UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

Charles Collins, *et al.*, Plaintiffs, v. The City of Milwaukee, *et al.*, Defendants.	Case No. 17-cv-234-JPS

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

INTRODUCTION

For over a decade, and continuing through today, Defendant City of Milwaukee ("City" or "Milwaukee") has engaged in an unlawful policy, practice, and custom of conducting a high-volume, suspicionless stop-and-frisk program. This civil rights action challenges this policy, practice, and custom on behalf of Black and Latino people who have been stopped or stopped and frisked in Milwaukee. This motion requests that the Court certify a proposed Main Class and Subclass, and separately requests that the Court approve undersigned counsel to serve as class counsel.

The City, through the Milwaukee Police Department ("MPD") and Defendant Milwaukee Fire and Police Commission ("FPC"), directs and sanctions the conduct of large numbers of stops and accompanying frisks throughout Milwaukee, with particular emphasis on Black and Latino neighborhoods. As a result, stops multiplied nearly threefold between 2007 and 2015, and police today conduct approximately one traffic stop for every four Milwaukee residents annually. Hundreds of thousands of people have been subjected to traffic stops, pedestrian stops, and frisks that are not supported by reasonable suspicion as required by law. Black and Latino people are disproportionately victimized by these stops throughout Milwaukee, including in predominantly white neighborhoods. Milwaukee police stop Black drivers and pedestrians at rates more than 500 percent higher than the rates at which they stop white drivers and pedestrians. The widespread conduct of stops and frisks unsupported by reasonable suspicion and motivated by race and ethnicity is now a longstanding and pervasive feature of life for Black and Latino people in Milwaukee. It is established through MPD policies and is now custom with the force of law, institutionalized in MPD culture, and sanctioned by the FPC, the entity charged by law with MPD oversight.

Plaintiffs Charles Collins, Tracy Adams,[1] Jeremy Brown, Gregory Chambers, Caleb Roberts, David Crowley, Stephen Jansen, and Alicia Silvestre (the "Named Plaintiffs")[2] are Black and Latino people who were collectively subjected to at least a dozen unlawful stops as a direct result of Defendants' policies, practices, and customs. Plaintiffs, like hundreds of thousands of other Black and Latino people throughout Milwaukee, fear that they may be stopped, frisked, or otherwise treated like criminal suspects when doing nothing more than walking to a friend's house or home from school, driving to and from the homes of loved ones, running errands, or simply taking a leisurely walk or drive through the City. No matter where they are in the City, Plaintiffs face the substantial risk that they and their children will be subjected to police harassment even if they are doing nothing wrong.

Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution and under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. ("Title VI"), against Defendants, including, in his official capacity Alfonso Morales, the Interim Police Chief of the MPD.[3] Plaintiffs submit this

[1] Plaintiff Tracy Adams brings claims on behalf of her child, Dallas Adams, who was a minor at the time this lawsuit was filed. Because Dallas Adams is no longer a minor, prior to the commencement of trial, Plaintiffs will seek the Court's permission to substitute Dallas Adams for Plaintiff Tracy Adams.

[2] Jerimiah Olivar does not join in this motion as he wishes to withdraw as a named Plaintiff and dismiss his individual claims. Plaintiffs have requested that Defendants stipulate to the dismissal, and will otherwise file a motion by the end of the week requesting that his claims be dismissed.

[3] Plaintiffs' Amended Complaint named as a defendant Edward Flynn in his official capacity as Chief of the MPD. Amended Class Action Complaint for Declaratory and Injunctive Relief ¶ 27 (May 24, 2017), ECF No. 19 ("Am. Compl."). On February 16, 2018, former Police Chief Flynn retired and Alfonso Morales was selected by Defendant FPC to serve as Milwaukee's Interim Police Chief. *See* Williamson Decl. Ex. A (Ashley Luthern, *Alfonso Morales Formally Sworn-in as Milwaukee's Interim Police Chief*, Milwaukee J. Sentinel (Feb. 16, 2018)). Pursuant to Federal Rule of Civil Procedure 25(d), Alfonso Morales is automatically

memorandum of law in support of their motion to certify the following Main Class and Subclass for declaratory and injunctive relief under Federal Rule of Civil Procedure 23(a) and (b)(2):

- **Main Class:** All persons who, since January 7, 2008, have been or will be stopped and/or stopped and frisked by MPD officers.
- **Subclass:** Black and Latino members of the Main Class.

Plaintiffs satisfy each of the elements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—and show that class-wide treatment is appropriate under Rule 23(b)(2). Plaintiffs have alleged and submit evidence demonstrating that the widespread conduct of stops and frisks made without reasonable suspicion, and on the basis of race and ethnicity, is the direct result of Defendants' longstanding policies, practices, and customs. Plaintiffs seek to certify the Main Class and Subclass under Rule 23(b)(2) to obtain broad affirmative class-wide injunctive relief—significant changes to MPD stop-and-frisk policies and practices, and to FPC oversight practices—that would benefit all Main Class and all Subclass members. Accordingly, the proposed classes should be certified.

Plaintiffs further request that the undersigned counsel be designated class counsel for the purposes of this litigation. As set forth in the appended declarations of Plaintiffs' counsel, proposed class counsel has extensive experience managing complex civil rights litigation, including in the class action context. Counsel are providing their services at no cost to Plaintiffs and the proposed classes. For these reasons, the undersigned counsel should be named class counsel.

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substituted for Edward Flynn as a defendant sued in his official capacity as the Interim Police Chief of the MPD.

I. STATEMENT OF FACTS

A. The Named Plaintiffs and Class Member Declarant

The Named Plaintiffs are Black and Latino people who allege, and attest by declaration, that they were stopped or stopped and frisked one or more times in the City by MPD officers without reasonable suspicion and on the basis of their race or ethnicity. The facts surrounding their individual stops are set forth in their declarations. All share in common the experience of being subjected to unlawful stops or stops and frisks due to Defendants' policies, practices, and customs.

Plaintiffs Charles Collins, Gregory Chambers, Caleb Roberts, and Alicia Silvestre were stopped or stopped and frisked as drivers without individualized, objective, and articulable reasonable suspicion of criminal activity or a traffic or vehicle equipment violation.[4] Plaintiffs Jeremy Brown, Gregory Chambers, David Crowley, and Stephen Jansen, and Dallas Adams (the son of Plaintiff Tracy Adams) were all stopped or stopped and frisked, as pedestrians without reasonable suspicion of criminal activity.[5] Whether stopped while driving or on foot, all Named Plaintiffs were targeted because of their race or ethnicity.[6] The Named Plaintiffs include a military veteran, mothers and fathers, grandparents, graduate students, a Milwaukee Public

[4] *See* Chambers Decl. ¶¶ 3–20; Collins Decl. ¶¶ 4–10; Roberts Decl. ¶¶ 3–16; Silvestre ¶¶ 3–25.

