COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

SUFFOLK, SS

SUPERIOR COURT
DOCKET NO. 15-2373 B

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, and AMERICAN CIVIL LIBERTIES UNION,

Plaintiffs,

v.

WILLIAM EVANS, in his Official Capacity as Police Commissioner for the City of Boston, and BOSTON POLICE DEPARTMENT,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs seek declaratory and injunctive relief requiring the Boston Police Department (the "BPD") and Commissioner William Evans to respond to a September 2014 request for public records about recent street-level encounters between BPD officers and civilians. Defendants' failure to produce responsive records violates the Massachusetts Public Records Law (the "MPRL").

2. The release of these records is especially urgent after a June 2015 report found "racially disparate treatment" of Blacks and Hispanics by the BPD in its street-level encounters from 2007 to 2010. *See* Jeffrey Fagan, Anthony A. Braga, Rod K. Brunson, and April Pattavina, "Final Report[:] An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports," June 15, 2015, at ii, *attached as* Exhibit 1. In particular, the report revealed racial disparities that could not be explained by crime rates or other "non-race" factors, and were instead due to "processes of racial discrimination." *Id.*

at 4, 20-21. In the wake of this report, the BPD has reportedly begun reforming its stop-and-frisk practices and pledged to publish annual data about police-civilian encounters.

3. Yet, despite these promises, Defendants have failed to produce any documents responsive to Plaintiffs' September 2014 request for records of post-2010 police-civilian encounters. Although Massachusetts law mandates a response within 10 days, Defendants have now failed to provide these records for more than *11 months*. That failure prevents the public from learning whether the BPD's racially discriminatory practices have persisted since 2010, and it hamstrings public debate about whether the BPD's purported reforms are sufficient to address these problems.

4. This is not the first time Plaintiffs have experienced long delays in trying to obtain public records about the BPD's street-level encounters. Indeed, the just-published June 2015 report—and the BPD's announcement of reforms—arrived roughly four years after ACLUM and the BPD agreed, in 2011, that ACLUM would defer a 2009 public records request in exchange for the BPD's commitment to support a study of police-civilian encounters from 2007 to 2010.

5. Plaintiffs bring this lawsuit to ensure that Defendants comply fully with their legal obligation to disclose the requested data on police-civilian encounters. The public is entitled to know, as promptly as possible, whether people of color in Boston continue to be subjected to disparate treatment by the BPD.

PARTIES

6. Plaintiff American Civil Liberties Union of Massachusetts ("ACLUM") is a non-profit membership organization dedicated to the protection of civil rights and civil liberties. To advance the interests of open government and equality, ACLUM works to shed light on law

enforcement practices that affect civil rights and civil liberties, including racially discriminatory policing.

7. Plaintiff American Civil Liberties Union ("ACLU") is a national non-profit membership organization, of which ACLUM is an affiliate. Through its Racial Justice Program, the ACLU aims to preserve and extend constitutional rights to those who have historically been denied their rights on the basis of race.

8. Defendant William Evans is the Police Commissioner for the City of Boston. Commissioner Evans is the formal custodian of all records for the BPD. He is being sued in his official capacity as Police Commissioner. His usual place of employment is at 1 Schroeder Plaza, Boston, Massachusetts 02120.

9. Defendant Boston Police Department has physical custody of the records sought. Its headquarters is at 1 Schroeder Plaza, Boston, Massachusetts 02120.

JURISDICTION AND VENUE

10. This Court has jurisdiction under G. L. c. 66, § 10, c. 212, § 4, and c. 231A, § 1.

11. Venue is proper because ACLUM's usual place of business is in Boston.

ALLEGATIONS

I. The Boston Police Department Has Engaged in Racially Discriminatory Civilian Encounters.

A. Plaintiffs' Efforts to Learn About Police-Civilian Encounters

12. In the past six years, ACLUM has made multiple requests for public records of the BPD's police-civilian encounters—known as "Field Interrogation, Observation, Frisk, and/or Search" reports or "FIO reports."

13. BPD policy requires FIO reports to be generated every time an officer engages in a stop, observation, encounter, and/or frisk of a person.[1]

14. FIO reports are an important tool for police accountability. By studying reports of police-civilian encounters, the police and the public can learn whether police are serving all of a city's residents in an equitable manner.

15. ACLUM first requested the BPD's FIO reports in 2009, after receiving numerous complaints that BPD officers were unfairly targeting people of color during street-level encounters.

16. Ultimately, after a period of negotiation, ACLUM deferred its requests for the BPD's FIO report data based upon the BPD's agreement to make this data available for study by an independent researcher.

17. ACLUM and the BPD agreed that Dr. Anthony Braga, a professor in the School of Criminal Justice at Rutgers University, and a policy advisor for the BPD at the time, would code the FIO reports, collaborate with an independent researcher in analyzing the coded data, and produce a report.

18. ACLUM and the BPD also agreed that Dr. Braga would provide a preliminary analysis to an external academic review panel and give ACLUM periodic updates on the progress of the study, information about the methodology used, and access to the coded data after completion of the study.

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[1] In 2011, these reports were renamed "Field Interaction/Observation/Encounter" reports. For the sake of convenience, this complaint refers to all of these reports as FIO reports, and it uses the term "FIO encounter" to mean a stop, observation, encounter, and/or frisk that is documented in an FIO report.

19. One goal of the research was to study whether race had an impact on stops, frisks, and searches of civilians by BPD officers.

20. Dr. Braga estimated that the study—which began in 2011—would take one year to complete.

21. In June 2012, Dr. Braga provided a preliminary report of data from the 2007-2010 FIO reports at a meeting attended by representatives from the BPD and ACLUM.

22. At that June 2012 meeting, Dr. Braga reported that Blacks were the subject of the majority of FIO encounters from 2007 to 2010, even though Blacks comprised only a quarter of Boston's population.

23. In 2013, ACLUM made multiple contacts with the BPD and Dr. Braga to check in about the progress of the study.

24. In light of delays in producing the study, ACLUM also requested access to the coded data that Dr. Braga was studying.

25. The BPD did not provide ACLUM with the requested FIO data.

B. The March 2014 Disclosure of Disparate Treatment

26. In March 2014, Dr. Braga provided the preliminary results of his study at a meeting attended by representatives of the BPD, ACLUM, and the ACLU.

27. At that meeting, Dr. Braga once again reported that Blacks were subjected to a disproportionate number of FIO encounters, as compared to the percentage of Blacks in Boston's population.

28. Specifically, Dr. Braga reported that Blacks were the subjects of roughly 129,600 of the 204,739 FIO reports, even though Blacks comprised only a quarter of the city's population.

29. Beyond presenting these raw numbers, Dr. Braga also presented a preliminary analysis—relying on statistical techniques, demographic information, and police force deployment and other data—of the degree to which race, as opposed to other factors, influenced police-civilian encounters.

30. Using this analysis, Dr. Braga informed Plaintiffs and the BPD that the percentages of Black and Hispanic residents in Boston neighborhoods were significant predictors of the number of FIO reports, *even after controlling for crime and other "non-race" factors*. Thus, given three neighborhoods in Boston with precisely the same amount of crime, the predominantly Black and Hispanic neighborhoods would be subjected to more police-civilian encounters than an otherwise identical neighborhood that was predominantly white.

31. Dr. Braga also informed Plaintiffs and the BPD that, even after controlling for individual arrest history and gang membership, Blacks were more likely than whites to be frisked or searched during an FIO encounter and were also more likely to be subject to multiple FIO encounters.

32. In short, Dr. Braga told Plaintiffs and the BPD in March 2014 that the 2007-2010 data provided evidence of discriminatory treatment of Blacks and Hispanics in Boston. Significant numbers of police-civilian encounters in Boston, therefore, including encounters involving stops and frisks, could not be explained by factors other than race.

33. Dr. Braga indicated that he would circulate a draft report for peer review in June 2014.

C. The ACLU Report

34. Following Dr. Braga's March 2014 presentation, Plaintiffs urged the BPD to respond to the disclosures about disparate racial treatment by considering specific policy reforms,

including body-worn cameras, civilian receipts for police encounters, and the regular publication of data.

35. Beginning in September 2014—when the deaths of Michael Brown and other young Black men had brought the issue of racially discriminatory policing to the forefront of national attention—Plaintiffs repeatedly communicated with the BPD about the urgency of releasing Dr. Braga's findings.

36. Also beginning in September 2014, Plaintiffs notified the BPD that, in light of the national conversation about race and policing and the ongoing delay in the publication of Dr. Braga's report, ACLUM and the national ACLU were prepared to release their own report summarizing the preliminary findings that had been shared in March 2014.

37. In October 2014, Plaintiffs and the BPD discussed a joint release of Dr. Braga's findings. But ultimately, they could not agree on the meaning of the data or the scope of needed reforms.

38. On October 8, 2014, Plaintiffs released a report summarizing the March 2014 preliminary analysis and explaining how that analysis provides troubling evidence of racially discriminatory policing from 2007 to 2010. *See* American Civil Liberties Union Foundation of Massachusetts and American Civil Liberties Union, "Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007-2010," October 13, 2014, *attached as* Exhibit 2.

39. In response, Defendants discounted Plaintiffs' report on the ground that the underlying FIO data was years old.

40. Defendants also asserted that the report did not reflect the results of new training and a recent overhaul in procedures for police-civilian encounters. They stated that the number of police encounters with civilians—and the accompanying FIO reports—had dropped since 2010.

41. Also on October 8, 2014, the BPD issued its own press release disclosing some information from Dr. Braga's study. *See* Boston Police Department, *Boston Police Commissioner Announces Field Interogation and Observation (FIO) Study Results*, Oct. 8, 2014, *available at* bpdnews.com/news/2014/10/8/boston-police-commissioner-announces-field-interrogation-and-observation-fio-study-results.

42. The press release acknowledged that "[t]he study did show some racial disparities that must be addressed," and that there was still work to be done "to ensure we are closing the gap on these racial disparities." *Id.*

43. At the same time, the BPD's press release asserted that the numbers "overall" were "encouraging," and showed that the BPD was "headed in the right direction." *Id.*

44. The press release also discussed "Steps the Department has taken since 2010 to ensure a fair and effective FIO program," including trainings and increased documentation requirements. *Id.*

45. The release also stated that "[a]s a result of" the BPD's meetings with the ACLU, "the Department agrees that publishing FIO statistics going forward is necessary." *Id.*

D. The 2015 FIO Report

46. The final report that the BPD and Plaintiffs had requested in 2011, entitled "Final Report[:] An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports," was completed on or about June 15,

2015 (the "2015 Report"). Its authors are listed as Jeffrey Fagan, Anthony A. Braga, Rod K. Brunson, and April Pattavina. *See* Ex. 1.

47. The 2015 Report confirms what researchers told the BPD in March 2014 and what the ACLU reported in October 2014—that the BPD's FIO practices from 2007 to 2010 reflected "racially disparate treatment." *See id.* at ii, 20-21.

48. Although the 2015 Report's authors could not definitively conclude whether this "racially disparate treatment" was attributable to "bias," they made clear that they had identified patterns that were due to one or more "processes of *racial discrimination* in BPD FIO practices." *Id.* at 21 (emphasis added).

49. As a threshold matter, the 2015 Report confirmed that Blacks were disproportionally subjected to street-level encounters: Only 25.1% of Boston's population was Black, yet Blacks were subjected to 63.3% of the FIO encounters from 2007 to 2010. *See id.* at 2.

50. And although the report noted that the BPD has targeted gangs, it found that less than 6% of those who were subject to FIO encounters were known gang members. *Id.* at 5, 7.

51. The 2015 Report relied on statistical analysis, demographics, police force deployment data, and other information to ascertain the degree to which race, as opposed to other factors, influenced police-civilian encounters in Boston. *Id.* at 3-4, 24.

52. The 2015 Report sought to ascertain the effect of race in two primary respects: (1) whether a neighborhood's concentration of Black and Hispanic residents influenced the number of FIO encounters that occurred there; and (2) whether race influenced the frequency and the intrusiveness of individual FIO encounters. *Id.* at 8-14.

53. On both counts, the researchers found statistically significant racial disparities, even after accounting for "non-race" factors like crime or gang membership. *See id.*

54. According to the report, a neighborhood's concentration of Black or Hispanic residents influenced the overall number of FIO encounters that the neighborhood could expect: a neighborhood with a higher percentage of Blacks or Hispanics in the neighborhood population would be subjected to more police encounters than a neighborhood with a higher percentage of whites, even if the white neighborhood had exactly the same crime rate as the Black or Hispanic neighborhoods. *See id.* at 9.

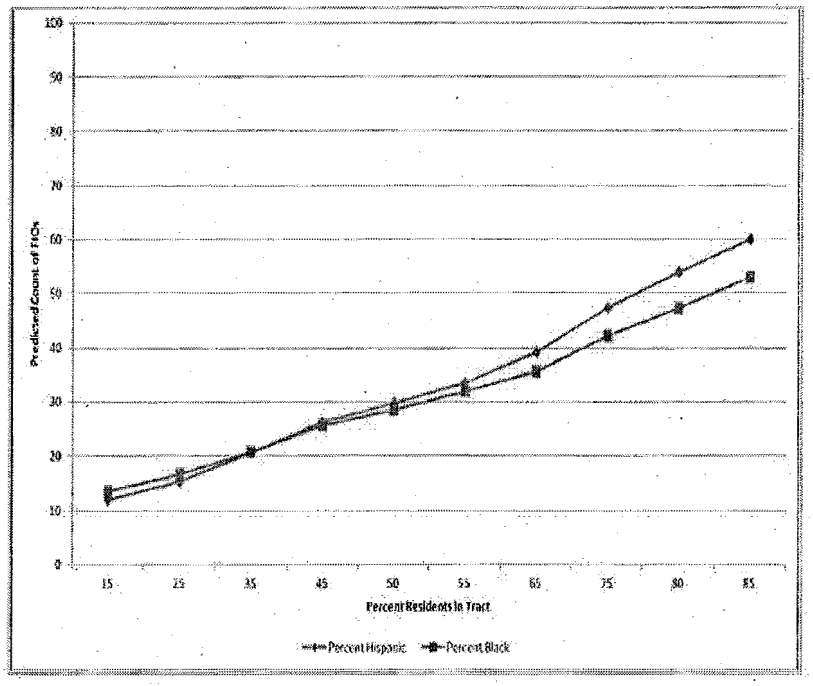
55. Specifically, even controlling for neighborhood crime and other factors, for every 1 percentage point increase in a neighborhood's Black population, the 2015 Report found an approximate 2.2% rise in the expected number of FIO encounters. *See id.* at 9, Table 4 ("Percent Black" cross-tabbed with "Residents").

56. The effects of this seemingly small rise are dramatic. As the researchers explained, a *single* Boston census tract—typically an area of just 20 to 30 blocks—would experience *over six hundred additional FIOs each year* that are attributable to race, not to crime or other "non-race" factors, if its population were 85% Black. *See id.* at 9-10.

57. The 2015 Report found that a neighborhood's concentration of Hispanic residents had an even greater impact on FIO activity. For every 1 percentage point increase in a neighborhood's Hispanic population, the 2015 Report described a 4.1% rise in the expected number of FIO encounters, even when controlling for neighborhood crime and other factors. *See id.* at 9, Table 4 ("Percent Hispanic" cross-tabbed with "Residents").

58. Thus, as reflected in Figure 2 of the 2105 Report, the researchers found that the proportion of Blacks and Hispanics in a Boston neighborhood, separate and apart from the amount of crime, significantly influences the number of expected police encounters with civilians. *Id.* at 10, Figure 2.:

Figure 2. Predicted Count of FIO's per Month by Percent Black and Hispanic Residents in Tract, Boston, 2007-10, Controlling for Crime, Policing and Social Conditions



59. With respect to the analysis of individual encounters, the 2015 Report found that Blacks and Hispanics who were subject to FIO encounters were more likely to be subject to repeat encounters, even controlling for gang membership and prior arrest history. *Id.* at 20.

60. Blacks and Hispanics were also more likely than otherwise identical whites to be frisked and/or searched during an FIO encounter. Blacks were 12.4% more likely to experience a frisk and/or search, and Hispanics were 4.5% more likely, even when controlling for criminal history and other "non-race" factors. See *id.* at 13, Table 6 ("Suspect Race – Black" and "Suspect Race – Hispanic" cross-tabbed with "*OR*").

61. If anything, these figures may *under-report* the effect of race on policing in Boston. This is true for at least two reasons.

62. First, even ostencibly "non-race" factors like gang membership and arrest history can be influenced by race.[2] Where there is evidence that race significantly influences police-civilian encounters, as the 2015 Report found with respect to Boston, race can shape the arrest histories and recorded gang membership of Blacks and Hispanics. When that happens, using statistical methods that control for arrests and gang membership may actually obscure the full impact of race on stops and frisks.

63. Second, on information and belief, the BPD primarily uses FIOs to record information about suspected gang members and other persons of interest to the police.

64. Thus, on information and belief, police-civilian encounters may be *less likely* to result in an FIO report when the subject turns out to be innocent of wrongdoing and not of interest to the police. To the extent these unrecorded encounters involve greater numbers of Blacks and Hispanics, the 2015 Report will have underestimated the effect of race on police-civilian encounters.

65. On information and belief, the more than 200,000 FIOs studied for the 2015 Report described encounters in which no arrest was made. Indeed, Dr. Braga stated in March 2014 that only 2.5% of the police-civilian encounters resulted in the seizure of drugs or other contraband.

66. Moreover, in the vast majority of FIO reports, officers made no attempt to identify reasonable suspicion, probable cause, or any other legal reason for conducting a stop, frisk, or search. Instead, the 2015 Report found that in 75% of all FIO reports, BPD officers merely cited "investigation person" as the reason for a stop, observation, frisk, or search. *See* Ex. 1 at 3.

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[2] *See* Dylan Matthews, *The black/white marijuana arrest gap, in nine charts*, The Washington Post, June 4, 2013, *available at* washingtonpost.com/blogs/wonkblog/wp/2013/06/04/the-blackwhite-marijuana-arrest-gap-in-nine-charts (reporting that Blacks far more likely to be arrested for marijuana possession than whites, despite similar rates of marijuana use).

67. On information and belief, although the 2015 Report is dated June 15, 2015, the BPD elected to release it just before the July 4 holiday weekend.

II. Defendants Have Failed to Produce Any Public Records Responsive to ACLUM's MPRL Request.

68. Given the BPD's claims that it has made progress since 2010 and its pledge to address the racial disparities that were revealed by the 2007-2010 data, the release of post-2010 data is important to many Boston residents.

69. Specifically, post-2010 FIO data is important to determining whether racially disparate policing has persisted since 2010.

70. In fact, the BPD has acknowledged the importance of releasing FIO data.

71. Most recently, on July 3, 2015, the *Boston Globe* reported that the BPD intends to review FIO data from 2014, and that the BPD intends to report future FIO data annually. *See* Evan Allen, *Boston police to step up antibias measures*, The Boston Globe, July 4, 2015, *available at* https://www.bostonglobe.com/metro/2015/07/03/boston-police-institute-new-antibias-policies-after-critical-report-policing-minority-communities/7PxecpL5o5qCWDEQ5x0HzL/story.html.

72. Despite these promises of transparency, the BPD has failed to respond to Plaintiffs' request for post-2010 FIO reports and data.

73. The September 5, 2014 request sought:

- Any and all records documenting the number of Boston Police Department ("BPD"):
    - stops of civilians conducted since January, 1, 2011;
    - frisks of civilians conducted since January, 1, 2011, and the number of such frisks that resulted in the recovery of contraband, disaggregated by contraband type *(e.g.,* weapon, type of suspected stolen property, type of controlled substance);

- searches of civilians conducted since January, 1, 2011, and the number of such searches that resulted in the recovery of contraband disaggregated by contraband type;

- consent searches of civilians conducted since January, 1, 2011, the number of such consent searches that resulted in the recovery of contraband disaggregated by contraband type;

- arrests of civilians conducted since January, 1, 2011, disaggregated by age, race, gender, and the offense(s) for which each arrest was made.

- Any and all records created since January 1, 2011, including Field Interrogation, Observation, Frisk, and/or Search ("FIOFS") Reports and Field Interaction/Observation/Encounter ("FIOE") Reports, collecting information about each observation, stop, frisk, and search conducted by BPD, including records identifying the following information about each incident:

    - the location or address of the stop, frisk, and/or search;

    - the date of the stop, frisk, and/or search;

    - the duration of the stop, frisk, and/or search, or in the alternative, the time that the stop, frisk, and/or search was initiated and the time that it concluded;

    - the race, ethnicity, gender, national origin, and/or age of the individual(s) stopped;

    - the basis for the stop, including any description of the circumstances leading to the stop;

    - whether any frisk was conducted and the basis for the frisk, including any description of the circumstances leading to the frisk;

    - whether any frisk resulted in the recovery of contraband, and the nature of any contraband recovered (*e.g.*, weapon, type and amount of suspected stolen property, type and approximate quantity of controlled substance, money seized for forfeiture);

    - whether any search was conducted and the basis for the search, including any description of the circumstances leading to the search;

    - whether any search resulted in the recovery of contraband, and the nature of any contraband recovered;

    - whether the stop resulted in an arrest, citation, or no further action, and the basis for any resulting arrest or citation;

- the badge number (or other unique identifier) and jurisdiction of the law enforcement officer(s) who completed the form.

Letter from Mr. Carlton E. Williams to Amy Condon, September 5, 2014, at 1-2, *attached as* Exhibit 3.

74. Plaintiffs sought these records in order to inform the public about BPD policing practices that may threaten the constitutional rights of a large number of Boston residents and to advocate for any necessary reforms.

75. Plaintiffs expressly excluded from the requested records "any individually identifiable information, or other private individual information, including the name of the person subjected to an FIOFS/FIOE encounter." *Id.* at 2.

76. Upon information and belief, BPD officers are required to enter all FIO reports into a database and post-2010 FIO reports are stored in electronic form.

77. As the BPD acknowledged in an April 2010 letter, because they are electronically stored in a database, FIO reports can be "easily redacted for investigatory information."

78. Under the BPD's retention policies, FIO reports shall be maintained in the BPD's electronic database for no longer than 5 years from the date an individual was last referenced in an FIO report.

79. Thus, some of the requested records soon risk being deleted by the BPD.

80. On January 30, 2015, after receiving no response to its September 2014 request for post-2010 FIO reports and data, Plaintiffs wrote to BPD Legal Advisor Amy Condon. This letter addressed Plaintiffs' September 2014 request for FIO reports and data, as well as other outstanding public records requests for production of training, policies, and other materials. *See* Letter from Matthew Segal to Amy Condon, January 30, 2015, *attached as* Exhibit 4.

