



THE PHOENIX POLICE DEPARTMENT THE ROAD TO REFORM

*Submitted to the U.S. Department of Justice
on behalf of the City of Phoenix*



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Steptoe

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This report,¹ which accompanies the letter sent to Associate Attorney General Vanita Gupta, Assistant Attorney General Kristen Clarke, and Chief of the Special Litigation Section Steven Rosenbaum on January 11, 2024, addresses the issues identified in the United States Department of Justice’s (DOJ) August 5, 2021, announcement of its pattern-or-practice investigation of the City of Phoenix (the City) and the Phoenix Police Department (PPD).² It provides information on the various ways in which Phoenix and PPD have proactively launched an extraordinary wave of reforms, the scope of which may well be unsurpassed in the 30 years of the DOJ’s pattern-or-practice program. Because the DOJ has provided very little information about any potential finding of unconstitutional behavior, the City and PPD have been left in the dark over the past 29 months and cannot be certain that the reforms precisely address any proposed negative findings. Even so, the scope and scale of the reforms, some of which pre-date the DOJ investigation, are extremely relevant to any findings the DOJ may issue.

Because the DOJ has now made clear that it will not share a draft of its findings report prior to its public release, the City and PPD will not have a meaningful ability to respond to the report in a timely way.³ As a result, one of the purposes of this report is to make the DOJ and the Phoenix community fully aware of the changes currently taking place in the City of Phoenix and PPD and make clear that a resolution of the DOJ’s investigation should fully take into account the scope and trajectory of these reforms. Any remedial solutions must be developed in partnership with Phoenix and its police department such that the time, expense, and wastefulness of a consent decree can be avoided. In Phoenix, the heavy hand of federal oversight in the form of a consent decree and an independent monitor is not the appropriate remedy.

I. The DOJ Investigation

The August 5 DOJ announcement identified five specific issues that the DOJ planned to investigate for potential Constitutional and federal statutory violations during the period 2016 to the present. The five issues are:

1. Use of force, including deadly force;
2. Potential retaliatory activity for the exercise of First Amendment rights;

¹ This report was prepared by Michael R. Bromwich, Michael G. Scavelli, and Emma S. Marshak of Steptoe LLP, with the enormous assistance of members of the Phoenix Police Department. The facts, assertions, and conclusions contained in this report are solely the responsibility of Steptoe LLP.

² U.S. Dept. of Justice, “Justice Department Announces Investigation of the City of Phoenix and the Phoenix Police Department” (Aug. 5, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department>.

³ Letter from Assistant Attorney General Kristen Clarke to Michael R. Bromwich, November 29, 2023, available at <https://www.documentcloud.org/documents/24191156-letter-to-bromwich-20231129>.

3. Discriminatory policing;
4. Responses to people with disabilities, including mental and behavioral health disabilities; and
5. Claims that the PPD has improperly disposed of the property of people experiencing homelessness

In addition to these discrete areas of focus, the August 5 announcement stated that the investigation would include a comprehensive review of PPD policies, training, supervision, and investigations of uses of force. Finally, the DOJ stated that it would also examine the structures in place to hold officers accountable for acts of misconduct and violations of PPD policies.

Over the course of the past 29 months, the DOJ team of lawyers and experts have made an encyclopedic set of documents and evidence requests to the City and PPD. By our count, the DOJ has made a total of 234 such requests, including numerous follow-up requests, that continued into December 2023. Finding, collecting, and producing responsive materials has absorbed massive amounts of time and resources. Even so, the City and PPD have continued to respond to those requests as promptly and diligently as possible; indeed, their cooperation was recently noted with approval by the head of the Civil Rights Division.⁴ Through December 2023, the DOJ's requests have resulted in the production of the following materials:

- More than 179,000 separate documents, totaling over one million pages;
- Approximately 20 terabytes of data from multiple PPD databases and systems;
- More than 22,000 body worn camera (BWC) videos relating to uses of force; and
- Approximately 200 recordings of 911 calls

In addition to these requests for materials, DOJ lawyers and experts have traveled to Phoenix on eight occasions to conduct group and individual interviews, visit each PPD precinct, observe training, meet with community groups, and conduct ride-alongs with PPD officers and supervisors.

Because of various obstacles and complications, including the DOJ's COVID-related reluctance to authorize travel in this matter until early 2022, the DOJ's first site visit took place more than six months after the August 5 announcement, in late March 2022. Despite this delay in commencing onsite work, from that date through mid-November 2023, DOJ lawyers and their experts in various subject areas relevant to the investigation have made the eight site visits referred to above. The City and PPD have done their best to facilitate and schedule the large number of meetings, interviews, and observation opportunities (including training at the Academy), accommodating

⁴ *Id.*

numerous last-minute changes requested by the DOJ team. During those eight visits, members of the DOJ team conducted approximately 200 hours of ride-alongs, with full access to PPD officers and supervisors during each multi-hour ride-along. Throughout the investigation, City and PPD personnel have responded promptly and responsibly to the DOJ's myriad requests. In their most recent visit to Phoenix, in early November 2023, DOJ lawyers conducted extended interviews with Interim Chief Michael Sullivan and City Manager Jeffrey Barton.

II. The Phoenix Police Department

The Phoenix Police Department, the largest law enforcement agency in Arizona, was founded in 1881 when Phoenix was incorporated as a municipality. As of February 2023, PPD had an authorized strength of 3,125 sworn members, but only 2,575 sworn employees. There are 1,375 civilian positions of which 1,064 are currently filled.

PPD is led by the chief of police, two executive assistant chiefs, seven assistant chiefs, seven commanders of the different patrol precincts, and the commanders of five investigative bureaus, four strategic and tactical bureaus, and three reserve bureaus. There are also five commanders in the administration, accountability, and transparency section, including the commander of the new Organizational Integrity Bureau.

In recent years, PPD has been a leader in the national conversation on policing. In 2016, for example, when then-Attorney General Loretta Lynch took a national Community Policing Tour to highlight jurisdictions with "collaborative programs and innovative methods that can serve as a model for other jurisdictions,"⁵ Phoenix was one of her stops. The Attorney General highlighted PPD's training, particularly the scenario-based de-escalation and harm-reduction training.⁶

The Attorney General noted during her visit that the DOJ would refer other police departments seeking to improve their de-escalation training procedures to PPD, stating, "We are trying to reach out and be proactive in a number of different ways, and we will be using the Phoenix department as an example and hoping to match them with other departments."⁷ In particular, the Attorney General described PPD's training as "a

⁵ U.S. Dept. of Justice Office of Community Oriented Policing Services, *Attorney General's Community Policing Report: 2015 - 2016* at 32 (2017), https://www.justice.gov/d9/press-releases/attachments/2017/01/12/ag_community_policing_report.pdf.

⁶ *Id.* at 49-51.

⁷ Jude Joffe-Block, *Attorney General: Phoenix Police A Model For Training*, KJZZ (June 28, 2016), <https://kjzz.org/content/327177/attorney-general-phoenix-police-model-training>.

thoughtful, substantive, effective approach to a number of different scenarios,” and she praised PPD’s Crisis Intervention Team and mental health programs.⁸

III. Significant Reforms Implemented Prior to the Hiring of Interim Chief Sullivan

Many years before the August 5, 2021 DOJ announcement, Phoenix had shown it was a reform-minded city, with a reform-minded police department – prepared to incorporate new policies, procedures, and practices in response to evolving industry best practices and events experienced by the City and PPD. We have summarized some of the most noteworthy reforms during the decade preceding the August 5 announcement, but it is by no means an exhaustive list of the noteworthy changes and reforms made during that period of time.

A. Community and Police Trust Initiative

In March 2015, then-City Manager Ed Zuercher announced the formation of the Community and Police Trust Initiative (CPTI). The purpose of CPTI was to review police-community relations throughout the City and formulate recommendations to enhance PPD’s relationship with the residents it serves. To accomplish that goal, Mr. Zuercher selected 17 members of the community to serve on the CPTI, to ensure representation of the disability, immigrant, LGBT, millennial, and refugee identity communities, among others. After a nine-month process, the CPTI developed a set of nine “first tier” recommendations and six “second tier” recommendations, which were subsequently merged into an implementation plan that addressed all 15 recommendations.⁹

The recommendations focused on subjects as diverse as officer-involved shootings, regular community listening sessions, and the development of various

⁸ Megan Cassidy, *Attorney General Loretta Lynch praises Phoenix police “de-escalation” training*, Arizona Republic (June 28, 2016), <https://www.azcentral.com/story/news/local/phoenix/2016/06/28/attorney-general-loretta-lynch-praises-phoenix-police-de-escalation-training/86492722/>; see also David Marino Jr., *Attorney General Loretta Lynch praises Phoenix police training*, Cronkite News (June 28, 2016), <https://cronkitenews.azpbs.org/2016/06/28/ag-loretta-lynch-praises-phoenix-police-training/> (“Lynch spoke glowingly of the Phoenix Police Department’s mental health programs and so-called ‘de-escalation’ training, referring to using negotiations and other tools to calm confrontations and reduce the chance of violence.”); see also Brahm Resnik, *Nation’s top cop praises Phoenix police response to community*, NBC 9News (June 29, 2016), <https://www.9news.com/article/news/local/valley/nations-top-cop-praises-phoenix-police-response-to-community/75-258502639>.