[5] *See* Adams, D. Decl. ¶¶ 3–33; Adams, T. Decl. ¶¶ 3–36; Chambers Decl. ¶¶ 21–25; Crowley Decl. ¶¶ 4–12; Jansen Decl. ¶¶ 3–15; Williamson Decl. Ex. B (Excerpts from Dec. 12, 2017 Dep. of Brown ("Brown Dep.") at 57:15–85:8).

[6] *See* Adams, D. Decl. ¶ 36; Adams, T. Decl. ¶ 39; Chambers Decl. ¶ 28; Collins Decl. ¶ 12; Crowley Decl. ¶ 15; Jansen Decl. ¶ 23; Roberts Decl. ¶ 18; Silvestre Decl. ¶ 30.

School employee, a Wisconsin State Assembly member, and a young man stopped and frisked for the first of many times when he was only 11 years old.[7]

Named Plaintiffs and Dallas Adams reside in, and/or frequently travel to, the Milwaukee neighborhoods where they were stopped without legal basis, as well as neighborhoods that are routinely targeted for MPD stops.[8] These neighborhoods include Milwaukee Police Districts Two, Three, Five, and Seven, all of which experience traffic stop rates that are dramatically higher than rates in other districts. Abrams Decl. Ex. A, ¶ 38 & Ex. 5 (finding that traffic stop rates in predominantly Black Districts Three, Five and Seven, and in predominantly Latino District Two are substantially higher than the traffic stop rate in predominantly white District 6). All of the Named Plaintiffs face—and in the case of Plaintiff Tracy Adams, her son, Dallas faces—a substantial risk that they will again be stopped or stopped and frisked by MPD officers in violation of their constitutional and civil rights.[9] Indeed, Mr. Adams and Mr. Chambers were subjected to multiple unlawful MPD stops.[10] Additionally, Mr. Adams, Mr. Chambers, and Mr. Jansen were stopped as recently as 2016.[11]

[7] Collins Decl. ¶ 2; Adams, T. Decl. ¶ 1; Silvestre Decl. ¶¶ 2–3; Williamson Decl. Ex. B (Brown Dep. at 60:4–16); Roberts Decl. ¶ 2; Crowley Decl. ¶ 3; Adams, D. Decl. ¶ 3.

[8] *See* Adams, D. Decl. ¶¶ 1–2; Adams, T. Decl. ¶¶ 1–2; Chambers Decl. ¶¶ 1–2; Collins Decl. ¶¶ 1–2; Crowley Decl. ¶¶ 1–2; Jansen Decl. ¶¶ 1–2; Roberts Decl. ¶¶ 1–2; Silvestre Decl. ¶¶ 1–2; Williamson Decl. Ex. B (Brown Dep. at 8:3–18).

[9] *See* Adams, D. Decl. ¶ 36; Adams, T. Decl. ¶ 39; Chambers Decl. ¶ 28; Collins Decl. ¶ 12; Crowley Decl. ¶ 15; Jansen Decl. ¶ 23; Roberts Decl. ¶ 18; Silvestre Decl. ¶ 30; Williamson Decl. Ex. B (Brown Dep. at 8:3–18; 79:15–80:17).

[10] *See* Adams, D. Decl. ¶ 3; Adams, T. Decl. ¶ 3; Chambers Decl. ¶ 3.

[11] *See* Adams, D. Decl. ¶ 29; Chambers Decl. ¶ 21; Jansen Decl. ¶ 3.

The Named Plaintiffs seek only declaratory and injunctive relief—not monetary relief—on behalf of themselves and the proposed Main Class and Subclass.[12] Each Named Plaintiff understands and is willing to fulfill his or her responsibilities and duties as a class representative, and has participated in, and cooperated with, Defendants' discovery requests, and will continue to do so.[13] Named Plaintiffs have been satisfied with the representation provided by the lawyers seeking to be appointed class counsel.[14]

Proposed Main Class and Subclass member Miguel Sanchez also submits a declaration in support of this motion. Mr. Sanchez attests that he is a Latino Milwaukee resident who lives in District Two and has been stopped by Milwaukee police multiple times. Sanchez Decl. ¶¶ 1–2, 4. He attests that these stops were made without reasonable suspicion of criminal activity or a traffic or vehicle equipment violation, and on the basis of his ethnicity. Sanchez Decl. ¶ 14–15. Mr. Sanchez was most recently subjected to an unlawful stop in January 2018—just two months ago—near his home on the south side of Milwaukee. Sanchez Decl. ¶¶ 5–14. He also fears being unlawfully stopped and frisked in the future. Sanchez Decl. ¶ 17. Further, Mr. Sanchez attests that, since the beginning of 2018, he has noticed an increase in the number of MPD officers present in his neighborhood, as well as an increase in the number of traffic stops being conducted, particularly toward the end of each month. Sanchez Decl. ¶ 16. Mr. Sanchez continues to reside in, and frequently travels to, the Milwaukee neighborhoods in which he and

[12] *See* Adams, D. Decl. ¶ 38; Adams, T. Decl. ¶ 41; Chambers Decl. ¶ 30; Collins Decl. ¶ 14; Crowley Decl. ¶ 17; Jansen Decl. ¶ 25; Roberts Decl. ¶ 20; Silvestre Decl. ¶ 32; Am. Compl. ¶¶ 286–294.

[13] *See* Adams, D. Decl. ¶¶ 37, 39; Adams, T. Decl. ¶ 40; Chambers Decl. ¶ 29; Collins Decl. ¶ 13; Crowley Decl. ¶ 16; Jansen Decl. ¶ 24; Roberts Decl. ¶ 19; Silvestre Decl. ¶ 31.

[14] *See* Adams, D. Decl. ¶ 40; Adams, T. Decl. ¶ 43; Chambers Decl. ¶ 32; Collins Decl. ¶ 16; Crowley Decl. ¶ 19; Jansen Decl. ¶ 27; Roberts Decl. ¶ 22; Silvestre Decl. ¶ 34.

the Named Plaintiffs were previously stopped without legal basis, as well as neighborhoods, including District Two, that are routinely targeted for MPD suspicionless stops. Sanchez Decl. ¶¶ 2–3.