81. Because several months had passed since they had made their public records requests, Plaintiffs' letter asked that the BPD explain by February 13, 2015, how it intended to handle the pending requests. The letter also requested that the BPD comply with its obligations under G. L. c. 66, § 10(b), and produce the requested records in electronic form. *Id.* at 2.

82. In a February 13, 2015 voicemail, BPD attorney Nicole Taub stated that the BPD would be gathering more "substantive information" responsive to Plaintiffs' outstanding public records requests in the coming weeks.

83. Subsequently, on February 24, 2015, Ms. Taub wrote to Matthew Segal of the ACLU of Massachusetts concerning the outstanding public records requests. Her letter included some documents responsive to Plaintiffs' requests for policy, training, and other materials. *See* Letter from Nicole Taub to Matthew Segal, February 24, 2015, *attached as* Exhibit 5.

84. But with regard to Plaintiffs' September 2014 request for post-2010 FIO reports and data, Ms. Taub indicated only that she had "forwarded [the] September 5, 2014 request for FIO related data to our Information Services Group." She promised to "provide further updates." *Id.* at 2.

85. Defendants have provided no further response to Plaintiffs' request.

86. Despite public commitments to produce FIO data, Defendants have failed to provide a good faith estimate of any anticipated fees or to produce *any* documents responsive to Plaintiffs' September 2014 request for post-2010 FIO reports and data.

87. The BPD's failure to produce responsive documents has harmed Plaintiffs and the public at large by preventing them from learning whether, since 2010, the BPD has taken adequate steps to end racially discriminatory police practices. Without that information, members of the public cannot effectively vindicate their constitutional rights or engage in

informed debate about the impact of street-level encounters on communities of color or about the scope of needed reforms.

CLAIMS FOR RELIEF

Count I – Violation of the Massachusetts Public Records Law

88. Plaintiffs incorporate by reference paragraphs 1 through 87 as if set forth here in their entirety.

89. Under the MPRL, a "custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request." G. L. c. 66, § 10(b). A public record in Massachusetts is defined by G. L. c. 4, § 7 to include "documentary materials or data . . . made or received by any officer or employee . . . of any political subdivision [of the Commonwealth]."

90. Massachusetts public records laws "shall be construed to ensure the public prompt access to all public records." 950 C.M.R. 32.02.

91. The BPD has acknowledged the important public interest at stake in the release of the records Plaintiffs request.

92. But Defendants have not offered any valid basis for their failure to provide the requested records.

93. Instead—despite the MPRL's requirement that they respond to a request for public records within 10 days—Defendants have failed to provide records for over 11 months.

94. Defendants' failure to provide records in response to Plaintiffs' request violates the MPRL.

Count II – Declaratory Judgment

95. Plaintiffs incorporate by reference paragraphs 1 through 94 as if set forth here in their entirety.

96. There is an actual controversy between Plaintiffs and Defendants regarding the production of requested FIO reports and data.

97. Pursuant to G. L. c. 231A and the MPRL, Plaintiffs are entitled to a declaration that the records they request are public records within the meaning of G. L. c. 66, § 10, that their release is required by law, and that Defendants have no right to withhold such records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

1. Issue a declaratory judgment pursuant to G. L. c. 231A that the records Plaintiffs have requested are public records within the meaning of G. L. c. 66, § 10 and c. 4, § 7, that their release is required by law, and that Defendants have no right to withhold such records;

2. Enter preliminary and permanent injunctions ordering Defendants to immediately disclose the requested records;

3. Issue a short order of notice for a hearing to show cause why the Court should not grant the relief requested in these Prayers for Relief;

4. Award Plaintiffs the costs of this action; and

5. Grant such other and further declaratory and equitable relief as the Court deems just and proper.

August 6, 2015

Respectfully submitted,

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

SUFFOLK, SS

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AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, and AMERICAN CIVIL LIBERTIES UNION,

Plaintiffs,

v.

WILLIAM EVANS, In His Official Capacity as Police Commissioner for the City of Boston, and BOSTON POLICE DEPARTMENT,

Defendants.

VERIFICATION OF COMPLAINT

I, Matthew Segal, hereby swear under the pains and penalties of perjury that I am the Legal Director of the American Civil Liberties Union Foundation of Massachusetts, a plaintiff in this action, that I have read the Complaint to which this Verification is attached, and that the facts therein are true to the best of my own knowledge, information, and belief.

Dated: August 6, 2015

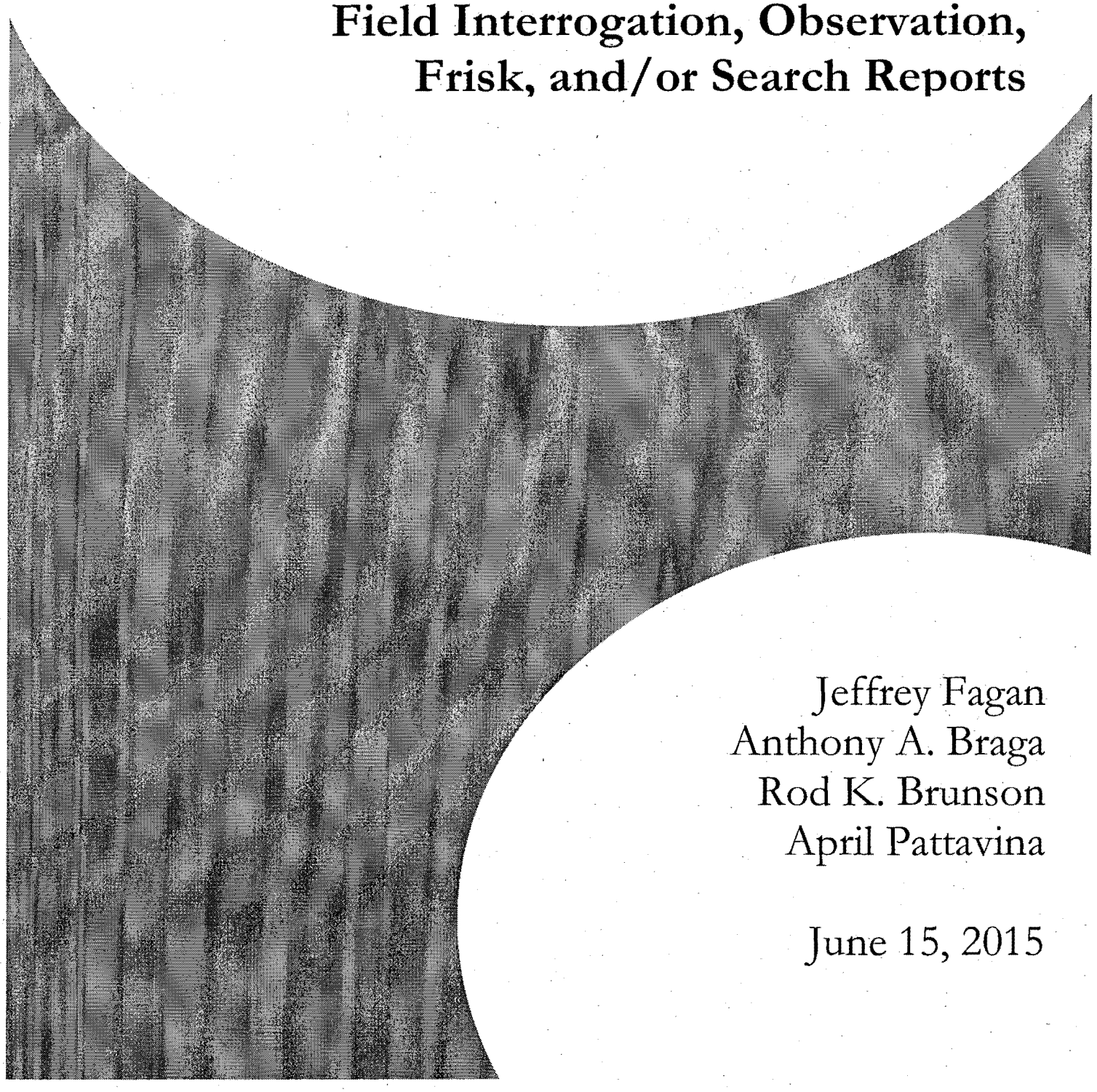
Matthew Segal

EXHIBIT 1

Exhibit 1

Final Report

An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports



Jeffrey Fagan
Anthony A. Braga
Rod K. Brunson
April Pattavina

June 15, 2015

ACKNOWLEDGEMENTS

This research was conducted at the request of the Boston Police Department and the ACLU of Massachusetts. The Boston Police Department generously provided the data on its encounters with citizens as well as data on crime and arrests and police officers in the City of Boston. We thank Police Commissioner William Evans, former Commissioner Edward Davis, former Chief of Staff Sharon Hanson, and the staff of the Boston Regional Intelligence Center. At the ACLU of Massachusetts, John Reinstein helped create the collaboration that made possible this research. Carol Rose and Matthew Segal of the ACLU also contributed to the project. All opinions and errors are solely ours and do not reflect the views of the Boston Police Department or the ACLU of Massachusetts.

ABOUT THE AUTHORS

Jeffrey Fagan is the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School and Professor of Epidemiology at the Mailman School of Public Health at Columbia University

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Rod Brunson is a Professor of Criminal Justice at Rutgers University

April Pattavina is an Associate Professor of Criminal Justice and Criminology at University of Massachusetts, Lowell.

EXECUTIVE SUMMARY

The research findings presented in this report represent an independent inquiry into possible racial disparities in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search practices (informally known as FIO reports). This inquiry was conducted at the request of the Boston Police Department and the American Civilian Liberties Union of Massachusetts and spans the years 2007-10. This report summarizes the methods and research findings of the independent research enterprise.

Key research findings include:

- The yearly number of FIO reports made by the BPD has steadily decreased in recent years. Between 2008 and 2013, the number of FIO reports made by the BPD decreased by almost 42% (from 55,684 to 32,463). This study focused on N=204,739 FIOs made by BPD officers between 2007 and 2010.

- Controlling for a variety of factors including race of residents, the logged number of crimes in Boston neighborhoods was the strongest predictor of the amount of FIO activity in Boston neighborhoods. However, the analyses revealed that the percentage of Black and Hispanic residents in Boston neighborhoods were also significant predictors of increased FIO activity after controlling for crime and other social factors. These racial disparities generate increased numbers of FIO reports in minority neighborhoods above the rate that would be predicted by crime alone. For instance, a neighborhood with 85 percent Black residents would experience approximately 53 additional FIO reports per month compared to an "average" Boston neighborhood.

- FIO activity was concentrated on repeated interactions with a relatively small number of people. Roughly 5 percent of the N=72,619 unique individuals subjected to FIO encounters accounted for more than 40 percent of the total number of FIO reports made during the study time period. 67.5 percent of the FIO subjects only experienced one FIO and, as a group, accounted for 24.6 percent of the total number of FIO reports made by BPD officers during the study time period.

- Gang membership and prior arrest histories were significant predictors of (a) repeated FIO reports of the same subject and (b) whether subjects were frisked / searched during an FIO encounter. These effects were present after controlling for age, sex, and race. In addition, Black subjects experienced 8 percent higher numbers of repeat FIOs and were roughly 12 percent more likely to be frisked / searched during an FIO encounter, controlling for prior criminal history, gang membership, and other factors.

- FIO reports were also concentrated among a small number of very active BPD officers. Roughly 4 percent of N=2,349 BPD officers made over 43 percent of the FIOs during the study time period. Youth Violence Strike Force officers (informally known as the "gang unit") were associated with the highest numbers of FIO reports. During the study period, nearly 26 percent of BPD officers did not file a single FIO report. These officers

were primarily assigned to administrative positions or were on leave for significant portions of the study time period.

- White BPD officers made significantly higher numbers of FIO reports during the study time period relative to Black and Asian officers. White BPD officers also were more likely to frisk / search subjects during FIO encounters relative to minority officers. However, white officers did not seem to discriminate by subject race and ethnicity. Also, White officers made elevated numbers of FIO reports and were more likely to frisk and search during FIO encounters for subjects of all races and ethnicities. However, within suspect race categories, Black officers were less likely to FIO or frisk White or Black suspects than were White officers.

- These analyses revealed racially disparate treatment of minority persons in BPD FIO activity. However, we cannot determine whether the identified patterns were generated by bias or other sources of racial discrimination in BPD FIO practices. Further research is necessary to understand the factors and processes that influence the observed disparities.

I. INTRODUCTION

The use of proactive police tactics to disrupt criminal activities, such as *Terry* investigative (street)[1] stops and concentrated misdemeanor arrests, are common in contemporary urban policing. Although endorsed by many police executives, these tactics gave rise in the past decade to popular, legal, political and social science concerns about disparate treatment of minority groups in their everyday encounters with law enforcement. Litigation has resulted in court oversight in nearly two dozen cities since 1996, and political tensions have contributed to wide divides in trust of the police between minority and white citizens.

This report presents the results of an independent inquiry into possible racial disparities in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search practices (informally known as FIO reports). FIO activity is the tactical expression of the *Terry* stop regime and proactive policing in Boston. This inquiry was conducted at the joint request of the Boston Police Department and the American Civilian Liberties Union of Massachusetts. It is intended to provide a factual basis to assess the implementation of proactive policing in Boston and how it affects Boston's diverse neighborhoods.

II. DATA AND METHODS

A. Data Sources

The Boston Police Department (BPD) Boston Regional Intelligence Center (BRIC) maintains an electronic database of Field Interrogation, Observation, Frisk, and/or Search reports (hereafter, FIO reports). FIO reports are used to document BPD officer interactions with individuals suspected of criminal activity, or associates of those individuals, including direct encounters and non-contact observations.[2] FIO reports represent a central activity in the BPD's intelligence efforts to collect and disseminate data on the activities and whereabouts of known and suspected criminals and their associates in Boston. These reports document the name, date-of-birth, sex, and race of FIO subjects as well as the date, time, and location of interaction.

FIOs also are conducted under constitutional authority set forth in *Terry v Ohio* (1968) and a series of subsequent state and federal cases.[3] Under *Terry*, officers are permitted

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[1] *Terry v. Ohio*, 362 U.S. 1 (1968), stating that officers can conduct investigative stops and temporary detentions of citizens based on reasonable, individualized and articulable suspicion that "crime is afoot."

[2] Boston Police Department Rules and Procedures. Rule 323, Field Interrogation, Observation, Frisk, and/or Search Reports. May 25, 2005, Page 1.

[3] *Terry v. Ohio*, 392 U.S. 1 (1968). See, generally, David A. Harris, "Particularized Suspicion, Categorical Judgments: Supreme Court Rhetoric versus Lower Court Reality under *Terry v. Ohio*." *72 St. John's Law Review* 975 (1998); Tracey Meares and Bernard Harcourt, Randomization and the Fourth Amendment, 78 *University of Chicago Law Review* 809-877 (2011). For examples of state law, see, e.g., *People v DeBour*, 40 NY2d 210 (1976). In Massachusetts, the standard for *Terry* stops follows federal constitutional law, and was clarified in *Commonwealth v. Narcisse* (457 Mass. 1 (2010) ("police officers may not escalate a consensual encounter with an individual into a protective frisk absent a reasonable suspicion that the individual has committed, was committing, or was about to commit a criminal offense, and that the individual was armed and dangerous.")

to stop and detain citizens if they have reasonable suspicion to believe that "crime is afoot."[4] The BPD practice departs from the street detentions authorized by *Terry* in that FIOs record a broader spectrum of police practices than the street detentions imagined and endorsed under *Terry*. They include non-contact observations of and direct encounters with individuals as well as the types of face-to-face investigative stops that were the focus of the *Terry* decision and that are an commonly used in contemporary urban policing. Compliance with constitutional requirements has been an important focus of research and litigation on *Terry* encounters.

Our analysis focuses on the period from 2007 through 2010. During that time, BPD officers made N=204,739 FIO reports. Compared to the residential population, the targets of FIO reports were disproportionately male, young, and Black. For these 204,739 FIO reports, the subjects were 89.0 percent male, 54.7 percent ages 24 or younger, and 63.3 percent Black. According to the U.S. Census Bureau, in 2010, Boston had some 617,594 residents that were 47.9 percent male, 36.2 percent ages 24 or younger, and 25.1 percent black.[5]

At first glance, these differences suggest racially disparate treatment in BPD FIO activity. However, these differences could also reflect crime risk differences in Boston's neighborhoods and population groups. Criminological research has long documented that criminal offenders are more likely to be young and male.[6] Violent crime problems also tend to concentrate in highly disadvantaged urban neighborhoods that are disproportionately populated by black residents.[7]

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[4] In *Terry v. Ohio*, supra note 1 at 27, the U.S. Supreme Court ruled that a person can be stopped and briefly detained by a police officer based on a reasonable suspicion of involvement in a punishable crime. If the officer has reasonable suspicion, the officer may perform a search of the person's outer garments for weapons. Such a detention does not violate the Fourth Amendment prohibition on unreasonable searches and seizure, though it must be brief. "Reasonable suspicion" requires more than an "inchoate and unparticularized suspicion or 'hunch'" (*Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)). Reasonable suspicion must be based on specific and articulable facts, taken together with rational inferences from those facts, (*Terry*, id at 21) and the suspicion must be associated with the specific individual (*Ybarra* at 85, 91).

[5] http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (Accessed March 14, 2015).

[6] David Farrington, Age and Crime 7 *Crime & Justice* 189 (1986). Jeffery T. Ulmer, and John H. Kramer, The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Costs of Being Young, Black, and Male, 36 *Criminology* 763-797 (1998).

[7] Lauren J. Krivo, Ruth D. Peterson, and Danielle C. Kuhl, Segregation, Racial Structure, and Neighborhood Violent Crime, 114 *American Journal of Sociology* 1765-1802 (2009). Unfortunately, due to a long history of exclusion from economic and social opportunities, residents of disadvantaged urban neighborhoods are primarily minorities and often black. Research has documented that most violence occurs within racial groups and that black Americans, often victimized by black offenders, experience disproportionately high levels of violent crime. Empirical evidence suggests that the capacity of neighborhood residents to achieve a common set of goals and exert control over youth and public spaces, termed "collective efficacy," is a protective factor against serious violence. See, Robert J. Sampson and William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality* in Crime and Inequality (John Hagan and Ruth Peterson, eds.) 37-56 (1995); Robert J. Sampson, Steven Raudenbush and Felton Earls, Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy, 277 *Science* 918 (1997); Jeffrey D. Morenoff, Robert J. Sampson and Steven Raudenbush, Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence, 39 *Criminology* 517-59 (2001).

BPD officers are required to document the reason for the FIO encounter in a FIO report and also to note whether they conducted *Terry* frisks for officer safety purposes and/or searches for the purposes of seizing evidence. Four in ten (40.5 percent) FIO reports led to a frisk and/or search of the subject (82,919).[8] Officers have limited space on the form to record their reasons for the FIO and, unfortunately, 75.0 percent (153,554) of the FIO reports simply state "investigation person" as the justification. This absence of evidence of stop rationales prevents a Fourth Amendment analysis of the constitutionality of discretionary stops and searches of FIO subjects. Also, the FIO reports contain no information as to whether the frisks and searches led to arrests, summons, or seizure of weapons or contraband. FIO events that did lead to either of those outcomes are not recorded on the FIO report, but instead officers default to the completion of an arrest report in those circumstances. In turn, the type of outcome analysis that has been widely applied to resolve Fourth and Fourteenth Amendment claims in policing litigation was not possible in this analysis.

B. Analytic Strategy

We combined two distinct approaches to estimate racial disparities. The first strategy is a disparate treatment strategy that examines stops in alternate empirical specifications looking at first aggregates – neighborhoods or police districts – and then individuals nested within those districts. We drew upon statistical models developed by Fagan and colleagues[9] to investigate alleged violations of the Fourteenth Amendment of the U.S. Constitution by the New York City Police Department (NYPD) in their stop, question, and frisk (SQF) practices.[10] The analyses in that litigation estimated whether the racial composition of NYPD precinct residents predicted stop patterns after controlling for the influences of crime, social conditions, and the allocation of police resources. Here, we adapted that analytical framework to examine whether the racial composition of Boston neighborhoods, defined as census tracts, predicts BPD FIO patterns, adjusting for crime, social and economic predictors, and police resources.

We apply a general test for evidence of disparate treatment using a regression equation that takes the form:

$$\text{Outcome} = \alpha + \beta_1 * \text{Minority} + \Sigma_i \beta_i * (\text{Plausible Non-Race Influences}) + \varepsilon_i$$

[8] 38.6% of the FIO reports indicated that the subjects were frisked and 11.6% of the FIO reports indicated that the subjects were searched. All but 1.8% of the searches were reported in conjunction with a frisk of the subject. Moreover, descriptive statistical analyses revealed that the biggest differences between FIO type and subject race arose when the FIO involved a frisk and/or search relative to a more simple observation and/or interrogation. Some 29.5% percent of White subjects were frisked / searched during an FIO relative to the 45.4% percent of Black subjects, 40.5% of Hispanic subjects; and 35.6% of Asian /other race subjects. As such, FIO type was collapsed into two categories: 0 = No Search (Observed and/or Interrogated only) and 1 = Frisk and/or Search Conducted.

[9] Report of Jeffrey Fagan, Ph.D. (2010) for *David Floyd et al. v. City of New York et al.*, U.S. District Court for the Southern District of New York, 08 Civ. 01034 (SAS), October 28; Andrew Gelman, Jeffrey Fagan, and Alex Kiss, "An Analysis of the NYPD's Stop-and-Frisk Policy in the Context of Claims of Racial Bias," 102 *Journal of the American Statistical Association* 813-823 (2007).

[10] Second Amended Complaint, *David Floyd et al. v. City of New York et al.*, U.S. District Court for the Southern District of New York, 08 Civ. 01034 (SAS), October 28.

where *Outcome* is the event or status of interest, *Minority* is an indicator for the racial composition or status of the unit observed (i.e., neighborhood or person, depending on the outcome), *Plausible Non-Race Influences* are a set of variables representing non-race factors that also might influence the outcome, and an error term e that captures the variation in the outcome that cannot be explained by either Minority status or the Non-Race Influences. These models may include non-race influences that are correlated with race, so as to better identify the unique effects of race that are present once the influence of proxies for race are removed.[11]

The goal in specifying these models is to identify the effects of race on outcomes after simultaneously considering factors that may be relevant to race.[12] Under a disparate treatment theory, the critical question is whether a person's race was the "but for" *cause* of being selected for different treatment than similarly situated persons of other races. Failure to consider these other race-correlated factors raises the risk of "omitted variable bias," which could lead to erroneous conclusions about the effects of variables that do appear in a regression test.[13]

The second strategy exploits the availability of data on officer race to determine whether the observed differences in stop rates for White and non-white youths are a function of preference-based discrimination, or statistical discrimination.[14] Statistical discrimination would reflect a tendency to stop one group at a higher rate than another based on observable characteristics such as known crime rates. But preference-based discrimination would reflect a tendency to prefer one group for stops over others based on factors unrelated to their observable differences in the targeted behavior.[15] Similar to prior studies, we use comparisons of officer race and suspect race to distinguish between these two potential sources of disparity.

