



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai‘i

BY EMAIL

July 5, 2020

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Re: Racial and wealth disparities in policing

Dear Chief Ballard, Chair Alivado, and Ms. Uyema:

The ACLU of Hawai‘i Foundation (“*ACLU of Hawai‘i*”) writes with constitutional and civil rights concerns about recent reports of racial bias and disparities in arrests and use of force by the Honolulu Police Department (“*HPD*”). One news article revealed that HPD’s enforcement of the COVID-19 orders had a disparate impact on Black people, Micronesians (e.g., people from the Federated States of Micronesia, Marshall Islands, Palau, etc.), Samoans, and people experiencing homelessness.¹ A second article showed persistent racial disparities in police use of force against Black people, Native Hawaiians, and other Pacific Islanders between 2010 and 2018.²

¹ Ashley Mizuo, *Racial Disparities Emerge In HPD Enforcement Of Stay-At-Home Violations*, HAWAII PUBLIC RADIO (June 29, 2020), <https://www.hawaiipublicradio.org/post/racial-disparities-emerge-hpd-enforcement-stay-home-violations>.

² Anita Hofschneider, *HPD Chief Says There’s Less Racial Bias In Hawaii. She’s Wrong*, CIVIL BEAT (June 29, 2020), <https://www.civilbeat.org/2020/06/what-implicit-bias-looks-like-in-hawaii/>.

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HPD's own arrest data shows that during the COVID-19 pandemic, HPD was 30 times more likely to arrest a Micronesian person and five times more likely to arrest a Black or Samoan person for violations of the COVID-19 orders than to arrest a white person.³ Similarly, a person experiencing homelessness was almost 55 times more likely to be arrested under the orders than a housed person. Such arrests are particularly concerning, because they run counter to public health and the purpose of the orders, which is to avoid the spread of COVID-19.⁴ Moreover, the Centers for Disease Control and Prevention issued clear guidance against conducting sweeps of homeless encampments when "individual housing options are not available,"⁵ and people experiencing homelessness were exempt from the stay-at-home provisions of the orders. Similarly, between 2008 and 2010, HPD officers were 3.5 times more likely to use force against Black people and 26 percent more likely to use force against Native Hawaiians and other Pacific Islanders than against white people.

The Hawai'i and U.S. constitutions promise to all persons equal protection of the laws, regardless of their race or wealth. Discriminatory enforcement of criminal laws against Black people was one of the central evils meant to be addressed by the framers of the Fourteenth Amendment. When HPD officers disproportionately or selectively enforce criminal laws against members of one race or socio-economic class, they break that promise and violate the laws and constitutions they have sworn to uphold.⁶

³ The ACLU of Hawaii's analysis of the data used in the news reports is available at <https://docs.google.com/spreadsheets/d/1ht7pf-Av20WRiNtKc14H2qe-V4aW0Mn6Hl7vHTxGDwU/edit#gid=0>.

⁴ ACLU of Hawai'i, *Letter re Guidance of Enforcement of COVID-19 Related Restrictions on the General Public* (March 27, 2020) ("Because of the grave risks of COVID-19 exposure for people in police custody and jail, the use of custodial arrest to enforce these restrictions is not an appropriate public health measure and should almost never be the outcome of these enforcement efforts.").

⁵ Centers for Disease Control and Prevention, *Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials* (May 13, 2020) ("Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread."), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

⁶ See, e.g., *Cross v. City & County of San Francisco*, 386 F.Supp.3d 1132, 1149 (N.D. Cal. 2019) ("Here, it does not really matter whether Plaintiffs engaged in conduct that supported probable cause. Even if their conduct supported probable cause, Plaintiffs' equal protection rights were still violated if the police targeted Plaintiffs for the buy-walk transactions because of their race.").