B. Defendants' Citywide Policies, Practices, and Customs Challenged by Plaintiffs

Defendants maintain a policy, practice, and custom of conducting pervasive, citywide stops and frisks that are unsupported by reasonable suspicion and that are motivated by race and ethnicity. Defendants authorize and sanction this unlawful policy, practice, and custom through specific policies that are developed by MPD leadership and disseminated to the rank and file through the chain of command and/or are otherwise maintained by MPD leadership and the FPC. These include: the enforcement of an informal stop quota requiring officers to meet a numerical target for stops; the deployment of "hotspot" and "saturation" policing tactics targeting expansive, vaguely-defined geographic areas in which the population is predominantly Black or Latino for large numbers of stops; and the MPD and FPC's failure to adequately guide, supervise, and monitor the conduct of stops and frisks, and consequent failure to identify and correct unlawful stops and frisks. These policies, practices, and customs directly caused the unlawful stops or stops and frisks of the Named Plaintiffs, Dallas Adams, and Miguel Sanchez. Defendants' policies, practices, and customs continue to place Named Plaintiffs as well as members of the putative Main Class and Subclass at substantial risk of stops and frisks that are legally unjustified and that are motivated by race and ethnicity.[15]

[15] Defendants continue the policies, practices and customs described below in spite of the recent retirement of former Police Chief Edward Flynn and former Assistant Police Chief James Harpole. Despite Plaintiffs' discovery requests, Defendants have failed to produce any documents demonstrating substantive change to the policies, practices, and customs that Plaintiffs challenge. As the Milwaukee Journal Sentinel recently reported, "what has been noticed more than [Interim Police Chief Morales'] actions within the department is the shift in

1. MPD's Policy, Practice, and Custom of Pervasive, Citywide Stops and Frisks Made Without Reasonable Suspicion

Plaintiffs allege and provide evidence demonstrating that Defendants maintain a policy, and longstanding and widespread practice and custom, of conducting suspicionless stops and frisks. Am. Compl. ¶¶ 191–92. Plaintiffs submit a declaration from Margo L. Frasier ("Frasier"), an expert with over forty years of law enforcement experience, who analyzed the legal basis for stops documented in MPD data systems. Ms. Frasier concluded that records of 353,045 pedestrian and traffic stops conducted between 2010 and 2017, and stored in the Traffic and Criminal Software Version 7 ("T7 TraCS"), fail to show that officers had individualized, objective, and articulable reasonable suspicion of criminal activity or a traffic or vehicle equipment violation prior to initiating the stop. Frasier Decl. Ex. A, at 14, 22. Ms. Frasier also analyzed a sample of 2016–2017 records from the Tiburon Records Management System ("RMS"), and determined that 41 percent of traffic and pedestrian stop records in the sample failed to show that the officer had individualized, objective, and articulable reasonable suspicion of criminal activity or a traffic or vehicle equipment violation prior to initiating the stop. Frasier Decl. Ex. A, at 11, 29.

Ms. Frasier concluded that MPD officers routinely conduct traffic and pedestrian stops that are not supported by reasonable suspicion as required by the Fourth Amendment even if some of the records analyzed correspond to stops that were, in fact, legally justified. Frasier

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tone he has brought to the agency." *See* Williamson Decl. Ex. C (Ashley Luthern, *How Milwaukee's New Police Chief is Changing the Department*, Milwaukee J. Sentinel (Mar. 9, 2018)). Moreover, Defendant Morales will serve as Interim Police Chief only until a permanent chief is named, and Defendant FPC has yet to even determine the selection process for a permanent chief. *Id*; *see generally* Plaintiffs' Opposition to Defendants' Rule 12(b)(1) Motion to Dismiss for Mootness and Lack of Subject Matter Jurisdiction, Collins v. City of Milwaukee, 17-CV-00234-JPS (Feb. 15, 2018), ECF No. 74.

Decl. Ex. A, at 23. Plaintiffs also submit a declaration from David Abrams ("Abrams"), an expert in law and economics, who concluded that the rates of stops failing to document legal justification, as determined by Ms. Frasier, are higher than the rates in other jurisdictions, including New York City and Philadelphia. Abrams Decl. Ex. A, ¶ 84.

2. MPD's Policy, Practice, and Custom of Pervasive, Citywide Stops of Black and Latino People that are Motivated by Race and Ethnicity

Plaintiffs allege and provide evidence demonstrating that Defendants maintain a policy, and longstanding and widespread practice and custom, of targeting Black and Latino people for stops and frisks that are motivated by race and ethnicity. Am. Compl. ¶ 199. Plaintiffs have submitted extensive statistical evidence showing that MPD officers disproportionately target Black and Latino drivers and pedestrians throughout the City and in each police district, and that factors other than race and ethnicity do not explain these disparities.

Dr. Abrams determined through analysis of MPD stop data that Black and Latino people are more likely than white people to be subject to traffic stops across Milwaukee, both in MPD districts in which the residential population is racially heterogeneous and districts in which the residential population is predominantly white. Abrams Decl. Ex. A, ¶¶ 12(i), 38–40. Dr. Abrams also determined through statistical analysis that across Milwaukee, MPD officers stop Black drivers and pedestrians at rates that are 500 percent higher than the rates of police stops of white drivers and pedestrians, and that neither of these differences are explained by potentially confounding factors other than race and ethnicity, including the district crime rate and demographic composition. Abrams Decl. Ex. A, ¶¶ 48–51, 93, Ex. 8A.[16]

[16] Dr. Abrams found that the racial disparities in the stop rates of Black and white drivers and the stop rates of Black and white pedestrians are both statistically significant at the 95 percent confidence interval. Abrams Decl. Ex. A, ¶¶ 48, 93.

3. MPD's Policy, Practice, and Custom of Imposing an Informal Stop Quota and Related Productivity Measures Promotes the Conduct of Unlawful Stops.

Plaintiffs allege that a significant driving force behind the longstanding and widespread conduct of unlawful MPD stops and frisks is Defendants' policy, practice, and custom of imposing an informal stop quota and standards for evaluating officer productivity based on the number of stops conducted. Am. Compl. ¶ 213. Plaintiffs have submitted extensive evidence showing that for years, MPD leadership has exerted pressure on patrol officers to conduct large numbers of stops as a tool to purportedly deter non-traffic crime. *See* Williamson Decl. Ex. D (Letter from Michael V. Crivello, Milwaukee Police Association, to the Fire and Police Commission (May 5, 2016)) (protesting imposition of an "absolute quota" requiring officers to conduct at least two traffic stops per day); *see* Walker Decl. Ex. A, ¶ 30 (detailing evidence of informal MPD stop quota). Pressure to focus on stop numbers is communicated to rank and file officers through the chain of command, including through regular CompStat meetings, a management practice long used by the MPD to disseminate policing strategies and priorities and to evaluate officer performance. *See* Williamson Decl. Ex. E (Letter from Sheronda Grant & Troy Johnson, League of Martin, to Edward Flynn, Chief, MPD (Oct. 14, 2016)) ("The L[eague] O[f] M[artin] has reviewed Compstat thoroughly and believes Compstat acts primarily as a quota system, forcing patrol officers to conduct traffic stops and subject stops on random citizens instead of criminals.").

