

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

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>NOTICE SUBMITTING SEARCH AND</u>
CITY OF CLEVELAND)	<u>SEIZURE IN-SERVICE TRAINING</u>
)	<u>CURRICULA</u>
Defendant.)	
)	
)	

Pursuant to Paragraphs 173 and 174 of the Consent Decree and the 2021 Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted an In-Service Proposed Training Curriculum for Search and Seizure to the Monitoring Team, consisting of three modules: 1) Introduction; 2) a Traffic Stop scenario; and 3) a Table Top exercise, attached hereto respectively as Exhibits A through C.

The Monitoring Team has carefully reviewed the Proposed Training Curriculum. The Team has determined that it provides sufficient guidance for CDP officers to understand the Division’s revised Search and Seizure policies through effective adult learning techniques, particularly through guided scenarios that allow officers to better understand legal subjects that

often can be difficult to learn and put into practice. The Monitoring Team therefore recommends that the Court approve CDP's Search and Seizure Training Curriculum.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING SEARCH AND SEIZURE TRAINING

Paragraph 173 of the Consent Decree requires that "CDP [] provide all officers with initial training . . . on investigatory stops, searches, and arrests, including the requirements of this Agreement." The training must "address the requirements of the Fourth Amendment and related law, CDP policies, and this Agreement, including:

- a. "the difference among the scope and degree of intrusion associated with different types of police contacts; the difference between probable cause, reasonable suspicion, and mere speculation; and the difference between voluntary consent and the mere acquiescence to police authority;
- b. "the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop;
- c. "the level of permissible intrusion when conducting searches, such as 'pat-downs' or 'frisks';
- d. "the permissible nature and scope of searches incident to an arrest;
- e. "procedures for executing searches, including handling, recording, and taking custody of seized property and evidence; and
- f. "the principles of procedural justice and the effect that differing approaches to investigatory stops, searches, and arrests can have on community perceptions of police legitimacy and public safety."

Dkt. 7-1 at ¶ 173.

Paragraph 174 states "CDP also will provide officers with annual search and seizure in-service training that is adequate in quality, quantity, type, and scope."¹

¹ This Search and Seizure curriculum has been a long time in development. The Monitoring Team first reviewed a draft curriculum in April 2020 and provided detailed comments, as did the Department of Justice. The Monitoring Team provided additional technical assistance on drafts in June and July 2020, and more drafts throughout 2021. As such, this annual training was originally due to be delivered in 2020.

II. STANDARD OF REVIEW

The Monitoring Team’s role is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitoring Team here is to determine whether the Proposed Training Curriculum complies with the Consent Decree’s requirements.

III. ANALYSIS OF THE SEARCH AND SEIZURE TRAINING

The Division’s Search and Seizure Training Curriculum is a four-hour block of in-service training designed to refresh all CDP officers on the revised Search and Seizure policies and explore specific issues around Search and Seizure. The curriculum is composed of an Introduction, a Traffic Stop Scenario, and a Tabletop exercise.

The Introduction module identifies consequences of failure to properly apply Search and Seizure law and policy (exclusion of evidence and legal liability, as well as loss of legitimacy), reinforces lessons on Fourth Amendment standards, including consent searches, open view, exigency, developing reasonable suspicion, and reinforces the data gathering requirements during stops. The separate Stop Data Form Training and Policy were previously approved by the Court on May 18, 2021.²

The Traffic Stop Scenario uses a video of a traffic stop encounter to explore nuanced issues such as when subjects may be required to exit their vehicle during a traffic stop, what protections apply to the search of locked containers, distinguishing between stops based on reasonable suspicion of criminal activity and probable cause that a traffic violation or crime has occurred,

² See Dkt. No. 360.

identifying probable cause for Operating a Vehicle while Intoxicated, as well as reinforcing all five Search and Seizure GPOs using the scenario.

The Tabletop module divides officers into small groups to work through facilitated scenarios with written responses. The scenarios ask officers to differentiate between investigative stops, consensual encounters, and to understand variables that can convert a consensual encounter into a seizure. Officers are also instructed when a “pat-down” for weapons is appropriate, when to activate their Wearable Camera System, how to introduce themselves during an encounter, and when they have the authority to request identification when to read Miranda, and evidence management. One scenario delves deeply into nuances of who can give consent to enter a home and when a warrant is required. Finally, officers are trained in the use of discretion in the performance of their duties - just because something is lawful does not mean it should be done.

Overall, the training uses a commendable variety of adult learning techniques, including question-and-answer, interactive exercises, small group discussions, and handouts.

V. CONCLUSION

The task of the Monitoring Team is to duly consider whether the City’s submitted Proposed Training Curriculum satisfies the terms of the Consent Decree. The Monitoring Team concludes that the Proposed Training Curriculum meets the terms of the Consent Decree. Accordingly, the Monitoring Team approves In-Service Proposed Training Curriculum for Search and Seizure in its entirety and requests that this Court order it effective immediately.

Respectfully submitted,

/s/ Hassan Aden

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2021 I served the foregoing document entitled **NOTICE**
SUBMITTING SEARCH AND SEIZURE IN-SERVICE TRAINING CURRICULA via the
court's ECF system to all counsel of record.

/s/ Brian G. Maxey
BRIAN G. MAXEY