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[11] For a general discussion of the specification of regression models to test for disparate treatment, see generally D. James Greiner, Causal Inference in Civil Rights Litigation, 122 *Harvard L. Rev.* 533 (2008). For a general discussion of how regressions sort out the influences of predictors of an outcome, see Thomas J. Campbell, Regression Analysis in Title VII Cases: Minimum Standards, Comparable Worth, and Other Issues Where Law and Statistics Meet, 36 *Stanford L. Rev.* 1299 (1984).

[12] See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). In a disparate treatment claim, we would ask if the use of a high school diploma requirement biases the hiring process since African American job applicants may be less likely to have obtained a high school diploma. Once this race-correlated control is introduced, it would likely reduce the racial disparity in the hiring rates and provide a different test than would a simple disparate impact test.

[13] See, e.g., Ian Ayres, Testing for Discrimination and the Problem of 'Included Variable Bias', Yale Law School Working Paper (2010), available at http://islandia.law.yale.edu/ayres/ayresincludedvariablebias.pdf; Ian Ayres, Three Tests for Measuring Unjustified Disparate Impacts in Organ Transplantation: The Problem of 'Included Variable' Bias, 48 *Perspectives in Biology and Medicine* 68 (2005).

[14] Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," 91 *The Review of Economics and Statistics*, 163–177 (2009).

[15] See, for example, Billy R. Close and Patrick Leon Mason, "Searching for Efficient Enforcement: Officer Characteristics and Racially Biased Policing," 3 *Review of Law & Economics* 263 (2007);

III. RESULTS

A. Suspects and Officers

Table 1 shows the characteristics of both suspects and officers. Suspect identifiers were available for 199,331 (97.4% of 204,739) FIO encounters between 2007 and 2010. From these, we were able to identify N = 72,619 unique subjects. Using gang intelligence databases maintained by BPD, we estimated that 5.5 percent (3,967 of 72,619) of the suspects in FIO encounters were classified as gang members.[16] The number of FIO's per suspect ranged from 1 to 249, with an average of 2.74 FIO events per suspect, during the study period. About half (48.5 percent) had been arrested, with the number of arrests ranged from 1 to 63, with a mean of 5 arrests.

Most suspects were young: nearly half were younger than 25 years of age. One in three (33.7%) were between 18 and 24 years of age. Most were male (81.8%), consistent with known gender differences in crime rates by gender.[17] Most suspects were Black (42.5%) or Hispanic (13.3%), each above their respective share of population in Boston in the 2010 census. Whites were under-represented in the FIO subject pool relative to population share. As we discussed earlier, population is a weak benchmark, and we control for local crime rates in subsequent analyses.

About half of the FIO suspects (48.5%) had one or more prior arrests, and in turn, more than half had none. To the extent that stops in general carry risks of social and psychological harms,[18] the reach of FIOs to persons with no prior record extends an umbrella of suspicion to a group of primarily young people with no known criminal involvement.

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[16] See, Anthony A. Braga, David M. Hureau, and Leigh Grossman, *Managing the Group Violence Intervention: Using Shooting Scorecards to Track Group Violence*, 15 (2014). The Boston Regional Intelligence Center (BRIC) created a classification system using several parameters to identify individuals as gang members. To be classified as a gang member by BRIC, a person has to accumulate 10 points based upon the following criteria: prior validation by a BRIC-affiliated criminal justice agency that uses the same selection criteria (9 points), prior validation by a non-BRIC-affiliated criminal justice agency that uses similar selection criteria (8 points), self-admitted gang membership (8 points), use and/or possession of gang paraphernalia or identifiers (4 points), gang-related photograph (2 points), known gang tattoo or marking (8 points), information from reliable confidential informant (5 points), information from anonymous source or tipster (1 point), crime victim associated with rival gang (3 or 8 points depending on incarceration status), possession of gang documents such as by-laws (3 or 8 points depending on incarceration status), possession of gang publications (2 points), participation in gang publication (8 points), possession of court and/or investigative documents involving an identified gang member (9 points), possession of printed or electronic media indicating membership (1 point), contact with known gang members via Field Interrogation Observation reports (2 points per report), named in police incident report involving known gang member (4 points per report), possession of gang membership material (9 points), information developed during surveillance and/or surveillance (5 points), and other information (1 point).

[17] Janet L. Lauritsen, Karen Heimer, and James P. Lynch, "Trends in the gender gap in violent offending: new evidence from the national crime victimization survey," 47 *Criminology* 361 (2009).

[18] See, William J. Stuntz, "Terry's Impossibility," 72 *St. John's Law Review* 1213 (1998). See, also, Ekow Yankah, "Policing Ourselves: A Republican Theory of Citizenship, Dignity and Policing" (2013), available at SSRN: http://ssrn.com/abstract=2258048; Amanda Geller, Jeffrey Fagan, Tom R. Tyler, and Bruce G. Link, Aggressive Policing and the Mental Health of Young Men, 104 *American Journal of Public Health* 2321 (2014).

Table 1. Age, Gender, and Race of Unique BPD FIO Subjects and Officers

	FIO Subjects, N=72,619		*FIO Officers, N=1750*[a]	
	N	Percent	N	Percent
Gender				
Male	59,438	81.8	1,558	89
Female	13,181	18.2	192	11
Age				
Below 18	9,201	12.7	0	0
18 – 24	24,471	33.7	10	0.6
25 – 30	12,375	17	208	11.9
31 – 35	6,417	8.8	286	16.3
36 – 40	5,636	7.8	356	20.3
41 – 50	9,650	13.3	609	34.8
51 and older	4,869	6.7	281	16.1
Mean	29.2		41.3	
Median	26		41	
Range	12 to 71 years		23 to 64 years	
Race				
Black	30,849	42.5	418	23.9
White	25,758	35.5	1,139	65.1
Hispanic	9,693	13.3	150	8.6
Asian / Other	1,321	1.8	43	2.5
Unknown	4,998	6.9	0	0
Selected Characteristics				
Subjects				
Gang member	3,967	5.5		
Prior arrest (1+)	35,256	48.5		
Officers				
Gang Unit (YVSF)	65	3.7		
Detective (any rank)	212	12.1		
Patrol Officer	1,379	78.8		
Patrol Sergeant	130	7.4		
Patrol Lieutenant / Captain	23	1.3		
Dep. Supt. / Superintendent	6	0.3		

a. These are the officers who have had one or more FIO encounter over the study interval.

Gangs are a focus of Boston police tactics. Yet few of the FIO suspects (5.5%) were known to the police as gang members. The department's gang unit was proportionately small, with 3.7% of the population of officers whose shields were in the FIO database.

BPD Officers were older, and in turn, experienced. More than half were over 40 years of age (50.9%), with a median age of 41.3 years. Nearly two officers in three were White (65.1%), and about one in four were Black (23.9%). Most were assigned to patrol commands, with about one in eight (12.1%) holding a detective's shield.

The number of repeat FIO reports per subject is concentrated among a small number of individuals who experience large numbers of FIO encounters. Table 2 shows that about two FIO subjects in three (67.5 percent) experienced just one FIO. As a group, they accounted for 24.6 percent of the total number of FIO reports from 2007 – 2010. About one in 20 (5.2 percent) experienced 10 or more FIOs and, as a group, accounted for 40.2 percent of the total number of FIO reports made by BPD officers during this time.

Table 2. FIO Report Distribution by Unique Subjects

N of FIOs	N Subjects	% Subjects	Cum. % Subjects	Sum FIOs	% FIOs	Cum. % FIOs
51+	211	0.3	0.3	14,886	7.5	7.5
25 – 50	671	0.9	1.2	22,314	11.2	18.7
10 – 24	2,933	4	5.2	42,787	21.5	40.2
5 – 9	4,926	6.8	12	31,798	15.9	56.1
2 – 4	14,860	20.5	32.5	38,528	19.3	75.4
1 only	49,018	67.5	100	49,018	24.6	100
Total	72,619	100	100	199,331	100	100

Table 3. FIO Report Distribution by Unique BPD Officers

N of FIOs	N Officers	% Officers	Cum % Officers	Sum FIOs	% FIO	Cum % FIO
1,000+	28	1.2	1.2	42,399	21.2	21.2
500 - 999	65	2.8	4	44,153	22.1	43.3
250 - 499	128	5.4	9.4	44,809	22.4	65.7
100 - 249	253	10.7	20.1	39,693	19.8	85.5
50 - 99	214	9.1	29.2	15,179	7.6	93.1
1 - 49	1,062	45	74.2	13,870	6.9	100
Zero	609	25.8	100	0	0	100
Total	2,359	100	100	200,103	100	100

Table 3 shows that, similar to the distribution of repeat FIOs among subjects, the number of repeat FIO reports per officer is also highly concentrated among a small number of individuals. FIO forms also report the badge numbers of the BPD officers who filled out the reports. Officer badge numbers were available for N=200,103 FIO reports (97.7% of 204,739). BPD personnel records identified 2,359 unique officers in its workforce between 2007 and 2010, including new hires and retirements during that time period. Personnel records were used to determine officer demographic information, years on the job, rank, assignment, and detective status for all sworn BPD officers. Badge numbers on FIO reports were used to identify the N=1,750 unique BPD officers.

About three officers in four (74.2% of 2,359) made one or more FIO reports between 2007 and 2010. The counts ranged from 1 to 2,315 FIOs. Officers averaged 84.3 FIOs over the four years, or 21 per year. Nearly half (45.0 percent) generated fewer than 50 FIO reports and, as a group, accounted for 6.9 percent of the total number of FIO reports during the study time period. A small group (4.0 percent, or approximately 70 officers) generated 500 or more FIOs; they accounted for 43.3 percent of the total number of FIO reports made by BPD officers from 2007 - 2010.

B. Race, Crime and FIOs

1. FIOs by Neighborhood Crime and Social Conditions

Table 4 shows the results of the estimates of FIO activity using alternate benchmarks for racial composition of the population of potential suspects. The monthly number of total Index crimes (logged, lagged) in a tract was a consistently significant positive predictor of the monthly count of FIO reports in a tract across models with varying benchmarks. This suggests that the intensity of BPD FIO activity in a tract is associated with the amount of serious crime experienced in a tract controlling for other conditions. An increase of 1 percent more total index crime incidents in the previous month leads to an increase of 10.6 percent (IRR=1.106) FIO reports in the following month. This is a large effect, considering that the average Boston census tract experiences 12.2 index crimes per month. Each of the models in Table 4 show that the Boston police prioritized crime problems in the allocation of FIO activity by tract and police district during this period.

After controlling for crime, Table 4 also shows that the racial composition variables for Percent Black and Percent Hispanic are positive and significant for all three models. The pattern of race effects suggests evidence of disparate treatment in FIO activity based on neighborhood racial composition. After controlling for local crime rates, we observe higher rates of FIO activity for census tracts based on their Black or Hispanic racial composition, whether in residents, arrestees, or the race of known crime suspects. In each of these specifications, the percentage of Foreign Born Residents in a tract was also a statistically-significant predictor of increased FIO activity. Since foreign born residents of Boston are primarily persons of color, the focus of FIO activity in those neighborhoods reinforces the notion of disparate treatment by race and ethnicity.

The consistent size and direction of the race and ethnicity coefficients suggests a consistent race effect after controlling for crime, police activity, and other relevant factors, even if the effects were modest in size. Still, even modest effects can have practical

significance. The disparity in the monthly count of FIO reports can be meaningful in census tracts with larger shares of minority residents, arrestees, and reported suspects. Using the residential racial composition variable as an example, the incidence rate ratio on Percent Black suggests that a one-unit increase in the black percentage of residents relative to the white percentage of residents in a Census tract is associated with a 2.2 percent increase (IRR=1.022) in the monthly count of FIO reports made by the BPD controlling for crime and other factors. The effects of race (and foreign born residents) in Table 4 were observed after controlling for the number of officers deployed in each police district, a measure of the exposure of local residents to police and their availability for FIO contacts.

Table 4. Negative Binomial Regressions of Monthly FIO Report Counts Controlling for Census Tract Characteristics, Crime, Police Activity, and Other Conditions for Three Racial Benchmarks (IRR's, SE, p)

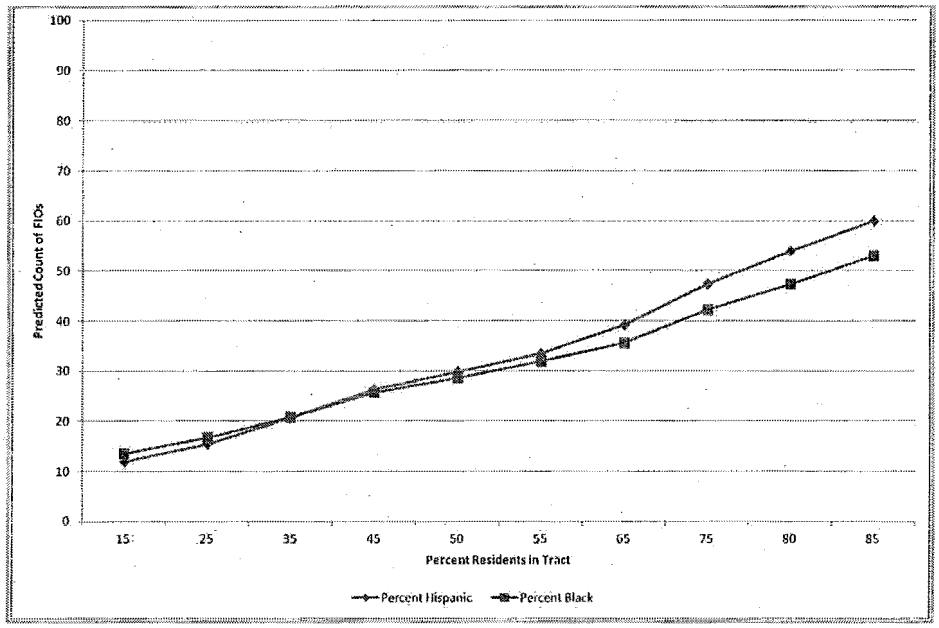
	Residents	Arrestees	Crime Victims
Percent Black	1.022 (.006) **	1.025 (.005) **	1.029 (.009) **
Percent Hispanic	1.041 (.008) **	1.016 (.008) *	1.040 (.011) **
Percent Asian / other	1.020 (.012)	0.917 (.052)	0.967 (.063)
Percent Unknown Race	-----	-----	0.922 (.015) **
Total Crime (logged, lagged)	1.106 (.026) **	1.125 (.036) **	1.091 (.027) **
Disadvantage Index	0.894 (.157)	0.911 (.178)	0.924 (.143)
Percent Foreign Born	1.016 (.009) +	1.017 (.007) *	1.019 (.009) *
Patrol Strength	1.006 (.006)	1.002 (.005)	1.006 (.006)
Moran's I (lagged)	1.285 (.369)	1.124 (.280)	1.054 (.282)
Constant	0.063 (.052) **	0.168 (.131) *	0.916 (.035) **
District Fixed Effects?	Yes	Yes	Yes
Year Fixed Effects?	Yes	Yes	Yes
Season Fixed Effects?	Yes	Yes	Yes
Standard Errors Clustered by Tract?	Yes	Yes	Yes
Observations	8,303	8,303	8,303
Groups	173	173	173
Wald Chi-Square	460.36	492.63	582.82
Wald degrees of freedom	25	25	26
Wald Chi-Square *p*	.000	.000	.000

Notes: Estimates reported as Incident Rate Ratios. Robust standard errors were clustered by census tract. Percent White is the reference category for the resident, arrestee, and suspect race dummy variables. The natural log of the total number of residents, total number of arrestees, and total number of suspects for each tract-month were used as exposure offsets in the respective regression models. Significance: + $p<=.10$, * $p<=.05$, ** $p<=.01$.

Figure 2 shows the marginal increase in the predicted count of monthly FIO reports in a census tract as the percentages of Black and Hispanic residents in a tract increase. The figure shows the nearly linear and monotonic increase in the adjusted (for predictors) monthly count of FIO reports increases as the percentages of minority residents increases in a tract. To illustrate, Figure 2 shows that a tract with 85 percent black residents would experience an additional 53 FIO reports per month compared to a tract with 15 percent

black residents. Over the course of one year, residents in that tract would be subjected to an additional 636 FIO reports and, over the four-year study time period, this difference would represent an additional 2,544 FIO reports in that tract.

Figure 2. Predicted Count of FIO's per Month by Percent Black and Hispanic Residents in Tract, Boston, 2007-10, Controlling for Crime, Policing and Social Conditions



Because crime and racial composition are unevenly distributed across tracts and neighborhoods in Boston, similar to other cities, we tested for the possible leverage of outliers in the estimates in Table 4.[19] That is, both of the central findings in Table 4 on crime and race could reflect the undue leverage and influence of neighborhood outliers in each of these distributions.[20] For example, Figure 2 shows the concentration of crimes and race in particular corners of the city. To test for the effects of outliers, we conducted a sensitivity test by trimming 20 percent of tracts at the extremes of the FIO activity distributions. The results were largely unchanged. Using a population benchmark (Model 1 in Table 4), the IRR for percent Black population declines slightly from 1.022 to 1.018 in the narrower model. For crime, the IRR of crime on FIO counts dropped from 1.106 to 1.088. In other words, the FIO / race / crime relationship is robust to the removal of the extremes.

[19] Krivo and Peterson, supra note 7.

[20] For an example of an estimation of leverage effects of outliers, see Richard A. Berk, "New Claims about Executions and General Deterrence: Déja Vu All Over Again?" 2 *Journal of Empirical Legal Studies* 303 (2005) (showing the undue influence of Texas in state-year fixed effects estimates of the deterrent effects of executions on homicides).

2. FIO Activity by Suspect Characteristics

FIOs are a first-stage intrusion by police on individual liberty and privacy. But in Boston, the use of non-contact FIOs carries a lower level of intrusion but also an unarticulated basis of suspicion. While privacy may be violated in the sense that one's movements in these contacts are recorded by a police officer acting on behalf of the state, a non-contact incident does not have the same physical intrusion nor temporary detention and liberty implications of a full contact stop. Yet the accumulation of official records of surveillance of one's movements and associations carries its own unique privacy effects. The fact that these incidents – which are not concretely tied to a crime incident – create an archival record outside of any constitutional regulatory mechanism raises concerns about the security and privacy of such personal information.

To compare race effects on contact versus non-contact encounters, we estimated negative binomial regressions of subject race and other individual characteristics on FIO counts. The models were estimated with and without gang membership status and arrest history to examine how individual criminality might mediate any observed race effects.

Table 5. Negative Binomial Regression of the Number of FIO Reports by Individual Suspect Characteristics Controlling for Gang Membership (IRR, SE, *p*)

	All FIO Reports		*Non-Contact FIO Reports*
	Model 1	***Model 2***	***Model 3***
Black Suspect	1.725 (.026) **	1.088 (.011) **	1.047 (.010) **
Hispanic Suspect	1.136 (.026) **	0.969 (.013) *	0.972 (.012) *
Asian / Other Suspect	0.725 (.024) **	0.791 (.021) **	0.757 (.021) **
Unknown Race	0.501 (.007) **	0.681 (.007) **	0.483 (.007) **
Age	0.990 (.001) **	0.988 (.001) **	0.979 (.001) **
Female Suspect	0.670 (.011) **	0.830 (.009) **	0.811 (.008) **
Gang Member	----	3.339 (.076) **	4.171 (.075) **
Arrest History	----	1.108 (.001) **	1.151 (.001) **
Constant	2.788 (.058) **	2.103 (.029) **	2.091 (.029) **
District Fixed Effects?	Yes	Yes	Yes
Year Fixed Effects?	Yes	Yes	Yes
Season Fixed Effects?	Yes	Yes	Yes
SE's Clustered by Tract?	Yes	Yes	Yes
Observations	72,619	72,619	72,619
Log Pseudo-likelihood	-153,503.52	-133,092.42	-117,323.91
Wald Chi-Square	9,269.43	22,813.61	19,112.43
Wald Chi-Square *p*	0.000	0.000	0.000

Notes: Models estimated with robust standard errors clustered by tract. Race variables contrasted with White. Significance: + $p<=.10$, * $p<=.05$, ** $p<=.01$

Model 1 in Table 5 shows the results for all FIO encounters. Model 2 controls for arrest history and gang membership, an adjustment that acknowledges the more intense surveillance and contact rates with suspected gang members or persons suspected by the police to be involved in criminal activity. Model 3 re-estimates Model 2 for only non-contact FIO encounters.

In Model 1, Black and Hispanic suspects have significantly higher FIO activity compared to Whites. The effect size for Blacks is especially large and more modest for Hispanic suspects. For Asian and Other Race suspects, they are less likely to be the subject of an FIO encounter compared to Whites, and the results also are significant. Older suspects and females are less likely to be subjects of FIO encounters.

Comparing Models 1 and 2, prior arrest history and gang membership each mediate the influence of race on the number of FIO encounters experienced by subjects, reducing the size of the race estimates but they remain statistically significant. Model 1 shows that compared to White subjects, Black subjects experienced 72.5 percent more FIO encounters per month across the city and Hispanic subjects experienced 13.6 percent more FIO encounters. When the prior arrest and gang status covariates are included, in Model 2, Black subjects experienced only 8.8 percent more FIO encounters per month and Hispanic subjects experienced 3.1 percent fewer FIO encounters compared to their White counterparts. The results for Asians and Other / Unknown race suspects remain unchanged. Gangs evidently are a priority in using FIO authority, and account for at least some of the racial disparity in FIO encounters. The reduction in effect size for race once gang status is introduced hints that race and gang status are serving as proxies for one another in FIO activity.

The pattern for non-contact FIO activity in Model 3 is similar to the pattern shown in Model 2. The effects of gang membership increase from Model 2 to Model 3, suggesting even greater attention to gang members, albeit without contact or interpersonal interaction. This makes sense, since gang members or reputed gang members are well known to the specialized Youth Violence Strike Force (YVSF, informally known as the gang unit), and their observations can be recorded for surveillance and intelligence purposes. Perhaps observing gang member movements and associations has intelligence payoffs, which might explain and rationalize the use of police powers in this way. But massing data on persons – many of whom have no prior record – carries the risk of an administrative stigma that may influence later police or court actions.