Plaintiffs submit a declaration from Samuel Walker, an expert in criminal justice policy, who determined that testimony by MPD leadership suggests that "traffic stop[s] were in the past, and continue to remain, a component in officer performance evaluations, which tends to encourage traffic stop numbers over traffic stop quality." Walker Decl. Ex. A, ¶ 32. Until recently, MPD CompStat meetings featured the use of a "Jahari squares" performance evaluation

system, which explicitly considered traffic and pedestrian stop numbers as two of four performance metrics for individual officers. *Id*. MPD leadership continues to use traffic and pedestrian stop numbers to evaluate "aggregate activities . . . by district." Williamson Decl. Ex. F (Excerpts from Oct. 31, 2017 Dep. of James Harpole ("Harpole Dep.") at 267:3–270:25). And traffic stop numbers remain "one of the measures by which officers are evaluated." Williamson Decl. Ex. G (Excerpts from Oct. 30, 2017 Dep. of Heather Wurth ("Wurth Dep.") at 138:19–24). Officers are informed that they are evaluated on these measures "[t]hrough ongoing communication from their sergeants and/or lieutenants." Williamson Decl. Ex. H (Excerpts from Nov. 3, 2017 Dep. of Jutiki Jackson ("Jackson Dep.") at 220:22–221:21). Officers have been "criticized for not being towards the [traffic stop] average" and instructed to conduct more pedestrian stops. Williamson Decl. Ex. I (Excerpts from Oct. 9, 2017 Dep. of Matthew Brooks at 173:20–174:7); Williamson Decl. Ex. J (Excerpts from Oct. 12, 2017 Dep. of Andrew Farina at 49:16–19, 50:17–51:9).

Plaintiffs' evidence further demonstrates that over the years, the pressure on patrol officers to conduct stops has solidified into a longstanding, pervasive, and citywide custom with the force of law involving the implementation of an informal stop quota and related productivity measures. Dr. Walker determined that the MPD's informal quota for stops is "implemented through management practices that are not stated in formal policies," including through "communicat[ion] to command officers at CompStat meetings, and then to patrol officers by their immediate supervisors." Walker Decl. Ex. A, ¶¶ 30(D), 31. Dr. Walker concluded that MPD officers' perception of an informal stop quota is indicative that such a quota exists, and that this quota has become ingrained in the MPD's organizational culture. Walker Decl. Ex. A, ¶ 30(B); *see* Walker Decl. Ex. A, ¶ 74 ("[O]nce established in a department, policies and

practices become ingrained in the organizational culture of a department.").[17] Defendants' ongoing policy, practice, and custom of implementing an informal stop quota and related productivity standards encourages and maintains the conduct of stops without individualized, objective, and articulable reasonable suspicion, and stops that are motivated by race and ethnicity. *See* Walker Decl. Ex. A, ¶¶ 34(A), 38 (MPD stop quota causes officers to "run the substantial risk" of conducting stops without legal justification and stops "that violate . . . constitutional standards with respect to the use of race and/or ethnicity").

4. MPD's Policy, Practice, and Custom of Hotspot and Saturation Policing Promotes the Conduct of Unlawful Stops.

Plaintiffs allege that a second driving force behind the longstanding and widespread conduct of unlawful MPD stops and frisks is Defendants' policy, practice, and custom of using "hotspot" and "saturation" policing. Am. Compl. ¶¶ 207–08. MPD leadership has authorized and encouraged the use of "saturation patrols" in order to conduct "specific enforcement activity in a targeted area to address a law enforcement concern." Williamson Decl. Ex. L (MPD Standard Operating Procedure 300.05). Saturation patrols are routinely deployed in geographic areas identified as so-called "hotspots" of criminal activity and involve a directive that officers conduct a large quantity of "proactive activity," including traffic and pedestrian stops, purportedly to deter crime. *See* Williamson Decl. Ex. M (Excerpts from Oct. 23, 2017 Dep. of Michael Brunson ("Brunson Dep.") at 92:12–18; 154:3–9); Williamson Decl. Ex. G (Wurth Dep. at 217:1–4). In practice, however, Defendants' policy, practice, and custom of saturation and hotspot policing directly leads MPD officers to target expansive geographic areas with

[17] *See also* Williamson Decl. Ex. K (Excerpts from Oct. 19, 2017 Dep. of Diana Rowe ("Rowe Dep.") at 211:15–23) (explaining the pressure felt by MPD captains to ensure their officers conduct two traffic stops per day).

populations that are predominantly Black or Latino for large numbers of traffic and pedestrian stops, causing stops and frisks that are motivated by race and ethnicity.

Although Defendants allege that "hotspots" are identified using crime data, these geographic areas are at best ill-defined and are known to MPD leadership to extend far beyond any discrete crime pockets. *See* Williamson Decl. Ex. F (Harpole Dep. at 105:19–21) (explaining, "You can ask 20 people and get 20 answers" to the question: "What is hot spot policing?"); Williamson Decl. Ex. G (Wurth Dep. at 216:19–21) (describing hot spots in District 2 as larger than a square mile). Several in MPD leadership testified that there is no definition of a "hotspot," and that MPD instead targets so–called "historic hotspots" or "generational hotspots"—by which they mean areas that the MPD vaguely associates with a history of crime. *See* Williamson Decl. Ex. M (Brunson Dep. at 217:25–218:15) (officers "know without anybody having to communicate to them that there's certain neighborhoods . . . that's not a really, you know, calm area, so to speak"); *see also* Williamson Decl. Ex. G (Wurth Dep. at 73:4–14). One MPD leader acknowledged that the majority of "hotspots" targeted by the MPD are in predominantly Black and Latino neighborhoods, which increases the likelihood of stops and frisks of Black and Latino people. Williamson Decl. Ex. H (Jackson Dep. at 195:6–23).

