

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST by and through its Co-Directors Natasha Soto and Shaketa Redden and on behalf of its members; DORETHEA FRANKLIN; TANIQUA SIMMONS; DE'JON HALL; JOSEPH BONDS; CHARLES PALMER; SHIRLEY SARMIENTO; EBONY YELDON; and JANE DOE, individually and on behalf of a class of all others similarly situated;

Plaintiffs,

v.

Civil No.: 1:18-cv-00719-CCR

CITY OF BUFFALO, NY; BYRON B. BROWN, Mayor of the City of Buffalo, in his individual and official capacities; BYRON C. LOCKWOOD, Commissioner of the Buffalo Police Department, in his individual and official capacities; DANIEL DERENDA, former Commissioner of the Buffalo Police Department, in his individual capacity; AARON YOUNG, KEVIN BRINKWORTH, PHILIP SERAFINI, ROBBIN THOMAS, UNKNOWN SUPERVISORY PERSONNEL 1-10, UNKNOWN OFFICERS 1-20, each officers of the Buffalo Police Department, in their individual capacities.

Defendants.

DEFENDANTS' RESPONSES TO PLAINTIFFS' RULE 56(A) STATEMENTS

Under Federal Rule 56(c)(1) and Local Rule 56(a)(2), Defendants the City of Buffalo, NY; Byron B. Brown, Mayor of the City Of Buffalo, in his Individual and Official Capacities; Byron C. Lockwood, Commissioner of the Buffalo Police Department, in his Individual and Official Capacities; Daniel Derenda, Former Commissioner of the Buffalo Police

Department, in his Individual Capacity; Aaron Young, Kevin Brinkworth, Philip Serafini, Robbin Thomas, Unknown Supervisory Personnel 1-10, and Unknown Officers 1-20 (collectively the “City Defendants”), respectfully submit responses to Plaintiffs’ Rule 56(a) Statements.

I. Background on the City of Buffalo’s Checkpoint Program

1. 1. The City of Buffalo (“City”), through the Buffalo Police Department (“BPD”), operated the Checkpoint Program from June 2012 until November 2017. Ex. 19, COB279173; Ex. 27, COB591045; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 147:3-17.

RESPONSE: Undisputed.

2. Under the Checkpoint Program, Checkpoints were expected to take place every day. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 146:7-18, 176:7-10.

RESPONSE: Undisputed.

3. Under the Checkpoint Program, the BPD conducted more than 1,600 Checkpoints over a five-year period. Ex. 15, Bjerck Report ¶¶ 158, 311; Ex. 27, COB591045; Ex. 19, COB279173.

RESPONSE: Undisputed.

4. Under the Checkpoint Program, thousands of motorists were stopped and ticketed. Declaration of Edward P. Krugman ¶¶ 34-35.

RESPONSE: Undisputed.

5. Under the Checkpoint Program, every motorist who passed through a Checkpoint was initially stopped without any individualized suspicion. Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 157:19-158:3; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 261:1-10; Ex. 2, Brown Nov. 6, 2023 Dep. at 223:6-224:11; Ex. 18, BPD MOP Ch. 8 § 10.5; Ex. 11, Young Oct. 26, 2022 Dep. at 52:12-16.

RESPONSE: Undisputed.

6. Under the Checkpoint Program, Checkpoints predominately took place in majority Black and Latino neighborhoods such as the East Side of Buffalo. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 261:11-262:2; Ex. 4, Derenda Dec. 23, 2021 Dep. at 282:1-6; Ex. 2, Brown Nov. 6, 2023 Dep. at 11:2-6, 213:19-214:7, 217:2-220:5; Ex. 24, COB082897; Ex. 25, Brown Dep. Exhibit 17; Declaration of Joseph Bonds ¶ 5; Ex. 15, Bjerck Report ¶¶ 311-317; Declaration of Edward P. Krugman ¶ 67.

RESPONSE: Disputed. The City does not dispute that the East Side of Buffalo is comprised of majority Black and Latino residents. The City disputes this paragraph on the basis that the record citations do not support the proposition Plaintiffs advance.