The importance of Table 5 is its portrayal of intense police attention to gang members by Boston police, including reputed gang members who may have had no criminal history. Gangs are thought to be an important source of the city's gun violence problem, which leads to this attention. We also see that like the general population of those with FIO encounters, gang membership also is skewed by both individual and neighborhood racial composition.[21]

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[21] Anthony A. Braga, David M. Hureau, and Andrew V. Papachristos, Deterring Gang-Involved Gun Violence: Measuring the Impact of Boston's Operation Ceasefire on Street Gang Behavior, 30 *Journal of Quantitative Criminology* 113 – 139 (2014); Andrew V. Papachristos, David M. Hureau, and Anthony A. Braga, The Corner and the Crew: The Influence of Geography and Social Networks on Gang Violence, 78 *American Sociological*

3. Frisks and Searches by Suspect Race

Table 6 shows that Black and Hispanic suspects were more likely to be frisked or searched during an FIO encounter, after controlling for non-racial suspect characteristics. Compared to White suspects, Black suspects were 12.4 percent more likely to be frisked / searched, and Hispanic subjects were 4.5 percent more likely to be frisked / searched during FIO encounters with arrest and gang status covariates included in the model. Gang members were 11.7 percent more likely to be frisked / searched during FIO encounters relative to their non-gang counterparts, controlling for other factors. For every additional arrest in their history, suspects were 1.8 percent more likely to be frisked or searched during FIO encounters. Asian and other race subjects were significantly less likely to be frisked / searched during FIO encounters when compared to White subjects. Here, the gang effect that explained FIO activity in Table 5 seems to have comparable and independent influence on the decision to frisk as does the suspect's race.

Table 6. Hierarchical Logistic Regression Estimating Impact of Suspect Race on Probability of a Frisk and/or Search (OR, SE, p)

Characteristic	*OR*	*SE*	*p*
Age	0.977	-0.001	**
Female	0.347	-0.007	**
Suspect Race – Black	1.124	-0.018	**
Suspect Race – Hispanic	1.045	-0.018	**
Suspect Race – Asian/Other	0.837	-0.021	**
Suspect Race – Unknown	0.588	-0.018	**
Gang Member	1.117	-0.017	**
Arrest History	1.018	-0.001	**
Constant	0.459	-0.082	***
Observations	199,331		
Log Likelihood	-121413.72		
Wald Chi-square	2603.82		
p(Wald Chi-square)	0.000		

Notes: Robust standard errors clustered by tract. Fixed effects for police districts, year and season. Random effects for tract characteristics (not shown) include tract population (logged), total violent crime in tract (logged, lagged), disadvantage index, and Moran's I. Race variables contrasted with White suspects. Significance: + $p<=.10$, * $p<=.05$, ** $p<=.01$

Taken together, Tables 5 and 6 show racial disparities in the number of repeated FIO contacts and the probability of being frisked / searches experienced by Black and Hispanic suspects. The effects in these tables are adjusted for the influences of age, gang membership, neighborhood and other relevant non-race influences.

Review 417 (2013); Anthony A. Braga, David Hureau, and Christopher Winship, "Losing Faith? Police, Black Churches and the Resurgence of Youth Violence in Boston, 6 *Ohio St. J. Crim. L.* 141 (2008).

In fact, we see the frisk estimates in Table 6 as conservative and expected to see even greater effects by suspect race considering the attention to gangs in this setting. This might be due to the BPD's use of FIOs for intelligence gathering purposes, especially among gang members. Other *Terry* stop "programs" do not document non-contact observations, in line with the Supreme Court dicta limiting constitutional regulation to the physical aspect of investigative stops.[22]

The large FIO differences in counts of encounters – both observational and face-to-face – compared to the incidence of frisks or searches suggests more extensive use of FIO reports to monitor gang members at a distance rather than repeatedly initiating physical contact to search them for weapons, drugs, or other contraband. Perhaps this is a safety consideration, or it may be that there are information yields from non-contact encounters, such as understanding gang membership and associations, that can address tactical and policy goals. Whatever the purpose and rational, more research is needed on the reasons and circumstances for this component of the FIO strategy, as well as its informational payoff.

4. FIO Activity by Unit and Officer Race

Table 7 shows the effects of officer characteristics on FIO patterns. There were large differences in FIO activity by officer race or ethnicity. Black officers made 42.5 percent fewer FIO reports per month compared to White officers, controlling for age, sex, rank, detective status, and assignment. Asian officers also made significantly fewer FIO reports. Relative to White officers, Asian officers made 44.8 percent fewer FIO reports controlling for officer demographic, rank, and assignment covariates. Hispanic officers made slightly smaller numbers of FIO reports than their White officers but the observed differences were not statistically significant. Controlling for assignment, rank, and other factors, older officers and female officers made significantly fewer FIO reports relative to their younger and male counterparts, respectively.

Unit assignment also was a significant predictor of officers' FIO activity. BPD officers assigned to the YVSF make almost 12 times as many FIO reports per month compared to officers assigned to other specialized units or policing districts, controlling for other factors. Their mission explains in part this emphasis: YVSF officers are charged with preventing outbreaks of gang violence. Completing FIO reports on gang member whereabouts, their associations and routine activities represent a central activity in pursuing that mission by massing information on the routine activities of gang members.

Compared to line level patrol officers, Captains, Deputy Superintendents, and Superintendents make significantly fewer FIO reports holding other officer characteristics constant. These high-ranking officers have extensive managerial responsibilities and, while they maintain a presence in the community, they are much less likely to be engaging in street-level law enforcement work.[23]

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[22] See, *Terry v Ohio*, 362 U.S. 1 (1968)

[23] The model used for the estimates in Table 7 is a zero-inflated negative binomial regression, which is employed in situations where there are large numbers of observations of zero events in the data and there are separate functions to determine any participation and then frequency of participation. See, for example, Kelvin KW Yau, Kui Wang, and Andy H. Lee, "Zero-Inflated Negative Binomial Mixed Regression Modeling- of Over-Dispersed Count Data with Extra Zeros," 45 *Biometrical Journal* 437 (2003). This regression first estimates factors that explain when there are one or more events, and then explains the count of those events given one or more. The first stage analyzes the inflation factors associated with *any* participation. The medical leave and administrative position variables were statistically significant predictors of zero FIO activity during the study

Table 7. Zero Inflated Negative Binomial Regressions of FIO Counts on Officer Characteristics (IRR, SE, p)

Characteristic	*OR*	*SE*	*p*
Years on Job	0.902	-0.007	**
Female	0.377	-0.069	**
Officer Race			
Black	0.575	-0.066	**
Hispanic	0.901	-0.156	
Asian	0.552	-0.121	**
Officer Rank			
Detective	0.885	-0.187	
Sergeant or Lt.	0.893	-0.151	
Captain or Command	0.778	-0.133	*
Officer Unit			
Mobile Operations	1.021	-0.583	
Drug Control	1.131	-0.263	
YVSF	11.953	-2.655	**
Other Patrol	0.358	-0.112	**
Other Investigation	0.215	-0.069	**
Constant	206.322	-49.72	**
Zero Inflation Parameters			
Administrative Assignment	4.946	-0.404	**
On Leave	4.592	-0.389	**
Constant	-4.734	-0.301	**
Observations	2,359		
Log Likelihood	-9,833.14		
Wald Chi-square	1059.06		
p (Chi-square)	0		

Notes: Models estimated with robust standard errors, not clustered due to mobility of officers. Fixed effects for police district, year, season, and police district. Significance: $^{+}$ $p<=.10$, * $p<=.05$, ** $p<=.01$

The strong influence of the YVSF officers on FIO activity, coupled with the race-specific patterns shown in Table 7, leads to a further question: whether FIO activity within the YVSF command also varies by officer race. Table 8 shows the results of regressions with

time period, controlling for other factors. BPD officers who were not able to perform their duties or were assigned to administrative positions generally do not complete FIO reports.

only officers having one of more FIO encounters, and disaggregating officers by race and YVSF assignment. The six groups shown in Model 2 in Table 8 are compared to Asian and Other Race officers, a move that exploits the fact that there are so few Asian officers in the YVSF. This permits direct comparisons of the regression estimates in Model 2.

Table 8. Negative Binomial Regression of the Number of FIO Reports by Officer Race and YVSF Status (IRR, SE, p)

	Model 1	*Model 2*
Age	.916 (.006) **	.922 (.006) **
Female	.307 (.059) **	.383 (.074) **
White Officer	1.752 (.335) **	----
Black Officer	1.171 (.243)	----
Hispanic Officer	1.613 (.338) *	----
White YVSF	----	9.022 (2.136) **
White Other	----	1.488 (.287) *
Black YVSF	----	8.358 (2.081) **
Black Other	----	.826 (.170)
Hispanic YVSF	----	10.788 (3.706) **
Hispanic Other	----	1.112 (.265)
Constant	191.969 (37.743) **	175.144 (34.663) **
Observations	1,750	1,750
Log Pseudo-likelihood	-9,245.30	-9,116.84
Wald Chi-Square	312.99	652.49
Wald Chi-Square *p*	0	0

Notes: Models estimated with robust standard errors, not clustered due to mobility of officers. Officers included in this analysis made at least one FIO report between 2007 and 2010. Asian is the contrast category for the FIO officer race tests.

Significance: + p<=.10, * p<=.05, ** p<=.01

Model 1 in Table 8 shows that White and Hispanic officers had substantially more FIO encounters than Black officers. Without controlling for assignment, the effect sizes for White and Hispanic officers are considerably larger than for Black officers. Model 2 shows that this effect is an artifact of YVSF assignment. Within officer race, YVSF officers have far more frequent FIO activity than their non-YVSF counterparts. The differences again are very large. White YVSF officers have about 6.5 times more FIO encounters per month than White officers in other units. The differences for Black and Hispanic officers in the YVSF units are even greater.

Here again, we see the importance of the YVSF unit in explaining racial disparities in FIO encounters between citizens and police. This is not to say that there is no evidence of racially disparate treatment by officers in other commands; the data show that in fact, regardless of command, White officers and Hispanic officers are more active in FIO work.

Rather, Table 8 shows that within this focus of police efforts, the race disparities within officer racial categories are quite large, and officers from all racial and ethnic groups are more active once assigned to this command. The results suggest an institutional dimension to explain officer FIO activity that is separate from an individual officer's taste or preference for discrimination.

5. Frisks and Searches by Officer Race and Assignment

Table 9 shows differences in frisk/search probability by officer race and assignment. Black officers were 15.0 percent less likely to frisk / search subjects during FIO encounters when compared to White officers, controlling for age, sex, rank, detective status, and assignment. Asian officers were also less likely to frisk / search FIO subjects. Relative to White officers, Asian officers were 32.6 percent less likely to frisk / search subjects during FIO encounters controlling for officer demographic, rank, and assignment covariates. Hispanic officers were only 4.4 percent less likely to frisk / search subjects during FIO encounters holding the other variables constant; that result was not statistically significant. More experienced officers and female officers were significantly less likely to frisk / search subjects during FIO encounters relative to their younger and male counterparts, respectively, controlling for assignment, rank, and other factors.

Two assignments show extremely elevated rates of frisk / search activity. Detectives were 49.5 percent more likely to frisk / search subjects during FIO encounters relative to non-detectives, controlling for assignment, rank, and other factors. Given their responsibility for investigating unsolved crimes, detectives were presumably more likely to frisk / search FIO subjects for evidence of criminal activity during the course of an investigation. YVSF officers were 24.3 percent more likely to frisk / search subjects during FIO encounters relative to non-YVSF officers, controlling for assignment, rank, detective status, and other factors. YVSF officers focus FIO encounters on gang members who pose a higher risk of carrying weapons relative to other FIO subjects, which explains in part their preferences for search relative to other BPD officers. Compared to line level patrol officers, Sergeants, Lieutenants Captains, Deputy Superintendents, and Superintendents were significantly less likely to frisk / search subjects during FIO encounters holding other officer characteristics constant.

Despite the frequent FIO activity by YVSF officers, these results suggest that they exercise caution in proceeding from an encounter to a frisk or search. YVSF officers were far more active in FIO activity, by orders of magnitude, than their non-YVSF counterparts, yet only a fraction of their encounters proceeded to a frisk or search.

Table 9. Hierarchical Logistic Regression Estimating Impact of Officer Race on Probability of a Frisk or Search (OR, SE, p)

Characteristic	*OR*	*SE*	*p*
Years on Job	0.973	(.007)	**
Female	0.618	(.069)	**
Officer Race			
Black	0.850	(.066)	**
Hispanic	0.956	(.156)	
Asian	0.674	(.121)	**
Officer Rank			
Detective	1.495	(.187)	
Sergeant or Lt.	0.847	(.151)	
Captain or Command	0.5	(.133)	*
Officer Unit			
YVSF	1.243	(2.655)	**
Constant	315.322	(49.720)	**
Observations	200,103		
Log Likelihood	-123,410.23		
Wald Chi-square	1,618.47		
p (Chi-square)	0.000		

Notes: Robust standard errors clustered by police district. Random effects (not shown) included census tract population (logged), total crime in tract (logged, lagged), disadvantage index, and Moran's I. Fixed effects for year, season, and police district. Significance: + $p<=.10$, * $p<=.05$, ** $p<=.01$

6. Officer-Suspect Racial Asymmetries

Table 10a shows the results of analyses that disaggregate patterns of FIO encounters by both officer race and suspect race. We estimated models of the count of FIO encounters using negative binomial regressions, following the functional form used in the previous models of FIO activity. Controls included age and gender of the suspect and age, gender, rank and assignment for officers. Separate models were conducted for each officer race group. Fixed effects for police districts controlled for differential exposure of officers to crime and to different local racial concentrations. The first three columns compare FIO reports of each suspect racial group by officers of each race to FIO reports done by White officers. The fourth column compares FIO reports by White officers to FIO reports of Black Officers. The cells in Table 10a show the incidence rate ratio for each comparison. To test for different patterns in frisks and searches, we use multilevel logistic regression

models as the functional form to estimate the probability of a frisk or search across racial groups. The results in Table 10b show the odds ratio for each comparison.

Table 10a. Negative Binomial Regression Analyses of the Joint Distribution of Officer Race and Subject Race on FIO Counts (IRR, SE)

	Officer Race			
Subject Race	*Black*	*Hispanic*	*Asian*	*White*
Black	.645**	.865	.504**	1.548*
	(.071)	(.139)	(.112)	(.169)
Hispanic	.581**	.128	.664	1.722**
	(.063)	(.170)	(.171)	(.188)
Asian / Other	.616**	1.219	1.113	1.623**
	(.089)	(.334)	(.281)	(.235)
White	.426**	.731*	.702*	2.345**
	(.041)	(.103)	(.200)	(.227)

Table 10b. Hierarchical Logistic Regression Analyses of the Joint Distribution of Officer Race and Subject Race on the Likelihood of a Frisk / Search (OR, SE)

	Officer Race			
Subject Race	*Black*	*Hispanic*	*Asian*	*White*
Black	.813**	.922**	.649**	1.229**
	(.014)	(.020)	(.038)	(.021)
Hispanic	.991	.968	.605**	1.008
	(.041)	(.040)	(.068)	(.041)
Asian / Other	.949	1.031	.724*	1.052
	(.060)	(.071)	(.112)	(.066)
White	.874**	.926*	.811**	1.143**
	(.032)	(.035)	(.057)	(.042)

Note: Models estimated with robust standard errors clustered by police district. Estimates control for suspect and officer age and gender. Fixed effects include year, season, police district, and officer rank and assignment. White is the contrast category for officer race variables in the regressions in the first three columns of coefficients. Black is the contrast category for the White officer race dummy variable in the regressions in the fourth column. Significance: $^{+}$ $p<=.10$, * $p<=.05$, ** $p<=.01$

Table 10a shows higher FIO activity for White officers for suspects of all races, including White suspects, compared to Black officers. White officers have significantly more encounters with White suspects than they have with suspects of other races. Column 1 shows that Black officers, compared to White officers, are significantly less active across all suspect race groups, again suggesting discrimination other than preference-based. The pattern for frisks and searches in Table 10b is similar. White officers are more likely to frisk or search both Black and White suspects compared to cross-racial frisks or searches by Black officers. Black officers again show lower rates of frisks and searches compared to White officers, and are equally likely to frisk or search both White and Black suspects. Hispanic officers are less likely compared to White officers to frisk Black and White suspects, while White officers are more likely than Hispanic officers to frisk or search both Black and White suspects. Both tables show that when we compare within suspect race, black officers are less likely to FIO black suspects than white officers are to FIO black suspects.

One way to understand Tables 10a and 10b is that while White officers may not discriminate between suspects of different races, they do have stronger preferences for stops between races than do Black officers. This is evident for suspects of all races. This presents a more complex picture of the preference-statistical discrimination distinction than previous studies have reported. White officers are more active than are Black or Hispanic officers in FIO activity overall, but they also prefer within each race to conduct FIOs relative to Black officers. There may not be preferences by race, but there does appear to be stronger preferences for FIO activity overall. Put another way, white officers are biased toward everyone compared to Black, Hispanic or Asian officers.

While this type of cross-racial comparison helps establish differences in preferences by officer race, we still cannot assume that this is a sign of bias in officers' perceptions and actions. That conclusion requires a different research model.

IV. Conclusion

We show that BPD FIO activity is concentrated in high-crime neighborhoods and largely focused on gang-involved and criminally-active individuals. Theses analyses also revealed racially disparate treatment of minority persons in BPD FIO activity. Controlling for a wide range of covariates and using three different benchmarks, the analyses demonstrated that neighborhoods with higher percentages of Black and Hispanic residents experienced higher numbers of FIOs relative to "average" Boston neighborhoods. Moreover, controlling for gang membership and prior criminal history, Black and Hispanic FIO subjects are more likely to experience repeated FIO encounters and are more likely to be searched during FIO encounters relative to white subjects.

Officer race explains part of the racial and ethnic disparaties in FIO activity. During the time period of the study, we find higher FIO activity for White officers for suspects of all races, including White suspects, compared to Black, Hispanic or Asian officers. Comparing within-suspect-race results, we see signs of preference-based discrimination by White officers. White officers have about 55 percent more FIO encounters with Black suspects compared to Black officers. Black officers have 35 percent fewer FIO encounters of Black suspects compared to White officers. This between-officer within-suspect comparison suggests preferences by White officers compared to Black officers in FIO

activity for Black suspects. However, White officers also have about 135 percent more FIO encounters with White suspects compared to Black officers and Black officers have about 67 percent fewer FIO encounters with White suspects compared to White officers.

Unfortunately, this research cannot determine whether the identified patterns were generated by bias or other processes of racial discrimination in BPD FIO practices. The data do not unravel the individual decision-making process of BPD officers who are engaged in FIO encounters; we can only observe differences that require more extensive and different types of study. Further research is necessary to understand the factors and processes that influence the observed disparities.

Technical Appendix

We analyze differences in stop rates by neighborhood to determine whether FIO activity is explained by local crime rates, or if there is additional variance that is explained by race. A race-neutral practice would predict a positive effect for local crime rates and non-significant effects for race once we control for crime. Significant positive or negative effects for other characteristics, including the racial and ethnic composition of the census tracts, would indicate the presence of additional explanatory effects net of the influences of local crime rates. The outcome variable of interest was the monthly count of FIOs made in each Census tract between 2007 and 2010 (N=8,304; 173 Census tracts with 48 observations each).

1. Data and Measures

The neighborhood analyses were conducted using 2010 U.S. Census tracts as the principal unit of analysis. Census tracts were used instead of BPD geographic units (e.g. districts, reporting areas) or smaller areal units (e.g. Census block groups, street segments). Tracts are areas roughly equivalent to neighborhoods developed by the U.S. Census Bureau for the purposes of analyzing populations.[24] According to the 2010 U.S. Census, Boston was comprised of N=181 tracts. Data on the social and economic conditions in these tracts were obtained from the 2007-2010 American Community Survey (ACS).[25]

Eight tracts were excluded from the analysis because there were no residents in these areas for a total N=173 tracts: the Stony Brook reservation, Belle Isle Marsh reservation, the Harbor Islands, the Esplanade recreational area, the Franklin Park recreational area, and three commercial property waterfront areas.

The FIO data included date and geographical location (x-y coordinates) information that permitted aggregation of FIO counts to Census tracts and by differing time periods. Coverage was good: 95.2% (194,858 of 204,739) of the FIO reports were geocoded to 2010 Census Tracts in Boston.

2. Estimation Methods

The specific estimation technique for this analysis, or the functional form of the regression equation, was responsive to the specific measure of FIO activity (monthly counts in Census tract units). Accordingly, models were estimated using negative binomial regressions. This class of regression models is appropriate for counts of events, such as FIO reports in a specific area, where assumptions about the independence of events cannot be reliably made. Negative binomial regressions also are especially useful for discrete data such as event counts when the variance exceeds the mean across areas. [26] We used a specific form of negative binomial regression known

[24] https://www.census.gov/geo/reference/gtc/gtc_ct.html; Nancy Krieger, A Century of Census Tracts: Health and the Body Politic (1906–2006), 83 *Journal of Urban Health* 83 (3): 355 (2006).

[25] http://www.census.gov/acs/

[26] Joseph M. Hilbe, Negative Binomial Regression (2007). See, also, Richard Berk and John M. MacDonald, Overdispersion and Poisson Regression, 24 *J. Quant. Criminology* 269 (2008); D. Wayne Osgood, Poisson-Based Regression Analysis of Aggregate Crime Rates, 16 *J. Quant. Criminology* 21 (2000); David A. Freedman, Statistical Models: Theory and Practice (2005); William Greene, Econometric Analysis (5th ED.) (2003).

as General Estimating Equations (GEEs).[27] GEEs are beneficial for nested or hierarchically organized data, such as years within Census tracts, as they allow for the specification of within-subject correlations of observations. These nesting variables are treated as random effects in the estimating models. Random effects here include census tract correlations. To adjust for difference in population densities in the census tracts, we estimated population-averaged models.

Since the analyses include a sequence of time periods (calendar months), the models include an AR(1) variance estimation function that adjusts for the serial autocorrelation (or autoregression) of the counts of events within sampling units over long periods of time.[28] AR(1) adjustments reflect the reality that the best predictor of what the crime rate will be in the next month is what it was in last month. This is an empirical constraint in identifying the relationship between crime and policing. Failure to correct for this temporal dependence will bias the standard errors in estimates of crime effects on policing, and this distortion remains even when fixed effects are used to control for temporal trends.