Defendants' policy and custom of using hotspot and saturation policing to target expansive, ill-defined geographic areas with predominantly Black or Latino populations for large numbers of stops causes officers to cast a wide net and disproportionately stop Black and Latino people. *See* Williamson Decl. Ex. F (Harpole Dep. at 106:7–108:5) (recognizing that "hotspots" contain "blocks where nothing is going on" and admitting Defendants lack policy and procedure for targeting smaller so-called "flare spots" of criminal activity). This policy, practice, and

custom encourages the conduct of stops and accompanying frisks that are motivated by race and ethnicity.

5. MPD's Policy, Practice, and Custom of Failing to Adequately Train, Supervise, Monitor, and Discipline Despite Awareness of Unlawful Stops and Frisks

Plaintiffs allege that a third driving force behind the longstanding and widespread conduct of unlawful MPD stops and frisks is the MPD and FPC's failure to adequately guide, supervise, and monitor the conduct of stops and frisks, and consequently to identify and correct unlawful stops and frisks. Am. Compl. ¶¶ 262, 276. Plaintiffs submit evidence that Defendants have had actual knowledge since at least 2011 that the policies, practices, and custom of pressuring officers to meet informal stop quotas and productivity measures, and of targeting Black and Latino neighborhoods for stops, were leading to stops conducted without legal justification and to significant racial and ethnic disparities. Williamson Decl. Ex. N (Ben Poston, *Racial Gap Found in Traffic Stops in Milwaukee*, Milwaukee J. Sentinel (Dec. 3, 2011)) (discussing former police chief's acknowledgement that MPD stops large numbers of "innocent people" and that those stopped are disproportionately Black and Latino); *see also* Williamson Ex. H (Jackson Dep. at 195:14–196:4). Defendants nevertheless fail to provide adequate training, supervision, and monitoring regarding the conduct of lawful stops and frisks to officers and supervisors, and fail to identify and correct unlawful stops and frisks.

First, Defendants fail to provide adequate training on the conduct of lawful stops and frisks. Frasier Decl. Ex. A, at 36. MPD Standard Operating Procedure 085 on Citizen Contacts, Field Interviews, Search and Seizure ("SOP 085"), Defendants' central policy for guiding officers on the lawful conduct of traffic stops, pedestrian stops, and frisks, among other things, does not indicate that reasonable suspicion must be individualized and objective. Williamson Decl. Ex. O (SOP 085). For example, law enforcement expert Margo Frasier concluded that

SOP 085 sets out "exceptionally broad criteria for officers to use to determine who should be subjected to a pedestrian stop, without making clear that any of these factors alone may be insufficient to demonstrate individualized, objective, and articulable reasonable suspicion of criminal activity." Frasier Decl. Ex. A, at 38. Dr. Walker determined that SOP 085 identifies four factors for officers to consider when determining whether there is reasonable suspicion to support a pedestrian stop, which actually promote officers' conduct of unconstitutional stops. Walker Decl. Ex. A, ¶ 37. Ms. Frasier concluded, "As evidenced by the deposition testimony of various MPD command staff . . . it is apparent that MPD officers do not receive adequate guidance or training on the factors that must be present for a traffic or pedestrian stop to be lawful." Frasier Decl. Ex. A, at 40.

Second, Defendants fail to adequately supervise officers who conduct stops and frisks to ensure that encounters are supported by reasonable suspicion and are not discriminatory. Supervisors do not make certain their direct reports complete stop documentation or review those records to ensure that the stops conducted were legally justified. *See* Frasier Decl. Ex. A, at 45–46; 55–56; 59–60; Williamson Decl. Ex. K (Rowe Dep. at 156:5–157:9; 185:1–12); Williamson Decl. Ex. M (Brunson Dep. at 165:22–166:4).[18] MPD does not require officers to document frisks at all, so there is no documentation for supervisors to review, and no effort by MPD leadership or anyone in the chain of command to determine whether frisks are legally justified. Walker Decl. Ex. A, ¶ 68; *see* Frasier Decl. Ex. A, at 49, 51, 62; Abrams Decl. Ex. A, ¶¶ 25–29,

[18] Evidence shows that Defendants fail to properly document pedestrian and traffic stops. *See, e.g.*, Abrams Decl. Ex. A, ¶ 35 (finding MPD failure to identify race of subjects in "one-third to one-half of all traffic stops documented in T10 TraCS between 2015 and 2017").

97.[19] Dr. Abrams and Ms. Frasier together conclude that MPD officers' failure to document frisks, and the reasons for frisks, highly likely leads to the routine conduct of frisks that are not supported by individualized, objective, and articulable reasonable suspicion that the subject of the frisk is armed and dangerous. Frasier Decl. Ex. A, at 49; Abrams Decl. Ex. A, ¶ 97.

Third, Defendants fail to monitor stops and frisks to identify unlawful officer conduct that merits corrective action and consequently fail to discipline officers for unlawful stops and frisks. For its part, Defendant FPC has failed to investigate whether the MPD has an informal stop quota despite awareness of complaints by the Milwaukee Police Association and the League of Martin that such a quota promotes the conduct of unlawful stops and large racial and ethnic disparities. Walker Decl. Ex. A, ¶ 55; Frasier Decl. Ex. A, at 33–34; Williamson Decl. Ex. Q (Excerpts from Nov. 14, 2017 Dep. of MaryNell Regan at 274:5–277:1). Nor have Defendants amended the MPD's Early Intervention Program to include unlawful stops and frisks as a trigger for counseling, retraining, or discipline. Walker Decl. Ex. A, ¶¶ 56–58. And Defendants entirely fail to conduct audits to identify individual officers, squads, or units that engage in patterns of unlawful stops or frisks. *See* Williamson Decl. Ex. R (Excerpts from Nov. 2, 2017 Dep. of Leslie Silletti at 94:7–24); Frasier Decl. Ex. A, at 54. Consequently, Defendants fail to correct unlawful stops and frisks through counseling, retraining, and discipline. *See, e.g.*, Frasier Decl. Ex. A, at 49 ("It is my expert opinion that MPD does not provide its officers and supervisors with adequate guidance in the conduct, supervision, and monitoring of frisks to

[19] Defendants have failed to promulgate any MPD policy, procedure, or guideline requiring officers who conduct frisks to document the bases of these encounters, so as to permit supervisory review for compliance with the Fourth and Fourteenth Amendments and Title VI. Neither SOP 085 nor SOP 070 on Citation Procedures, in any of their past or current iterations, has instructed officers to document frisks or the basis for frisks. *See* Williamson Decl. Ex. P (MPD Standard Operating Procedure 070); *id.* Ex. G (Wurth Dep. at 184:17–185:6) (explaining that there is no MPD policy or procedure that requires an officer to document a frisk).

ensure that these encounters comply with constitutional standards."); *see generally* Frasier Decl., Ex. A, at 52–59.

