

Prior to a 2011 settlement agreement, the Philadelphia stop-and-frisk policy had many of the same problems as the New York City policy. Philadelphia police officers were required to complete a vehicle or pedestrian incident report known as a 75-48a form. These forms were meant to keep track of all stop and frisks that officers made and to help guide officers in determining when they had reasonable suspicion to make a stop or frisk. Similar to NYPD's Unified 250 form, the Philadelphia Police Department's (PPD) 75-48a form allowed officers to use their individual impressions to decide whether to make a stop. Officers were allowed to make stops if a person was "loitering," engaged in "furtive movement," acting "suspiciously" or if the person was in a "high crime" area. Once an officer completed the 75-48a form he or she submitted it to his or her respective district to be uploaded to an electronic database. The

\textsuperscript{147} See id. at 585-87.
\textsuperscript{148} \textit{Floyd}, 959 F. Supp. 2d at 588-89 (2013 action).
\textsuperscript{149} Id. at 667.
database kept track of all 75-48a stops.

B. PROBLEMS WITH STOP-AND-FRISK IN PHILADELPHIA

Although Philadelphia’s stop-and-frisk policy had problems since the late 1980s, those problems were exacerbated with the election of Mayor Michael Nutter in 2007. In 2008, Mayor Nutter initiated the PPD’s “Crime Fighting Strategy.” His crime plan was to use criminal statistics to focus resources on areas where the most crimes were being committed. The plan also focused on preventing crimes from occurring by using citywide aggressive tactics such as stop and frisk. Mayor Nutter’s plan not only allowed officers to make more stops and frisks in high-crime areas, but also allowed officers to stop and frisk people simply for being in a high-crime area. A year after Mayor Nutter’s plan was implemented, there were 253,333 stops made in a city of approximately 1.5 million people. This was a higher person-to-stop ratio than New York City had in 2011. Of those 253,333 stops, over 183,000 or 72.2 percent were of African-Americans, who comprise 44 percent of Philadelphia’s population. Of the stops made, only 8.4 percent resulted in an arrest. Additionally, a significant amount of the arrests carried out were for reasons other than the suspicion that the stop and arrest was originally made. A majority of those arrests resulted from interactions or information discovered following the initial stop (i.e., disorderly conduct, outstanding warrants). These statistics demonstrate the ineffectiveness of the aggressive stop-and-frisk tactics to prevent crime from occurring and their discriminatory nature in stopping a disproportionate amount of African-Americans. Due to the disparity in the stops of African-Americans, it is apparent that officers in Philadelphia were not just using reasonable suspicion to make stops but were also using race as a factor. If race were not a factor then the number

152 Id. at 17-18.
153 Id. at 11.
154 Bailey Complaint at 21.
155 QUICKFACTS, supra note 27.
156 Bailey Complaint at 154.
157 Id.
158 Id.
159 Id.
of stops should at least be slightly relative to the percentages of Philadelphia’s population. However, this is not the case.\textsuperscript{160}

C. LITIGATION AS A REMEDY

As a result of the disparity in Philadelphia’s stop-and-frisk policy, citizens of Philadelphia have sought relief from the courts. In the 1980s several class action suits filed in the federal courts prohibited stop-and-frisk procedures because they violated the Fourth and Fourteenth Amendment rights of African-Americans and Latinos in Philadelphia.\textsuperscript{161} In 1996, the National Association for the Advancement of Colored People (NAACP) sued the City of Philadelphia and its police department for “the unlawful arrest, search and prosecution of hundreds of persons on false or otherwise improper narcotics charges, virtually all of whom were African-American or Latino.”\textsuperscript{162} Ultimately, the City agreed to settle the matter, vacating hundreds of convictions and agreeing to improve its stop-and-frisk policy.\textsuperscript{163} Under the 1996 settlement agreement, Philadelphia agreed to: (1) require its officers to fill out a 75-48a form for every stop they made, (2) appoint an Integrity and Accountability officer responsible for ensuring the City’s compliance with the settlement agreement and for reviewing the stop-and-frisk data to determine if any racial bias existed, and (3) allow the plaintiff’s lawyers to review and analyze the 75-48a data “to determine whether there was probable cause or reasonable suspicion for the officers’ actions and whether the stops and investigations of persons were undertaken in a racially biased manner.”\textsuperscript{164} Although the City complied with the agreement, the agreement terminated in 2005 without any long-term measure in place to stop Mayor Nutter, elected in 2008, from instituting a more aggressive stop-and-frisk policy.

