

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STATE OF ILLINOIS,

Plaintiff,

v.

CITY OF CHICAGO,

Defendant.

Case No. 17-cv-6260

Hon. Robert M. Dow Jr.

**CAMPBELL PLAINTIFFS' BRIEF OPPOSING FOP'S MOTION TO EXTEND
IMPLEMENTATION OF POINT AND REPORT PROVISIONS AND PROPOSING
POLICY GOVERNING POINTING OF A FIREARM BY LAW ENFORCEMENT**

Counsel for plaintiffs in the class action suit *Campbell et al. v. City of Chicago*, Case No. 17-cv-4467 (N.D. Ill.), hereby file this brief in opposition to the Fraternal Order of Police's (FOP's) motion to extend the time for implementing the firearm pointing provisions in the Consent Decree (Dkt. No. 747). *Campbell* plaintiffs also strongly urge the parties that any firearm pointing provisions that are implemented as Chicago Police Department (CPD) policy include the following language: pointing a gun at a civilian constitutes a use of force, which may only be used when deadly force would otherwise be warranted and lawful. The adoption of less stringent protections would be both be discordant with best law enforcement practices and risk future harm to the Chicago communities that continue to be traumatized by police violence.

I. A DELAY IN POLICY IMPLEMENTATION PUTS THE LIVES OF CHICAGO COMMUNITY MEMBERS AT RISK.

The Decree mandated the implementation of certain firearm pointing provisions by July 1, 2019. Dkt. No. 703-1 at 55. The FOP, which is neither party to the State of Illinois lawsuit nor imbued with any enforcement power under the Decree, has moved to delay action on the

firearm pointing provisions under the (unfounded) auspices of its collective bargaining rights. The City of Chicago has rightly opposed this motion. Dkt. Nos. 751, 758. However, those pleadings concern the labor rights of a police union, and do not speak to the rights or interests of the community that will be most affected by the pertinent policies and policing requirements. This brief attempts to correct that omission.

Couching their legal action as concerning merely labor negotiations, the FOP wrongly seeks to delay the implementation of procedures that, in reality, implicate the very lifeblood of people in this City. For the *Campbell* plaintiffs, and for all Chicago community members, a delay in implementation of the firearm pointing policy is not a prosaic concern. The Seventh Circuit and other circuits have affirmed that the action of pointing a gun, even without discharge, constitutes a threat of deadly force.¹ Multiple courts, again including in the Seventh Circuit, have found an impermissible and excessive use of force when officers point guns at people who do not pose any danger to the officers or others.²

Ungoverned pointing of firearms by officers is directly linked to civilian injuries and deaths. Major police departments throughout the nation have acknowledged that “[u]nnecessarily or prematurely drawing or exhibiting a firearm limits an officer’s alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an

¹ *Jacobs v. City of Chicago*, 215 F.3d 758, 774 and n. 7 (7th Cir. 2000) (“it is a reasonable inference...that the act of pointing a loaded weapon at a person...carries with it the implicit threat that the officer will use that weapon...”); *see also Espinosa v. City & Cty. of S.F.*, 598 F.3d 528, 537 (9th Cir. 2010) (“With regard to the force used, pointing a loaded gun at a suspect, employing the threat of deadly force, is use of a high level of force.”).

² *See, e.g., Jacobs*, 215 F.3d 758; *Baird v. Renbarger*, 576 F.3d 340 (7th Cir. 2009); *Espinosa*, 598 F.3d 528; *Robinson v. Solano County*, 278 F.3d 1007 (9th Cir. 2002); *Holland v. Harrington*, 268 F.3d 1179 (10th Cir. 2001); *Baker v. Monroe Township*, 50 F.3d 1186 (3rd Cir. 1995).

unwarranted or accidental discharge of the firearm.”³ The risks of gun drawing are increased exponentially when the gun is pointed directly at a person, as the action enhances the chances that someone will be shot. Gun training courses and manuals thus repeat the mantra: “Never point the gun at anything you are not prepared to see destroyed.”⁴ A drawn gun may easily lead to accidental discharge, for instance, if the armed officer is startled by an external disturbance or loses his balance.⁵ This deadly risk was illustrated in the case of *Stamps v. Town of Framingham*, in which a Massachusetts police officer lost his balance while he was pointing his gun at a fully compliant, elderly person, causing the officer to accidentally pull the trigger and kill the civilian.⁶

The physical risk of injury or death is further compounded by the psychological trauma attendant to facing the barrel of a loaded weapon drawn by a member of law enforcement. This is particularly true in Chicago, where CPD regularly points loaded weapons not only at adults, but at children, terrorizing them. Recent lawsuits attest to these harms. On July 19, 2019, Krystal Archie filed a lawsuit, partly on behalf of her three minor children, who, she alleged, were ordered to the floor of their home by CPD officers who pointed assault rifles at their faces and heads during a search of the home.⁷ On May 29, 2019, the Wilson family filed suit against

³ Los Angeles Police Department (LAPD) Manual, Volume 1, Policy 556.80, available at http://www.lapdonline.org/lapd_manual/volume_1.htm#504._THE_NATURE_OF_THE_TASK; see also Seattle Police Department Manual, 8.300 Use of Force Tools 5, 1/19/2019, available at <http://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools>.