⁹ Police Chief Joseph G. Yahner, *Memorandum to Assistant City Manager Milton Dohoney, Jr. regarding Community and Police Trust Recommendations* (Mar. 11, 2016), www.phoenix.gov/piosite/Documents/CPTI_Recommendations_ENG.pdf.

categories of training for sworn personnel. CPTI members subsequently held a series of 13 meetings throughout the city to describe the 15 recommendations and obtain community feedback.¹⁰

B. Introduction of Body Worn Cameras

Phoenix was an early adopter of body worn camera (BWC) technology. In 2013, PPD applied for and received a DOJ Bureau of Justice Assistance Smart Policing Initiative grant to deploy 56 body worn cameras. The deployment of BWCs continued to increase over time, such that full deployment to all patrol and enforcement personnel was achieved in July 2019, and to all personnel in January 2022. Thus, over 2000 sworn personnel currently use BWCs every day.

BWC footage proves extremely useful in documenting problematic encounters, which can exonerate officers as well as document instances of excessive usage of force and other police misconduct. BWCs provide powerful evidence of these encounters, which can be, and is, supplemented by witness accounts, forensic evidence, and other evidence relevant to the incident. BWCs provide a level of transparency previously unavailable to PPD supervisors, internal investigators, prosecutors, defense lawyers, judges, and juries.

The April 2013 rollout of the BWC pilot program was overseen by a dedicated Body Worn Camera Unit within PPD. The BWC Unit's mission includes managing and identifying BWC footage, and making it available to the public. The BWC Unit also leverages this critical data and its experience to inform policy changes and enhance training. The BWC Unit was also instrumental in numerous updates to Operations Order 4.49 concerning the use of BWCs, including mostly recently in June 2023.¹¹

PPD policy and procedure recognize that BWCs are extraordinarily useful as supervisory tools. BWC footage provides supervisors with the ability to review the actions of officers under their supervision in ways previously unavailable. An officer's direct supervisor has the ability to immediately review the officer's BWC footage after a violent encounter, citizen complaint or any other incident that requires supervisor attention or review. Each month, a precinct's Quality Assurance Sergeant (QAS)¹² inspects two randomly selected BWC videos from each patrol, Neighborhood Enforcement Team, and Community Actions Officer squad assigned to the precinct.

¹⁰ *Id.*; see also City of Phoenix, *Community & Police Trust Initiative*, <https://www.phoenix.gov/trust> (last visited January 9, 2024).

¹¹ Operations Order 4.49 is available online at <https://public.powerdms.com/PhoenixPD/>, as are all other current policies and the draft policies released for public comment.

¹² The QAS program is discussed in further detail in Section III(D).

The mandate of the QAS is broad and their review is intended to analyze everything from policy compliance to officer safety. The findings of the review are reported monthly to the precinct commander and PPD Executive Staff.¹³

In this monthly report, the QAS documents any notable incident they reviewed and verbally notifies the Commander of any serious incident. The QAS also reaches out to the individual officer's direct supervisor and/or lieutenant regarding the officer's actions, for any necessary corrective measures to be taken.

For instances involving officers pointing guns at citizens or responses to resistance, PPD policies and procedures require supervisors to promptly review and report the incident up the chain of command.¹⁴ Finally, PPD policies and procedures specifically require supervisors to ensure strict compliance with BWC policies or face discipline.¹⁵ PPD requires patrol precincts to reach a 90% BWC activation rate average across each precinct. If a precinct has failed to reach the 90% activation average, precinct leadership must explain the situation in monthly Compstat meetings, and discuss a strategy for compliance.

PPD's decade-long work with BWCs has allowed it to be a leader in the national conversation on how to use BWCs effectively. For example, former PPD leadership was extensively quoted in *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, a report from the Police Executive Research Forum and the DOJ's Community Oriented Policing Service.¹⁶ PPD also partnered with Arizona State University when it rolled out the BWC pilot program to help study the effect of BWCs on policing and plan for larger scale deployment of BWCs.¹⁷ That study showed encouraging early results and provided important recommendations for next steps. The DOJ also featured, through its National Institute of Justice, an extensive Arizona State University study of PPD's use of BWC cameras in December 2021.¹⁸ The study not

¹³ Ops. Order 4.49(10)(A)(2).

¹⁴ Ops. Order 4.49(10)(B), (C).

¹⁵ Ops. Order 4.49(12).

¹⁶ U.S. Dept. of Justice Office of Community Oriented Policing Services, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (2014), https://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf.

¹⁷ See also Charles Katz et al., *Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department*, ASU Center for Violence Prevention and Community Center (Dec. 2014), https://publicservice.asu.edu/sites/default/files/ppd_spi_feb_20_2015_final.pdf.

¹⁸ U.S. Dept. of Justice National Institute of Justice, *Program Profile: Police Body-Worn Cameras (Phoenix, Arizona)* (Dec. 6, 2021), <https://crimesolutions.ojp.gov/ratedprograms/730>.

only provides a roadmap for the deployment of BWC programs in other cities, but also showed that PPD's early investment in a BWC program worked. The results of the study – which the DOJ rated as “promising” – confirmed that the implementation of the BWC program yielded:

- A 96% decrease in citizen complaints as compared to an area where BWCs (at the time) had not been deployed;
- A 5.5% decrease in incidents involving proactive police contact; and
- A statistically significant increase in use of force incidents, which, while unexpected, provided invaluable data for improving training and ensuring the use of force was appropriate.

A 2018 study by the Police Executive Research Forum concluded that lawsuits against the department and money paid out from these lawsuits decreased significantly since the implementation of PPD's BWC program.¹⁹

Finally, BWC footage is an indispensable element in providing transparency to the community through the footage that is released to the public in connection with critical incidents.

C. #8CantWait

Following the murder of George Floyd in May 2020, Campaign Zero, a research-based platform created in August 2015, launched a campaign entitled “#8CantWait.” Designed to advance reform in police departments around the country, #8CantWait advocated for the development and implementation of eight specific policies whose goal was to reduce the number of civilians killed by police officers. The eight policies are:²⁰

- Establish ban on chokeholds and strangleholds
- Require de-escalation
- Require issuance of warnings before the use of deadly force
- Require exhaustion of all alternatives before using deadly force
- Adopt duty to intervene
- Ban shooting at moving vehicles

¹⁹ Police Executive Research Forum, *Cost and Benefits of Body-Worn Camera Deployments* at 11 (Apr. 2018), <https://www.policeforum.org/assets/BWCCostBenefit.pdf>.

²⁰ #8CantWait, <https://8cantwait.org/> (last visited January 9, 2024).

- Require adoption of the use of force continuum²¹
- Require comprehensive reporting on uses of force, including the reporting of gun-pointing incidents and other threats of force

Almost immediately, then-Chief Jeri Williams announced that PPD had already implemented many of the eight reforms and would promptly undertake the remainder – those relating to chokeholds, de-escalation, warnings before the use of deadly force, and the ban on shooting at moving vehicles. According to the #8CantWait website, PPD had implemented seven of the eight reforms as of July 2022.²² While PPD as a matter of policy and practice has required robust reporting of incidents involving shows of force (*e.g.*, gun pointing), the soon-to-be enacted revisions to its reporting policy (*i.e.*, Operations Order 1.5.02, which contains detailed instructions for reporting Shows of Force and Uses of Force) will meet the specific requirements of this “eighth” reform.

D. Additional Reforms

Nor were these the only major reforms implemented under Chief Williams. Other reforms included the following:

- *Tracking of Drawn Firearm Incidents.* PPD officers were required to document each time they drew their firearms during an encounter with civilians. In the first instance, this documentation requirement was implemented to address community concerns that PPD members were too quick to draw and use their firearms. Among other things, it was designed to show that PPD members discharged their firearms a small percentage of the times they were drawn. PPD’s data collection of these incidents began in August 2019 and has been shared publicly since August 2022.
- *Critical Incident Transparency Protocol.* To promote transparency with respect to the most potentially controversial encounters with civilians – including officer-involved shootings and other significant use of force incidents – PPD implemented a policy, starting in October 2019, of releasing to the public Critical Incident Briefings (CIBs) within 14 days of the incident.

²¹ The use of force continuum as envisioned in 2015 is no longer considered best practice, but the principles of the continuum continue to be observed.

²² #8CantWait, Phoenix, AZ, <https://8cantwait.org/> (last visited January 9, 2024) (accessed by selecting “Phoenix, AZ” from the homepage).

PPD's Critical Incident Transparency Protocol mandates the release of a video that consists of relevant video and audio footage, as well as other relevant information about the incident. The sources for the CIB video may include, among other materials, BWC video, the 911 calls relating to the incident, dispatch recordings, and any other relevant video.²³ Since the implementation of the CIB video policy, 104 videos have been released to the public, and numerous other law enforcement agencies have shown interest in adopting Phoenix's process for sharing information about critical incidents.

- *Creation of the Chief's Community Advisory Board Summit.* On February 13, 2020, PPD's Police Chief's Advisory Board Summit brought together representatives from all 12 of the Phoenix Police Department's Community Advisory Boards: the African-American Advisory Board, Arab Advisory Board, Asian Advisory Board, Cross-Disability Advisory Board, Faith-Based Advisory Board, Hispanic Advisory Board, Jewish Advisory Board, LGBTQ Advisory Board, Muslim Advisory Board, Native American Advisory Board, Refugee Advisory Board, and Sikh Advisory Board. The summit was sponsored by the National Police Foundation. It provided an opportunity for advisory board chairs, co-chairs, and members to connect directly with PPD Executive and Command staff, and to discuss issues identified by each of the boards.