There is a long tradition of studies of the seasonality of crime and the theoretical explanations for why crime varies by season. [29] Accordingly, we also controlled for yearly and seasonal variations in the monthly counts of FIO reports by including fixed-effects for calendar quarter and year.[30]

In each of the regressions, the parameter estimates were expressed as incidence rate ratios (i.e., exponentiated coefficients). Incidence rate ratios are interpreted as the rate at which things occur; for example, an incidence rate ratio of 1.10 would suggest that, controlling for other independent variables, a one unit increase in the selected independent variable was associated with a 10% increase in the rate at which the dependent variable occurs. [31] Robust standard errors clustered by tracts were used where appropriate.[32]

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[27] James W. Hardin and Joseph M. Hilbe, Generalized Estimating Equations (2003); Gary A. Ballinger, Using Generalized Estimating Equations for Longitudinal Data Analysis, 7 *Organizational Research Methods* 127 (2004).

[28] See, Badi Baltagi, Econometric Analysis of Panel Data (2001); Badi Baltagi and Qi Li, Testing AR(1) Against MA(1) Disturbances in an Error Component Model, 68 *Journal of Econometrics* 133 (1995).

[29] See, e.g., John R. Hipp, et al., Crime of Opportunity or Crimes of Emotion? Testing Two Explanations of Seasonal Change in Crime, 82 *Social Forces* 1333 (2004).

[30] We created indicator variables to account for seasonal variations by calendar quarter. Quarter 1 represented January, February, and March monthly FIO counts (1 = Yes, 0 = No). Quarter 2 represented April, May, and June monthly FIO counts (1 = Yes, 0 = No). Quarter 3 represented July, August, and September monthly FIO counts (1 = Yes, 0 = No). Quarter 4 represented October, November, and December monthly FIO counts (1 = Yes, 0 = No). Quarter 1 served as the reference category for the seasonal polychotomous dummy variable. We also created indicator variables for year to account for annual variations in the data.

[31] See, Sophie Rabe-Hesketh and Anders Skrondal. Multilevel and Longitudinal Modeling Using Stata, Volume II: Categorical Responses, Counts and Survival, 3rd ed. (2012). See, also, Kenneth Rothman and S. Greenland, Modern Epidemiology, 3rd ed. (2008).

[32] Greg Ridgeway and John MacDonald, Doubly Robust Internal Benchmarking and False Discovery Rates for Detecting Racial Bias in Police Stops, 104 *Journal of the American Statistical Association* 661 (2009). See, also Gary King and Margaret E. Roberts, How Robust Standard Errors Expose Methodological Problems they Do Not Fix, and What to Do About It, *Political Analysis* (2014).

3. Measures

Police activity in Boston is closely linked to crime.[33] As such, we test whether crime rates in a neighborhood are linked to the intensity of BPD FIO activity in that area. We use crime incident data generated by the BPD on 113,419 "index" crime incidents in Boston between 2007 and 2010.[34] These crime incident data were geocoded, and then aggregated by Census tract and month of occurrence to create a covariate measuring lagged and logged monthly counts of serious crime in Boston census tracts. All models control for the one-month-lag of logged total crime incidents. The natural log transformation of the actual number of crimes was used. Log transformation is necessary to adjust when the distributions are highly skewed and non-linear. The lag reflects the police planning process whereby FIO reports and other enforcement activity are adjusted to reflect actual crime conditions.

As Figure A-1 reveals, FIO reports made by BPD officers in 2010 tended to concentrate in census tracts with higher rates of total crime incidents and higher percentages of black resident populations. Figure A-1 also shows a high degree of spatial autocorrelation in the concentration of FIO reports across Census tracts. To account for spatial dependence, we included measure of spatial dependence in the estimates. Spatial dependence, or autocorrelation, violates the assumption of independence among observations used in most statistical models. Spatial regression analyses of the variation of crime, etc. across neighborhood units account for spatial autocorrelation through the addition of a spatial effects covariate such as Moran's I . The argument is that analyses that do not compensate for spatial dependency can have unstable parameter estimates and yield unreliable significance tests.[35]

We also control for police deployment patterns. The allocation of police and targeting of police activity frequently involved "saturation" deployment of police patrols in higher crime areas. Since these areas in Boston and elsewhere often had higher concentrations of non-white residents, asymmetrical deployments of police increased exposure of citizens to police and thus the increased probability of encounters with minority citizens as compared to whites,[36] in turn producing racial or ethnic differences in contact patterns. Accordingly, an analysis of FIO patterns by neighborhood required an understanding of the allocation of police patrol resources in each unit of analysis. Patrol

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[33] Anthony A. Braga, et al., An Ex-Post-Facto Evaluation Framework for Place-Based Police Interventions, 35 *Evaluation Review* 592 (2011).

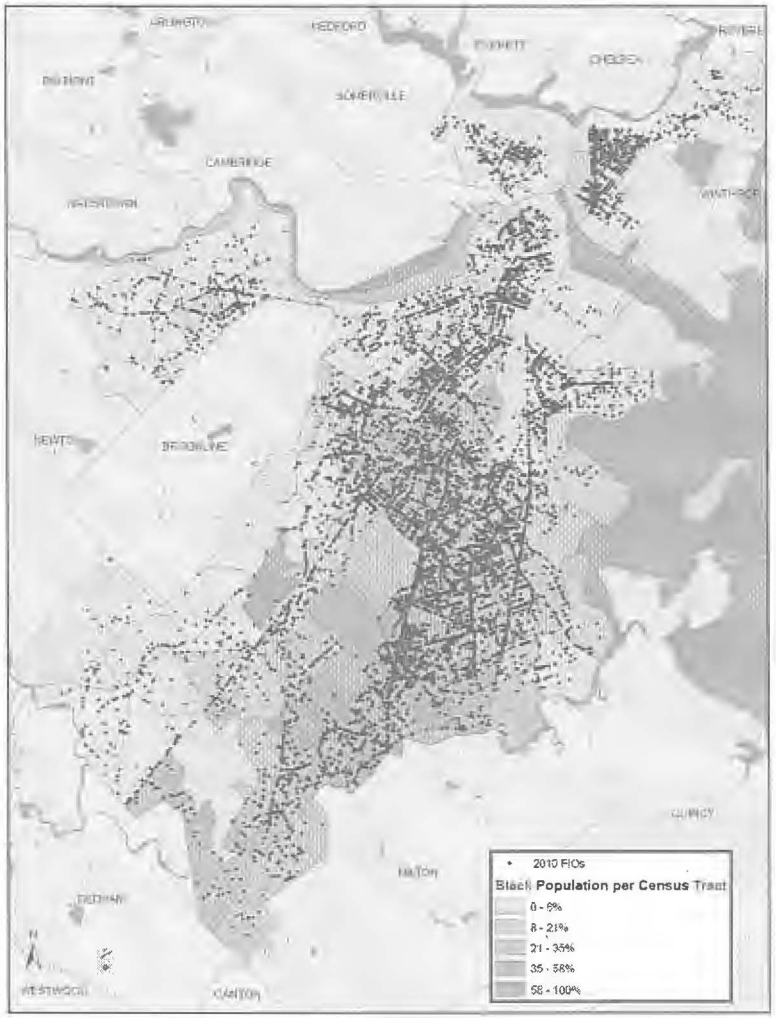
[34] Index crimes, as defined by the FBI, included murder, rape, robbery, aggravated assault, burglary, auto theft, and larceny. See http://www.fbi.gov/about-us/cjis/ucr (accessed August 1, 2014). Using ArcGIS 10.2 mapping software, the BRIC was able to geocode 113,152 of these incidents to their respective Census tracts (99.8 % of 113419 total crime incidents).

[35] See, Michael D. Ward and Kristian Skrede Gleditsch, *Spatial Regression Models*, Quantitative Applications in the Social Sciences series, No. 155, 8 – 10 (2008). ArcGIS 10.2 was used to export a shapefile containing the total number of FIOs made per U.S. Census Tract during the study time period to GeoDa 1.4.6 spatial analysis software. Using queen's contiguity, a Moran's I = 0.674689 was estimated (199 permutations, $\chi = 14.73$, $p<.005$; 99 permutations, $\chi = 15.18$, $p<.01$). The Moran's I spatial autocorrelation lag for each Census Tract was exported to Stata 13.1 and included in the neighborhood analysis.

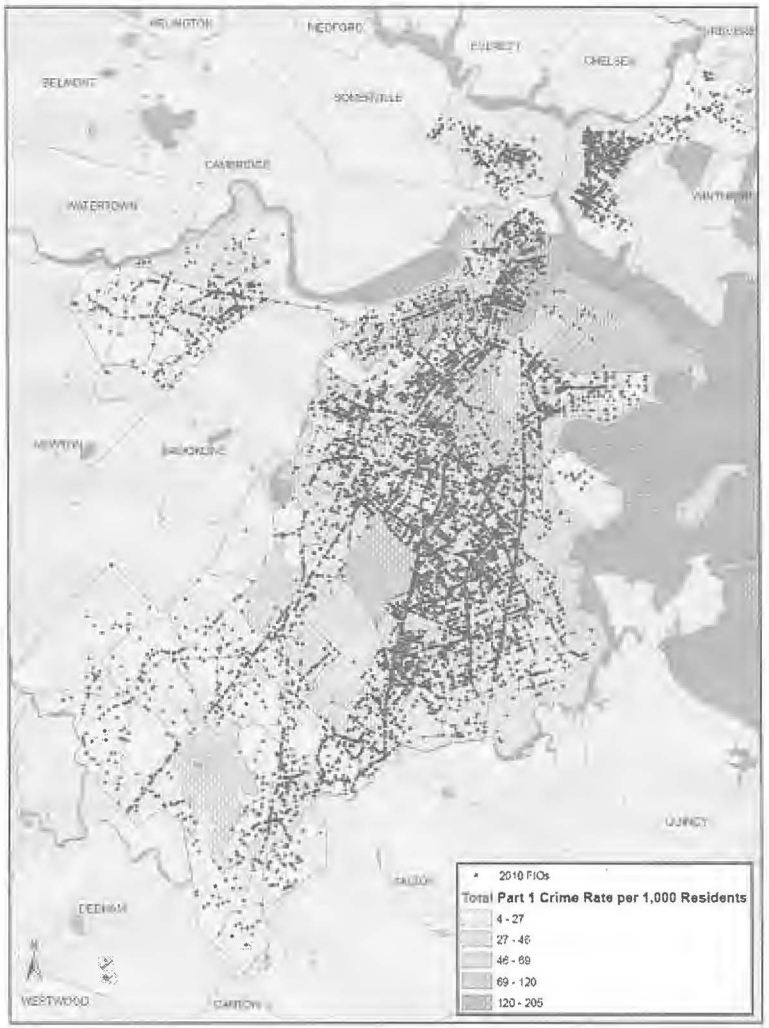
[36] See, e.g., Donald Tomaskovic-Devey, Marcinda Mason, and Mattew Zingraff, Looking for the Driving While Black Phenomena: Conceptualizing Racial Bias Processes and their Associated Distributions, 7 *Police Quarterly* 3 (2004).

Figure A-1. Crime Rate and Population Demography, 2010

2010 Percent Black Population in Census Tracts



2010 Total Part 1 Crime Rate per 1,000 Census Tract Residents



strength data were provided by the BPD for each of their eleven policing districts between 2007 and 2010. These patrol data were then allocated to the each Boston census tract. Because BPD districts do not, as a rule, share boundaries with Census tracts, we allocated patrol strength to tracts based on the percent of each district's area that falls into each tract. Because BPD districts do not, as a rule, share boundaries with Census tracts, we allocated patrol strength to tracts based on the percent of each district's area that falls into each tract.[37]

It is also important to note that the regulation and oversight of FIO policy and activities takes place at the police district level. There are 12 police districts in Boston, each commanded by a police captain who reports directly to the Superintendent of the Bureau of Field Services. BPD Captains are accountable for district-level crime trends and have discretion to allocate officers tactically within districts. Since tracts are nested within Boston's policing districts, we included fixed effects for police districts to account for any unobserved effects of conditions in the districts that might influence police activity, such as district-level variations in the use of FIOs to gather intelligence and maintain contact with potential offenders.[38]

Several studies show that neighborhood crime rates, including violent crime,[39] are strongly associated with concentrated social disadvantage, especially violent crime. The concentrated disadvantage index is a standardized index composed of the percentage of residents who are black, the percentage of residents receiving public assistance, the percentage of families living below the poverty line, the percentage of female-headed households with children under the age of 18, and the percentage of unemployed residents (as measured by the percentage of men over the age 16 who did not work in the previous year).[40] Since we are explicitly interested the independent impact of race on the number of FIO reports in a neighborhood controlling for other factors, we excluded the percentage of black residents from the construction of the Boston concentrated disadvantage used in this analysis. Because of the high correlation among these variables, we conducted principal components factor analysis to identify the underlying dimensions among the variables.[41] This

[37] For example, if Census tract A shares area with three police districts (A1, A2, and A3), the Census tract patrol strength was estimated as [(% of A1 falling into tract A * patrol strength of A1) + (% of A2 falling into tract A * patrol strength of A2) + (% of A3 falling into tract A * patrol strength of A3)].

[38] The BPD has 12 districts that provide policing services across Boston's neighborhoods: A-1 serving Downtown, Beacon Hill, and Chinatown neighborhoods; A-15 serving Charlestown; A-7 serving East Boston; B-2 serving Roxbury and Mission Hill neighborhoods; B-3 serving Mattapan and parts of North Dorchester; C-6 serving South Boston; C-11 serving most of Dorchester; D-4 serving Back Bay, Fenway, and South End neighborhoods; D-14 serving Allston and Brighton neighborhoods; E-5 serving West Roxbury and Roslindale neighborhoods; E-13 serving Jamaica Plain; and E-18 serving Hyde Park. The reference category for the BPD district dummy variable was E-13. For a basic review of the use of dummy variables in regression models, see: Melissa A. Hardy, *Regression with Dummy Variables*, No. 93 in Quantitative Applications in the Social Sciences series, 7 – 16 (1993).

[39] Robert J. Sampson and William Julius Wilson, "Toward a theory of race, crime, and urban inequality, in (John Hagan and Ruth Peterson, eds.), *Crime and Inequality*, 37 – 56 (1995); Robert J. Sampson, Steven Raudenbush and Felton Earls, Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy, 277 *Science* 918 (1997); Jeffrey D. Morenoff, Robert J. Sampson and Steven Raudenbush, Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence, 39 *Criminology* 517-59 (2001).

[40] Robert J. Sampson, Steven Raudenbush and Felton Earls, Neighborhoods and Violent Crime, id. Jeffrey D. Morenoff, Robert J. Sampson and Steven Raudenbush, *Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence*, id.

[41] Factor analysis is a statistical technique that captures consistency among observed variables to generate a composite measure using a lower number of unobserved variables. The method produces factors that represent the correlations

procedure revealed that variables load on a single factor (which was retained as a standardized disadvantage index variable).[42] The presence of concentrations of recent immigrants is a protective factor that reduces the risk of crime in a neighborhood.[43] As such, we created a variable that measured the percentage of foreign-born residents in each Census tract.

4. Benchmarks

The selection of a benchmark against which to assess police enforcement activity is a basic question in reliably measuring the extent of racial disparities in police-citizen interactions. [44] A benchmark allows us to determine if Boston Police are selectively, on the basis of race or another prohibited factor, singling out persons for FIO reports. As such, we compare the police decision to complete an FIO report on someone to their availability and eligibility for such reports, and compare that calculation across racial and ethnic groups. It is not hard to see that the reliability of an estimate of the extent of racial disproportionality or fairness is likely to depend on – and be particularly sensitive to – the benchmark used to measure criminal behavior.

To the extent that observed or reported crimes are leading indicators of those behaviors that are correlated with crime, crimes known to the police are important part of a valid benchmark. So too is population, as an index of the overall exposure of citizen as available targets for surveillance and interdiction. Accordingly, these analyses use both population and reported crime as benchmarks for understanding the racial distribution of FIO reports. Sensitivity tests applied alternate benchmarks including lagged race-specific arrest rates[45] and lagged race-specific suspect rates.[46]

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among the observed measures. See Jae-On Kim et al., *Factor Analysis: Statistical Methods and Practical Issues* (1978). The principal components factor analysis was completed using STATA 13.1.

[42] For example, a Boston Census tract featuring a disadvantage index score of 1.5 would be 1.5 standard deviations more disadvantaged than the mean Boston Census tract. As such, the disadvantage index is adjusted specifically for the city of Boston using 2010 ACS variables, even while the components used to construct the index remain constant across much neighborhood research and remain robust predictors of crime across a variety of city types and spatial aggregations. See Sampson et al., Collective Efficacy, supra note 32; Morenoff et al., Neighborhood Inequality and Collective Efficacy, supra note 32.

[43] See, e.g., Robert J. Sampson, Rethinking Crime and Immigration, Contexts, Winter 2008. Available at http://contexts.org/articles/winter-2008/sampson/

[44] The issues in benchmarking for pedestrian stops can be different from those that influence decisions on how to benchmark for traffic stops. See, generally, Lori A. Fridell, *By the Numbers: A Guide for Analyzing Data from Vehicle Stops*, 7 (2004); Jeffrey Fagan, "Law, Social Science and Racial Profiling," 4 *Justice Research and Policy* 104 (2002); Ian Ayres, "Outcome Tests of Racial Disparities in Police Practices," 4 *Justice Research and Policy* 133 (2002); Greg Ridgeway and John MacDonald, Methods for Assessing Racially Biased Policing, in *Race, Ethnicity and Policing: Essential Readings* (S.K. Rice and M.D. White, eds.) 180 (2010). See, also, Samuel Walker, "Searching for the Denominator: Problems with Police Traffic Stop Data and an Early Warning Solution," 4 *Justice Research and Policy* 133 (2002). The Fagan and Walker articles respectively wrestle with the unique demands of benchmarking for pedestrian stops.

[45] See Jerry H. Ratcliffe, Geocoding Crime and a First Estimate of a Minimum Acceptable Hit Rate, 18 *International Journal of Geographical Information Science,* 61-72 (2004).

[46] As described earlier, between 2007 and 2010, there were 113,419 Part I UCR crime incidents in Boston. Victims in these incidents reported information on 340,585 suspects. The racial distribution of these suspects was as follows: 41.2% Black, 21.8% White, 17.3% Hispanic, 2.0% Asian or other race category, and 17.7% unknown race.

Between 2007 and 2010, the BPD arrested 28,427 suspects. The racial distribution of arrested suspects was as follows: 50.4% Black, 26.8% White, 20.6% Hispanic, and 2.2% Asian or other race category. Using ArcGIS 10.2 mapping software, the BRIC was able to geocode 24,590 of these arrests to their respective Census tracts (86.5% of 28,427 total arrests). While a 100% geocoding rate is always desired, the geocode rate in the current study exceeds the minimum acceptable threshold of 85%. Natural log of the Census tract population, total number of arrested individuals in Census tract, and total number of suspects reported in Census tract were used as the offsets in the regression models.

These analyses were designed to test whether monthly counts of FIO reports in Census tracts were disproportionate to the racial composition of tract residents, racial composition of arrested suspects in the tract, and the racial composition of crime suspects as reported by victims in crime incident reports, after controlling for the known crime rate in the previous month and other characteristics that are correlated with crime. For each racial composition benchmark, three race categories (percent Black, percent Hispanic, and Percent Asian / other) are included and the category of percent White is omitted. This was done to avoid collinearity in the model estimation. As such, the coefficients for each racial group are based on comparison with the percent White of the benchmark in the tract. When a racial composition variable is significant, this means that its relationship to FIO activity is significantly different from that of the White racial composition of that benchmark in the Census tract.

EXHIBIT 2

Exhibit 2

Black, Brown and Targeted

A Report on Boston Police Department
Street Encounters from 2007–2010

ACLU

October 2014

Staff from the ACLU Foundation of Massachusetts and the national ACLU Racial Justice Program compiled this report.

Press date: October 3, 2014

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Cover photo: Boston resident Ivan Richiez

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EXECUTIVE SUMMARY

Boston Police Department (BPD) officers have engaged in widespread racially biased "stop-and-frisk" practices, according to a preliminary statistical analysis of four years of BPD police-civilian encounter reports. The findings confirm what many people from communities of color have long suspected: Boston police officers targeted people of color at far greater rates than white people.

In 2010, the BPD secured a researcher to analyze more than 204,000 BPD reports of police-civilian encounters from 2007 to 2010. These reports, known as "Field Interrogation, Observation, Frisk and/or Search"—or "FIOFS Reports," are made when an officer records having interrogated, observed, stopped, frisked, or searched someone. The researcher's preliminary analysis of these FIOFS Reports found evidence that Black Bostonians are more likely to be selected for these encounters than otherwise identical white Bostonians.

Most alarmingly, the analysis found that Blacks were subjected to 63% of these encounters, even though they made up just 24% of Boston's population. The analysis also showed that crime—whether measured by neighborhood crime rates or the arrest records or alleged gang involvement of the civilians subjected to these encounters—does not explain away this racial disparity.

Instead, even after controlling for crime, alleged gang affiliation, and other non-race factors, the number of police-civilian encounters was driven by a neighborhood's concentration of Black residents: as the Black population increased as a percentage of the total population, so did the number of police encounters. The analysis also found, *after controlling for alleged gang involvement and prior arrest records,* that Blacks were more likely to experience repeat police encounters and to be frisked or searched during an encounter.

This preliminary analysis—which has been shared with the BPD, the American Civil Liberties Union of Massachusetts, and the national ACLU—suggests that thousands of Black Bostonians were observed, stopped, interrogated, frisked, or searched because of their race. Key preliminary findings, all of which control for non-race factors, include the following:

- Young Black men were more likely than young white men to be targeted for police-civilian encounters such as stops, frisks, searches, observations, and interrogations.
- When police-civilian encounters occurred, young Black men were more likely than young white men to be frisked or searched.
- Young Black men were more likely to be targeted for repeat police-civilian encounters.

The preliminary findings make clear that the BPD has practiced racially discriminatory policing. This practice contradicts the principle of equal protection under the law, which is guaranteed by the Fourteenth Amendment to the U.S. Constitution and Articles 1, 10, and 106 of the Massachusetts Constitution.

The data also show that, for Bostonians of all races, the BPD has failed to ensure that police-civilian encounters comply with constitutional protections against unreasonable searches and seizures. Under the Fourth Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights, police stops are unlawful unless supported by individualized reasonable suspicion of wrongdoing, and frisks require individualized reasonable suspicion that a person is armed and dangerous. The data, however, show that BPD officers have largely failed to justify their police-civilian encounters with *individualized* suspicion.

Instead, in three-quarters of all FIOFS Reports from 2007-2010, the officer's stated reason for initiating the encounter was simply "investigate person." But "investigate person" cannot provide a constitutionally permissible reason for stopping or frisking someone. It only describes what the officer *decided* to do.