V. CITY OF PHILADELPHIA 2011 SETTLEMENT & FLOYD COURT’S REFORMS

On November 4, 2010, the American Civil Liberties Union of Pennsylvania and the law firm of Kairys, Rudovsky, and Messing & Feinberg filed a federal class action suit against the City of Philadelphia

\textsuperscript{160} Id.
\textsuperscript{161} Id. at 19.
\textsuperscript{162} Bailey Complaint at 19.
\textsuperscript{163} Id.
\textsuperscript{164} Id. at 19-20.
and its police department known as Bailey v. City of Philadelphia. The suit was filed on behalf of eight African-American and Latino men who were stopped by Philadelphia police officers based solely on their race. The suit alleged that thousands of people were stopped, frisked, and detained by the PPD as part of its stop-and-frisk policy in violation of plaintiffs' Fourth and Fourteenth Amendment rights. None of the stops or frisks led to the recovery of weapons or to the conviction of any crime. The plaintiffs sought a declaration that the stop-and-frisk policy was unconstitutional as well as injunctive and compensatory relief.

After over a year of motions and negotiations, the parties agreed to settle. The settlement agreement included certain disclosure and monitoring stipulations and changes to the PPD's stop-and-frisk policy. Under the agreement, the PPD agreed to allow plaintiff's counsel access to the Department's 75-48a forms for selected two-week periods in the years 2006 to 2010. Although plaintiffs' counsel may not sue for violations taking place within those two-week periods, they do get to analyze the City's stop-and-frisk policy by examining its 75-48a forms. The City of Philadelphia also agreed to continue to input all 75-48a forms into an electronic database and allow the plaintiffs' counsel to have access. This access would allow plaintiffs' counsel to monitor any disparity of stops and frisks. Plaintiffs' counsel would be allowed to conduct periodic reviews of stops and frisks to determine if any disciplinary action needed to be taken against an officer, commanding officer, or the PPD as a whole. Changes were also made as to which circumstances on the 75-48a form constitute reasonable suspicion. A stop and frisk due to furtive movement, "suspicious" behavior, loitering, being in a "high crime" or high drug area is no longer permissible. The last major stipulation of the agreement was the appointment of Dean Joanne Epps of the Temple University Beasley School of Law as an independent outside auditor who will conduct analysis, audit all proposals and procedures, and will have the authority to

166 Id.
167 Bailey Complaint at 7-16.
168 Id.
169 Id. at 29-30.
170 Bailey Decree at 3.
171 Id.
172 Id. at 4.
173 Id.
174 Id.
recommend additional policies, practices, and procedures to ensure compliance.\textsuperscript{175}

Turning back to New York City’s police, after declaring the New York City stop-and-frisk policy unconstitutional under the Fourth and Fourteenth Amendments, the \textit{Floyd} Court ordered several reforms to the policy.\textsuperscript{176} Prior to listing the reforms, the Court appointed an independent monitor to oversee the reform process.\textsuperscript{177} The independent monitor is responsible for assuring New York City’s compliance with reforming the use of the NYPD’s stop-and-frisk policy.\textsuperscript{178}

One reform the Court ordered was a revision of the policies and training materials related to the stop-and-frisk policy and racial profiling.\textsuperscript{179} The purpose of this reform is to ensure officers are trained how to make constitutional stops and frisks.\textsuperscript{180} The Court also ordered a change to stop-and-frisk documentation.\textsuperscript{181} The first document the Court ordered to be changed is the UF-250-Form.\textsuperscript{182} The Court ordered the UF-250-form: 1) include a narrative section where the officer must record, in her own words, the basis for the stop, 2) require a separate explanation of why a pat-down, frisk, or search was performed, 3) contain a tear-off portion stating the reason for the stop, which can be given to each stopped person at the end of the encounter, and 4) include a simplified and improved checkbox system used to indicate common stop justification.\textsuperscript{183} Regarding stop-and-frisk documentation, the Court also required all uniformed officers provide narrative descriptions of stops in their activity logs whenever a 250-Form is prepared.\textsuperscript{184}