II. CLASS CERTIFICATION SHOULD BE GRANTED BECAUSE THE PROPOSED CLASS AND SUBCLASS SATISFY THE REQUIREMENTS OF RULE 23.

A. The Legal Standard.

"A district court may certify a case for class-action treatment only if it satisfies the four requirements of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality, and adequacy of representation—and one of the conditions of Rule 23(b)." *McCaster v. Darden Restaurants, Inc.*, 845 F.3d 794, 800 (7th Cir. 2017) (internal quotation marks omitted). Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The party requesting certification must prove by a preponderance of the evidence that certification is proper. *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 373 (7th Cir. 2015).

Courts have "broad discretion to determine whether certification of a class-action lawsuit is appropriate." *Ervin v. OS Rest. Servs., Inc.*, 632 F.3d 971, 976 (7th Cir. 2011) (quoting *Chavez v. Illinois State Police*, 251 F.3d 612, 629 (7th Cir. 2001)). The only question is whether the requirements of Federal Rule of Civil Procedure 23 are met. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). In evaluating that question, the Court may only "peek" at the merits of Plaintiffs' allegations "that affect the decisions essential under Rule 23." *Schleicher v. Wendt*, 618 F.3d 679, 685 (7th Cir. 2010). The certification analysis is not a "dress rehearsal for the trial on the merits." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012).

As shown below, the proposed Main Class and Subclass satisfy the requirements of Rule 23(a) and 23(b)(2) by a preponderance of the evidence.

B. The Main Class and Subclass Satisfy the Requirements of Rule 23(a).

1. The Proposed Main Class and Subclass Satisfy the Numerosity Requirement.

The requirement for numerosity is satisfied if the class seeking certification demonstrates that the class is so "numerous that joinder of all parties is impracticable." Fed. R. Civ. P. 23(a)(1). "[A] class can be certified without determination of its size, so long as it's reasonable to believe it large enough to make joinder impracticable and thus justify a class action suit." *Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.*, 747 F.3d 489, 492 (7th Cir. 2014); *see Mulvania v. Sheriff of Rock Island Cty.*, 850 F.3d 849, 859 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 361 ("While there is no magic number that applies to every case, a forty–member class is often regarded as sufficient to meet the numerosity requirement."). "[A] good faith estimate is sufficient [to satisfy the numerosity requirement] where it is difficult to assess the exact class membership." *Buycks–Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 322, 329 (N.D. Ill. 1995) (alteration in original). When, as here, the class seeks prospective injunctive relief, which implicates the rights of future class members, a court will also count future class members in the numerosity analysis. *See Rosario v. Cook County*, 101 F.R.D. 659, 661 (N.D. Ill. 1983) ("Regardless of their number, the joinder of future alleged discriminatees is inherently impracticable."). Ultimately, a court can make common sense assumptions when determining if numerosity is met. *Miller v. Spring Valley Properties*, 202 F.R.D. 244, 247 (C.D. Ill. 2001).

There can be no serious dispute that the proposed Main Class and Subclass satisfy the numerosity requirement. The proposed Main Class consists of "All persons who, since January 7, 2008, have been or will be stopped and/or stopped and frisked by MPD officers." Expert

review of the MPD's own T7 TraCS data found records of more than 700,000 traffic and pedestrian stops conducted between 2010 and 2017. Frasier Decl. Ex. A, at 16 (finding 716,144 records relating to traffic and pedestrian stops in Defendants' T7 TraCS data).[20] Even if some of these records correspond to the same people, the proposed Main Class consists of tens of thousands, if not hundreds of thousands, of people.

The same is true of the Subclass, which is defined as Black and Latino members of the Main Class. Dr. Abrams found that 381,173 traffic stops of Black people and 73,478 traffic stops of Latino people were conducted between 2011 and 2015 and documented in T7 TraCS. Abrams Decl. Ex. A, at Ex. 13. Consequently, tens of thousands, if not hundreds of thousands, of Black and Latino people have been stopped by MPD officers since January 7, 2008, and are part of the Main Class and Subclass. Both the proposed Main Class and Subclass far exceed the "forty–member class [that] is often regarded as sufficient to meet the numerosity requirement." *Mulvania*, 850 F.3d at 859.

Joinder of tens or hundreds of thousands of Main Class and Subclass members is inherently impracticable. Joinder is also impracticable because the proposed Main Class and Subclass include future class members, and because many members of the proposed classes are not aware that their rights under the U.S. Constitution and Title VI have been violated and that they have the right to seek redress in court. For all of these reasons, the proposed Main Class and Subclass satisfy the numerosity requirement.

[20] 700,000 stops is a conservative estimate of the number of MPD stops conducted between 2011 and 2015 because MPD stops are also recorded in RMS and the Traffic and Criminal Software Version 10. *See* Abrams Decl. Ex. A, ¶¶ 30, 35.

2. *The Proposed Main Class and Subclass Present Common Questions of Law or Fact.*

The requirement for commonality is satisfied where "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires that the claims "depend upon a common contention that is capable of class-wide resolution." *Bell*, 800 F.3d at 374; *id.* ("[A] court need only find a single common question of law or fact . . . ."). A reviewing court inquires as to the "capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation . . . ." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis in original). Although proof of "the *existence* of a common question," is required, a plaintiff "*need not prove* that the answer to that question will be resolved in its favor." *Bell*, 800 F.3d at 376 (first emphasis in original). A "common question" is thus one that is "*capable of proof at trial* through evidence that is common to the class rather than individual to its members." *Id.* at 375 (emphasis in original). In other words, Plaintiffs must show that there is "some glue holding the alleged *reasons* for all those decisions [leading to the plaintiffs' injuries] together, . . . [such] that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored*." *Id.* at 374 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 352).