7. Plaintiffs Joseph Bonds, Jasmine Evans, Dorethea Franklin, De'Jon Hall, Shaketa Redden, Taniqua Simmons, Ebony Yeldon, Charles Palmer, and Shirley Sarmiento are Black individuals who drive in the City of Buffalo and intend to do so in future. Declaration of Joseph Bonds ¶¶ 1, 13; Declaration of Jasmine Evans ¶¶ 3, 10; Declaration of Dorethea Franklin ¶¶ 1, 9; Declaration of De'Jon Hall ¶¶ 5, 8-10, 12-13; Declaration of Charles Palmer ¶¶ 3, 12-13; Declaration of Shaketa Redden ¶¶ 1, 11; Declaration of Shirley Sarmiento ¶ 3; Ex. 12, Sarmiento Dec. 13, 2022 Dep. at 37:1-11; Declaration of Taniqua Simmons ¶¶ 1, 7; Declaration of Ebony Yeldon ¶¶ 3, 9.

RESPONSE: Undisputed.

8. Plaintiffs Joseph Bonds, Jasmine Evans, Dorethea Franklin, De'Jon Hall, Shaketa Redden, Taniqua Simmons, and Ebony Yeldon were each stopped at one or more Checkpoints as part of the Checkpoint Program. Declaration of Joseph Bonds ¶¶ 5, 9; Declaration of Jasmine Evans ¶ 5; Declaration of Dorethea Franklin ¶¶ 3-4; Declaration of De'Jon Hall ¶¶ 6-7; Declaration of Shaketa Redden ¶¶ 4-6; Declaration of Taniqua Simmons ¶ 3; Declaration of Ebony Yeldon ¶ 5.

RESPONSE: Undisputed.

9. Plaintiffs Joseph Bonds, Jasmine Evans, Shaketa Redden, and Taniqua Simmons each received one or more traffic tickets at a Checkpoint. Declaration of Joseph Bonds ¶ 5; Declaration of Jasmine Evans ¶ 6; Declaration of Shaketa Redden ¶ 4; Declaration of Taniqua Simmons ¶ 5.

RESPONSE: Undisputed.

10. Plaintiffs Ebony Yeldon, Dorethea Franklin and De'Jon Hall were each stopped at one or more Checkpoints but did not receive tickets. Declaration of Ebony Yeldon ¶ 5; Declaration of Dorethea Franklin ¶ 4; Declaration of De'Jon Hall ¶¶ 6-7.

RESPONSE: Undisputed.

II. The Checkpoint Program Was a Municipal Policy, Custom or Practice

11. BPD Commissioner Daniel Derenda created the Checkpoint Program. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 174:9-175:9.

RESPONSE: Undisputed.

12. Derenda served as Commissioner of the BPD during the time period from 2012 to 2017. Ex. 3, Derenda Nov. 10, 2021 Dep. at 15:23-16:4.

RESPONSE: Undisputed.

13. The Commissioner is the BPD's highest-ranking member. Buffalo City Charter, Art. 13 § 13-1; Ex. 16, BPD MOP Ch. 1 § 3.2.

RESPONSE: Undisputed.

14. As Commissioner, Derenda established final policy for the BPD. Buffalo City Charter, Art. 13 § 13-4; Ex. 16, BPD MOP Ch. 1 § 3.2.

RESPONSE: Disputed. The record citations do not support the proposition that former Commissioner Derenda established "final policy for the BPD," nor is it clear what "final policy" means in this context. The documents speak for themselves.

15. Commissioner Derenda oversaw the Checkpoint Program during the time period from 2012 to 2017. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 174:9-175:9; Ex. 16, BPD MOP Ch. 1 § 3.2.

RESPONSE: Undisputed.

16. Byron Brown served as Mayor of the City of Buffalo during the time period from 2012 to 2017. Ex. 2, Brown Nov. 6, 2023 Dep. at 8:14-21.

RESPONSE: Undisputed.

17. Mayor Brown approved of the Checkpoint Program. Ex. 2, Brown Nov. 6, 2023 Dep. at 238:7-15.

RESPONSE: Disputed. The record citations do not support the proposition that Mayor Brown "approved" the Checkpoint Program. Mayor Brown testified, "[t]he checkpoint program as it was proposed and administered I did support at the time." *Id.*

18. Mayor Brown delegated any authority he had over the implementation of the Checkpoint Program to Commissioner Derenda. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 72:16-73:16; Ex. 2, Brown Nov. 6, 2023 Dep. at 22:16-25:11, 53:8-56:23; Ex. 4, Derenda Dec. 23, 2021 Dep. at 344:3-7.

RESPONSE: Disputed. The record citations do not support the proposition.

19. Under the Checkpoint Program, Checkpoints were operated one to four times per day except when there were intervening manpower or weather concerns. Ex. 10, Serafini Dec. 27, 2021 Dep. at 118:23-119:12, 120:4-121:2; Ex. 23, COB041705.