PPD community advisory boards have existed in various forms since they were first used in 1967 to improve PPD's relationship with minority groups. The core values of the Community Advisory Boards are to: (i) Create unity and a climate of trust between and among the community and PPD; (ii) Provide a forum where the PPD can hear the community's concerns and collaborate to find solutions; and (iii) Improve the quality of life to all members of the Phoenix community.

- *Quality Assurance Sergeant Program.* Created in November 2020, the Quality Assurance Sergeant (QAS) is a precinct-based program intended to assure consistency in use of force reporting within the Patrol Division. Sergeants assigned as a QAS report directly to the precinct Commander and have the following responsibilities:
 - Review all precinct-based use of force reports
 - Review all precinct-based pointed-gun-at-person reports
 - Inspect/review random body-worn camera footage (described more fully above)
 - Analyze collision reports, incident reports, and use of force reports

²³ Phoenix Police Dept, *Critical Incident Transparency Protocol* (June 22, 2021)
https://www.phoenix.gov/policesite/Documents/Critical_Incident_Transparency_Protocol.pdf.

- Function as an in-house resource for patrol supervisors as they complete administrative reports
- *Arizona Law Enforcement Accreditation Program (ALEAP)*. Recognizing the importance of self-assessment and self-correction, in January 2021 PPD initiated the process of obtaining ALEAP accreditation, a rigorous two-year process culminating in on-site assessments evaluating compliance across 175 mandatory standards, all of which must be met. PPD views this accreditation as a useful tool for analyzing and tracking its performance against national best practices and obtained its accreditation in January 2023.
- *The DOJ's National Public Safety Partnership (PSP)*. In October 2021, two months after the announcement of the pattern-or-practice investigation, the DOJ announced that PPD was one of eleven law enforcement agencies selected to participate in the PSP program. Through the support of the DOJ and its partners, the PSP has enabled PPD to deploy many of the data-driven, evidence-based strategies described in this letter to meet the needs of the Phoenix communities.
- *Advanced Less-Lethal Program*. Following a pilot program evaluating the effectiveness and feasibility of using new less-lethal tools, PPD instituted the Advanced Less-Lethal Program. The goal of the program was to reduce lethal force encounters – specifically, officer-involved shootings – while successfully deescalating violent subjects utilizing two new platforms, a 40MM launcher and a PepperBall® launcher. These tools were not new to PPD, but their deployment to patrol was a key enhancement in expanding the available less-lethal force options.

The Advanced Less-Lethal Pilot Program was endorsed by a civilian community group comprised of the leaders of PPD advisory boards in February 2021, and began in October 2021. The pilot program consisted of 80 hours of training for 30 officers, focusing on de-escalation, communication, less-lethal deployment, force options, policy and case law, as well as scenario-driven reality-based training. At the conclusion of the training, the systems were deployed in two of the department's busiest precincts for two months, during which the new tools were discharged 34 times and there were no officer-involved shootings. After the two-month pilot program was successfully completed, the civilian board members unanimously approved the expansion of the program into a PPD-wide initiative.

As these many reform initiatives demonstrate, during the 2016 to 2021 time period – the years that serve as the center of the period under scrutiny by the DOJ – PPD was not a prisoner of the status quo. To the contrary, PPD was responding to changes in national best policing practices and the needs of the community, as well as

generating its own programs to improve its performance. As described below, however, the pace of reform reached an entirely new level beginning in mid-2022.

IV. The Hiring of Interim Chief Michael G. Sullivan

In May 2022, after serving for approximately six years as chief of police, PPD Chief Jeri Williams announced her resignation. Chief Williams began her career with PPD in 1989 and remained with PPD in various positions until 2011, when she was offered the position of chief in Oxnard, California. She served as chief in Oxnard for approximately five years before returning to Phoenix. As described above, her accomplishments in Phoenix included introducing body worn cameras, requiring documentation each time PPD officers drew their weapons, adopting less lethal responses to various encounters, and increasing transparency by releasing Critical Incident Videos within 14 days of the incident.²⁴

In selecting a replacement to serve as interim chief of PPD, City Manager Jeffrey Barton specifically sought someone with experience dealing with DOJ pattern-or-practice investigations and the reform process within police departments. On July 29, 2022, Mr. Barton announced the selection of Michael G. Sullivan to serve as interim chief of police:

“In the search for an interim Police Chief, it was my priority to identify a leader with the qualifications to guide the department through the DOJ investigation and propel the department forward. ... Sullivan brings 27 years of law enforcement experience to the table, and he has led police reform efforts for major cities. His experience working in collaboration with communities, the DOJ, federal court and more gives me confidence he has the experience necessary to step into the interim Phoenix Police Chief role during this important time.”²⁵

Interim Chief (IC) Sullivan had spent approximately 24 years with the Louisville Metro Police Department before being hired to serve as a deputy commissioner in the Baltimore Police Department (BPD). In Baltimore, he initially served as Deputy Commissioner for Operations and subsequently as Deputy Commissioner for Compliance. In the latter position, he was responsible for implementing the broad set of reforms mandated by the consent decree entered into by the City of Baltimore and the DOJ in 2017 following a pattern-or-practice investigation. Thus, he had experienced

²⁴ City of Phoenix, “Chief Williams to Retire After 33-year Career as Police Officer, 11 as Chief” (May 3, 2022), <https://www.phoenix.gov/newsroom/city-manager/2330>.

²⁵ City of Phoenix, “Phoenix City Manager Names Interim Police Chief” (July 29, 2022), <https://www.phoenix.gov/newsroom/city-manager/2425>.

the costs and benefits of the consent decree process. More importantly, he was a central participant in implementing cutting edge police reform.

Immediately upon his arrival in Phoenix in late September 2022, IC Sullivan began acting on his mandate for reform. At his formal swearing-in a month later, he emphasized that fighting crime is not antithetical to reform – indeed, in his view they go “hand in hand.”²⁶ He announced his goal of creating in PPD a “self-assessing and self-correcting” organization, skilled at identifying its own weaknesses and determining the appropriate remedies to address those weaknesses.²⁷ Over the past 16 months, IC Sullivan has devoted himself tirelessly to building on PPD’s strong foundation to bring meaningful change and reform to PPD and the City of Phoenix, as well as breaking down the barriers to change that exist not merely in every law enforcement agency, but in organizations of any size.

V. Use of Force

A. Policies

Within two months of his arrival in Phoenix, IC Sullivan began an effort to revise and update PPD’s use of force policy, because of its central role in regulating interactions between PPD members and Phoenix residents in the most difficult encounters. Together with outside experts and IC Sullivan’s executive team, PPD’s Continuous Improvement Unit (CIU) launched a holistic review of the existing policy, even though it had been revised as recently as July 2022. As part of that review process, the CIU reviewed the use of force policies in various jurisdictions, including numerous cities (Seattle, Baltimore, and Chicago) in which use of force policies have been revised as part of the consent decree process. These policies therefore had the approval of the DOJ, an independent monitor, and a federal judge.

Among the most significant changes made in the rebuilding of PPD’s use of force policy was the requirement that any use of force be not only reasonable but also proportional and necessary in the circumstances. This test is quite deliberately more stringent than the Constitutional minimum established by *Graham v. Conner*²⁸ – there are many instances in which the use of force may be reasonable and even proportional but not necessary. The requirement of necessity was designed to ensure that force was used only in circumstances when it was truly essential, not merely when it was

²⁶ Chelsea Curtis, *Michael Sullivan sworn in as Phoenix police chief*, Arizona Republic (Oct. 28, 2022), <https://www.azcentral.com/story/news/local/phoenix-breaking/2022/10/28/michael-sullivan-officially-sworn-new-phoenix-police-chief/10626827002/>.

²⁷ *Id.*

²⁸ 490 U.S. 386 (1989).

justifiable – in other words, to reduce the number of “lawful but awful” incidents.²⁹ This was consistent with the policy’s declaration enshrining the sanctity of human life as its first core principle.³⁰

In addition, the revised policy (updated again in May 2023) established three different categories of use of force – Levels 1, 2, and 3 – to categorize different types of force on a scale of seriousness.³¹ Level 1 was defined to include physical control techniques – such as wrist locks and the use of pressure points – designed to secure compliance, as well as forcible takedowns. Level 2 includes any use of force resulting in loss of consciousness; use of tasers; chemical spray; and less lethal launchers and munitions, among others. Level 3 includes the use of deadly force by means of a firearm; any use of force resulting in death or hospitalization; and the intentional use of a police vehicle to strike a person or other vehicle, among others. These carefully delineated levels of force are designed to provide added clarity for PPD officers and supervisors, and different organizational mechanisms for reviewing uses of force in each category.

Further, the reporting obligations for Level 1 uses of force will capture data not previously collected and systematically maintained.³² This enhanced data collection will enable PPD supervisors and management to develop a fuller understanding of the prevalence of low-level uses of force, and tailor supervisory approaches and training based on such data. Level 1 use of force data will be collected and reviewed at the precinct or bureau level. The framework and composition of these new accountability mechanisms are currently being developed.