Finally, the BPD seems unable to prove that its stop-and-frisk tactics were effective in fighting crime. According to BPD officials, officers did not file FIOFS Reports when encounters resulted in arrest. And, for the 204,000-plus FIOFS Reports that were completed,

only 2.5% indicate that an officer seized weapons, drugs, or other contraband. Despite ACLU requests, the BPD has not disclosed any information showing that it has eradicated racially biased policing, or that it now ensures that its stops and frisks are justified.

The ACLU applauds the BPD for making FIOFS data available to independent researchers, and for permitting the researchers to share their preliminary analysis with our organization, and thereby policy-makers and the public. These disclosures mark an enormous step forward; they present the police, elected officials, and the people of Boston with clear evidence that it is time for the BPD to adopt a new, more effective, and more equitable approach.

We welcome the opportunity to use this new information to work with Boston city leaders, the BPD, and people from affected communities. Together, we can enhance public safety by reducing racial bias in policing and by building trust between Boston communities and the officers who swear an oath to protect and serve them. These are our key recommendations to the Mayor and the BPD:

- Require all officers who engage in police-civilian encounters—including interrogations, stops, frisks, and searches—to use body-worn cameras during every interaction with the public. Also require written or video-recorded consent whenever an officer claims that such an encounter was consensual.
- Provide documentation—i.e., a receipt—to any civilian involved in an interrogation, stop, frisk, or search, whether or not it was consensual.
- Publish electronic data on a quarterly basis about all stops, frisks, non-consensual searches, observations, and consensual interrogations and searches, including a breakdown by race, gender, age, outcome, and the officer's basis for the encounter and action.
- Adopt a bias-free policing policy that addresses obstacles to race-neutral policing—including implicit bias—and revise, provide training on, and regularly publish BPD policies and department directives on stops, frisks, searches, and consent.

I. INTRODUCTION: IVAN'S STORY

Ivan Richiez, a young Black Dominican-American, was robbed at gunpoint in the summer of 2011. Two young men took his wallet and cell phone. One of them pistol-whipped Ivan, smashing his mouth.

Ivan then slowly walked home, down Washington Street and right by the District E-13 Police Station in Boston's Jamaica Plain neighborhood. As Ivan approached the station, bloodied and battered, he thought of the role that police officers had played in his life.

Ivan grew up in the South Street housing projects of Jamaica Plain. His friends and neighbors came from Boston's communities of color: Puerto Ricans, Dominicans, African-Americans, Haitians and others—some citizens and some immigrants. For them, the police were a daily presence.

Ivan experienced his first stop and frisk on a warm fall evening in 2007, when he was 14 years old. He was sitting with some friends on the benches across from his apartment building. A Boston police car, a "blue and white," rolled into the South Street parking lot. Two uniformed officers, both white, jumped out and confronted Ivan and his friends:

"Who are you guys?"

"What are you doing here?"

"Where do you live?"

"What gang are you in?"

The officers then frisked Ivan. They grabbed at his legs, his arms, his torso. One officer reached into Ivan's pockets. But they found nothing on Ivan or his friends.

Ivan describes this treatment as rough, abusive, and lacking any respect. He says that this is common, for himself and his friends. When asked how many times he has been subjected to stops and frisks, Ivan says,

"Many times . . . thirty to forty times. Maybe fifty."

The night Ivan was robbed, he walked past the police station. In his mind, he says, he paused. He thought, "Should I go inside? Should I tell the cops . . . that I was just robbed at gunpoint?"

He never told the police. He never reported the crime. As a result, the people who robbed him were never caught. Ivan says "What would [the police] have done for me? I don't trust them after the way they have treated me and my people for so many years."

II. POLICING IN BOSTON: FROM "SEARCH ON SIGHT" TO "GETTING POSTED"

The City of Boston has a checkered racial past, and the BPD is no stranger to it. In the late 1980s, the BPD applied a policy of "Search on Sight" to anyone allegedly "associated with a gang" in Boston's predominantly-Black Roxbury neighborhood. This practice subjected people to humiliating searches based on where they lived and the color of their skin. As a Superior Court judge recognized, illegal searches in Roxbury were not just tolerated by the BPD; they were "applauded."

Thankfully, the BPD abandoned Search on Sight by the early 1990s. But stories like Ivan's are common. These stories suggest, and a preliminary statistical analysis now shows, that the BPD still disproportionately targets Black men for stops, frisks, and searches—even when controlling for the alleged gang affiliation and past criminal histories of people subject to these encounters.

Similar experiences in other cities, from New York City to Newark to Los Angeles, reflect this trend: police departments have pledged to "get tough" on crime by targeting "high-crime" areas. But instead, police officers have gotten tough on people of color by conducting high numbers of humiliating and stigmatizing stops, frisks, and searches in their neighborhoods.

This is the problem that has become known as Stop and Frisk.

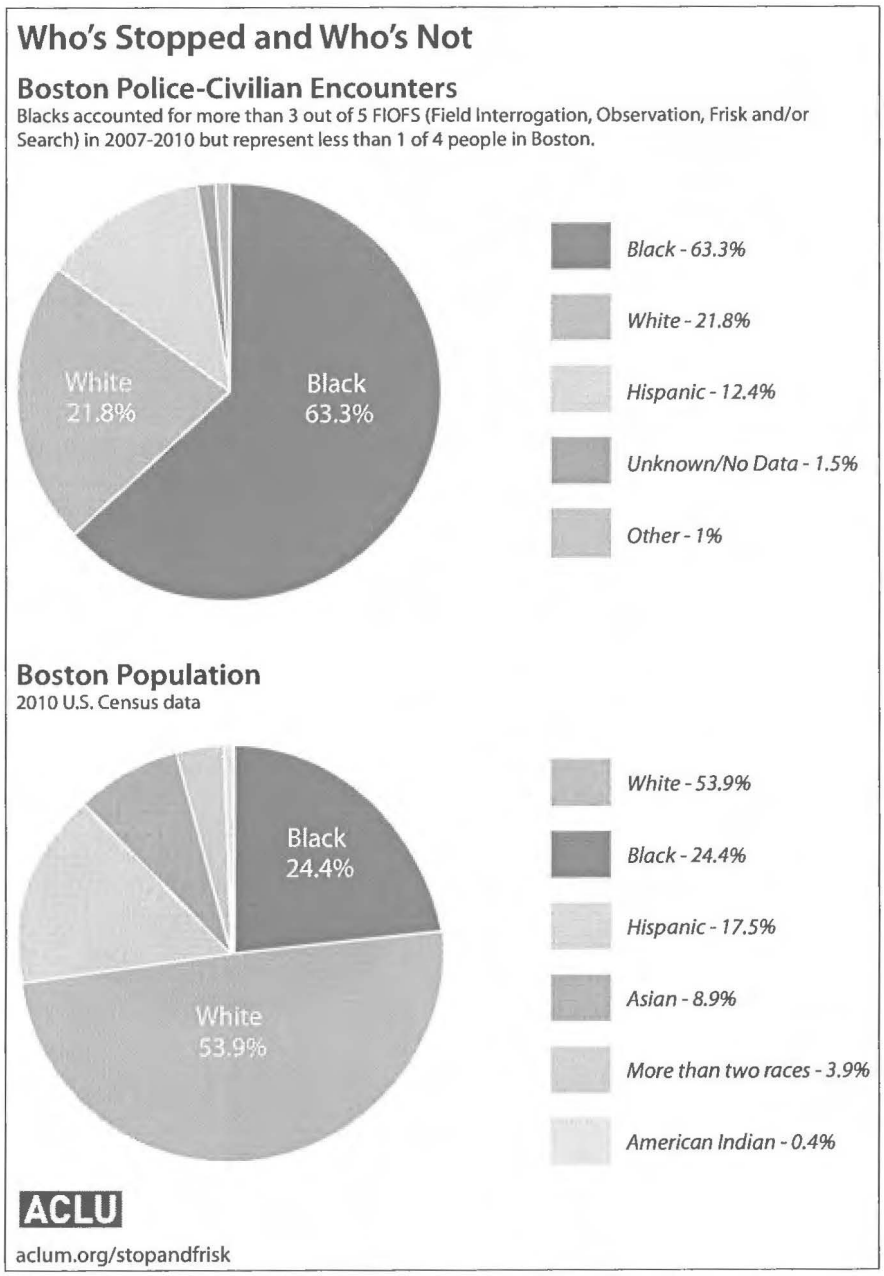
The United States Supreme Court first authorized the law enforcement technique of "stop and frisk" in *Terry v. Ohio*, a 1968 case involving a group of men who were casing a jewelry store for a robbery. The Court permitted police officers to conduct investigatory stops and protective frisks to protect officer safety and to investigate possible crimes. But a stop or frisk cannot be based on a mere hunch, and it cannot rely *at all* on real or perceived race, ethnicity or national origin:

- **To "stop" someone,** a police officer must have individualized and objective reasonable suspicion that the person has committed, is committing, or is about to commit a crime.
- **To "frisk" someone,** which is a pat-down of a person's outer clothing, an officer must have reasonable suspicion that a lawfully stopped person is armed and dangerous. A frisk is not a full-blown search for evidence; it may be used only to seek weapons.

> The bottom line: the BPD unfairly targets Black people because of their race.

BPD officers are supposed to complete "2487 Forms" following encounters with civilians. From 2007 to 2010, the forms were called "Field Interrogation, Observation, Frisk, and/or Search" or "FIOFS" Reports (though, as of 2011, they were renamed "Field Interaction/Observation/Encounter" or "FIOE" Reports). At the time, BPD Rule 323 required officers to complete these reports after "observ[ing], detain[ing], or interrogat[ing] a person suspected of unlawful design," after "frisk[ing] or search[ing] an individual during a stop," and after searching vehicles.

BPD officers refer to these encounters as "FIOs." But



on the streets of Boston, it's called "getting posted."

While anecdotal evidence of racial profiling is easy to find, and a 2004 Northeastern University study found evidence of racial bias in BPD *traffic stops*, the public has never been shown empirical data about *street encounters* between Boston police officers and pedestrians. In March 2014, however, researchers presented to the BPD and the ACLU a preliminary analysis of data from over 204,000 FIOFS Reports of police-civilian encounters that occurred between 2007 and 2010.

The analysis is clear: from 2007 to 2010, Boston had a serious stop-and-frisk problem. This problem included a pattern of racially targeted, police-civilian encounters and a practice of failing to ensure that stops and frisks were justified.

HISTORY OF THE BOSTON STREET-ENCOUNTER STUDY

This report is part of the ACLU of Massachusetts's "Justice for All" initiative. In recent years, the ACLU of Massachusetts has received reports that Boston Police Department officers are unfairly targeting people of color for stops and frisks. Together with the national ACLU's Racial Justice Program, and with legal counsel from the law firm WilmerHale, we have sought to examine the BPD's stop-and-frisk policies and practices.

In June 2009, the ACLU of Massachusetts wrote the BPD to propose a study of police-civilian encounters. We requested access to FIOFS data and urged the BPD to "assess the significance of race as a factor in stop[s] and searches." We also asked the BPD whether FIOFS Reports were being used primarily to gather intelligence on civilians, rather than to oversee officers.

We were then told that we would be charged $112,000 simply to obtain redacted FIOFS Reports from 2007-2009. Unable to pay that amount, we considered other means—including litigation—of making these vital public records available to policymakers and the public.

But instead of going to court, in 2010 the ACLU of Massachusetts reached an agreement with the BPD. The agreement provided that then-BPD Policy Advisor Anthony Braga, a professor in the School of Criminal

Justice at Rutgers University, would work with the BPD to "code" the FIOFS Reports into an analyzable form. Dr. Braga agreed that he would then consult with independent scholars, including one suggested by the ACLU of Massachusetts, to analyze the data.

The stated research goal was to study: (1) the extent to which police officers documented stops, frisks, and searches in FIOFS Reports; (2) the nature and scope of any supervisory review of these reports; (3) the impact, if any, of race on decisions to stop or search; and (4) the incidence of stops and searches at different times and locations in Boston. Dr. Braga predicted that the study would be completed by the summer of 2012.

However, the study is still ongoing as of the date of this report, and the BPD has not disclosed any of the underlying data. Instead, on two occasions, some of the data has been *described*.

First, in June 2012, Dr. Braga told the BPD and the ACLU of Massachusetts that the proportion of FIOFS Reports involving Black subjects (63.3%) far exceeded the proportion of Black residents in Boston (24.4%). Later, in March 2014, Dr. Braga presented a preliminary analysis of the FIOFS Reports to the BPD, the ACLU of Massachusetts, the ACLU, and WilmerHale. He revealed racial disparities that persisted even after controlling for crime and other non-race factors, and he said that a full written analysis would be completed by June 2014.

The analysis is not yet complete. However, we have no reason to believe that the final analysis will contradict the key preliminary findings presented in June 2012 and March 2014.

This report addresses those key findings, while understanding that new information may still come to light. The preliminary findings, combined with discussions we have held with community members, leaders, and activists—some of whom are pictured above—make clear that now is the time for a meaningful public conversation about reforming stop-and-frisk practices in Boston.

III. RACIAL BIAS IN THE BPD'S STOP-AND-FRISK PRACTICES

When police officers use race as a factor in stopping or frisking people, they engage in racial profiling

STOP AND FRISK IN BOSTON'S LATINO COMMUNITIES

Why does this report focus on the impact of the BPD's stop-and-frisk tactics on Black Bostonians, rather than both Blacks and Latinos?

The answer relates to the BPD's core data problems. The BPD's data likely reflects an under-identification of Latinos. When reporting a police-civilian encounter, officers must identify the subject as American Indian, Asian, Black, Hispanic, or white. These limited categories fail to capture the complexity of the Latino community, where often racial and ethnic categories are not mutually exclusive. Officers may incorrectly report a Latino to be "white." And like Ivan, some people in Boston's Latino communities identify by both their race and ethnicity.

The likely under-reporting of police encounters with Latinos makes it difficult to assess the impact of the BPD's stop-and-frisk practices on Latinos.

But the preliminary analysis did find that a neighborhood's concentration of "Hispanic" residents, like the concentration of Black residents, drives increased BPD encounters. The BPD's stop-and-frisk practices should be reformed to address this problem.

Thus, in formulating recommendations below, we propose reforms that would benefit all communities of color. We also call upon the BPD to revise FIOFS Report forms to accommodate more complex racial and ethnic designations, and to implement precinct-level cultural competency training in the histories and cultures of local immigrant and ethnic communities.

prohibited by the Fourteenth Amendment to the U.S. Constitution and Articles 1, 10, and 106 of the Massachusetts Constitution. Preliminary analysis of 204,739 FIOFS Reports confirms what many in Boston's communities of color have long suspected: the BPD has not only stopped, frisked, observed, and searched them at far greater rates than whites; it has targeted thousands of Black people for these encounters at least in part *because of their race.*[1]

A. THE BPD'S FIOFS REPORTS REFLECT WIDESPREAD TARGETING OF BLACKS

Nearly two-thirds of BPD police-civilian encounters target Black Bostonians. While the 2010 census reveals that Blacks made up 24.4% of Boston's population, they comprised 63.3% of police-civilian encounters from 2007 to 2010—well over double the rate suggested by population figures. Over a four-year period, Black Bostonians were subjected to roughly 129,600 of the 204,739 recorded police-civilian encounters.

The BPD's practices between 2007 and 2010 were arguably even more racially skewed than the New York City Police Department's (NYPD) tactics ruled unconstitutional in 2013 by a federal court. Boston and New York City have comparable Black populations; the 2010 census found that 24.4% of Bostonians and 23% of New Yorkers were Black. However, Blacks accounted for 52% of NYPD stops between 2004 and 2012—a shocking figure, but still far lower than the 63.3% of BPD encounters that targeted Blacks.[2]

B. RACIAL BIAS PERSISTS EVEN AFTER ACCOUNTING FOR CRIME

The research team has studied whether factors other than race explain why, from 2007 to 2010, the BPD targeted Blacks for nearly two-thirds of all police-civilian encounters. Was it simply because Blacks are more likely than whites to commit crimes or live in rough neighborhoods?

The answer, it turns out, is no.

1 FIOFS Reports are not limited to stops and frisks; they also document interrogations, searches, and mere observations. In March 2014, BPD officials acknowledged that officers might have failed to comply uniformly with the rule that they report all stops and frisks in FIOFS Reports from 2007 to 2010, and they continue to fail to do so. Nevertheless, FIOFS Reports provide the best data about stops and frisks in Boston.

2 *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558-59 (S.D.N.Y. 2013), appeal dismissed (Sept. 25, 2013).

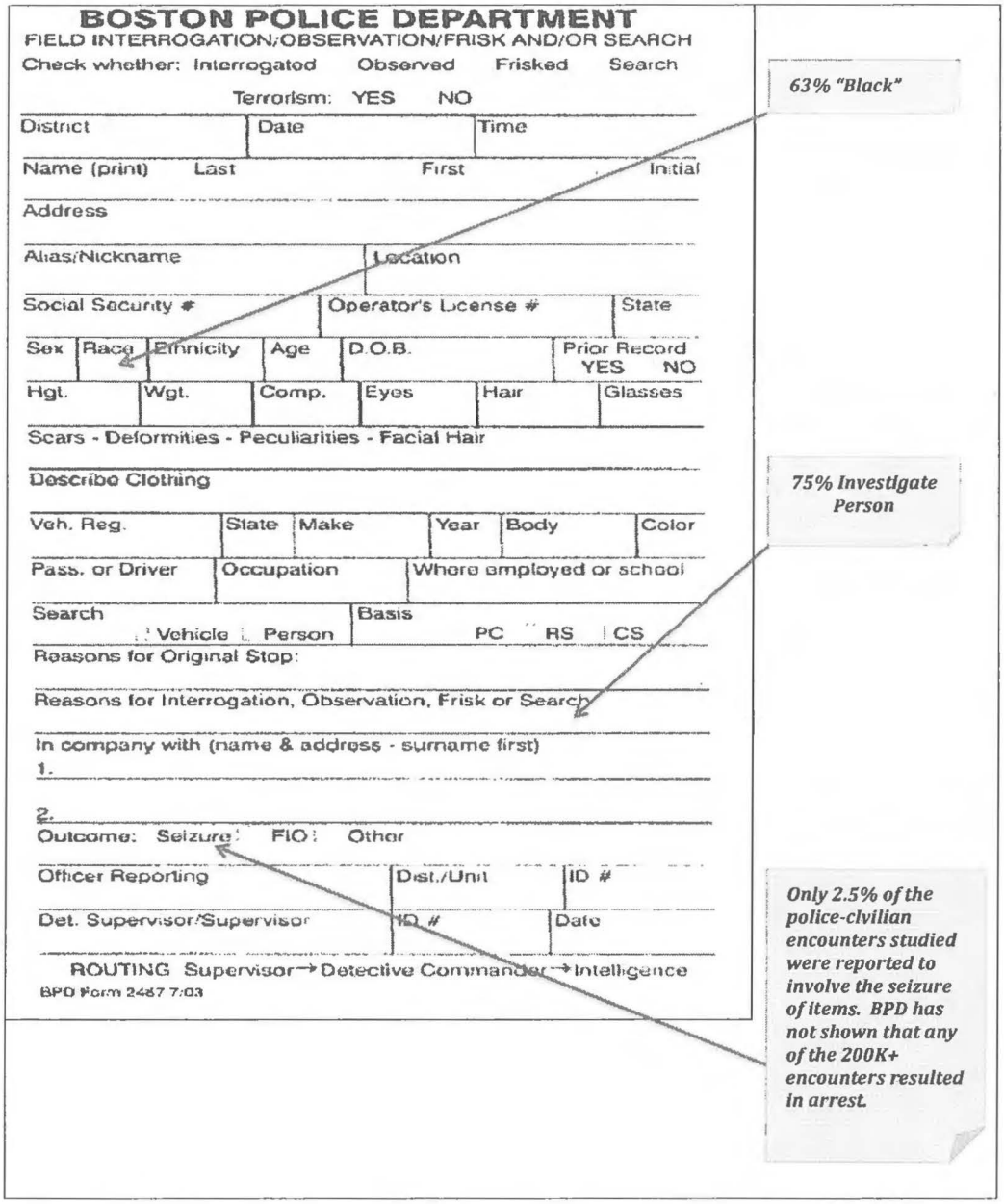
The research team conducted several analyses to measure the effect of race on these encounters. Their preliminary findings confirm that Blacks were more likely to experience both stops and searches—*even after* controlling for non-race factors such as neighborhood crime rates or the past arrest records and alleged gang affiliation of the civilians subjected to police encounters.

These preliminary findings include the following evidence of race-based policing:

- Black race is a significant factor driving BPD police-civilian encounters.

The research team determined that a neighborhood's concentration of Black residents drives the rate of police-civilian encounters.

What does this mean? It means that given two otherwise identical Boston neighborhoods—with identical crime rates and total populations—BPD initiated more street encounters in the neighborhood with more Black residents. Between 2007 and 2010, the *mere presence of Black residents* increased the numbers of police-civilian encounters. And higher concentrations of Black residents yielded even more police-civilian encounters *(see chart on page 8)*. This finding provides important—and disturbing—evidence that race drove, at least in part, BPD encounters.