Policies or practices alleged to have caused Plaintiffs' injuries can serve as the necessary "glue" establishing commonality. For example, in *Bell*, the Seventh Circuit upheld class certification based on the common question of whether PNC Bank had an unofficial policy or practice that required class members to work off-the-clock overtime hours. 800 F.3d at 374; *see McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 487–90 (7th Cir. 2012) (holding that lawsuit was suitable for class-wide resolution because two company-wide policies were alleged to have a disparate impact on Black employees). Moreover, numerous

courts have found commonality to be satisfied in Section 1983 lawsuits against police practices, including stops and frisks, where plaintiffs alleged or provided evidence of a common question as to whether centralized municipal policies, practices, and customs caused the violation of constitutional rights. *See, e.g.*, *Floyd v. City of New York*, 283 F.R.D. 153, 172–75 (S.D.N.Y. 2012) (certifying class and holding that differences in conduct of individual stops and frisks did not defeat commonality because stops and frisks were made according to centralized policing policies); *Stinson v. City of New York*, 282 F.R.D. 360, 369–70 (S.D.N.Y. 2012) (certifying class of people issued summonses that were later dismissed due to common allegation against NYPD policy of issuing summonses without probable cause to satisfy quota); *Morrow v. Washington*, 277 F.R.D 172, 192–94 (E.D. Tex. 2011) (certifying class of Latinos subjected to traffic stops and finding commonality in light of statistical evidence showing increase in the number of minorities stopped after adoption of a new police policy); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 989–90 (D. Ariz. 2011) (certifying class of Latino motorists alleging racial profiling due to evidence of a departmental policy of racial profiling), *aff'd sub nom.*, *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012).

The proposed class members suffer ongoing violations of their rights because of common polices, practices, and customs maintained by Defendants. *See* Statement of Facts, I.B, *supra.* Thus, answers to common questions of fact and law will drive the resolution of the claims of the proposed classes. The common questions include:

- Whether Defendants maintain a policy, practice, and custom of widespread stops and frisks that are not legally supported by individualized, objective, and articulable reasonable suspicion of criminal activity or a traffic or vehicle equipment violation, as required by the Fourth Amendment;

- Whether Defendants maintain a policy, practice and custom of widespread stops and frisks of Black and Latino people that are motivated by race and ethnicity, in violation of the Fourteenth Amendment and Title VI;

- Whether Defendants maintain a policy, practice, and custom of implementing an informal stop quota and related productivity measures for officers that is a moving force behind widespread unlawful stops and frisks;

- Whether Defendants maintain a policy, practice, and custom of saturation and hotspot policing targeting stops in expansive areas with predominantly Black or Latino populations that is a moving force behind widespread unlawful stops and frisks; and

- Whether Defendants demonstrate deliberate indifference to the need to identify and correct unlawful stops and frisks by failing to adequately guide, supervise, discipline, and monitor MPD officers' conduct relating to stops and frisks and by failing to correct constitutional violations of which they are, or should be, aware.

The existence of these common contentions provides the "glue" necessary to show commonality precisely because they concern whether Defendants in fact authorize and ratify specific, centralized municipal policies, practices, and customs, and whether those policies, practices, and customs cause the violation of rights of the Named Plaintiffs and members of the proposed Main Class and Subclass. Moreover, "determining the truth or falsity of" these common contentions will resolve central merits issues for all putative members of the Main Class and Subclass. *Bell*, 800 F.3d at 374; *see, e.g.*, *Floyd*, 283 F.R.D. at 172; *Stinson*, 282 F.R.D. at 370; *Arpaio*, 836 F. Supp. 2d at 989–90. Accordingly, Plaintiffs have established commonality.

3. The Claims of Named Plaintiffs are Typical of the Main Class and Subclass.

The typicality requirement is met when the named representatives' claims have the same essential characteristics as the claims of the proposed class. *De La Fuente v. Stockley-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). A representative plaintiff's claims are typical if they "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members" and are based on the same legal theory. *Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008). Factual differences between the claims of the named representative and the

class do not make the representative's claims atypical. *See Crissen v. Gupta*, No. 2:12-CV-00355-JMS, 2014 WL 4129586, at *16 (S.D. Ind. Aug. 19, 2014) (quoting *De La Fuente*, 713 F.2d at 232). "The commonality and typicality requirements of Rule 23(a) tend to merge." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982). "Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Id.* "[T]here must be enough congruence between the named representative's claim and that of the unnamed members of the class to justify allowing the named party to litigate on behalf of the group." *Spano v. Boeing Co.*, 633 F.3d 574, 586 (7th Cir. 2011).

The Named Plaintiffs' claims are typical of the claims of the Main Class and of the Subclass. Named Plaintiffs, like members of the Main Class, were all stopped or stopped and frisked by MPD officers since January 2008. Moreover, the Named Plaintiffs, like members of the Subclass, are all Black and Latino people who were stopped or stopped and frisked by MPD officers since January 2008.

Further, the Named Plaintiffs, like members of the proposed Main Class and Subclass, assert claims under the Fourth Amendment, Fourteenth Amendment, and Title VI arising out of Defendants' policies, practices, and customs concerning the longstanding, citywide conduct of stops and frisks that are unsupported by reasonable suspicion and that are motivated by race and ethnicity. The Named Plaintiffs also seek classwide injunctive and declaratory relief, including changes to the MPD's stop-and-frisk policies, practices, and customs, which will benefit all class members. Am. Compl. at ¶¶ 286–290. For all of the foregoing reasons, the Named Plaintiffs satisfy the typicality requirement.

4. Named Plaintiffs and Proposed Class Counsel Will Fairly and Adequately Protect the Interests of Absent Class Members.

A court will find the adequacy requirement satisfied when: (1) the class representative does not have interests that conflict with, or are antagonistic to, those of the class; and (2) class counsel are qualified, experienced, and able to conduct the class litigation. *See* Fed. R. Civ. P. 23(a)(4) & (g)(1); *see, e.g.*, *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993). Both Named Plaintiffs and proposed class counsel will provide adequate representation on behalf of the absent class members.

i. The Named Plaintiffs are Adequate Class Representatives.

The adequacy inquiry seeks to uncover conflicts of interest between named parties and the class they seek to represent. *See Falcon*, 457 U.S. at 158 n. 13; *Sec'y of Labor v. Fitzsimmons*, 805 F.2d 682, 697 (7th Cir. 1986) (en banc). The named plaintiff must be a member of the proposed class and must possess the same interests and suffer from the same injuries as unnamed class members. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 626–27 (1997).

The Named Plaintiffs have the same interest and have suffered the same injuries as the unnamed class members. All Named Plaintiffs are Main Class and Subclass members who reside in Milwaukee or visit it frequently.[21] Named Plaintiffs face a substantial risk of being unlawfully stopped and/or stopped and frisked by MPD officers due to Defendants' policies, practices, and customs.[22] Indeed, several of the Named Plaintiffs, in addition to putative class

[21] *See* Adams, D. Decl. ¶ 2; Adams, T. Decl. ¶ 2; Chambers Decl. ¶ 2; Collins Decl. ¶ 2; Crowley Decl. ¶¶ 2–3; Jansen Decl. ¶ 2; Roberts Decl. ¶ 2; Silvestre Decl. ¶ 2; Williamson Decl. Ex. B (Brown Dep. at 8:3–18).