⁴ Royce de R. Barondes, *Article: Automatic Authorization of Frisks In Terry Stops For Suspicion Of Firearms Possession*, 43 S. ILL. U. L. J. 1, 14 (2018); *Perez v. City of Los Angeles*, 83 Cal. Rptr. 3d 821, 825-26 (Cal. Ct. App. 2008) (this rule is one of the “cardinal rules of firearm safety.”).

⁵ Barondes, *supra* note 4, at 14.

⁶ 813 F.3d 27, 31 (1st Cir. 2016).

⁷ Josh McGhee and Adam Mahoney, *Lawsuit: Chicago Cops Pointed Guns at Children During Illegal Raids*, CHI. REPORTER (July 19, 2019), <https://www.chicagoreporter.com/lawsuit-chicago->

the City and CPD officers who ordered Domonoque Wilson and her three children (ages 6, 8, and 9) out of their home at riflepoint.⁸ In 2018, a lawsuit was filed against CPD officers who raided the home of Peter Mendez, then 9 years old, and pointed guns at Peter, his younger brother, and his mother and father, while executing a mistaken search warrant.⁹ Also in 2018, the City of Chicago paid a \$2.5 million settlement to Davianna Simmons and her family, in recognition of the severe psychological trauma caused by a police officer who pointed a gun at the then-three year-old during the execution of an arrest warrant at her home.¹⁰ Davianna remains terrified of police and police car sirens, and her doctor described her as suffering the worst case of child post-traumatic stress disorder (PTSD) he has ever seen.¹¹ These cases underscore both the violence inherent in firearm pointing, and that that particular use of force is a quotidian practice of the CPD.

The necessity of protecting community safety and well-being by regulating officer gun pointing is especially salient given the high rates of gun violence in the City more generally.

cops-pointed-guns-at-children-during-illegal-raids/ (citing Compl., *Archie v. City of Chicago et al.*, No. 19-cv4838, Dkt. No. 1 (N.D. Ill. Jul. 19, 2019)).

⁸ Erin Donaghue, *Chicago Police Pointed Guns at Kids, Cuffed 8-year-old During Raid, Lawsuit Alleges*, CBSNews (May 29, 2019), <https://www.cbsnews.com/news/chicago-police-pointed-guns-at-kids-cuffed-8-year-old-during-raid-lawsuit-alleges/>; Compl., *Wilson et al. v. City of Chicago et al.*, No. 19-cv-3550, Dkt. No. 1 (N.D. Ill. May 29, 2019).

⁹ Dave Savini, *CPD Officers Raid Wrong Home, Point Guns at 9-Year-Old Boy; 'My Life Flashed Before My Eyes*, CBS CHICAGO (Aug. 14, 2018), <https://chicago.cbslocal.com/2018/08/14/chicago-police-cpd-raid-wrong-home-point-guns-at-9-year-old-boy-peter-mendez/>; Compl., *Mendez et al. v. City of Chicago et al.*, No. 18-cv-5560, Dkt. No. 1 (N.D. Ill. Aug. 15, 2018).

¹⁰ *Chicago City Council Approves \$2.5M Payout for 3-year-old Girl Traumatized by Police*, WGN-TV (June 28, 2018), available at <https://wgntv.com/2018/06/28/chicago-city-council-approves-2-5m-payout-for-3-year-old-girl-traumatized-by-police/>.

¹¹ See Hannah Moore, *Chicago Police to Pay Out \$2.5 Million to Family After a Cop 'Pointed a gun at a Three-Year-Old Girl's Chest' as He Arrested Her Mother*, DAILYMAIL.CO.UK, June 27, 2018, <https://www.dailymail.co.uk/news/article-5893873/Chicago-police-pay-2-5-million-cop-pointed-gun-three-year-old-girls-chest.html>.

This violence has been described as a mental health crisis, where entire communities are forced to contend with PTSD, depression, anxiety and other negative psychic effects of rampant shootings.¹² CPD conduct exacerbates these stressors. An individual traumatized by gun violence is likely to be retraumatized¹³ if faced with a police officer's loaded gun, particularly given CPD's history of violence against people of color, and the City's systemic failure to hold violent police officers accountable.¹⁴

In short, CPD's ongoing practice of pointing guns at civilians, both adults and children, constitute serious acts of violence, and *Campbell* plaintiffs ask that they be treated as such by this Court. The FOP should not be given the opportunity to put lives at risk by delaying implementation of an imperative policy.

