



July 9, 2012

VIA EMAIL

Honorable Edwin M. Lee
Mayor
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Mayor Lee:

Since you raised the possibility of bringing New York's stop and frisk policy to San Francisco, there has been a torrent of public comments expressing shock and dismay coming from public officials, civil rights organizations, community groups and residents who live in the neighborhoods that will be most affected. In response to this widespread criticism, you have said that you wanted the New York policy included in "the conversation."¹ However, while the serious problem of gun violence merits a free and full discussion about causes and solutions, the New York stop and frisk program has become a code word for racial profiling, and thus injecting it into the "conversation" has already spread fear, distrust and polarization, and in fact distracted attention from the problems you are trying to address. Therefore, the ACLU-NC calls on you to make a public statement to make it clear that San Francisco is not looking to the New York stop and frisk policy as a model.

As you know, the police already have legal authority to stop and frisk criminal suspects. The Supreme Court in *Terry v. Ohio* gave the police the power to stop individuals based on "reasonable suspicion" that they are involved in criminal activity, and to pat them down if there are "reasonable grounds" to believe the person is "armed and dangerous." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Chief Suhr has made it clear that the SFPD uses the "stop and frisk" technique – and that he understands its constitutional limits. "We detain people based on reasonable suspicion and when we pat search people it's for officer safety sake."²

¹ Phillip Matier and Andrew Ross, *SFGate*, SAN FRANCISCO CHRONICLE, July 2, 2012, available at <http://www.sfgate.com/bayarea/matier-ross/article/Paul-Seeman-on-leave-from-bench-still-gets-paid-3676220.php>.

² Mariana Barrera, *Deadly June in San Francisco Results in 68 Arrests During Citywide Sweep*, FOG CITY JOURNAL (June 28, 2012), <http://www.fogcityjournal.com/wordpress/4724/deadly-june-in-san-francisco-results-in-68-arrests->

What New York-style stop and frisk adds to these existing powers is the saturation of communities of color with police and the generation of a sudden outbreak of “reasonable suspicion” leading to a stop and frisk explosion in communities of color. The number of stops in New York went from about 97,000 a year before Mayor Bloomberg took office to 685,724 in 2011.³ Ninety percent of these stops were of innocent people – they were neither arrested nor cited. *Id.* Black and Latino males between the ages of 14 and 24 accounted for 41.6 percent of the stops in 2011 even though they are only 4.7 percent of the population of New York. *Id.* Furthermore, no gun was retrieved in 99.9 percent of all of the stops. *Id.*

These statistics illustrate why the New York policy has become a code word for racial profiling and led to such an outcry in New York and beyond. That it has raised a similar outcry in San Francisco should not be surprising, as it is thoroughly inconsistent with this City’s values and policies. Just last year, the City reaffirmed its strong and clear commitment to unbiased policing, with a policy that explicitly prohibits the police from using race “to any extent or degree” in determining whether to initiate any law enforcement action.⁴ That policy states that it is “crucial” for the police to “eliminate any perception of policing that appears racially biased.” *Id.* Your raising the controversial and discredited New York policy has already led to “perceptions” of police bias that can by themselves erode community trust and confidence in the police.

The problem of racial profiling by SFPD goes beyond community perceptions. There has been a persistent and documented disproportionate arrest rate for African Americans in this city. In 2007, an extensive report was submitted to the Office of the Mayor by a nationally recognized expert in police practices concerning this problem and recommending twenty-eight changes to “facilitate full fair and impartial policing.”⁵ Following the New York model ignores the central message of this Report, as that will result in increased arrests and criminal records for young people of color.

San Francisco has been a leader in recognizing the adverse and unfair impact of criminal records on young people, and young people of color in particular, and established a Reentry Council in 2008 to help deal with this problem. Once young people are saddled with a criminal

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³ *Stop-and-Frisk 2011 NYCLU Briefing*, AMERICAN CIVIL LIBERTIES UNION OF NEW YORK STATE (May 9, 2012), http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf.

⁴ San Francisco, Cal., SFPD General Order DGO 5.17 (July 17, 2003).

⁵ Lorie Fridell, *Fair and Impartial Policing: Recommendations for the City and Police Department of San Francisco*, SAN FRANCISCO POLICE DEPARTMENT 1 (March 2007), <http://sf-police.org/Modules/ShowDocument.aspx?documentid=14851>.

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record for even a minor offense, their chances of accessing housing, education, and employment are diminished for the rest of their lives. Yet you are considering a program that would inevitably involve detentions and arrests for many young people who have no connection with gangs and no connection with serious crime or gun violence.

For all of these reasons, the stop and frisk program in New York is under legal siege, with four class action cases pending. Less than two months ago, a District Court in New York granted class certification to a lawsuit challenging the program as constitutionally suspect. *Floyd v City of New York*, 2012 WL 1868637 (SD NY, May 16, 2012). Twenty-seven of the fifty-one members of the City Council filed an amicus brief arguing that New York's stop and frisk practices "'reinforce negative racial stereotypes' and have created 'a growing distrust of the NYPD on the part of Black and Latino residents.'" *Id.* at 2. And in the last two weeks, two New York appellate courts have ruled that NYPD stop and frisks of juveniles violated constitutional standards.⁶ As the Court in *Darryl C.* noted: "While aggressive police tactics may well result in more arrests, neither respect for the law nor cooperation with law enforcement authorities is fostered by subjecting individuals to the exercise of arbitrary police power." *Matter of Darryl C.*, No. 05118, Slip Op. at 5 (N.Y. App. Div. June 26, 2012). It is mystifying to us, and to many others in the legal community, why you would consider bringing such a civil rights nightmare to San Francisco.

The stop and frisk program in New York is bad law and even worse public policy. The ACLU-NC asks you to dispel the confusion, distrust and fear that has been fostered by its inclusion in the San Francisco public debate by a clear Mayoral rejection of this discredited and failed policy.

Very truly yours,



Alan Schlosser
Legal Director

cc: Members of the Board of Supervisors
Members of the Police Commission
Police Chief Greg Suhr
City Attorney Dennis Herrera
Public Defender Jeff Adachi

⁶ Russ Buettner, *Appeals Court Throws Out Second Conviction in Stop and Frisk Case*, NEW YORK TIMES, July 3, 2012, available at <http://www.nytimes.com/2012/07/04/nyregion/appeals-court-throws-out-2nd-gun-conviction-in-stop-and-frisk-case.html>.