Because of their smaller number and larger significance, Level 2 and Level 3 uses of force will be reviewed by newly-constituted entities. Level 2 uses of force will be reviewed by the Force Evaluation and Review Unit. Level 3 uses of force will be reviewed by the Critical Incident Response Team. Both units are new to PPD and will be based on similar structures in other jurisdictions that have proven successful in reviewing and analyzing uses of force.

²⁹ Kathleen Foody, *Questioning Blurs Meaning of ‘Lawful But Awful,’* The Associated Press (Apr. 7, 2021), <https://apnews.com/article/death-of-george-floyd-george-floyd-cba9d3991675231122e2b68fbd5b4b00>; Police Executive Research Forum, *Guiding Principles on Use of Force* at 32 (Mar. 2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>.

³⁰ Draft Ops. Order 1.5.00 (January 2023), www.phoenix.gov/policesite/Documents/1.5%20Use%20of%20Force%202023.pdf.

³¹ Draft Ops. Order 1.5.00(4) (May 2023); Draft Ops. Order 1.5.01 (May 2023).

³² Draft Ops. Order 1.5.02 (May 2023).

Other significant changes embedded in the new use of force policy include a new duty to intervene and a revised version of the pre-existing duty of PPD members to render medical aid.³³ The duty to intervene requires members of PPD to intervene, prevent, and stop misconduct or the excessive use of force whenever and wherever they observe it. This duty applies regardless of rank – it is blind to whether the person intervening is of higher or lower rank than the person requiring the intervention. This duty to intervene has been successfully established in the New Orleans and Baltimore Police Departments as the Ethical Policing is Courageous (EPIC) program³⁴ and is the basis for the Active Bystander for Law Enforcement (ABLE) Project at Georgetown University Law Center.³⁵ It will be described in more detail below.

The duty to provide medical aid, which was previously a separate policy, has been incorporated in the new use of force policy. Like requiring the use of force to be necessary, it is based on regard for the sanctity of human life and recognizes that prompt medical assistance can frequently be the difference between life and death. The revised policy requires officers and other PPD members to render medical aid consistent with their training, and to request that medical personnel come to the scene if appropriate.³⁶

Beyond the substantive reforms and the creation of new entities to review uses of force, PPD applied principles of full transparency to the development of its revised use of force policies. For the first time in its history, PPD released a draft of its use of force policies for internal and public review. The result was the receipt of approximately 800 internal and external comments on the initial draft, which was circulated in January 2023. The comments were reviewed and various changes were made to the policy in response to those comments. In May 2023, draft policies closely related to the foundational use of force policy – the Force Response Options and Use of Force Reporting policies – were circulated in draft form for both internal and public review. After reviewing the comments to these policies, the use of force policy was redrafted and the finalized policies were approved by IC Sullivan in October 2023. They will go

³³ Draft Ops. Order 1.5.00(2)(G), (H) (May 2023); *id.* (6)(A), (B); Draft Ops. Order 1.8 (April 2023).

³⁴ Jessica Anderson, *Baltimore Police are being trained to step in when fellow officers cross the line. Will it prevent misconduct?*, The Baltimore Sun (Apr. 19, 2021), <https://www.baltimoresun.com/news/crime/bs-pr-md-ci-police-epic-training-20210419-mnivh6szkrcw5mh7i357cuhki4-story.html>.

³⁵ *Id.*; Georgetown Law, *Active Bystandership for Law Enforcement (ABLE) Project*, <https://www.law.georgetown.edu/cics/able/> (last visited January 9, 2024). The duty to intervene is closely related to the prohibition on retaliating against PPD personnel who attempt to intervene. A draft of this policy was released for public comment in May 2023, and is currently in the process of being translated into Spanish.

³⁶ Draft Ops. Order 1.5.00(2)(H), (6)(B) (May 2023).

into effect and govern PPD members once the training of all PPD personnel on the new policies has been completed.

B. Training

New policies require new training. Officers cannot fairly be held accountable for following policies on which they have not been trained. The revisions to PPD's use of force policy require a carefully crafted training course that focuses on the important changes from previous policies. In August 2023, IC Sullivan announced a use of force training program consisting of 20 hours devoted exclusively to the new use of force policies. The milestones in the development of this training course are the completion of the initial training curriculum in December 2023, a pilot of the training for senior PPD executives and commanders in the first half of 2024, and the commencement of training for all PPD members in January 2024. Because of the size of the Phoenix Police Department, the completion of use of force training is projected to extend through the third quarter of 2024.

In addition to the two-day training course described above, numerous training programs related to the use of force have been provided to PPD members over the past year, including firearms, Pepperball®, small team tactics, tactical response, proactive enforcement, drawing from concealment, and low-light handgun. In addition, in 2022, updated de-escalation training was provided to all PPD members. The training focused on using elements of time, cover, and distance to reduce the risks that encounters would result in the use of serious or deadly force. PPD also continues to leverage its Academy curriculum and its eLearning platform to ensure members are trained early and often on these important concepts.

As mentioned above, ABLE training links the duty to intervene, which is part of PPD's new use of force policy, with the prohibition on retaliation against PPD members who attempt to intervene or report misconduct. ABLE is based on training developed originally by Dr. Ervin Staub at UMass Amherst specifically to help officers stop behavior by other officers that is harmful to themselves, their fellow officers, and members of the community. It was originally introduced in 2014 to the New Orleans Police Department as EPIC and has spread rapidly throughout the country. According to ABLE's website, as of December 2023 its model has been introduced to more than 370 law enforcement agencies around the country and more than 2,500 ABLE instructors have been certified by the program.³⁷

³⁷ Georgetown Law, *ABLE: About Us*, <https://www.law.georgetown.edu/cics/able/about-us/> (last visited January 9, 2024); Georgetown Law, *ABLE Agencies* (December 7, 2023), <https://www.law.georgetown.edu/cics/able/agencies-initiatives/> (list of all ABLE agencies available at <https://airtable.com/appHmGFY8MwGngfHA/shrtnoqhVd8ptO90J/tbllyrnw6OBOwxWBh>).

PPD was fully committed to ABLE even before IC Sullivan’s arrival: PPD was officially accepted into the program in August 2021. The training of PPD’s own ABLE trainers began in June 2022. As of the end of November 2023, a significant percentage of PPD’s membership have received ABLE training.

Recently introduced to PPD by IC Sullivan, the Integrating Communications, Assessment, and Tactics (ICAT) training program was developed by the Police Executive Research Forum (PERF), a well-respected law enforcement think tank. ICAT is an evidence-based approach to use of force training that emphasizes equipping officers with the skills, tools, and options that can help to defuse critical incidents. A database compiled by the *Washington Post* beginning in 2015 determined that approximately 410 of the average 1,026 people shot and killed by police officers each year were either unarmed or armed with a weapon other than a firearm, and approximately 96 of those 400 people had documented mental health issues at the time of the incident.³⁸ ICAT training specifically focuses on techniques to deal with people experiencing mental health or behavioral crises who are either unarmed or armed with weapons other than firearms. The ICAT training program consists of seven related modules, including crisis recognition, operational tactics, and dealing with “suicide by cop” situations.³⁹

At IC Sullivan’s direction, PPD personnel contacted PERF regarding ICAT in October 2022. The train-the-trainer process for ICAT in PPD began in January 2023 and ICAT training of PPD personnel began in April 2023. As of the end of November 2023, approximately 475 PPD members had undergone the training. The ICAT training is being conducted in partnership with the National Policing Institute, which will produce research based on the implementation of ICAT training within PPD.

C. Independent Review of Use of Force

During the DOJ investigation, the City and PPD commissioned an independent review of use of force incidents by Michael A. Davis of MBD Innovation (a policing and public safety consulting consortium based in Boston). Chief Davis is Vice President of Safety, Security and Policing at Northeastern University, whose main campus is in

³⁸ See Washington Post, *Fatal Force* (database last updated Dec. 31, 2023), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>. According to the database, 9,241 people were killed by police between January 1, 2015 and December 31, 2023. 3,783 people – approximately 41%--were not armed with a firearm. Within that group, 907 people – approximately 24% – were experiencing a mental health crisis.

³⁹ Police Executive Research Forum, *ICAT Training Guide*, <https://www.policeforum.org/icat-training-guide> (last visited January 9, 2024). “Suicide by cop” describes a situation in which a suicidal person causes a police officer to use lethal force against them. See Police Executive Research Forum, *Suicide by Cop: Protocol and Training Guide*, <https://www.policeforum.org/suicidebycop> (last visited January 9, 2024).

Boston but also has 12 additional campuses globally under his jurisdictional control. Prior to his work at Northeastern, Chief Davis served for almost 16 years with the Minneapolis Police Department, then nearly six years as Chief of Police with the Brooklyn Park (Minnesota) Police Department, the sixth largest police department in the state. As a consultant Chief Davis has served as a use of force expert in the DOJ's pattern-or-practice investigations of the Ferguson (Missouri) Police Department and the Cleveland Division of Police. In addition, Chief Davis has advised departments such as the Detroit Police Department (under the Violence Reduction Network), the Ohio State Patrol and the Tucson Police Department.

At PPD's request, Chief Davis reviewed 32 use of force cases handled at the precinct level. The time period for these cases was November 2022 through June 2023. As part of his analysis, Chief Davis reviewed the full set of materials necessary to assess the handling of the cases, including all documentation and relevant body worn camera footage. He evaluated the cases based on the requirements of PPD's use of force policy in effect at the time of his review. His review encompassed not only the initial documentation completed by the officer(s) using force, but also the successive reviews by multiple supervisors. Chief Davis assessed the component parts of the use of force reporting and review process – its accuracy, thoroughness, consistency with PPD policy, and review by PPD supervisors.