We understand HPD is considering providing racial bias training to its officers. While that is a start, it is simply not enough. We recommend HPD also take the following measures:⁷

1. **End the aggressive enforcement of low-level offenses:** statistics show that between 2007 and 2017, three out of four arrests in Hawai‘i were for non-violent and non-property offenses.⁸ Even more shocking is that one in six arrests was of a minor, overwhelmingly for non-violent offenses. Aggressive enforcement of low-level offenses such as drug possession unnecessarily funnels thousands of people into the criminal legal system — primarily young people of color and poor people. Therefore, HPD should deprioritize police enforcement of drug possession or status offenses, as well as a range of other low-level offenses, such as “quality of life” offenses, and work with communities to address these issues through measures that do not involve the criminal legal system. Such a policy could free up additional resources to fund public health, economic, and education initiatives that address the social and health challenges at the root of most criminal offenses.
2. **End racial and wealth-based profiling:** racial profiling is not only the act of selecting or targeting minorities for law enforcement contact, but also includes policies or practices (such as broken window policing or sweeps) that have a disparate impact on disadvantaged communities. Police interactions with people should be directed only toward investigating real threats to public safety. However, too often, police stop and search people of color without substantial evidence of wrongdoing, based on explicit and implicit biases, including those of the people calling the police to complain about non-criminal activity. Such profiling can lead to the aggressive enforcement of minor offenses, disproportionately and needlessly entangling people experiencing homelessness and people of color — particularly young people — in the criminal legal system for offenses that are rarely, if ever, enforced in more affluent communities. As an example, the arrest

⁷ Additional information concerning these and other related recommendations can be found in a recent ACLU report about racially targeted arrests for marijuana-related offenses. See ACLU, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* at 43-47 (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

⁸ These arrest statistics are based on the Hawai‘i crime data collected as part of the Uniform Crime Reporting Program available at <https://ag.hawaii.gov/cpja/rs/cih/>.

data for the COVID-19 orders showed that while a vast number of arrests happened in Kalihi, there were very few or no arrests in Kahala, Mānoa, Kailua, and Hawaii Kai.⁹ Consequently, HPD should adopt model racial profiling policies that define racial profiling, prohibit law enforcement from engaging in it, and make clear that it is unconstitutional under the Fourth and Fourteenth Amendments.¹⁰

- 3. End use of raw numbers of stops, citations, summons, and arrests as a metric to measure productivity and effectiveness:** evaluating law enforcement agencies and individual officers based on the numbers of stops, citations, summons, and arrests does not properly measure public safety and health; it also puts additional pressure on police officers and departments to aggressively enforce criminal laws for low-level offenses. Including arrests as a measure of effectiveness and productivity, through COMPSTAT and similar programs, creates an incentive for police to selectively target and harass poor and marginalized communities for enforcement of low-level offenses, as such offenses are committed more frequently than serious, harmful crimes. Relying on numbers of stops, citations, summons, and arrests, as HPD has sometimes done in the past,¹¹ squanders HPD's resources on low-level offenses. This increases arrest statistics and can make departments appear productive and highly active, while discouraging police from reporting and solving more

⁹ Ashley Mizuo, *Racial Disparities Emerge In HPD Enforcement Of Stay-At-Home Violations*, *supra* note 1.

¹⁰ The only policy in HPD's Standards of Conduct speaking to the potential for racial bias does not directly address racial profiling. *See* HPD Policy Number 2.21, Standards of Conduct at 21 ("Impartial Attitude - Officers and civilian employees shall remain completely impartial toward all persons coming to the attention of the department. They shall not display favoritism for or discriminate against a person because of race, ethnicity, national origin, gender identification, creed, religion, sexual orientation, age, disability, or influence."); *see also* End Racial Profiling Act of 2015, H.R. 1933, 114th Cong. (2015); The Racial and Identity Profiling Act of 2015, A.B. 953, 2015 Leg., Reg. Sess. (Ca. 2015); Southern Poverty Law Center, *10 Best Practices for Writing Policies Against Racial Profiling* (Oct. 23, 2018), <https://www.splcenter.org/20181023/10-best-practices-writing-policies-against-racial-profiling>.