RESPONSE: Undisputed.

20. Under the Checkpoint Program, officers were instructed to set up each Checkpoint in a way that minimized the possibility of motorists avoiding it. Ex. 30, COB060320; Ex. 3, Derenda Nov. 10, 2021 Dep. at 83:12-18; Ex. 18, BPD MOP Ch. 8 § 10.5(C).

RESPONSE: Undisputed.

21. Under the Checkpoint Program, officers were instructed to conduct traffic stops on any vehicle that attempted to avoid the Checkpoints. Ex. 30, COB060320; Ex. 3, Derenda Nov. 10, 2021 Dep. at 83:19-84:2; Ex. 18, BPD MOP Ch. 8 § 10.5(D).

RESPONSE: Undisputed.

22. Under the Checkpoint Program, all motorists who approach a Checkpoint must pass through the Checkpoint regardless of whether they are suspected of violating the law. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 261:1-10; Ex. 2, Brown Nov. 6, 2023 Dep. at 223:6-224:11; Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 157:19-158:3.

RESPONSE: Undisputed.

23. Under the Checkpoint Program, every vehicle that passes through a Checkpoint is subjected to an initial stop. Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 157:19-158:3; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 261:1-10; Ex. 18, BPD MOP Ch. 8 § 10.5.

RESPONSE: Undisputed.

24. Under the Checkpoint Program, the initial stop occurs without individualized suspicion of wrongdoing. Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 157:19-158:3; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 261:1-10; Ex. 2, Brown Nov. 6, 2023 Dep. at 223:6-224:11; Ex. 18, BPD MOP Ch. 8 § 10.5; Ex. 11, Young Oct. 26, 2022 Dep. at 52:12-16.

RESPONSE: Undisputed.

25. Following the initial stop, officers could direct motorists to pull to the side of the road for a secondary stop. Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 72:7-11; Declaration of Dorethea Franklin ¶ 4.

RESPONSE: Undisputed.

26. Officers conducting Checkpoints were instructed to look for all types of New York Vehicle and Traffic Law violations. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 102:19-103:4, 149:5-8, 248:6-248:19; Ex. 18, BPD MOP Ch. 8 § 10.5(H).

RESPONSE: Disputed. Officers were ordered to check for valid registrations, valid inspections, proper seatbelt usage, and any other VTL violations that could be detected through plain view observations and mobile plate readers. Sahasrabudhe Decl., Ex. 41.

27. Officers conducting Checkpoints were instructed to issue tickets for any and all New York Vehicle and Traffic Law violations they observed. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 102:19-103:4, 149:5-8, 248:6-248:19; Ex. 30, COB060320; Ex. 18, BPD MOP Ch. 8 § 10.5(H).

RESPONSE: Undisputed.

28. Officers conducting Checkpoints could investigate motorists for potential criminal wrongdoing. Ex. 30, COB060320; Ex. 18, BPD MOP Ch. 8 § 10.5(G); Ex. 2, Brown Nov. 6, 2023 Dep. at 222:11-224:2; Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 37:9-22; Ex. 11, Young Oct. 26, 2022 Dep. at 44:21-47:22; Ex. 28, Young Dep. Exhibit 5, COB228535.

RESPONSE: Disputed. Officers were permitted to “act upon any and all probable cause situations arising from information obtained from the ‘mobile plate reader’ and/or from ‘officer initiated plain view observations.’” BPD MOP Ch. 8 § 10.5(G); *see also* Sahasrabudhe Decl., Ex. 41.

29. Commissioner Derenda instructed officers conducting Checkpoints to “impound as many vehicles as legally possible” and to “make arrests and write traffic summons as many as possible.” Ex. 19, COB279173; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 161:12 -162:19.

RESPONSE: Undisputed.

III. The Strike Force and Housing Unit’s Participation in the Checkpoint Program and Mandatory Reporting to the BPD Leadership

30. The BPD Strike Force operated the Checkpoints. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 146:7-147:15.

RESPONSE: Undisputed.

31. The mission of the Strike Force was to target violent crime in crime hot spots, including by gang members, and to remove illegal guns from the streets of Buffalo. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 17:23-19:23; Ex. 21, COB060319; Ex. 17, BPD MOP Ch. 1 § 8.6; Ex. 3, Derenda Nov. 10, 2021 Dep. at 17:3-18:20.

RESPONSE: Disputed. The mission of the Strike Force was to:

1. Target and eliminate crime hotspots throughout the city.
2. Remove illegal Guns from [the City's] Streets.
3. Strict Enforcement of the Mayor[']s Zero Tolerance Crime Policy
4. Make Buffalo a better place to live, work and raise a family.

