



# OLR RESEARCH REPORT

January 18, 2012

2012-R-0037

## **JUSTICE DEPARTMENT REPORT ON ALLEGATIONS OF DISCRIMINATORY POLICING BY EAST HAVEN POLICE DEPARTMENT**

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You asked for a summary of the U.S. Justice Department's (DOJ) [report](#) on the East Haven Police Department.

### **SUMMARY**

After a two-year investigation of the East Haven Police Department (EHPD), DOJ found that that EHPD engages in a “pattern or practice” of systematically discriminating against Latinos in violation of the U.S. Constitution and federal law. It also found that “discriminatory policing” is deeply rooted in the department’s culture and interferes with its ability to deliver services to the entire East Haven community (DOJ Report pp. 1 & 2).

The investigation sought to determine whether EHPD police officers systematically deprive individuals of their federally protected rights. It focused on whether EHPD police officers engage in discriminatory policing, use excessive force, and conduct unlawful searches and seizures in violation of the U.S. Constitution and federal law.

Specifically, DOJ found reasonable cause to believe that EHPD officers “intentionally target Latinos for disparate traffic enforcement and treatment because of their race, color, or national origin” (DOJ Report, p. 3).

DOJ based its conclusions on the following:

1. a statistical analysis of (a) traffic-stop data from 2009 and 2010 showing that EHPD police target Latino drivers for traffic stops and use non-standard and, in some cases, unacceptable, justifications for stopping them and (2) traffic incident reports showing that officers treat Latinos more punitively than non-Latinos after a traffic stop;
2. serious incidents of abuse of authority and retaliation against critics of the discriminatory treatment of Latinos;
3. failure to remedy a history of discrimination and a deliberate indifference to the rights of minorities, including failure to train, supervise, and discipline officers engaged in unlawful discrimination; and
4. significant deviations from standard police practices that result in covering up or exacerbating the disparate treatment of Latino drivers, including failure to (a) collect and report traffic-stop data required by state law, (b) implement anti-discrimination policies, (c) hold officers accountable through internal investigations, (d) provide limited-English proficient Latinos with appropriate language access, and (e) abide by individuals' consular rights by notifying arrested foreign nationals of their right to contact their consulates.

Although DOJ expressed serious concerns that EHPD engages in unlawful searches and seizures and the use of excessive force, it did not make a formal “pattern or practice finding” but is continuing to review these issues. It also expressed concern that EHPD created a hostile and intimidating environment for people who wished to provide information relevant to the investigation (*id* at p. 2).

The report includes many remedial measures EHPD must take to correct the deficiencies identified by DOJ. These measures, according to DOJ, will enable EHPD to ensure that it can fairly and effectively police the entire community. According to DOJ, given the longstanding and deeply-rooted nature of the violations, an effective and sustainable resolution will require a comprehensive, written agreement and federal judicial oversight. DOJ says that it will proceed with litigation or terminate certain federal funding if EHPD does not negotiate a judicially enforceable consent decree.

## **INVESTIGATION AND FINDINGS**

### ***Reason for Investigation***

DOJ's investigation began in response to allegations that EHPD police officers engage in "biased policing, unconstitutional searches and seizures, and the use of excessive force" in violation of federal law and the U.S. Constitution.

Federal law prohibits governments or related entities from depriving "persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States" (42 USC § 14141(a)). The 14<sup>th</sup> Amendment's Equal Protection Clause prohibits government conduct that would "deny a person. . .equal protection of the laws" (U.S. Const. Amend XIV § 1).

Title VI of the Civil Rights Act prohibits intentional discrimination on the basis of race, color, or national origin in any program or activity receiving federal funds and authorizes the federal government to seek judicial remedy for failure to voluntarily comply with these provisions (42 USC § 14141). The Safe Streets Act prohibits discrimination, on the same basis as Title VI, by police departments receiving certain federal funds and authorizes the federal government to bring a civil action to address a pattern or practice of discrimination by any criminal justice agency receiving such funds (42 USC § 3789d).