Chief Davis highlighted the extensive use of photos relevant to documenting the use of force and the broad scope of the BWC footage captured and included in the use of force review process. He concluded that this was consistent with best practices. He also set forth a set of six criteria that use of force reports should aspire to, including: 1) a full explanation of the context of the encounter; 2) a thorough description of the encounter from start to finish; 3) an explanation of why the officer used force, the resistance faced, and any attempts to de-escalate the situation; 4) the effectiveness of the force; 5) the results of the force, including any injuries; and 6) a list of any witnesses to the use of force. Although Chief Davis found that the information for most of the 32 cases was fully sufficient to document the use of force, he identified opportunities for reviewing supervisors to improve the process.

Importantly, in none of the 32 cases that Chief Davis reviewed did he find that the use of force violated existing PPD policy, although he made a helpful suggestion for PPD to consider a change to the policy governing conducted energy weapons (CEWs, better known as Tasers). More broadly, Chief Davis made three recommendations for improving the use of force documentation and supervisory review process. PPD has reviewed Chief Davis's recommendations and is working to implement them.

VI. Retaliation Against People Exercising First Amendment Rights

The protection and respect of citizens exercising their First Amendment Rights has been a top priority for reform since even before IC Sullivan took over the PPD, and he has reinforced its importance. IC Sullivan and department leadership are acutely aware of how the 2017 anti-protestor challenge coin incident and the department's handling of the 2020 demonstrations surrounding the death of George Floyd highlighted shortcomings in the way PPD responded to those isolated episodes and served to erode public trust. In response, PPD has been working to remedy these shortcomings and has made substantial progress in doing so.

A. PPD Has, At Times, Fallen Short in Its Treatment of Protestors and Police Protests

In particular, there are two highly-publicized episodes in which PPD's response to specific events highlighted shortcomings that have significantly guided PPD's reform efforts with respect to public demonstrations and the tension between effective crowd control and the need to respect First Amendment rights.

1. The 2017 Challenge Coin Incident

On August 22, 2017, a protest in downtown Phoenix in connection with a rally held by then-President Donald Trump turned violent, and PPD members deployed smoke grenades and other munitions at the protestors. One protestor was struck in the lower torso with a powder round and fell to the ground.⁴⁰ Because the shot appeared to have hit the protestor's groin area, images and other depictions of the protestor's injury began to circulate online. One cartoon image in particular – depicting a protestor with an impact to his groin – was circulated, including by certain members of PPD. It was later discovered that members of the department purchased (with their own money) and exchanged challenge coins⁴¹ inscribed with this cartoon image, the date August 22, 2017, and the slogans “Good Night Left Nut” and “Making America Great Again...One Nut at a Time.”⁴² An investigation of the incident was requested by the City and conducted by the Ballard Spahr law firm regarding ties between these slogans and hate speech and political speech, respectively, and regarding PPD knowledge or creation of the coins. Other similar memorabilia appear to have also been created in response to the August 22, 2017 event.

⁴⁰ Ballard Spahr, *City of Phoenix Challenge Coin Investigation* at 3 (Aug. 3, 2021), <https://www.phoenix.gov/citymanagersite/Documents/Challenge-Coin-Summary-Report-08-12-2021.pdf> (hereinafter “Challenge Coin Report”).

⁴¹ A challenge coin is a memorabilia item that officers in various law enforcement agencies, including PPD, exchange and collect. Challenge Coin Report at 6.

⁴² Challenge Coin Report at 6.

2. 2020 George Floyd Demonstrations

The 2020 protests in Phoenix following the murder of George Floyd were unprecedented in terms of size, intensity, and duration.⁴³ This series of protests began on May 28, 2020, and, during the first night, certain demonstrators marching on the State Capitol began throwing water bottles at police and rocks at a police cruiser near PPD Headquarters. PPD responded by deploying officers from its Downtown Operations Unit (DOU) and its Tactical Response Unit (TRU) which, at the time, were the units trained to respond to large-scale demonstrations. PPD declared an unlawful assembly later that evening and used tear gas to disperse the crowd. That night, eight individuals were arrested. The clash between police and protestors in front of PPD Headquarters intensified over the next three days, with PPD ultimately declaring an unlawful assembly each night and forcibly dispersing the crowd. On the nights of May 30 and May 31, PPD arrested a total of more than 300 people.⁴⁴

Periodic protests ranging from several hundred to up to 3,000 people continued for months thereafter. PPD has faced both criticism and litigation for the actions it took against the protestors in those months, including allegations of undue force and unjustified arrests. One particularly notable incident occurred on October 17, 2020 when fifteen individuals were arrested following a protest at University Park. Weeks later, the individuals were charged as members of a street gang. Investigations were conducted by both a former Maricopa County judge and Ballard Spahr, and both concluded these charges were inappropriate and there was possible misconduct by both the Maricopa County Attorney's Office and members of PPD. Serious administrative penalties were imposed on high-ranking PPD personnel, including the reassignment of three assistant chiefs to the commander level and the imposition of an eight-hour suspension on Chief Williams.

B. PPD's Response Based on Lessons Learned

PPD has made learning from these and other incidents a high priority for the Department. Since the fourth quarter of 2022, PPD has undertaken a top-to-bottom review of the policies, practices, and training initiatives at the heart of these episodes. Many of these reforms have already been implemented and more are still being developed. In the meantime, Phoenix has experienced numerous peaceful protests during which PPD's reforms and renewed focus on building relationships with the

⁴³ Perry Vandell and Katelyn Keenehan, *George Floyd's death launched months of protests across Arizona*, Arizona Republic (Dec. 26, 2020), <https://www.azcentral.com/in-depth/news/local/arizona/2020/12/26/arizona-2020-review-george-floyd-death-sparks-protests-change/6343395002/>.

⁴⁴ *Id.*

protesting groups were on full display. During 2023, PPD helped ensure safe and free expression at numerous demonstrations without any major incidents. Two recent examples are illustrative. First, on November 1, 2023, hundreds of citizens demonstrating against the Israel-Hamas conflict lined the outside of Chase Field following the elimination of the Arizona Diamondbacks from the World Series.⁴⁵ PPD obtained advance information about the demonstration, established a secure area for the demonstrators, and formulated a plan for how to avoid clashes between the 40,000 baseball fans and the demonstrators. When the disappointed fans left the stadium, emotions were high but, as planned, PPD successfully created a human barrier between the demonstrators and the fans ensuring the safe co-existence of both groups. There were no arrests or reported incidents. Second, a November 14, 2023 “sit-in” at the office of Senator Mark Kelly remained peaceful, with media reporting that PPD “spoke with representatives from the property and the group’s coordinators and designated an area where the group could ‘continue their activity without interfering [with] the daily business of the property.’”⁴⁶ In short, PPD’s efforts are working.

1. *Policy and Protocol Reforms*

PPD has revised its Civil Disturbance Response Plan, and drafted a new policy, aimed at responding to PPD’s previous shortcomings and increasing transparency to the community, and is in the process of rolling the policies out.

- *Civil Disturbance Response Plan.* The Civil Disturbance Response Plan draws heavily on policies and procedures from the Washington, D.C., Metropolitan Police Department’s Civil Disturbance Team and lessons learned from the 2020 protests.⁴⁷ Consistent with recent findings by the DOJ in connection with its investigation of the Minneapolis Police Department, the policy contains clear limitations on using less-lethal projectiles and chemicals – including that all such usage must be authorized by a commander – and adds additional requirements for reporting and reviewing uses of force during protests, including that all force is reviewed by the Force Evaluation and Review Unit.⁴⁸ Moreover, drawing on

⁴⁵ See Eshaan Sarup and Michelle Cruz, *Arizona Rally for Palestine Brings Awareness of War in Gaza to World Series Crowd*, Arizona Republic (Nov. 2, 2023), <https://www.azcentral.com/story/news/local/phoenix/2023/11/02/pro-palestine-protest-chase-field-world-series-game-5-phoenix/71417065007/>.

⁴⁶ Laura Daniella Sepulveda, *10 Protestors pushing for ceasefire in Israel arrested outside Sen. Mark Kelly’s office*, Arizona Republic (Nov. 15, 2023), <https://www.azcentral.com/story/news/politics/arizona/2023/11/14/protesters-urge-sen-mark-kelly-to-call-for-a-ceasefire-in-israel/71586027007/>.

⁴⁷ Draft Ops. Order 9.3 (October 2023).

⁴⁸ U.S. Dept. of Justice Civil Rights Division, *Investigation of the City of Minneapolis and the Minneapolis Police Department* at 54 (June 16, 2023), <https://www.justice.gov/d9/2023->

PPD's own experience during the 2020 protests, the policy contains detailed considerations for when and how protestors can be dispersed, emphasizing the important balance between First Amendment rights and public safety. Finally, the policy emphasizes communication over force. Police announcements during First Amendment assemblies must include repeated requests for peaceful protest and must provide an identified egress route for attendees.

- *First Amendment Facilitation & Management.* Recognizing that protests are not necessarily “civil disturbances,” PPD has created a separate First Amendment Facilitation & Management policy, which emphasizes PPD's commitment to all citizens' right to gather and protest.⁴⁹ The policy draws from other departments with similar DOJ-approved policies, including Baltimore, Seattle, and Chicago. Central to this new policy is increased scrutiny for officers who arrest protestors⁵⁰ and clear directions, in situations where detention is not deemed necessary, to cite and release arrestees.