Ex. 21; Derenda Nov. 10, 2021 Dep at 17:15-18:4.

32. Traffic safety did not appear in the Strike Force's mission statement. Ex. 21, COB060319; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 20:1-4.

RESPONSE: Undisputed. The express language did not include "traffic safety."

33. The BPD Housing Unit sometimes assisted the Strike Force in operating the Checkpoints. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 71:4-7, 147:18-21; Ex. 10, Serafini Dec. 27, 2021 Dep. at 68:19-69:9.

RESPONSE: Undisputed.

34. The mission of the Housing Unit was crime prevention in and around Buffalo Municipal Housing Authority ("BMHA") housing complexes. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 28:3-10, 29:20; Ex. 17, BPD MOP Ch. 1 § 8.5.

RESPONSE: Disputed. The mission of the Housing Unit was to be "responsible for all policing and security issues in the BMHA Housing Complexes," and to "work closely with the BMHA Staff, Council, outside agencies, as well as other units in the BPD to maintain strict enforcement of the Mayor's zero tolerance crime policy." Dkt. No. 254-17, p. 7, § 8.5.

35. Derenda required Strike Force and Housing Unit officers to submit daily reports that logged the number of felony and misdemeanor arrests they made, traffic summons issued, impounds performed, and guns and cash seized while on patrol, including at Checkpoints. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 25:1:-27:6, 36:23-37:8; Ex. 10, Serafini Dec. 27, 2021 Dep. at 231:22-234:7; Ex. 29, COB029724.

RESPONSE: Undisputed.

36. Commissioner Derenda required the daily reports because his "philosophy is what gets measured gets done." Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 26:10-11, 36:11-18.

RESPONSE: Undisputed.

37. Commissioner Derenda used the reporting to “make sure people were doing what they were being paid to do.” Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 157:18-19.

RESPONSE: Undisputed.

38. Commissioner Derenda let the Strike Force and Housing Unit know when he was not satisfied with their “production.” Ex. 3, Derenda Nov. 10, 2021 Dep. at 102:19-105:16; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 157:6-23; Ex. 31, COB042018.

RESPONSE: Undisputed.

39. Once the Checkpoint Program began, tinted window tickets were the most frequently issued ticket by the BPD. Ex. 26, Lockwood Dep. Exhibit 32; Ex. 9, Lockwood Aug. 17, 2023 Dep. at 200:1-201:8.

RESPONSE: Disputed. The record citations do not support the stated proposition.

40. Tinted windows do not cause many traffic accidents. Ex. 26, Lockwood Dep. Exhibit 32; Ex. 9, Lockwood Aug. 17, 2023 Dep. at 200:1-201:8.

RESPONSE: Disputed. The record citations do not support the stated proposition.

41. The BPD considered tinted windows to present an officer safety issue. Ex. 9, Lockwood Aug. 17, 2023 Dep. at 201:9-13.

RESPONSE: Undisputed.

IV. The Alleged Purpose of the Checkpoint Program Was to Enforce the New York State Vehicle and Traffic Law

42. In its contention interrogatory responses, the City stated that the primary purpose of the Checkpoint Program was “vehicle and traffic safety and the enforcement of the New York State Vehicle and Traffic Law” Ex. 13, Defs.’ Feb. 20, 2024 Rog Responses at 2.

RESPONSE: Undisputed.

43. Commissioner Derenda testified that his goal in implementing the Checkpoints “was to enforce the provisions of the vehicle and traffic law.” Ex. 3, Derenda Nov. 10, 2021 Dep. at 85:15-17.

RESPONSE: Disputed. The City disputes this to the extent the Plaintiffs attempt to represent that this was former Commissioner Derenda’s only goal in implementing the Checkpoints.

Former Commissioner Derenda testified that the checkpoints were “primarily for traffic safety.” Derenda Dep. 1 at 21:6-18.

44. Commissioner Derenda testified as the City's 30(b)(6) representative that, under the Checkpoint Program, traffic safety meant enforcing the New York Vehicle and Traffic Safety Law ("VTL"). Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 248:6-248:19.

RESPONSE: Undisputed.

45. Mayor Brown testified that "[t]he primary purpose of checkpoints was vehicle and traffic interdiction." Ex. 2, Brown Nov. 6, 2023 Dep. at 102:6-7.