### ***Traffic Stops***

DOJ examined traffic-stop data for a two-year period, from (January 1, 2009 through December 31, 2010) and found "pervasive discrimination against Latinos on every level of traffic enforcement" (i.e., officer, squad, and department). For example, one officer had a 40% stop rate for Latinos. EHPD, as a whole, had a 19.9% Latino stop rate, even though Latinos comprise only 8.5 % of the population in East Haven and 15.5% of the population in East Haven and surrounding towns (DOJ Report, pp. 6-8).

A review of incident reports showed that EHPD officers target Latino drivers by (1) focusing traffic enforcement activity on areas where Latinos congregate, (2) using non-standard and extreme tactics to justify stopping Latinos, and (3) treating them more punitively than non-Latinos after a stop (e.g., arresting them and having their vehicles towed). In DOJ's view:

EHPD's use of tactics that are directed almost entirely at Latinos demonstrates the degree to which Latinos are disparately impacted by EHPD practices. Indeed, the use of these discriminatory tactics is so pervasive as to independently show that they were taken with the intent to target Latinos in violation of the Fourteenth Amendment (*id* at p. 9).

DOJ found that although EHPD has no agreement with the federal government to perform immigration enforcement functions, it has allowed its officers to "engage in haphazard and uncoordinated immigration enforcement efforts to target Latino drivers for traffic stops." It concluded that EHPD's enforcement of immigration law is used to harass and intimidate Latinos rather than pursue legitimate law enforcement objectives.

### ***Harassment of People who Complain of Disparate Treatment of Latinos***

The investigation found serious incidents of abuse of authority and retaliation against people who complained about or criticized EHPD's discriminatory treatment of Latinos. It cites the knowingly false arrest of a priest who videotaped two officers harassing a Latino grocery store operator in 2009. The officers' arrest report claimed that they thought the priest was pointing a weapon at them, but the audio of the priest's video recorded the officers acknowledging that they knew it was only a camera.

### ***Failure to Remedy History of Discrimination***

DOJ found that East Haven has an extensive history of discrimination, which it failed to meaningfully address or remedy. It cites a recently concluded federal lawsuit alleging discrimination against African-Americans that ended with a jury verdict against East Haven (*Jones v. Town of East Haven, et. al.*, 493 F. Supp 2d. 302, D. Conn. 2007). The federal court concluded in this case that "there existed within EHPD a custom or practice of deliberate indifference to the constitutional rights of African-Americans [and] that the Chief of Police was aware of the custom and practice and deliberately indifferent to it" (*id* at 338). DOJ said it found no evidence that the EHPD instituted any meaningful changes in any of its policies following the *Jones* verdict.

## ***Failure to Prevent Discrimination in Institutional Practices***

According to DOJ, evenhanded enforcement of the law in conventional policies has numerous generally accepted critical components designed to prevent discriminatory policing. These include (1) training in constitutional law enforcement; (2) detailed policies and codes of conduct; and (3) a system of accountability, which includes meaningful recordkeeping, supervision, internal investigation, and oversight (DOJ Report, p. 12). DOJ found that EHPD systematically and substantially departs from these policies and practices. In DOJ's view, this departure is evidence that EHPD does not engage in "even-handed enforcement and instead promotes or condones discriminatory application of law" (*id* at p. 12).

Among other things, EHPD:

1. does not comply meaningfully with the state racial profiling law, in many cases misrepresenting or failing to collect ethnicity data in connection with traffic stops and failing to submit the required traffic stop data to the state;
2. does not maintain policies designed to prevent discriminatory policing, including policies to help officers communicate with non-English speakers;
3. provides inadequate police officer training and virtually no training on matters related to discriminatory policing;
4. operates a seriously deficient complaint system, which (a) discourages citizen participation, especially by Latinos (e.g., complaint forms are available only in English and at police headquarters) and (b) limits the initiation and scope of investigations and discipline for violations;
5. exercises minimal oversight of officers and has no systematic means to track, analyze, or respond to claims of discriminatory policing or other complaints;
6. provides no meaningful language access to Latinos and, among other things, (a) has failed to use a language line for communicating with people who are not proficient in English and (b) has no formal policies guiding officers in the field for their encounters with such people;

7. disregards the rights of Latinos, including failing to abide by treaties obligating law enforcement agencies to notify arrested foreign nationals of their right to contact their respective consulates; and
8. has made almost no attempt to conduct meaningful outreach to the Latino community.