These more “tactical” reforms are, of course, not a complete solution. Many of the anti-discrimination policies and trainings discussed in the previous section will equip PPD members with the knowledge, awareness, and understanding required to maintain respect for the protests and, importantly, to not view protesters as adversaries.⁵¹

PPD is also in the process of finalizing a Standards of Public Trust Policy that requires that all individuals who interact with police are treated with dignity and respect. The policy will be sent out for public comment in January 2024 and PPD's training programs, including its use of force training, will be updated accordingly. In addition, the soon-to-be-effective Duty to Intervene Policy places an affirmative duty on all PPD employees to “intervene to prevent or stop...[r]etaliatio[n] against an individual participating in 1st Amendment protected activity.”⁵² Finally, consistent with DOJ-approved policies in other cities, PPD trainings focus specifically on the scope of First Amendment rights – providing officers with specific information on precisely what the First Amendment protects.⁵³

[06/minneapolis_findings_report.pdf](#) (hereinafter “Minneapolis DOJ Report”); Draft Ops. Order 9.3 (October 2023).

⁴⁹ Draft Ops. Order 1.10 (October 2023).

⁵⁰ *Accord* Minneapolis DOJ Report at 54.

⁵¹ *Id.* at 54-55.

⁵² Draft Ops. Order 1.8(3)(A) (April 2023).

⁵³ Minneapolis DOJ Report at 54.

2. *Re-Constituting the Tactical Response Unit (TRU) as the Civil Disturbance Unit (CDU)*

Drawing on the lessons of the 2020 demonstrations, as well as the experience of a similar unit in Washington, D.C., PPD has created a new Civil Disturbance Unit (CDU), which will be provided (and will, in turn, provide PPD) with specialized training—overseen by the Training Bureau—in responding to demonstrations both large and small. In addition, the new CDU will work closely with PPD’s Community Engagement Bureau (CEB). CEB, in turn, has fostered direct relationships with community leaders and will communicate with these leaders in advance of demonstrations to understand the expectations of those leaders and keep lines of communication open during the protest. As noted above, CEB’s relationships with these community members have already ensured a number of safe, peaceful protests.

C. The Steps Taken Are Consistent with the Reforms and Recommendations Proposed by the DOJ in Other Cities

In Minneapolis and Louisville, where the DOJ has recently found shortcomings in this set of issues, the DOJ recommended reforms that focus on improved: (1) policies for protests and demonstrations; (2) officer accountability and reporting; (3) planning in advance of protests and demonstrations; (4) understanding by the department on what set of activities the First Amendment protects; and (5) understanding of the rules of engagement and de-escalation strategies.⁵⁴ The PPD initiatives described above demonstrate that meaningful improvement, consistent with the DOJ’s principles, has occurred in Phoenix and that PPD is committed to ensuring that progress continues.

VII. Discriminatory Policing

The DOJ has defined discriminatory policing as follows:

Discriminatory policing occurs when police officers and departments unfairly enforce the law—or fail to enforce the law—based on characteristics such as race, ethnicity, national origin, sex, religion, or LGBT status. Discriminatory policing may take the form of bias-based profiling, in which an officer impermissibly decides whom to stop, search, or arrest based upon one of the above-mentioned characteristics, rather than upon the appropriate consideration of reasonable suspicion or probable cause.

⁵⁴ See, e.g., Minneapolis DOJ Report at 86; U.S. Dept. of Justice Civil Rights Division, *Investigation of the Louisville Metro Police Department and Louisville Metro Government* at 83 (March 8, 2023), https://www.justice.gov/d9/press-releases/attachments/2023/03/08/2023.3.8_lmpd_findings_report_0.pdf (hereinafter “Louisville DOJ Report”).

Failing to provide police services to some persons or communities because of bias or stereotypes, or by not taking necessary steps to enable meaningful communication, also constitutes discriminatory policing. Discriminatory policing may also result when a police department selects particular enforcement and crime prevention tactics in certain communities or against certain individuals for reasons motivated by bias or stereotype.⁵⁵

This statement of the standard establishes a high bar to demonstrate discriminatory policing.

The fact that it is a bar seldom reached based on evidence, rather than suspicion or surmise, is confirmed by how infrequently the DOJ has found a police department to engage in discriminatory policing. According to our research, in only four out of the approximately 30 pattern-or-practice investigations that have been opened since 2010 has the DOJ made a finding of racially discriminatory policing. Here are the specifics of those four racial discrimination findings.

A. Maricopa County

In the DOJ's 2011 report on its investigation of the Maricopa County Sheriff's Office (MCSO), the DOJ based its finding of discriminatory law enforcement practice on four separate grounds. First, the DOJ had commissioned a statistical study that found Latino drivers were far more likely to be stopped than similarly-situated non-Latino drivers. Second, the DOJ reviewed traffic-related incident reports generated by the MCSO's Human Smuggling Unit, which showed that a large percentage of traffic stops of Latino drivers constituted violations of the Fourth Amendment. Third, the DOJ gathered numerous individual accounts suggesting that traffic stops of Latinos were made on a discriminatory basis. And fourth, the DOJ developed evidence of numerous episodes in which immigration-related crime suppression activities were initiated without evidence of criminal activity and were focused on Latinos.⁵⁶

B. New Orleans

In the DOJ's 2011 report on its investigation of the New Orleans Police Department (NOPD), the factual basis for the finding of discriminatory policing was weak on its face. It was based in part on a failure by NOPD to collect the robust arrest

⁵⁵ U.S. Dept. of Justice Civil Rights Division, *Investigation of the New Orleans Police Department* at ix (March 16, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf (hereinafter "New Orleans DOJ Report").

⁵⁶ U.S. Dept. of Justice Civil Rights Division, *United States' Investigation of the Maricopa County Sheriff's Office* at 3 (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

and related data necessary to demonstrate whether discriminatory policing took place—“NOPD has failed to take sufficient steps to detect, prevent, or address bias-based profiling and other forms of discriminatory policing on the basis of race.”⁵⁷ In addition, the DOJ said that it had received reports from community members that they subjectively believed themselves to have been targeted for stops, searches, and arrests based on their race, ethnicity, or membership in an LGBT population.⁵⁸

C. Ferguson

In the DOJ’s report on its investigation of Ferguson, Missouri, and the Ferguson Police Department, the finding of racial discrimination was based on the strong evidence of disproportionate impact of its law enforcement activities on African Americans. The data showed that 85% of Ferguson’s vehicle stops, 90% of its citations, and 93% of its arrests were of African Americans even though they comprised only 67% of its population.⁵⁹

D. Baltimore

In the DOJ’s report on its investigation of the City of Baltimore and the Baltimore Police Department (BPD), the finding of racial discrimination was based on data and other evidence that BPD’s enforcement activities were disproportionately aimed at African Americans, and that evidence of those disproportionate enforcement activities “suggested” intentional discrimination against African Americans. The DOJ summarized its finding as “using enforcement strategies that produce severe and unjustified disparities in the rate of stops, searches, and arrests of African Americans.”⁶⁰

* * *

We are aware of no such evidence of racially discriminatory practices by the Phoenix Police Department. Indeed, consistent with recommendations made by DOJ in numerous jurisdictions,⁶¹ PPD has taken numerous important steps to ensure it does not engage in discriminatory policing. With respect to training, in March 2019, in partnership with the National Training Institute on Race and Equity, PPD rolled out an

⁵⁷ New Orleans DOJ Report at 32.

⁵⁸ *Id.* at 34.

⁵⁹ U.S. Dept. of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* at 4-5 (March 4, 2015), https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf (hereinafter “Ferguson DOJ Report”)

⁶⁰ U.S. Dept. of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department* at 3 (Aug. 10, 2016), https://www.justice.gov/d9/bpd_findings_8-10-16.pdf (hereinafter “Baltimore DOJ Report”).

⁶¹ *See, e.g.*, Ferguson DOJ Report at 94.

eight-hour implicit bias training for all sworn and civilian employees. The department has since mandated an online refresher course in 2021 and 2023. With respect to policy, PPD has implemented a range of policies and procedures, including orders that provide broad prohibitions on bias-based policing,⁶² and that set appropriate parameters for police encounters with immigrants.⁶³

Moreover, as the DOJ is aware, within the past few months, its own Bureau of Justice Assistance (BJA) awarded a \$400,000 grant to PPD under the Matthew Shepard and James Byrd, Jr. Hate Crimes Program to prevent and address hate crimes. In awarding the grant, the BJA stated,

The Phoenix Police Department has continuously worked to promote civil rights, increase access to justice, support crime victims, protect the community from crime and evolving threats, and build trust between law enforcement and the community.⁶⁴

It would be virtually impossible to reconcile the DOJ providing a sizable grant to PPD in recognition of its commitment to civil rights in the later stages of a pattern-or-practice investigation that subsequently finds the same department guilty of engaging in discriminatory policing. But that is exactly what the DOJ would be doing if it makes that finding.

Even though Phoenix and PPD are unaware of any credible evidence of discriminatory policing, the City and PPD have commissioned a data intensive analysis of PPD law enforcement practices by Steven Raphael to determine whether the data reflect any evidence of discrimination. Professor Raphael is a Professor of Public Policy at UC Berkeley and holds the James D. Marver Chair at the Goldman School of Public Policy. His research focuses on, among other things, the economics of crime and corrections.⁶⁵ His work is ongoing.