RESPONSE: Disputed. The City disputes this to the extent the Plaintiffs attempt to represent that this was Mayor Brown's only testimony on this topic. Mayor Brown also testified that the "primary purpose of checkpoints was traffic safety." Brown Dep. at 107:1-2.

46. Aaron Young, who served as Chief of the Housing Unit and Strike Force, testified that the goal of the Checkpoint Program was "to enforce provisions of the vehicle and traffic law." Ex. 11, Young Oct. 26, 2022 Dep. at 32:9-19.

RESPONSE: Disputed. The City disputes this to the extent Plaintiffs attempt to represent that this was Aaron Young's only testimony on this topic. Aaron Young also testified that the goal of the checkpoints was vehicle safety. Young Dep. at 151:23-152:6; 46:19-23.

47. Defendant Philip Serafini, Captain of the Housing Unit, testified that the Housing Unit conducted checkpoints around BHMA properties in order "to enforce vehicle and traffic law and penal law." Ex. 10, Serafini Dec. 27, 2021 Dep. at 67:15-20.

RESPONSE: Undisputed.

48. The BPD's Manual of Procedures ("MOP") contains provisions authorizing the Checkpoint Program. Ex. 18, BPD MOP Ch. 8 § 10.5.

RESPONSE: Undisputed.

49. The MOP states that "[t]he purpose of a checkpoint is to stop motorists and to methodically evaluate their compliance with the law." Ex. 18, BPD MOP Ch. 8 § 10.5.

RESPONSE: Undisputed.

50. The NY VTL contains more than nine hundred provisions. N.Y. Veh. & Traf. Law §§ 100 et seq.

RESPONSE: Undisputed.

51. Violations of the VTL are charged as violations, misdemeanors, or felonies depending on the gravity of the offense. N.Y. Veh. & Traf. Law §§ 100 et seq; Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 248:6-248:19.

RESPONSE: Undisputed.

52. The New York State Vehicle and Traffic Law authorizes criminal penalties against motorists. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 248:6-248:19.

RESPONSE: Undisputed.

53. Penalties for violations of the VTL range from civil fines to jail time depending on the gravity of the offense. N.Y. Veh. & Traf. Law §§ 100 et seq.

RESPONSE: Undisputed.

54. Vehicle and traffic law enforcement is a part of the law enforcement duties of BPD officers. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 46:21-47:9, 49:8-15, 71:8-12, 71:20-72:5, 73:13-74:1; Ex. 6, Gramaglia Sept. 22, 2023 Dep. at 25:2-12; Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 50:1-16; Ex. 8, Lockwood Aug. 10, 2023 Dep. at 162:3-9; Ex. 32, COB041743.

RESPONSE: Undisputed.

55. Outside of Checkpoints, individualized suspicion was a known requirement for traffic stops. Ex. 7, Gramaglia Mar. 14, 2024 30(b)(6) Dep. at 32:17-33:8, 40:9-13.

RESPONSE: Undisputed.

56. Enforcing the vehicle and traffic law is law enforcement. Ex. 1, Brinkworth Mar. 16, 2022 Dep. at 50:1-16.

RESPONSE: Undisputed.

V. The Program's Lack of Traffic Safety Considerations

57. It was not the policy of the BPD to require that Checkpoint locations be selected based on traffic safety data. *See, e.g.*, Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 207:20-208:8.

RESPONSE: Undisputed.

58. The City cannot identify any instances where traffic safety data was actually used to determine a Checkpoint location. Ex. 14, Defs.' Mar. 11, 2024 RFA Response at 3-10.

RESPONSE: Disputed. The evidence cited does not support the stated proposition.

59. It was not the policy of the BPD to require that Checkpoint locations be selected based on the location of motor vehicle accidents. *See, e.g.*, Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 207:9-208:12.

RESPONSE: Undisputed.

60. The City cannot identify any instances where reports of motor vehicle accidents or motor vehicle accident data were actually used to determine a Checkpoint location. Ex. 14, Defs.' Mar. 11, 2024 RFA Response at 3.

RESPONSE: Disputed. The record citations do not support the stated proposition.

61. It was not the policy of the BPD to require that Checkpoint locations be selected based on the location of red light or stop sign violations. *See, e.g.*, Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 208:13-208:20.

RESPONSE: Undisputed.

62. The City cannot identify any instances where reports of red light or stop sign violations were actually used to determine a Checkpoint location. Ex. 14, Defs.' Mar. 11, 2024 RFA Response at 4-5.

RESPONSE: Undisputed.