The report cites a 2011 Police Executive Research Forum ("PERF") report on EHPD. That report found, among other things, that EHPD policies "fell well short of best professional practices," including policies regarding use of force, use of less lethal weapons, civilian complaints and internal investigations, and an early intervention system. It also found that policy infractions and discipline were unevenly enforced. Also EHPD failed to fund training for its officers. According to DOJ, PERF's findings regarding insufficient policies and procedures, training, discipline, and community engagement support its conclusion that EHPD's institutional practices facilitated the pattern and practice of discrimination against Latinos (DOJ Report, pp. 17 & 18).

According to DOJ, the deficiencies it found constitute a violation of Title VI and the Safe Streets Act. But it is deferring formal determinations of noncompliance to give EHPD an opportunity to voluntarily cooperate in resolving the matter so as not to jeopardize DOJ funding.

### **ADDITIONAL AREAS OF CONCERN**

In addition to the law and constitutional violations, DOJ identified two areas of serious concern. It declined to make a formal pattern or practice finding, but continues its review. First, its investigation revealed serious deficiencies in the accountability and supervision of officers that creates an unreasonable risk of other constitutional violations, particularly involving unlawful searches and seizures and use of excessive force.

Second, DOJ expressed its concern with reports that the department created a hostile and intimidating environment for people who wished to cooperate with the investigation.

### **REMEDIAL MEASURES**

To correct the deficiencies identified above, DOJ says EHPD must take the following remedial measures.

1. Update all policies to (a) conform to generally accepted police practices, including policies governing the handling of complaints, conduct of internal investigations, handling of discipline, and responsibilities of supervisors, and (b) include a comprehensive code of conduct that describes permitted and prohibited police activity.
2. Develop a comprehensive, non-discrimination policy forbidding EHPD officers from using race, color, ethnicity, or national origin as a basis for conducting stops or detentions, or certain activities following stops or detentions, except when engaging in appropriate activity to identify a particular person or group suspected of specific criminal conduct.
3. Effectively train officers on policies and practices and provide updated training to its officers on a regular basis, including at roll call, in the field, and at scheduled training sessions.
4. Effectively train deputies on non-biased policing, policing of diverse communities, community outreach, and procedural justice.
5. Document all traffic and pedestrian stops accurately and completely, including the race or ethnicity of the driver and passengers, the reason for the stop, and the post-stop action taken with regard to the violation.
6. Audit all documentation submitted by patrol officers and subject them to meaningful analysis to enable detection of any trends of unlawful behavior and, if possible, early interventions to prevent unlawful behavior.
7. Develop and implement a risk management system that incorporates, organizes, and synthesizes data regarding officer conduct. Include information from a variety of sources, including complaints, arrest and traffic stop incident reports, field interviews, and search reports.
8. Use the risk management system as a regular supervisory tool to (a) promote civil rights, (b) manage risk and liability through early intervention and discipline, and (c) evaluate personnel.
9. Develop and implement a comprehensive language access program (LAP) that will give persons of limited English proficiency full

access to EHPD services and enable EHPD officers to fully and effectively carry out their duties when encountering such people.

10. Include routine and detailed training of officers on the LAP and develop detailed policies describing the obligations of officers and staff relating to language access. Include a clear mandate in LAP to use formal language services, such as a language line; translated signs, forms, websites, and other documents; and command-level responsibility for the provision of these services.
11. If EHPD continues to enforce immigration laws, develop a clear immigration enforcement policy and provide training and oversight to ensure that officers (a) adhere to the policy consistently and in a non-discriminatory manner and (b) comply with Department of Homeland Security policies, practices, and directions.
12. Allow only officers who have received comprehensive and appropriate training in immigration law to enforce immigration law.
13. Establish a comprehensive outreach program that includes establishing liaisons capable of effectively communicating with the communities that EHPD serves in their native language. Provide public forums for hearing community concerns and explaining EHPD enforcement strategies and priorities to those impacted by them.

## **RESOURCES**

U.S. Department of Justice, Civil Rights Division, Investigation of the East Haven Police Department

[http://www.justice.gov/crt/about/spl/documents/easthaven\\_findletter\\_12-19-11.pdf](http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf)

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