¹² Ryan Connelly Holmes, *Chicago's Gun Violence is Also a Mental Health Crisis*, PBS (Aug. 22, 2017), <https://www.pbs.org/newshour/health/chicagos-gun-violence-crisis-also-mental-health-crisis>.

¹³ Retraumatization is "a conscious or unconscious reminder of past trauma that results in a re-experiencing of the initial trauma event." *See id.*

¹⁴ *Cf.* Patricia Shelly et. al., *Preventing Retraumatization: A Macro Social Work Approach to Trauma-Informed Practices & Policies*, <https://www.socialworker.com/feature-articles/practice/preventing-retraumatization-a-macro-social-work-approach-to-trauma-informed-practices-policies/>. *See also* United States Department of Justice Civil Rights Division & United States Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department 24* (Jan. 2017), <https://www.justice.gov/opa/file/925846/download> ("[O]ur investigation found that CPD officers use unnecessary and unreasonable force in violation of the Constitution with frequency, and that unconstitutional force has been historically tolerated by CPD."); Jennifer S. Richards, et al., *92 deaths, 2,6623 Bullets: Tracking Every Chicago Police Shooting over 6 Years*, CHI. TRIB. (Aug. 26, 2016), <http://www.chicagotribune.com/news/watchdog/ct-chicago-police-shooting-database-met-20160826-story.html> (Between 2010 and 2015, about four out of every five people shot by police were Black males—or, 80% of the 262 people shot by Chicago Police (despite Black people comprising just one-third of Chicago's population));

II. The Firearm Pointing Policy Adopted by the City of Chicago Must Be Robust and Affirm that Pointing a Firearm is a Use of Force.

While there should be no delay in the adoption of a firearm policy, nor should the parties to this suit allow for the implementation of a policy that does not vigorously protect Chicago communities. The current policy, proposed by the City, fails to meet this measure.

On July 16, the Chicago Police Department released its proposed “Firearm Pointing Incidents Policy.”¹⁵ That proposed policy states that “[w]hen a Department member points a firearm at a person to detain that person, a seizure (e.g., investigatory stop or arrest) has occurred and will be documented consistent with existing procedures.” Firearm pointing under this proposal is governed by a “reasonableness standard,” meaning officers may point a firearm at a person “when it is objectively reasonable to do under the totality of the circumstances faced by the member on the scene.” The draft is currently subject to public comment, pursuant to paragraph 633 of the Decree.

That policy is wholly inadequate and should not be adopted. Specifically, contrary to Seventh Circuit law, best practices, and the lived experiences of Chicagoans, the proposed policy *does not* consider the pointing of a loaded firearm at a civilian to be a use of force, subject to the use of force reporting and accountability provisions of existing City policy and the Decree. And it *does not* apply the use of lethal force standard to the conduct. A constitutionally adequate policy must do both, explicitly, so that officers who commit the types of acts detailed in the aforementioned lawsuits are not granted immunity from discipline, and so a culture of violence does not remain embedded within a historically violent department.

Campbell plaintiffs urge the adoption of language that meets these objectives. To wit:

¹⁵ <https://home.chicagopolice.org/firearm-pointing-incidents-policy/>.

Recommended Policy Language

Pointing a firearm at a person is a use of force. Officers are prohibited from pointing a firearm at a person except in circumstances where there is an imminent threat of death or great bodily harm to the officer or another person. For example, an officer may not point a firearm at a person to gain compliance with orders unrelated to preventing imminent death or great bodily harm, and may not point a firearm at a person when the person is handcuffed, otherwise subdued, or unarmed.

Officers are prohibited from drawing or exhibiting a firearm, including in sul or low-ready position, in the field and/or when interacting with members of the public, unless the officer has an objectively reasonable belief that deadly force may become necessary. When the threat is over, the officer shall holster the firearm.

If officers are trained that they may not point their guns at people absent an imminent risk of death or great bodily harm, accidental shootings are less likely to occur, resulting in safer community-officer interactions. More importantly, if officers are held strictly accountable under a use of force standard for improperly using their weapon as a tool of terror, fewer people in this city will be physically and psychologically harmed by law enforcement.

WHEREFORE, *Campbell* plaintiffs respectfully request that this Court deny the FOP's motion to delay the implementation of the firearm pointing provisions mandated by the Consent Decree, and urge the parties to this suit to adopt "best practices" language concerning the pointing of a firearm at civilians.

Respectfully submitted,

/s/ Alexa Van Brunt
One of the Attorneys for *Campbell* Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on July 25, 2019, she filed this brief upon all parties who have filed appearances in the above-captioned case via the CMECF electronic system.

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One of the Attorneys for *Campbell* Plaintiffs