Other reforms the Court ordered include changes to supervision, monitoring, and discipline, participation in a joint remedial process, which allows all parties in the litigation to develop remedial measures to improve stop-and-frisk, and the use of body-worn cameras by one officer in one precinct of each borough.\textsuperscript{185} These reforms were intended to prevent officers from making unconstitutional stops, involve the community in the

\textsuperscript{175} See Bailey Decree at 5, 8.
\textsuperscript{176} \textit{Floyd}, 959 F. Supp. 2d at 671 (2013 action).
\textsuperscript{177} Id. at 676.
\textsuperscript{178} Id. at 677.
\textsuperscript{179} Id. at 679.
\textsuperscript{180} Id.
\textsuperscript{181} Id. at 681.
\textsuperscript{182} \textit{Floyd}, 959 F. Supp. 2d at 681.
\textsuperscript{183} Id. at 681-682.
\textsuperscript{184} Id. at 682-683.
\textsuperscript{185} Id. at 683-687.
reform of stop-and-frisk, and to monitor how stops and frisks are carried out.\textsuperscript{186}

This Note proposes that in addition to the reforms ordered by the\textit{ Floyd} Court, New York City should also adopt two critical aspects of the Philadelphia settlement. In addition to the reforms ordered by the\textit{ Floyd} Court, the NYPD should also grant civil rights groups that represent victims of illegal stops and frisks access to its Unified Form 250 electronic database. This access should give these organizations the ability to determine why people were stopped, in which precinct they were stopped, who stopped them, and any other pertinent information that will allow them to determine whether stop-and-frisk is being carried out constitutionally. This assures the affected communities that progress is being made. The NYPD should also eliminate "furtive movement," "high crime area," and any other similarly vague term on the UF-250-form. This will decrease the likelihood that an officer stops someone based solely on his or her race. One suggestion that was not considered in the Philadelphia settlement or the reforms in\textit{ Floyd}, but New York City should adopt, is the creation of an outside disciplinary body to deal with officers who carry out stops and frisks with less than reasonable suspicion or to deal with commanding officers that are not correcting this behavior. Allowing the NYPD to continue to regulate itself allows it to reward officers who violate the rights of African-Americans and Latinos on a daily basis and to ostracize those officers who follow the law.

VI. CONCLUSION

Everyday in the streets of New York City, young African-American and Latino males are asked to prove where they live as they walk down the very same street where they have lived all their lives. They are frisked and searched as if they were criminals while their friends and neighbors watch. They are too often disrespected and belittled if they question why they are subjected to such treatment. They are then released without any explanation for why they were stopped in the first place. This treatment disproportionately affects the African-American and Latino community of New York City, and it can no longer be justified with the claim that crimes most often take place in these communities. Statistics compiled by the New York Civil Liberties Union and by the NYPD and reviewed by the Southern District in\textit{ Floyd v. City of New York} have proven that stops and

\textsuperscript{186} \textit{Id.}
frisks do not reduce the number of weapons on the streets and do not significantly reduce crime. Just this past year, the number of homicides in New York City dropped to an all-time low since the 1960s while the number of stops dropped by 30 percent compared to 2011. Furthermore, 88.3 percent of people stopped in 2011 had not committed any crime. African-Americans and Latinos should not continue to be harassed, humiliated, and their rights violated for a policy that has not proven to be effective.

Although Floyd v. City of New York appears to be the solution African-Americans and Latinos had been waiting for, the City will not go down without a fight. In fact, the City recently filing a notice of appeal. Even if the Floyd decision is reversed, New York City should adopt the reforms suggested in the district court’s decision. Additionally, the NYPD should be regulated by an outside entity that can evaluate police conduct objectively. Racial profiling and excessive stops have become a part of NYPD culture and have too often been rewarded rather than disciplined. To effectively change this culture, police officers need to be held accountable for violating the rights of African-Americans and Latinos, and officers who follow the law need to have an entity they can safely reach out to if they are feeling pressure from their commanding officers. Finally, civil rights groups that represent victims of illegal stops and frisks should be granted access to the NYPD’s Unified Form 250 electronic database so they can monitor the policy’s progress. These modifications will prevent the further persecution and degradation of the African-American and Latino communities that, for the most part, have lost faith and respect for the NYPD.

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187 See STOP AND FRISK FACTS, supra note 7. See also New York City Murder Rate 2012, supra note 42.
188 New York City Murder Rate 2012, supra note 42.
189 2011 REPORT, supra note 3.