VIII. Accountability Systems Enhancements

PPD's reforms to its accountability systems are driven by the recognition that holding its members to account for misconduct, including the excessive use of force, is

⁶² Ops. Order 1.6.

⁶³ Ops. Order 4.48.

⁶⁴ U.S. Dept. of Justice Bureau of Justice Assistance, *Phoenix Police Department BJA FY 23 Matthew Shepard and James Byrd, Jr. Hate Crimes*, <https://bja.ojp.gov/funding/awards/15pbja-23-gg-05363-hate> (last visited January 9, 2024).

⁶⁵ Berkeley Public Policy, *Steven Raphael*, <https://gspp.berkeley.edu/research-and-impact/faculty/steven-raphael> (last visited January 9, 2024).

critical to maintaining the public trust. Allegations of misconduct must be thoroughly investigated in a timely, objective manner and appropriate discipline for those found to have engaged in misconduct must be imposed. In addition, successful systems of accountability ensure that the results of these investigations inform continuous improvement to PPD's policies, protocols, and trainings.

In October 2023, IC Sullivan and PPD leadership directed the department to undertake a substantial transformation of PPD's systems of accountability. In December 2023, PPD leadership approved the framework for broad changes in PPD's accountability systems, and this month workgroups are beginning to implement these major pieces of the new accountability system:

- Developing enhanced systems of accountability policies and workflows in consultation with industry leaders and other law enforcements agencies (including the Baltimore Police Department);
- Identifying areas where new technology solutions can increase the efficiency and effectiveness of these systems (*e.g.* a web portal for complaints and other feedback);
- Restructuring PPD's Critical Incident Review Board and Discipline Review Board into a Performance Review Board model with review boards at the executive and command level;
- Ensuring that employee development and discipline are separate both in policy and in practice; and
- Ensuring all employees are adequately trained on all changes to the policies and procedures.

PPD aims to begin the rollout of these initiatives and training immediately after completing the revised Use of Force policy training. PPD anticipates this will occur in the third quarter of 2024.

A. The Organizational Integrity Bureau

At the forefront of these reforms is the new Organizational Integrity Bureau (OIB), which contains the Continuous Improvement Unit, the Quality Assurance and Standards Unit, and the Force Evaluation and Review Unit. This structure ensures that all units with responsibilities for making organizational assessments and reforms are overseen by a single Bureau to ensure consistency and accountability. The OIB commander will also be responsible for all of PPD's behavioral health initiatives. Reporting to the OIB commander is a newly-hired Special Projects Administrator who

will manage all reform and continuous improvement projects. The OIB Commander and the Special Projects Administrator will bring a consistent approach to reform efforts, including using a formal project management methodology.

The Quality Assurance and Standards Unit will become the data center of PPD. It will conduct audits, assessments, and program evaluations while also maintaining public dashboards that will keep the public informed on a variety of issues on a real-time basis. It will also be responsible for maintaining PPD's current accredited status in the Arizona Law Enforcement Accreditation Program. OIB will also work with the Continuous Improvement Unit to drive policymaking. PPD is in the process of substantially expanding the policy group to identify best practices and support reform efforts.

B. Robust Investigation into Use of Force Incidents

PPD's investigation of use of force incidents is among the most substantial reforms in this area. Many of these reforms are already being implemented, with the rest to be implemented in 2024. In addition to these reforms, as described above, PPD commissioned a review of randomly selected lower level use of force incidents by use of force expert Michael Davis. *See Section V.C, supra.*

1. *Force Evaluation Team/Force Evaluation and Review Team*

Beginning in September 2022, PPD began a Force Evaluation Team (FET) pilot program. The FET is intended to serve as an additional layer of review and accountability for investigations of use of force that are conducted at the precinct-level. It will review all use of force investigations that involve:

- Any tool or instrument strike in a non-target area (fists, kicks, less lethal, taser, etc.);
- Any force resulting in a broken bone or hospitalization;
- Any strikes to a handcuffed person;
- Any taser discharge involving three or more cycles; and
- Any protest-related use of force

As discussed below, more serious uses of force will be investigated by the Critical Incident Review Team (CIRT). The FET pilot program, to date, has been a success. The FET has reviewed over 100 investigations: 15% of the investigations were deemed incomplete or insufficient and transferred to the Professional Standards Bureau for additional investigation, and 40% were referred to the Training Bureau to ensure additional training for both individual officers and entire squads.

The FET is in the process of scaling up and has been renamed the Force Evaluation and Review Unit (“FERU”). In October 2023, a full-time lieutenant (assigned to OIB) was chosen to lead the unit and its five sergeants, all of whom have been selected. To ensure FERU is in a position to provide the most meaningful analysis and training recommendations, each member of the FERU will receive training certifications in a range of policing skills, including defensive tactics, firearms, 40mm, Pepperball®, and Electronic Control Weapons (ECW, commonly known as tasers), and will be considered subject matter experts for force investigations once they are trained and certified). FERU is projected to be fully operational around the third quarter of 2024 and will review all Level 2 uses of force to ensure compliance with PPD policy.

2. *Critical Incident Response Team*

The CIRT will investigate all Level 3 uses of force and, where appropriate, respond to the scene. These include:

- Officer-involved shootings;
- In-custody deaths;
- Uses of force resulting in serious physical injury or injury requiring hospitalization; and
- Intentional use of a police vehicle to strike a pedestrian, cyclist, or occupied vehicle.

The CIRT members will be required to be certified in defensive tactics, firearms, 40mm, Pepperball®, and ECW and will be considered subject matter experts for force investigations once they are trained and certified. The CIRT is currently being developed, and PPD expects it will be operating by the third quarter of 2024.

3. *Performance Review Boards*

The Performance Review Board initiative will play an important role in driving change in the Department’s accountability systems. Consistent with DOJ recommendations in other cities, these boards will identify patterns and recommend immediate reforms based on a specific incident or set of incidents and will provide investigative direction to the Professional Standards Bureau for specific types of misconduct and/or policy violations – ensuring that PPD is always a “self-evaluating and self-correcting agency.”⁶⁶ PPD is in the process of developing “executive level” and “command level” Performance Review Boards.

While the structure and tasks of the boards are still under review to ensure consistency with state law, at the executive level the Performance Review Board is

⁶⁶ Louisville DOJ Report at 20.

expected to review all serious uses of force within thirty days of occurrence. The board will be made up of three assistant chiefs along with representatives from the community, labor unions, PPD rank-and-file, training, legal, and the Office of Accountability and Transparency.

The command-level Performance Review Boards are anticipated to review a sampling of Level 2 use of force incidents from the previous 30 days. These boards will be chaired by three commanders and will similarly include representation from the community, labor unions, PPD rank-and-file, training, legal, and the Office of Accountability and Transparency. Consistent with DOJ recommendations in other cities, this additional layer of review assures consistent accountability and transparency.⁶⁷

C. Complementary Policies That Will Enhance Accountability

Complementing these numerous steps to enhance accountability are several other policies and training initiatives that are also in the process of development and implementation, including:

- *Standards of Public Trust Policy (forthcoming Operations Order 1.7)* – this policy will make explicit that PPD officers are *required* to ensure “the perception of fairness” in all police encounters by, among other things, “treating all persons with dignity and respect” and “giving persons a voice during encounters.”⁶⁸ Despite the Order not yet being final, the substance of the Order is part of PPD’s current 20-hour use of force training.
- *Duty to Intervene Policy (forthcoming Operations Order 1.8)* – as described above, the policy will mandate PPD employees to verbally and/or physically intervene in situations involving excessive force, unconstitutional or unlawful searches or other actions, discriminatory policing, and retaliation against protected First Amendment activity.⁶⁹ It also requires that employees, wherever possible, take a “preventative approach” to unethical or inappropriate behavior that is about to occur and requires the member to contact a supervisor immediately when intervention is not successful. The substance of the order is part of PPD’s current 20-hour use of force training.
- *Prohibition Against Retaliation Policy (forthcoming Operations Order 1.9)* – PPD’s Community Engagement Bureau was tasked with looking at policies from cities

⁶⁷ See, e.g., Minneapolis DOJ Report at 87.

⁶⁸ See, e.g., Draft Ops. Order 1.7(1)(A) (October 2023).

⁶⁹ Draft Ops. Order 1.8(3)(A) (April 2023).

including Dallas and Chicago and materials from the ABLE Project to draft a policy that prohibits PPD employees from retaliating – in any way – against anyone attempting to intervene or report misconduct. The policy has been largely drafted, and PPD is awaiting additional comments from the public before finalizing. The current draft construes “retaliation” broadly to include “any ... conduct deterring the exercises of employee rights.”⁷⁰ It also makes clear that the failure to act on retaliation complaints subjects supervisors to discipline.⁷¹ Training on the policy began in December 2023 as part of PPD’s 20-hour use of force training.

- *CompStat*. PPD’s adoption of a CompStat model in August 2023 will, among other things, add a layer of accountability for PPD leadership. The CompStat model will track data, including training compliance, policy compliance, budget/overtime compliance, response times, and staffing to monitor the effectiveness of PPD leaders in key areas in holding their teams accountable.
- *Evertel Messaging*. In the summer of 2023, PPD rolled out the Evertel messaging platform. Requiring all members to use Evertel fosters better collaboration, while ensuring communications are secure and appropriately retained.