63. It was not the policy of the BPD to require that Checkpoint locations be selected based on the location of licensing, registration, or inspection violations. *See, e.g.*, Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 208:21-210:19.

RESPONSE: Undisputed.

64. The City cannot identify any instances where reports of any licensing, registration, or inspection violations were actually used to determine a Checkpoint location. Ex. 14, Defs.' Mar. 11, 2024 RFA Response at 7-10.

RESPONSE: Disputed. The record citations do not support the stated proposition.

65. The City cannot identify any instances where reports of speeding or DWI violations were actually used to determine a Checkpoint location. Ex. 14, Defs.' Mar. 11, 2024 RFA Response at 5-7.

RESPONSE: Disputed. The record citations do not support the stated proposition.

66. Checkpoint locations were selected based on Strike Force and Housing Unit law enforcement priorities. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 164:14-18, 168:5-9, 168:21-169:5.

RESPONSE: Disputed. The record citations do not support the stated proposition. Moreover, Checkpoint locations were selected based on a variety of factors, including citizen complaints.

Derenda Dep. 1 at 96:3-97:2.

67. To the extent that the City used data to determine Checkpoint locations, it relied on crime statistics, hot spot maps, and reports of recent shootings or violence. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 211:15-20; Ex. 10, Serafini Dec. 27, 2021 Dep. at 142:8-142:17; Ex. 20, COB040949; Ex. 22, COB041712; Ex. 28, Young Dep. Exhibit 5, COB228535; Ex. 11, Young Oct. 26, 2022 Dep. at 37:4-49:17; Ex. 27, COB591045.

RESPONSE: Disputed. The record citations do not support the proposition that crime statistics, hot spot maps, and reports of recent shootings or violence were the only data points used to determine Checkpoint locations. Nor is it clear what “data” means in this context.

68. The City never conducted any analyses to determine whether the Checkpoint Program improved traffic safety. Ex. 14, Defs.’ Mar. 11, 2024 RFA Response at 10 (RFA 17); Ex. 5, Derenda 30(b)(6) Jan. 23, 2024 Dep. at 194:23-195:22, 196:21-197:14, 248:20-249:1.

RESPONSE: Disputed. The record citations do not support the stated proposition. The City does not dispute that it never conducted a formal analysis as to whether the Checkpoint Program improved traffic safety.

69. When asked to explain why no such analyses were done, BPD Commissioner Derenda testified as the City’s 30(b)(6) representative: “We had a focus of reducing crime throughout the city which we accomplished. Traffic safety, if we came across numbers of accidents the chief said, oh, we’re having numerous accidents here, we would address it with *different issues*.” Ex. 5, Derenda 30(b)(6) Jan. 23, 2024 Dep. at 196:21-197:14 (emphasis added).

RESPONSE: Undisputed.

VI. Current Status of Checkpoints

70. The Checkpoint Program was suspended in November 2017. Ex. 32, COB041743.

RESPONSE: Undisputed.

71. Nothing prevents the Checkpoint Program from being reinstated. Ex. 5, Derenda Jan. 23, 2024 30(b)(6) Dep. at 198:4-199:3; Ex. 2, Brown Nov. 6, 2023 Dep. at 238:15-16; Ex. 18, BPD MOP Ch. 8 § 10.5.

RESPONSE: Disputed. BPD Commissioner Alfonso Wright has attested to the fact that, under his tenure, the BPD will not conduct vehicle and traffic safety Checkpoints as they were conducted while the Housing Unit and Strike Force existed. Doc. 252-6, p. 3.

72. As of the date of this Statement of Material Undisputed Facts, the BPD Manual of Procedures contains provisions authorizing the Checkpoint Program. BPD MOP, Ch.8, § 10.5, <https://www.buffalony.gov/DocumentCenter/View/7565/CHAPTER-8---PATROLpdf> (last visited Feb. 7, 2025).

RESPONSE: Undisputed.

Dated: Buffalo, New York
May 30, 2025

HODGSON RUSS LLP

Attorneys for Defendants City of Buffalo, NY, Byron B. Brown, Byron C. Lockwood, Daniel Derenda, Aaron Young, Kevin Brinkworth, Philip Serafini, Robbin Thomas, Unknown Supervisory Personnel 1-10, and Unknown Officers 1-20

By: /s/ Cheyenne N. Freely

Hugh M. Russ III, Esq.

Peter A. Sahasrabudhe, Esq.

Cheyenne N. Freely, Esq.

The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040
716.856.4000

hruss@hodgsonruss.com

psahasra@hodgsonruss.com

cfreely@hodgsonruss.com