[22] *See* Adams, D. Decl. ¶ 36; Adams, T. Decl. ¶ 39; Chambers Decl. ¶ 28; Collins Decl. ¶ 12; Crowley Decl. ¶ 15; Jansen Decl. ¶ 23; Roberts Decl. ¶ 18; Silvestre Decl. ¶ 30.

member Miguel Sanchez, have been stopped repeatedly by MPD officers.[23] Thus, Named Plaintiffs have sufficient interest in the case's outcome and have an interest in seeing these unconstitutional policies, practices, and customs enjoined so that they do not face the same injuries in the future.

Further, the Named Plaintiffs do not seek compensatory or punitive damages.[24] The Named Plaintiffs have vigorously pursued the claims of the Main Class and Subclass, including by making themselves available for extensive discovery and depositions and by meeting with and communicating with proposed class counsel.[25]

ii. Proposed Class Counsel is Qualified, Experienced, and Able.

The Named Plaintiffs are represented by the American Civil Liberties Union Foundation ("ACLU"); the American Civil Liberties Union of Wisconsin Foundation ("ACLU-WI"); and Covington & Burling LLP ("Covington"). Named Plaintiffs' counsel have substantial experience in class action litigation, including class actions involving law enforcement and criminal justice practices.[26] The ACLU is a leading national civil rights organization and currently serves, or has served, as class counsel in the following lawsuits involving claims against law enforcement and criminal justice practices: *Arpaio*, 836 F. Supp. 2d 959; *Fuentes v. Benton Cty.*, No. 15-2-02976-1 (Yakima County Super. Ct., Wash., Oct. 5, 2016); *Barrett v. Claycomb*, 936 F. Supp. 2d 1099 (W.D. Mo. 2013); and *Tucker v. Idaho*, No. CV-OC-2015-

[23] *See* Adams, D. Decl. ¶ 3; Adams, T. Decl. ¶ 3; Chambers Decl. ¶ 3; Sanchez Decl. ¶¶ 1–2, 4.

[24] *See* Adams, D. Decl. ¶ 38; Adams, T. Decl. ¶ 41; Chambers Decl. ¶ 30; Collins Decl. ¶ 14; Crowley Decl. ¶ 17; Jansen Decl. ¶ 25; Roberts Decl. ¶ 20; Silvestre Decl. ¶ 32; Am. Compl. ¶¶ 286–294.

[25] *See* Adams, D. Decl. ¶¶ 37, 39; Adams, T. Decl. ¶ 40; Chambers Decl. ¶ 29; Collins Decl. ¶ 13; Crowley Decl. ¶ 16; Jansen Decl. ¶ 24; Roberts Decl. ¶ 19; Silvestre Decl. ¶ 31.

[26] *See* Choudhury Decl. ¶¶ 7–9, 11; Dingle Decl. ¶¶ 4; Rotker Decl. ¶¶ 5–6.

10240 (4th Judicial Dist., Idaho Dist. Ct. Jan 17, 2018). Covington is a global law firm that has vast experience in public and private class action litigation, including as class counsel in *Arpaio*, 836 F. Supp. 2d 959, and in the recent successful representation of a class of plaintiffs challenging the stop-and-frisk policies of the New York City Police Department, *see Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013). The ACLU of Wisconsin also has extensive experience litigating class actions and is currently class counsel in, among others, cases raising Fourteenth Amendment claims, *Frank v. Walker*, 196 F. Supp. 3d 893 (E.D. Wis. 2016), *order stayed on other grounds*, 2016 WL 4224616 (7th Cir. Aug. 10, 2016), and unconstitutional corrections practices, *see, e.g.*, *J.J. v. Litscher*, No. 3:17-cv-47 (W.D. Wis. filed Jan. 24, 2017).

Thus, Named Plaintiffs' counsel have the resources, expertise, and experience to prosecute this action.[27] Counsel for the Named Plaintiffs are unaware of any conflicts among members of the class or between the attorneys and members of the class.

C. Both the Proposed Main Class and Subclass Satisfy the Requirements of Rule 23(b)(2).

Class certification pursuant to Federal Rule of Civil Procedure 23(b)(2) is appropriate when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2); *see Amchem Prod., Inc.*, 521 U.S. at 614. "Colloquially, 23(b)(2) is the appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would

[27] *See* Choudhury Decl. ¶¶ 7–14; Dingle Decl. ¶¶ 5, 13–14; Rotker Decl. ¶¶ 5–9.

benefit the whole class." *Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.*, 797 F.3d 426, 441 (7th Cir. 2015).

"Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) classes. *Amchem Prod. Inc.*, 521 U.S. at 614; *see also* Advisory Comm. Notes, Fed. R. Civ. P. 23(b)(2) ("Illustrative [of cases appropriate for class certification under 23(b)(2)] are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration."); *see generally* Class Actions for Injunctive or Declaratory Relief Under Rule 23(b)(2), 7AA Fed. Prac. & Proc. Civ. §§ 1776, 1776.1 (3d ed.) ("Rule 23(b)(2) has been utilized to protect a variety of constitutional rights," such as in "[a]n action to enjoin police practices that allegedly violate the Fourth and Fourteenth Amendment rights of citizens to be free from governmental detention or search and seizure without probable cause" and "to enjoin allegedly racially-motivated improper police practices.").

Consistent with the purpose of Rule 23(b)(2), the Named Plaintiffs bring claims for declaratory and injunctive relief that would benefit the entire class through reform of Defendants' stop-and-frisk policies, practices, and customs. The Named Plaintiffs seek only class-wide declaratory relief stating that Defendants' policies, practices, and customs violate the Fourth Amendment rights of the Main Class and the Fourteenth Amendment and Title VI rights of the Subclass, as well as injunctive relief to end these unlawful policies, practices, and customs as outlined in the Am. Complaint. Am. Compl. ¶¶ 286–294. Neither the Main Class nor the Subclass seeks any money or individual relief. This case presents a prototypical Rule 23(b)(2) class.

CONCLUSION

For the reasons set forth above, Named Plaintiffs respectfully ask the Court to certify the proposed Main Class and Subclass under Rule 23(a) and Rule 23(b)(2); appoint Charles Collins, Tracy Adams, Dallas Adams, Jeremy Brown, Gregory Chambers, Caleb Roberts, David Crowley, Stephen Jansen, and Alicia Silvestre as representatives of the Main Class and Subclass; and appoint the ACLU, the ACLU-WI, and Covington & Burling LLP as counsel for the Main Class and Subclass.

Dated this 26th day of March, 2018.

Respectfully submitted by,

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