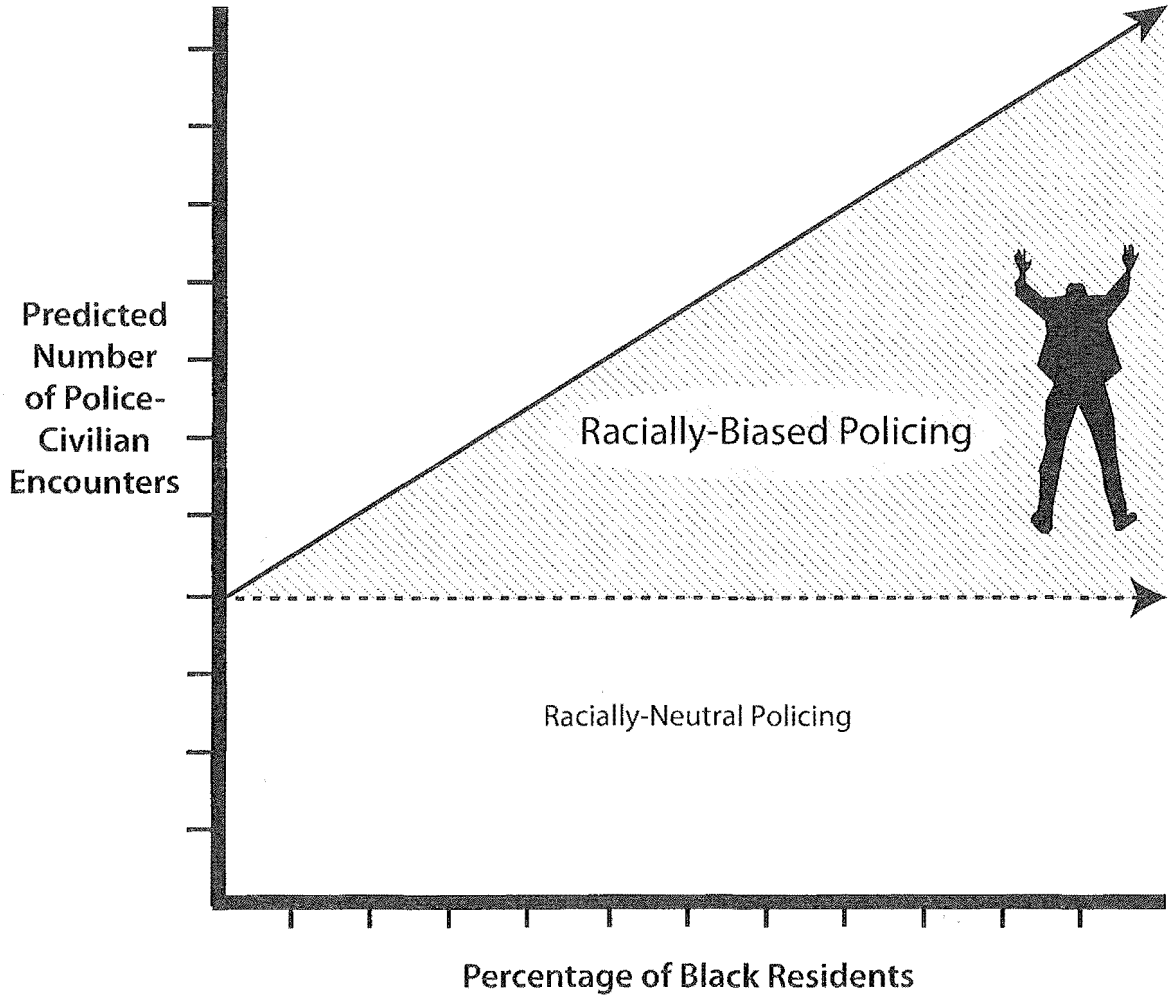


- A person's Black race substantially increases the likelihood that the BPD will target him for more than one encounter.

The research team also reported that, among people who experienced police encounters, Blacks were more likely to be targeted for multiple encounters.

What does this mean? It means that, once targeted for an encounter, a Black person was at a higher risk than an otherwise identical white person of being targeted again. The researchers found that

Approximate Relationship between the Percentage of Black Residents and the Predicted Number of Police-Civilian Encounters in Boston Neighborhoods (Controlling for Other Variables)



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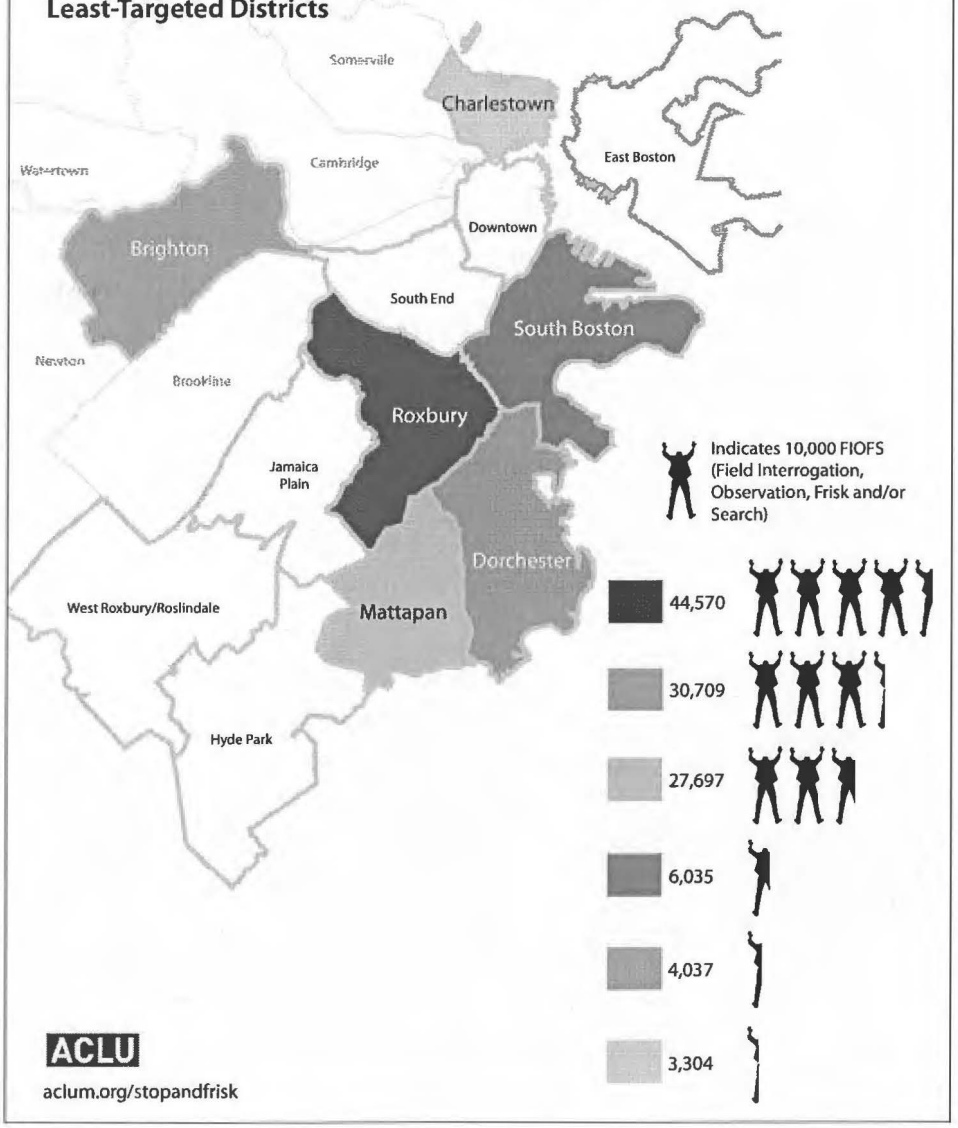
although prior arrest history and gang membership also increased a person's chance of being targeted for a repeat police-civilian encounter, those factors did not explain away the role of Black race. Thus, Blacks targeted for police-civilian encounters are more likely to experience not just one, but repeat police-civilian encounters *because of their race*.

- A person's Black race substantially increases the likelihood that the BPD will target him for a frisk or search.

The research team also reported that among Blacks and whites who experienced police encounters, Blacks were more likely than whites to be frisked or searched.

What does this mean? It means that, if a Black person and an otherwise identical white person were each targeted for an encounter, the Black person was at a higher risk of having the police elevate the encounter to a physical frisk or search. Once again, the researchers controlled for a person's prior arrest history, alleged gang membership, and other factors. Thus, after the start of a police-civilian encounter, Blacks were more likely to be frisked or searched *because of their race*.

Neighborhood Disparities: Boston Police-Civilian Encounters from 2007 – 2010, in the Three Most-Targeted and Three Least-Targeted Districts



The bottom line: the BPD unfairly targets Black people because of their race, separate and apart from efforts to target neighborhoods or people associated with crime.

C. IF ANYTHING, THESE FINDINGS UNDERESTIMATE BOSTON'S PROBLEM OF RACIALLY BIASED POLICING

The preliminary research might actually underestimate the role of racial bias in the BPD's policing practices. Why? In assessing the role of crime in driving police-civilian encounters, the research team relied on the BPD's own data and reporting practices. For three reasons, those practices might undercount the number of Blacks who were targeted because of their race.

- BPD records appear to omit some encounters with people who lack arrest records or gang affiliations.

BPD rules require an officer to complete a FIOFS Report even if

the officer stopped someone who had no arrest record, gang affiliation, drugs, or weapons. But Bostonians report that this does not always happen.

Ivan is one of those Bostonians. He has been stopped and frisked many times, but the officers often did not even take down his name, much less fill out a FIOFS Report. As a result, FIOFS Reports may well underestimate the number of police-civilian encounters that involved people of color or unaffiliated with gangs or lacking prior arrest records.

- BPD records may overstate the involvement of Black people in gangs.

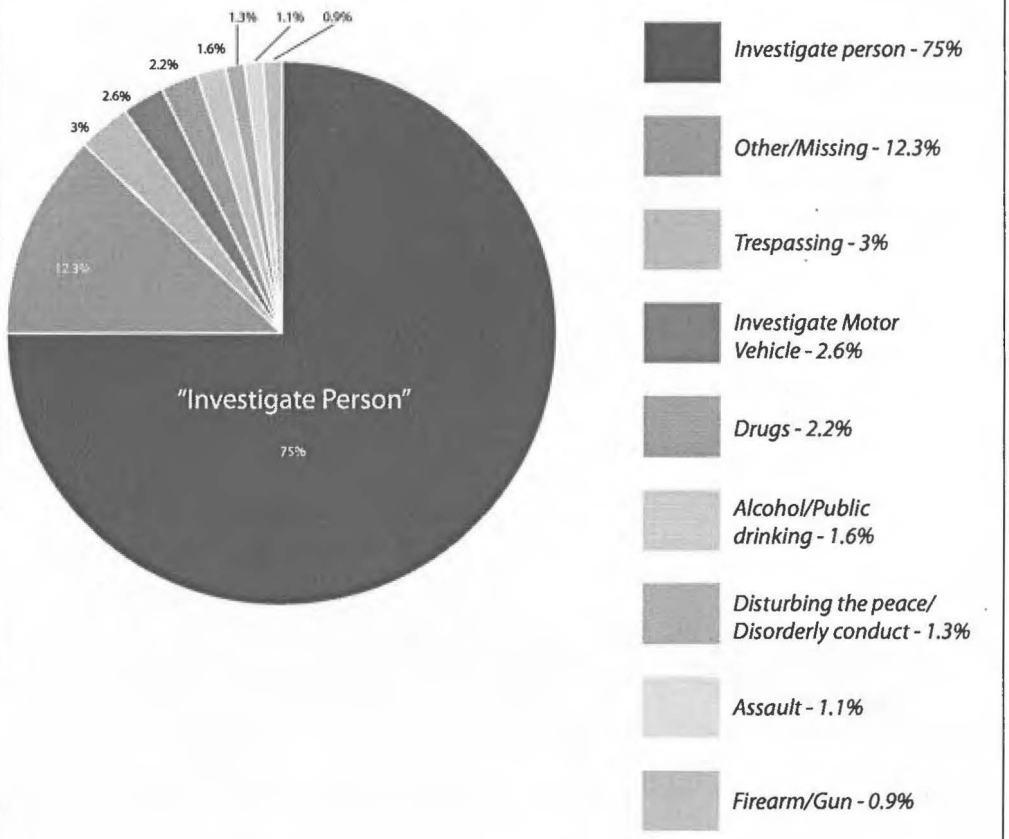
The BPD collects and retains the names of alleged gang members in a BPD gang database, but has declined to reveal how it decides whether to include or remove a name from the list. As Ivan's experience demonstrates, young Black men can be labeled gang members even when they are not. And there is no way for them to correct that error.

- A person's prior arrest record, by itself, cannot justify a stop or frisk.

A person's arrest record reflects *past* conduct; it does not justify stopping and frisking that person whenever the police want. In fact, BPD officials have conceded that *none* of the encounters described in the FIOFS Reports involved an arrest. Whatever the subjects of these Reports did in the past, they were evidently *not* committing crimes when the police initiated these encounters.

Reasons for Interrogation Observation, Frisk, or Search from 2007 – 2010

"Investigate Person" was the most common reason given, yet it doesn't reference a crime.



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And prior arrests might have been due to racially biased policing. For example, the FBI Uniform Crime Reporting Program shows that, in 2010, Black people in Suffolk County were 4.8 times more likely than whites to be arrested for marijuana possession, even though studies confirm that Blacks and whites use marijuana at roughly the same rates.[3]

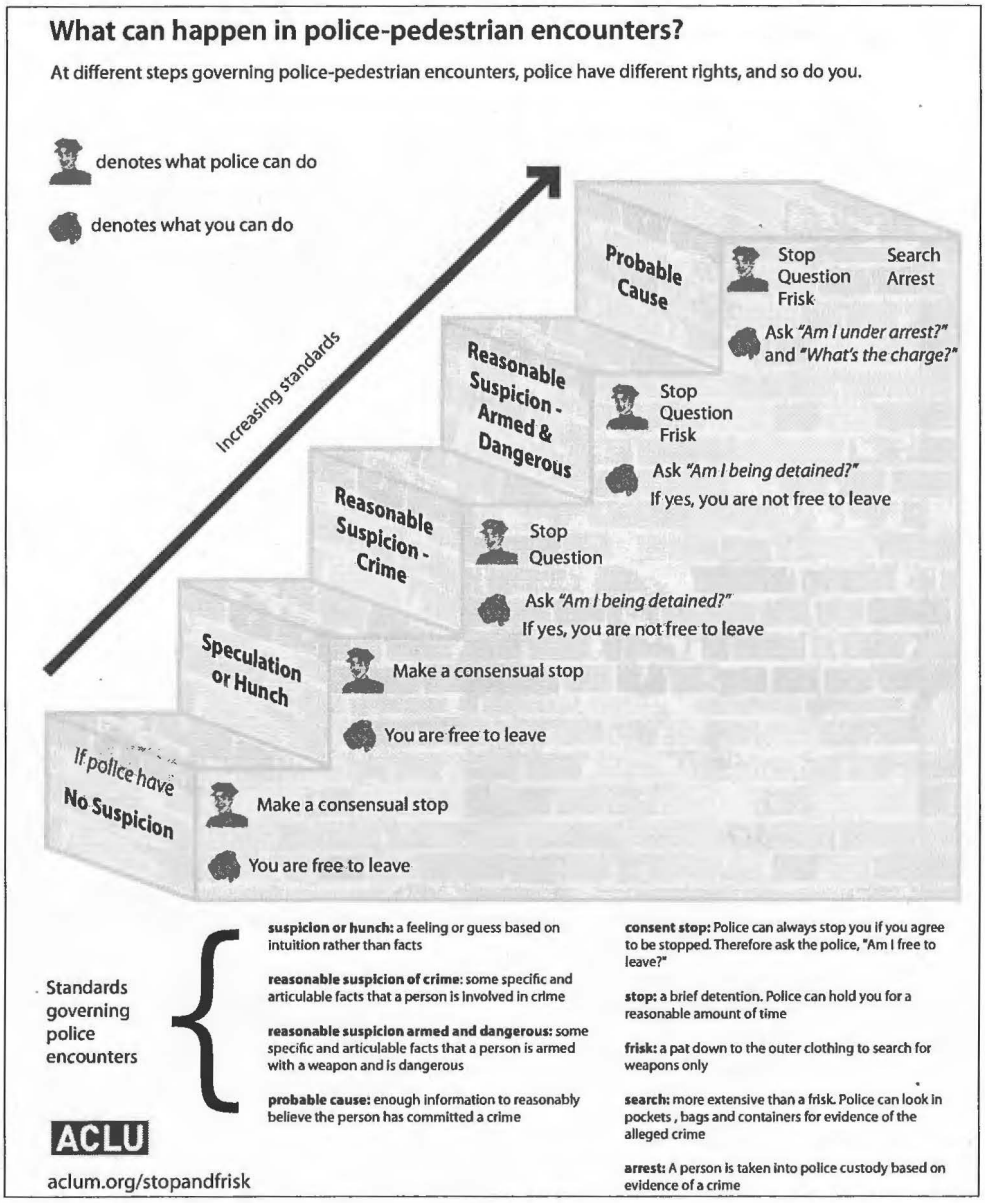
3 ACLU, The War on Marijuana in Black and White, 156; see Results from the 2011 National Survey on Drug Use and Health: Detailed Tables, Table 1.24B (Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older, by Demographic Characteristics: Percentages, 2010 and 2011) (2012), available here.

IV. THE BPD'S INABILITY TO SHOW THAT IT COMPLIES WITH CONSTITUTIONAL GUARANTEES AGAINST UNREASONABLE SEARCHES AND SEIZURES

The Fourth Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights prohibit unreasonable intrusions on our bodies and possessions by the government. The preliminary analysis of 204,739 FIOFS Reports demonstrates that the BPD has not ensured compliance with this prohibition.

A. BPD OFFICERS HAVE NOT PROVIDED LEGITIMATE REASONS FOR STOPS, FRISKS, AND SEARCHES

In 75% of all FIOFS Reports, BPD officers cited "investigate person" as the reason for the interrogation, observation, frisk, or search. But that phrase merely indicates *that* the patrol officer initiated a stop, frisk, or search. It cannot explain, either to the public or to a BPD supervisor, *why* the officer did so.



The U.S. and Massachusetts Constitutions require more than that. Officers must have legitimate reasons for initiating stops and frisks. To initiate a stop, an officer must have reasonable, articulable suspicion of criminal activity. To conduct a frisk, the officer must have reasonable articulable suspicion that the individual is armed and dangerous.

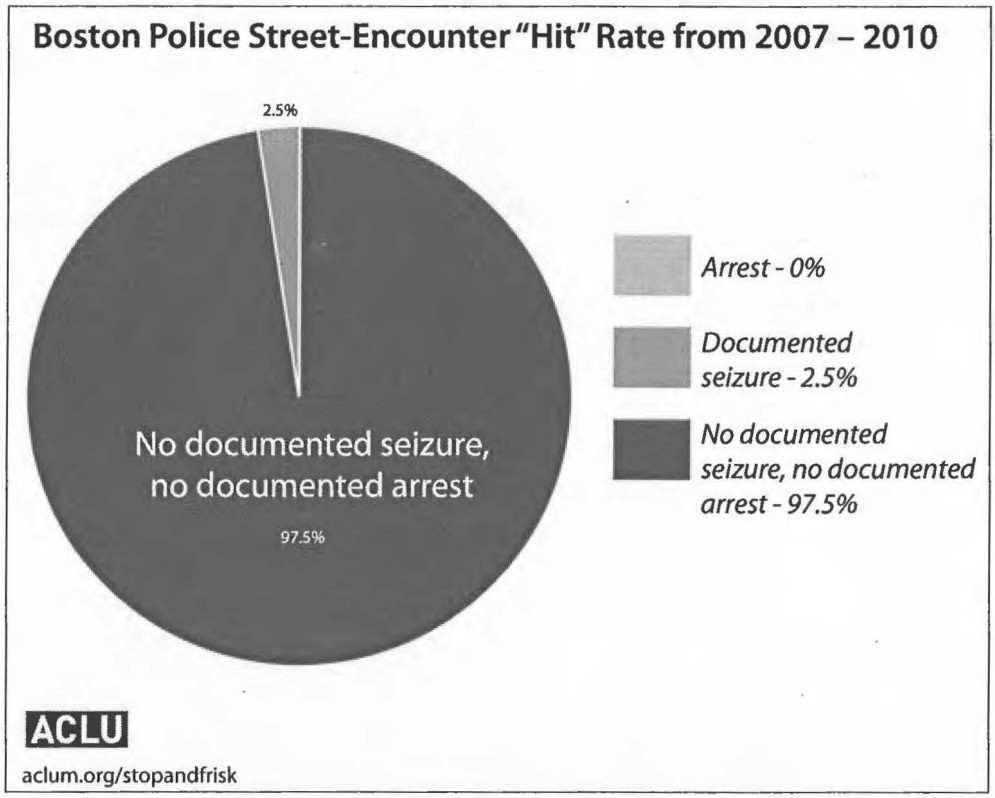
Under these standards, an "investigate person" rationale cannot justify a single stop or frisk. It is no different from writing, "Because I said so."

In fact, "investigate person" is worse than the "furtive movement" rationale that was used by NYPD officers in 51.3% of their stops and frisks. A federal court ruled that "furtive movement" is so vague that it fails to justify a stop or frisk, without more specific information.[4]

Yet the "furtive movement" rationale at least attempts to explain what someone did to attract suspicion; the "investigate person" rationale does not.

4 *Floyd*, 959 F. Supp. 2d at 559.

Because the "investigate person" rationale is both so pervasive and so deficient, the BPD cannot determine whether its officers regularly stopped and frisked people for good reasons or bad. Thus, this rationale undermines supervision, enabling BPD officers to avoid both individual and collective accountability to the Department, the people, and the communities that they are supposed to protect and serve.



B. THE BPD HAS NOT SHOWN THAT ITS STOPS AND FRISKS PRODUCED RESULTS

Beyond being unable to prove that it has complied with constitutional guarantees against unreasonable searches and seizures, the BPD cannot show that its stop-and-frisk practices helped to fight crime. BPD officials have acknowledged to the ACLU that, despite a rule requiring officers to complete FIOFS Reports for every encounter, officers did not complete Reports for anyone who was arrested. Because it did not track the entire universe of stops and frisks—i.e., those that led to arrest and those that did not—the BPD cannot say what proportion of stops and frisks resulted in arrest.

But the FIOFS Reports do reveal certain facts. They show that, in a four-year span, the BPD targeted Blacks for roughly 129,600 encounters—63.3% of 204,739—that did *not* result in arrest.

Moreover, only 2.5% of the FIOFS Reports involved the seizure of contraband or a weapon. So tens of thousands of Black Bostonians were subjected to these encounters despite not being engaged in conduct that a BPD officer deemed worthy of an arrest.

V. THE EFFECT OF BIASED POLICING ON PEOPLE OF COLOR AND PUBLIC SAFETY

Policing based on bias and negative stereotypes not only undermines civil liberties, it imperils public safety. The harms caused by biased policing have become apparent in interviews and community meetings that the ACLU of Massachusetts has had with Bostonians of color over the last several months and years. These discussions, some of which are described below, demonstrate that people feel hurt by, and fearful of, the police.

That is hardly surprising. Protests swept the nation in August 2014 following the killing of unarmed teenager Michael Brown by a police officer in Ferguson, Missouri. In Ferguson, traffic stop data show that police disproportionately target Blacks for stops and searches. Communities of color nationwide have pointed to Ferguson as an example of the counterproductive, stigmatizing, and sometimes dangerous effect of unfairly targeting Blacks for police action. As a federal judge recognized when addressing the NYPD's

stop-and-frisk program, *"While it is true that any one stop is a limited intrusion in duration and deprivation of liberty, each stop is also a demeaning and humiliating experience. No one should live in fear of being stopped whenever he leaves his home to go about activities of daily life."*[5]

> I can't ride my bike down the street to the corner store without worrying that I'll end up in the back of a cop car." —Armani W.