¹¹ *See, e.g.*, Lynn Kawano, *New HPD policy sounds like a quota*, HAWAII NEWS NOW (Aug. 19, 2014), <https://www.hawaiinewsnow.com/story/26322137/new-hpd-policy-sounds-like-a-quota/>; KHON2, *Notice more police officers out writing tickets? HPD explains why* (Jan. 26, 2018), <https://www.khon2.com/news/notice-more-police-officers-out-writing-tickets-hpd-explains-why/1012417301/>; *see also* HPD, *2018 Annual Report* at 26-46 (statistics section focusing almost exclusively on arrest data), <http://www.honoluluupd.org/downloads/HPD2018annualreport.pdf>.

serious crimes. To move away from evaluating public safety and police efficacy through arrest numbers, HPD should reduce its reliance on stops, citations, summons, and arrests and broaden their benchmarks of success, relying instead on measurements such as community satisfaction with law enforcement; number of complaints filed against law enforcement; rate of racial disparities in arrests; and number of serious crimes solved.

- 4. Routinely collect and release accurate data for a range of police practices:** recent reports about HPD's lack of transparency and shoddy data collection practices¹² demonstrate the urgent need for HPD to prioritize accountability and transparency. HPD can do so by collecting stop, frisk, search, citation, and arrest data; making the aggregate data publicly available and easily accessible; creating evaluation systems to analyze such data to identify and address racially biased and harmful practices and policies; and developing strategies and tactics that eliminate any form of racial disparities in enforcement practices. Whether or not a citation is issued or an arrest is made, HPD officers must document the following information (in addition to providing the data, time, and location of the stop as a "receipt" to anyone they stop or search): (1) the demographic information of the individual stopped (including race, national origin, ethnicity, age, disability, and gender) and the date, time, and location of the stop; (2) whether a search was conducted and for what reason; (3) whether and what type of contraband was recovered; (4) the outcome of the encounter (summons, citation, warning, arrest, no action); and (5) the identification of the officers involved. Personally identifiable information of a person stopped or searched need not be released. To guarantee statewide uniform arrest and citation documentation, HPD should electronically record information regarding stops, frisks, searches, citations, and arrests by district, race, national origin, ethnicity, age, and gender, and share such information with the public in quarterly reports on HPD's website and

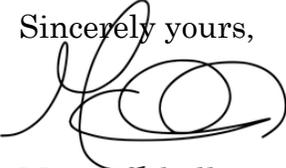
¹² See, e.g., Nick Grube, *20 Years Of Honolulu Police Misconduct Summaries Document Serious Bad Behavior*, CIVIL BEAT (June 24, 2020), <https://www.civilbeat.org/2020/06/20-years-of-honolulu-police-misconduct-summaries-document-serious-bad-behavior/>; Anita Hofshneider, Yoohyun Jung, Nick Grube, *Shoddy Record Keeping By HPD Skews Public Picture Of Police Killings*, CIVIL BEAT (June 17, 2020), <https://www.civilbeat.org/2020/06/shoddy-record-keeping-by-hpd-skews-public-picture-of-police-killings/>.

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in print.¹³ The reports should be easily searchable. Transparency will provide the public — community members, activists, local and state policymakers, criminologists, lawyers, academics, the media, etc. — with a meaningful empirical basis for determining whether any demographics have been targeted and to raise concerns and propose policy solutions. This would provide more objective and understandable information for assessing public safety; inform discussions about the nature and appropriateness of police practices and police resources; promote community safety, trust, and autonomy; and better ensure accountability of police departments and individual officers.

Finally, pursuant to Chapter 92F of the Hawai‘i Revised Statutes, we ask that HPD produce all government records (as defined by HRS Section 92F-3) related to the enforcement of the COVID-19 orders during the pandemic. This request includes, but is not limited to, any and all statistics concerning arrests and citations issued for alleged violations of said orders, excluding any personally identifiable information.

We ask that you please respond to this letter by July 20, 2020. If you have any questions or comments, please contact me at 808-522-5908 or mcaballero@acluhawaii.org.

Sincerely yours,

Mateo Caballero
Legal Director

¹³ More specific offense information for arrests is needed, because the Uniform Crime Report for 2017 (the last year for which there is comprehensive spreadsheet data for Honolulu) shows that one in four arrests were for unspecified “other criminal offenses.” Attorney General, *Crime in Hawai‘i 2017: A Review of Uniform Crime Reports* (Jan. 2019), <https://ag.hawaii.gov/cpia/files/2019/01/Crime-in-Hawaii-2017.pdf>.