These words are just as true for Boston as they are for New York. When police officers engage in racially biased actions, they undermine the vital trust between police and the public that is necessary to ensure public safety. As *New York Times* columnist Charles M. Blow has said, fighting crime by treating young Black people with "universal suspicion" is "like burning down a house to rid it of mice."[6]

A. IMPROPER STOP-AND-FRISK TACTICS HARM BLACK BOSTONIANS

In interviews and community meetings, young Black Bostonians report feeling scared while walking home or to school because of how the Boston police target and harass them. One young man stated that he does not know why the police regularly stop him when he is not doing anything, and that the police's behavior toward him and his friends "make people build a type of hatred toward them." In his view, "We get stopped all the time, but people in the South End get treated differently."

Another young man noted, "Police think badges give them the power to do whatever they want." Similarly, Armani W. explained that no matter what he does, how he dresses, or where he goes, he always feels that the police are targeting him. Armani stated, "I'm walking down the street trying to mind my own business and I get stopped. I look like college, but I'm still getting stopped. I'm in the newspaper as a neighborhood scholar, and I'm still getting stopped. I can't ride my bike down the street to the corner store without worrying that I'll end up in the back of a cop car."

The BPD's targeting of Black men and youth for police encounters has caused many in Boston's Black communities to feel as though they are living under siege. The BPD's stop-and-frisk tactics pervade every aspect of daily life, leaving people to feel as though they are criminals and constantly suspect. As one young man explained, "Being stopped affects your sense of home and the image being projected about you. [Stop-and-frisk] marks you and the people who look like you as criminals."

B. IMPROPER STOP-AND-FRISK TACTICS ERODE TRUST WITH COMMUNITIES OF COLOR

When people are stopped without any reason, or when they hear that the "reason" is reported as "investigate person," they begin to believe that the system is not treating them fairly. And, of course, they're right. These experiences inevitably reduce trust and faith in the police.

One young woman, Yohana B., put the problem this way: "Unless you're white, this is not a system to protect you. It is not about the rights written down, it's about what happens."

Many of Boston's young men of color believe that when officers look at them, they see only one thing: criminals. Alex P-C., a resident of Boston's predominantly-Black Roxbury neighborhood, stated, "Stop and frisk really changes how you act; like it really gets to you. It makes you feel like you're a criminal when you're not even doing anything wrong."

When the BPD targets Mattapan, Roxbury, and Dorchester for stops just because of their high concentration of Black residents, communities of color can feel that they are under occupation.

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5 *Floyd*, 959 F. Supp. 2d at 557.

6. Charles M. Blow, The Whole System Failed Trayvon Martin, N.Y. Times (July 15, 2013), http://www.nytimes.com/2013/07/16/opinion/the-whole-system-failed.html

Young Bostonians sometimes alter entirely legal behavior just to avoid the police. They do not go to parks and playgrounds, basketball courts and baseball diamonds. They avoid train stations and bus stops, city squares and community festivals.

And, perhaps most worryingly, they avoid the police. Ivan Richiez's story suggests that victims of crime are less likely to report it if they have personally experienced racially biased policing. That makes all of us much less safe in our communities, in our homes, and on our streets.

"Being stopped affects your sense of home and the image being projected about you. [Stop-and-frisk] marks you and the people who look like you as criminals."

Lastly, by selecting Black people for the majority of more than 204,000 police encounters over four years, the BPD has effectively told Black children that we are preparing them to enter a pipeline. That pipeline starts in school, moves to stops and frisks on the streets, and ends with jails and prisons. Stop and Frisk creates a culture that tells our youth, "The place for you is behind bars."

Martsyl Joseph, a criminal defense attorney in Boston, explains, "[Stop and Frisk] happens so much that kids internalize the view that police have of them—that they are criminals. Among many of the youth with whom I work, being targeted by the police because of the color of their skin has become 'normal.' Kids know that even if they're not doing anything wrong, the police are going to stop them. To Black and Latino kids, that's just how it goes."

Joseph further notes that "with racially discriminatory policing being the norm, you have large groups of youth who do not trust the police and who do not want to cooperate with the police. You cannot have productive community policing so long as you keep treating all young Black and Latino people like criminals."

VI. TIME TO ACT: BRINGING ACCOUNTABILITY, CONSTITUTIONALITY AND TRANSPARENCY TO BOSTON STOP-AND-FRISK PRACTICES

The preliminary analysis of FIOFS Reports from 2007 to 2010 identifies a serious stop-and-frisk problem, with two major dimensions: (1) racially biased policing, including the targeting of Black neighborhoods for police-civilian encounters and of Black people for repeat police-civilian encounters as well as frisks and searches; and (2) a failure to ensure that the BPD's practices complied with constitutional prohibitions against unreasonable searches and seizures.

How did this happen? And how do we end these practices?

A. BPD POLICIES ARE INADEQUATE[7]

The BPD's deficient practices from 2007 to 2010 appear to reflect deficient policies. The BPD has disclosed five policies and training materials from this period, which address stops, frisks, and searches, as well as procedures for completing FIOFS Reports and entering information about civilians into law enforcement databases. None of those materials prohibit racially biased policing or instruct BPD officers on how to ensure that stops, frisks, and searches are not based to *any extent* on race, ethnicity, or national origin, as the law requires.

Nor does it appear that the BPD has imposed significant reforms since hearing, in June 2012 and March 2014, about racial disparities in its police-civilian encounters. The ACLU has asked the BPD to make available all recent policies and training materials on racial

7 The policies and training materials discussed in this section are available at https://www.aclum.org/stopandfrisk/policies_and_training.pdf

profiling and Stop and Frisk, as well as recent data on stop-and-frisk practices. In response, the BPD has indicated that it intends to move away from permitting officers to use "investigate person" as a justification for an encounter. But the BPD has not provided *any* post-2010 policies, training materials, or data geared toward addressing problems with racially biased policing or unjustified stops, frisks, and searches.

Instead, the BPD has produced several other documents. These include a 2014 policy on consensual police-civilian encounters, a training document on constitutional law, and a 2011 revision of Rule 323, which governs the conduct and reporting of encounters with civilians. These documents do not solve the BPD's stop-and-frisk problems.

We should strive to make Boston a model to which other cities aspire.

For example, the 2011 revision to Rule 323 fails to instruct officers how to ensure that police encounters are not driven by race. It does not prohibit the use of race, ethnicity, or national origin to any degree in justifying a stop, frisk, or search. Nor does it clearly require officers to document all stops, frisks, and searches. Rule 323 also fails to explain that a stop is impermissible unless officers identify specific, articulable evidence supporting individualized suspicion of wrongdoing. And finally, the rule does not identify the proper standard for conducting protective frisks—reasonable suspicion that a person is armed and dangerous—and does not adequately guard against the use of coercion to obtain "consent."

Similarly, the training document incorrectly states that stops are permitted based on factors such as "time of day" and "furtive gestures." But those factors, standing alone, do not provide reasonable suspicion for a stop.

With respect to the ACLU's request for updated *data*, the BPD has reported a 42% drop in the number of police-civilian encounters per year between 2010 and 2013. Although this reduction is commendable, it does not mean that the BPD has ceased disproportionately targeting Boston's communities of color, or that it has ceased using flimsy justifications to initiate encounters with civilians.

To the contrary, because the BPD's post-2010 *policies* evidently do not address the problems identified in June 2012 and March 2014, it is doubtful that those problems have been solved by the BPD's post-2010 *practices*.

Accordingly, there remains cause for concern that BPD encounters with civilians, even if less frequent, are still deeply flawed. These concerns are reinforced by interviews that the ACLU of Massachusetts has recently conducted in targeted communities. Time and again, people of color in Boston reported that police still target Black youth, not because they are committing crimes, but because of the color of their skin.

B. THE TIME FOR CHANGE IS NOW

Boston has a new mayor and a new police commissioner. These circumstances present a unique opportunity for Boston to adopt new and better approaches to Stop and Frisk. To transform an environment of discrimination and suspicion into one of trust and cooperation, we urge reforms that promote police Accountability, safeguard Constitutional rights, and create Transparency.

In short, the BPD needs to A.C.T.

Accountability

The BPD can manage only what it measures. The BPD should implement oversight that can quickly spot, address, and correct unconstitutional policing. After all, the best policies will not lead to improvements in the streets unless the BPD ensures that officers follow them.

- All officers engaged in police-civilian encounters should wear and utilize *body-worn cameras* (BWCs) during every interaction with the public. Likewise, all BPD vehicles used in encounters with civilians should be equipped with *dashboard-mounted cameras* (DMCs).

»Officers should immediately notify people that

they are being recorded by a BWC.

»The BPD should delete BWC or DMC video after two years unless a recording is "flagged" at the subject's request or because it documents the use of force, or involves an encounter that is the subject of a complaint, or led to a detention or arrest.

»The BPD should permit individuals recorded by BWCs or DMCs to have access to and make copies of those recordings. This same permission should be available to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

- BPD officers should issue *receipts* to anyone who is interrogated, stopped, frisked, or searched.

»The receipt should be issued no matter whether the encounter was consensual, and no matter whether the encounter resulted in an arrest or other legal action.

»The receipt should identify the officer(s) involved, the time and place of the encounter, the legal basis for the encounter, and the means of filing a complaint with the BPD.

»The BPD should *follow up appropriately on all complaints* relating to civilian encounters.

- The BPD should *ensure that all officers complete a FIOFS Report* for every stop, frisk, or search, regardless of whether the subject consented and regardless of the encounter's outcome.

»Supervisors should be required to promptly review FIOFS Reports and to take corrective action if an officer fails to complete them.

»The BPD should take corrective or disciplinary action if a supervisor fails to conduct complete, thorough, timely, and accurate reviews of the FIOFS Reports.

Constitutionality

Of course, oversight will not work unless the officers conducting street encounters are actually trained to follow the Constitution. Thus, the BPD should implement policies and training to ensure that officers conduct proper stops, frisks, and searches, without any influence by race, ethnicity, or national origin.

- The BPD should *revise its stop, frisk, and search policies* so that they require officers:

»to have individualized, objective reasonable suspicion of specific criminal activity to conduct an investigatory stop;

»to have individualized, objective reasonable suspicion that someone stopped is "armed and dangerous" before conducting a protective frisk for weapons;

»to never rely in any way on real or perceived race, ethnicity, national origin, religion, gender, gender identity, disability status, or sexual orientation;

»to refrain from conducting a consensual encounter, interrogation, frisk, or search until the officer affirmatively informs the individual of his or her right of refusal, and obtains prior written documentation of the subject's consent; and

»to require substantial cadet and in-service training to all sworn officers on all revised FIOFS policies.

- The BPD should *revise its training policies and FIOFS Report form* to ensure that each Report:

»identifies the individualized reasonable suspicion that led to the police-civilian encounter and each action taken during the encounter, including any frisks, searches, and uses of force;

»cautions officers against using boilerplate language to articulate reasonable suspicion;

»documents whether each encounter was consensual and, if so, provides proof that the civilian's consent was obtained in writing or through video-recording; and

»indicates whether the encounter resulted in a summons, arrest, and/or seizure of weapons or contraband.

- The BPD should *implement a bias-free policing policy* that:

» prohibits using race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability status to any extent in initiating an encounter, stop, frisk, or search;

» requires substantial cadet and in-service training to all sworn officers on bias-free policing; and

» disciplines officers for violating the policy.

Transparency

Beyond improving oversight and training, the BPD should work to rebuild trust with communities who have been stigmatized, victimized, and marginalized by the BPD's stop-and-frisk practices. That rebuilding is impossible so long as the BPD's practices and data are secret.

- The BPD should develop and implement *a program to inform Bostonians about their right to a citizen-receipt* following any police-civilian encounter and teaches them how to make police misconduct complaints.
- The BPD should, on a quarterly basis, *analyze and publish data on all consensual or non-consensual stops, frisks, searches, observations, and interviews.* The published data should be broken down by race, gender, age, and the officer's basis for the encounter or action.
- The BPD should annually *publish its FIOFS-related directives and training materials.* And, on a quarterly basis, the BPD should *publish information about civilian complaints,* including how many were received and how they were resolved.

VII. CONCLUSION

The information in this report places Boston at a crossroads. One road continues with business as usual, which has alienated communities and failed to ensure that police encounters are either just or effective. The other road leads to transparency, police accountability, and respect for the dignity and constitutional rights of all Bostonians.

All of us—the police, Bostonians, community groups, and others—should choose the second road. We should rededicate ourselves to making Boston a place of healthy and safe communities with justice for all. We should restore accountability, constitutionality, and transparency to police practices. And we should strive to make Boston a model to which other cities aspire.

If we do that, Boston's streets will be safer, its police department will be stronger, and the trust between its police officers and civilians will be more durable. Nearly 250 years after Boston was dubbed "the Cradle of Liberty," it is time again to put that ideal into practice. ▪

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EXHIBIT 3

Exhibit 3

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September 5, 2014

Transmitted via U.S. Mail and Facsimile

Amy Condon
Legal Counsel
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Re: Public Records Request Regarding FIOFS/FIOE Reports

Dear Attorney Condon,

This is a request for public records under M.G.L. ch. 66, § 10 made on behalf of the American Civil Liberties Union Foundation of Massachusetts ("ACLUM"), and the American Civil Liberties Union and American Civil Liberties Union Foundation (collectively "ACLU").

Please provide the following documents:

1) Any and all records documenting the number of Boston Police Department ("BPD"):

   a. stops of civilians conducted since January, 1, 2011;
   b. frisks of civilians conducted since January, 1, 2011, and the number of such frisks that resulted in the recovery of contraband, disaggregated by contraband type (*e.g.*, weapon, type of suspected stolen property, type of controlled substance);
   c. searches of civilians conducted since January, 1, 2011, and the number of such searches that resulted in the recovery of contraband disaggregated by contraband type;
   d. consent searches of civilians conducted since January, 1, 2011, the number of such consent searches that resulted in the recovery of contraband disaggregated by contraband type;
   e. arrests of civilians conducted since January, 1, 2011, disaggregated by age, race, gender, and the offense(s) for which each arrest was made.

2) Any and all records[1] created since January 1, 2011, including Field Interrogation,

[1] To the extent that these records are available in electronic form, we request that they be provided in an electronic storage medium, such as a delimited text file, csv (comma separated values) file, or Excel file.

Observation, Frisk, and/or Search ("FIOFS") Reports and Field Interaction/ Observation/Encounter ("FIOE") Reports, collecting information about each observation, stop, frisk, and search conducted by BPD, including records identifying the following information about each incident:

a. the location or address of the stop, frisk, and/or search;
b. the date of the stop, frisk, and/or search;
c. the duration of the stop, frisk, and/or search, or in the alternative, the time that the stop, frisk, and/or search was initiated and the time that it concluded;
d. the race, ethnicity, gender, national origin, and/or age of the individual(s) stopped;
e. the basis for the stop, including any description of the circumstances leading to the stop;
f. whether any frisk was conducted and the basis for the frisk, including any description of the circumstances leading to the frisk;
g. whether any frisk resulted in the recovery of contraband, and the nature of any contraband recovered (*e.g.*, weapon, type and amount of suspected stolen property, type and approximate quantity of controlled substance, money seized for forfeiture);
h. whether any search was conducted and the basis for the search, including any description of the circumstances leading to the search;
i. whether any search resulted in the recovery of contraband, and the nature of any contraband recovered;
j. whether the stop resulted in an arrest, citation, or no further action, and the basis for any resulting arrest or citation;
k. the badge number (or other unique identifier) and jurisdiction of the law enforcement officer(s) who completed the form.[2]

We expressly exclude from the requested records any individually identifiable information, or other private individual information, including the name of the person subjected to an FIOFS/FIOE encounter.

Because this request involves a matter of public concern and is made on behalf of a nonprofit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. 32.06(5), which encourages all custodians of public records to "waive fees where disclosure would benefit the public interest."

Should you withhold some portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions are being used and release any

2 If BPD retains a single, complete, electronic database of information collected about each stop, frisk, and search conducted by BPD since January 1, 20111, disclosure of the entire database in electronic form will satisfy paragraph 2 of this Request.

portions of the records for which you do not claim an exemption.

As you know, a custodian of public records shall comply with a request within ten days of receipt. Thank you for your assistance. Please do not hesitate to contact Carl Williams at 617 482 3170 x 171 with any questions concerning this Request.

Sincerely,

Carlton Williams / CR

Carlton E. Williams
Staff Attorney
American Civil Liberties Union of Massachusetts
Tel.: 617 482 3170 x 171
Email: cwilliams@aclum.org

Nusrat Choudhury
Staff Attorney
American Civil Liberties Union
Tel.: 212 519 7876
Email: nchoudhury@aclu.org

cc: Commissioner William Evans, Kevin Buckley, Nicole Taub, Boston Police Department (by email)
Carol Rose, Matthew Segal, and Miriam Mack, ACLU of Massachusetts (by email)
Dennis Parker, ACLU Racial Justice Program (by email)
Kevin Prussia, Stephen Jonas, and Thaila Sundaresan, WilmerHale (by email)

EXHIBIT 4

Exhibit 4

January 30, 2015

Via Email and First Class Mail

Amy Condon
Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Re: Public Records Requests

Dear Ms. Condon:

Earlier this month, the City of Boston and the entire country observed Martin Luther King, Jr. Day, the only national holiday dedicated to civil rights. We are writing in the hope that Boston will mark this occasion not just by commemorating the struggle for civil rights on one day, but also by taking concrete steps to improve civil rights for years to come.

As you know, a study commissioned by the Boston Police Department has provided evidence that BPD did not treat Blacks and whites equally from 2007 to 2010. Even after controlling for crime-related factors, black race significantly influenced (1) the number of police encounters in a neighborhood; (2) whether people were subjected to multiple encounters; and (3) whether encounters were escalated to frisks or searches. In short, thousands of encounters, frisks, or searches were conducted because of race, and not for legitimate reasons. In light of these findings, we pressed the BPD—since September 2014, well before the release of the ACLU's October 2014 report—to implement body-worn cameras, civilian receipts, and regular publication of data.

The BPD has declined to adopt those reforms or, to our knowledge, any other reform that is responsive to the study's troubling findings of racialized policing.

Meanwhile, during a meeting with ACLU attorneys and Boston Police Commissioner William Evans on October 8, 2014, Mayor Martin Walsh acknowledged the importance of examining current data in order to determine

whether the documented problems of 2007 to 2010 remain problematic today. We agree. That is why, on September 5, 2014, the ACLU of Massachusetts and the national ACLU submitted the enclosed public records request to the BPD for data on police-civilian encounters since January 1, 2011. *See* Exhibit 2. The BPD has provided no substantive response to that request.

In addition, on May 8 and October 3, 2014, the ACLU of Massachusetts and the national ACLU submitted the enclosed requests for documents relating to BPD policies, practices and training. *See* Exhibits 1 and 5. While the BPD has released some documents in response to these requests, other responsive documents remain undisclosed. *See* Exhibit 6. Under the Commonwealth's public records law, the BPD was required to comply with our requests within ten days. *See* G.L. c. 66, § 10(b).

We ask that the BPD make the data and policy records available in electronic form, not just to the ACLU but to the general public. And, consistent with the spirit of the Commonwealth's public records law, and with the Mayor's commitment to transparency, we ask that this data be made available free of charge.

Thank you for your consideration of this letter. We would be grateful to hear by February 13, 2015, how our pending requests will be handled.

Sincerely,

Matthew R. Segal
Legal Director
American Civil Liberties Union
Foundation of Massachusetts

Nusrat Choudhury
Staff Attorney
American Civil Liberties Union

cc: Mr. Eugene L. O'Flaherty, Esq., Corporation Counsel, City of Boston
Ms. Nicole Taub, Esq., Staff Attorney, Office of the Legal Advisor, BPD
Mr. Kevin S. Prussia, Esq., WilmerHale

Encl.

EXHIBIT 5

Exhibit 5

Boston Police Department
One Schroeder Plaza, Boston, MA 02120-2014

February 24, 2015

Matthew R. Segal, Esq.
Legal Director
ACLU Foundation of Massachusetts
211 Congress Street
Boston, MA 02110

Re: Outstanding Record Requests
Supplemental Production

Dear Attorney Segal,

As we previously discussed on the phone, I have reviewed your outstanding record requests and the documents previously provided. The following information is being provided in response to the outstanding portions of that request, as well as the information referenced in your January 30, 2015 correspondence.

May 8, 2014—The following information is intended to supplement the documents provided on September 5, 2014.

1. Reports created since January 1, 2005 identifying the names of law enforcement entities with which FIOs have been shared.

- The information you have requested is exempt from disclosure by MGL c. 4 s. 7(26)(f). Disclosure of the information contained in these documents would not be in the public interest and would prejudice the possibility of effective law enforcement. More specifically, the protection of such investigatory materials and reports is essential to ensure that the Department can continue to effectively monitor and control criminal activity and thus protect the safety of private citizens.
- In the alternative, the Department states that it has shared FIOs with five (5) other law enforcement and/or criminal justice agencies from 2011 to the present.

2. The compliance or non compliance of the FIO and FIO databases with international, federal, state and/or local privacy and anti-discrimination laws and state and federal regulations governing criminal intelligence systems.

- The information you have requested is exempt from disclosure by M.G.L. c. 4 s. 7(26)(a).
- Assuming responsive documents exist, any legal assessment of compliance or non compliance is protected by the attorney-client privilege.

If you believe additional information remains outstanding in response to the May 8, 2014 request please let me know.

October 3, 2014 E-Mail

On October 3, 2014, you requested additional documents regarding FIOs. Specifically, you requested the most current version of the FIOFS form and any draft versions; any policies/instruction concerning use of the new FIOFS form or any draft versions; any "new training protocols" on implicit bias; the Procedural Justice training materials; and the Rule 323 video.

In response to your request enclosed please find the following documents:

- 2011 Video on Rule 323
- "Closing the Gap" Toward Safer, More Just and More Effective Policing (The Curriculum on Procedural Justice)
- BPD New Recruit Training
- FIOFS Form

The request for draft versions of the FIOFS form and policies/instruction concerning use of the new FIOFS form are exempt from disclosure by M.G.L. c. 4 s. 7(26)(d). While pending, documents relating to the development of these policies are not public record. Once final versions are adopted within the Department, they may be subject to disclosure in response to a public records request.

Finally, as we discussed, I have forwarded your September 5, 2014 request for FIO related data to our Information Services Group and will provide further updates on the status of the response as it is received.

If you have been denied records by the Boston Police Department, you have the right to appeal this decision with the Supervisor of Public Records at the Public Records Division of the Secretary of the Commonwealth.

Please do not hesitate to contact me if you would like to discuss any of the information contained herein.

Sincerely,

Nicole I. Tand

Enclosures