D. Office of Accountability and Transparency

As an additional layer of accountability, in 2021, the City of Phoenix created the Office of Accountability and Transparency (“OAT”).⁷² Consistent with DOJ’s recommendations in other cities, OAT provides robust, independent, civilian review of the PPD.⁷³ OAT is an office under the City Manager responsible for monitoring allegations or complaints received against PPD. It is led by Director Roger Smith, who was hired in December 2021. The office currently has a staff of 15, including Mr. Smith.

OAT has “mandatory jurisdiction” to monitor PPD’s investigation of any: (i) officer-involved shooting; (ii) in-custody death; (iii) duty-related incident involving death or serious bodily injury; (iv) incident in which sworn personnel are under investigation for homicide, assault, kidnapping or unlawful sexual behavior; (iv) incident in which sworn personnel are under investigation for a misdemeanor or local law violation in which a use of force or threatened use of force is an element of the

⁷⁰ Draft Ops. Order 1.9(3)(B) (October 2023).

⁷¹ Draft Ops. Order 1.9(4)(A) (October 2023).

⁷² See City of Phoenix Code §§ 20-1 – 20-26; City of Phoenix, *Office of Accountability & Transparency*, <https://www.phoenix.gov/accountability> (last visited January 9, 2024).

⁷³ See, e.g., Baltimore DOJ Report at 147-149.

offense; or (v) misconduct by sworn personnel when the City Manager so requests.⁷⁴ The OAT also has discretion to monitor other PPD investigations that it believes are in the City's interest to have monitored.⁷⁵ PPD is required to promptly report to OAT all incidents that fall under its mandatory jurisdiction. OAT also receives civilian complaints and feedback through phone, email, mail, and walk-ins to its office.⁷⁶

A Memorandum of Understanding between PPD and OAT requires PPD to provide OAT access to videos, documents, and other evidence needed to monitor an investigation.⁷⁷ OAT's monitoring culminates in a publicly released Monitoring Report. The reports consider among other things the investigation's sufficiency, tactics, timeliness, reliability, disciplinary recommendations, and policy considerations. The report also specifically notes any circumstances where OAT did not receive full or timely cooperation from PPD.⁷⁸

IX. Responses to People with Mental Health Needs

PPD recognizes its legal and moral imperative to ensure that it responds to all situations involving people with mental health needs⁷⁹ with knowledge, care, and respect for these individuals' right to public services in the most integrated, appropriate setting.⁸⁰ To meet this imperative, beginning in 2015, after the tragic death of Michelle Cusseaux, PPD initiated a wide range of reforms, including revised policies and training and the creation of a Crisis Intervention Team ("CIT") squad. In the years that have followed, PPD has only increased its commitment.

PPD has subsequently done quite a bit more in this area, as evidenced by the many ongoing initiatives discussed below. But, at the outset, it is important to point out that PPD's commitment to improvement is demonstrated by the leading role it has played – and continues to play – in the national conversation on crisis intervention best

⁷⁴ City of Phoenix Code § 20-6(B).

⁷⁵ City of Phoenix Code §§ 20-7.

⁷⁶ Phoenix Office of Accountability and Transparency, *Quarterly Report July 1 – Sept. 30, 2023* at 5, https://www.phoenix.gov/accountabilitysite/Documents/OAT_2023_Q3_Report.pdf.

⁷⁷ Memorandum of Understanding Between The Office of Accountability and Transparency and the Phoenix Police Department (Apr. 3, 2023), <https://www.phoenix.gov/accountabilitysite/Documents/Signed-MOU-COP-OAT-PD.pdf>.

⁷⁸ Phoenix Office of Accountability and Transparency, *Annual Report 2023* at 12 (Mar. 30, 2023), https://www.phoenix.gov/accountabilitysite/Documents/OAT_AnnualReport_2023.pdf.

⁷⁹ The term "mental health needs" is intended to encompass individuals with psychological, cognitive, developmental or behavioral disabilities as well as individuals in acute mental health crises.

⁸⁰ See, e.g., 28 C.F.R. § 35.130(b)(7).

practices. PPD regularly hosts and models for other police departments best practices for forming and training CITs.⁸¹ Moreover, PPD Detective Sabrina C. Taylor, the Department's CIT Training coordinator since 2016, actively serves on the board of CIT International, a global non-profit that assists communities worldwide with crisis response.⁸² Detective Taylor was one of the primary authors of CIT International's *Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises*.⁸³ This important publication – and much of the work of CIT International – has been featured by the Department of Justice in its own writings on the topic.⁸⁴ This guide has served as an important reference for police departments, including PPD, looking to adopt best practices.

Finally, mental health care professionals have praised the “Arizona model” of “alternative” crisis response and have noted PPD's leading role in developing and implementing that model. A 2020 article from Crisis Now – a leading association of government and non-profit mental health leaders – highlighted that the Arizona model for crisis care “has gained nationwide attention, and other states are taking notice and working to replicate the model.”⁸⁵ According to the article, PPD's CIT program coordinators had been key players in originally developing the Phoenix area's “crisis care continuum,” which relies on the interplay of call centers, medical providers, in-patient facilitates, and law enforcement.⁸⁶ Data published by Crisis Now from its study of the Arizona model in the Greater Phoenix area suggests that 86% of all crisis presentations were diverted from hospitalization into more appropriately tailored, less

⁸¹A 2017 report from the New York City Police Department's Inspector General on the NYPD's response to crisis situations stated that it looked to PPD as an example of a department with a “well-established” CIT program “that had successfully improved police responses to people in crisis.” See OIG-NYPD, *Putting Training into Practice: A Review of NYPD's Approach to Handling Interactions with People in Mental Crisis* (Jan. 2017), <https://www.nyc.gov/assets/doi/reports/pdf/2017/2017-01-19-OIGNYPDCIT-Report.pdf>.

⁸² CIT International, *Sabrina Taylor*, <https://www.citinternational.org/Sabrina-C.Taylor> (last visited January 9, 2024).

⁸³ L. Usher, et al., *Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises*, CIT International (Aug. 2019), [https://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019_08_16%20\(1\).pdf](https://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019_08_16%20(1).pdf) (hereinafter “CIT Best Practice Guide”).

⁸⁴ See, e.g., U.S. Dept. of Justice Community Oriented Policing Services, *Best Practices for Addressing Mental Health Crises in the Community*, Dispatch 13:7 (July 2020), <https://cops.usdoj.gov/html/dispatch/07-2020/cit.html>.

⁸⁵ Stephanie Hepburn, *Stateline Takes a Deep Dive Into the 'Arizona Model' for Crisis Care*, Crisis Talk (Feb. 24 2020), <https://talk.crisisnow.com/stateline-takes-a-deep-dive-into-the-arizona-model-for-crisis-care/>.

⁸⁶ *Id.*

restrictive levels of care.⁸⁷ Data from 2016 for Maricopa County suggests that these efforts saved \$260 million in hospital spending, \$37 million in emergency department spending, 45 *years-worth* of emergency department psychiatric boarding hours, and 37 full-time equivalents of police officer time and salary.⁸⁸

PPD data confirms that these reforms are improving the experiences of people with mental health issues who previously were handled by a system that relied solely on a law enforcement response. Currently, approximately 10% of calls to dispatchers involve individuals with mental health needs, and thousands are resolved over the phone by dispatchers or Solari Crisis and Human Services (“Solari”),⁸⁹ the non-profit that serves as PPD’s partner in crisis response. Moreover, throughout 2023, PPD dispatched a Behavioral Health or Community Response unit (without a police co-response) nearly 7,000 times – a significant increase from 2022. Each of these diversions ensures that these individuals receive a clinically appropriate, tailored responses to their needs, while mitigating unnecessary police response or hospitalization.

PPD understands that it has not always lived up to its reputation as a leader in this space. The deaths of individuals with reported mental health issues at the hands of PPD officers, including the deaths of Ali Osman and Cosme Medina Nunez, are tragic reminders of the critical stakes of these efforts. As discussed below, PPD will continue to collaborate with a wide-range of stakeholders and experts to improve its response to the unique challenges posed by situations involving people with mental health needs. It is actively doing so and will continue to make this issue a priority.

⁸⁷ Group for the Advancement of Psychiatry, *Roadmap to the Ideal Crisis System*, National Council for Mental Wellbeing at 108 (March 2021), https://www.thenationalcouncil.org/resources/roadmap-to-the-ideal-crisis-system/?gclid=CjwKCAjw8-OhBhB5EiwADyoY1RSm8N3ZInciZNoqvfNWQdSDJmQ-OfaJFX0i7It3tAAiEngK8ROZlxoC1T8QAvD_BwE; National Action Alliance for Suicide Prevention, *How Does Your Crisis System Flow?*, <https://crisisnow.com/wp-content/uploads/2020/02/CrisisNow-HowDoesThatFlow.pdf>.

⁸⁸ M.E. Balfour, *et al.*, *Cops, Clinicians, or Both? Collaborative Approaches to Responding to Behavioral Health Emergencies*, National Association of State Mental Health Program Directors at 12 (Aug. 2020), <https://www.nasmhpd.org/sites/default/files/2020paper11.pdf>.

Dr. Thomas Insel, the former director of the National Institute of Mental Health, similarly mentioned Phoenix’s success in his 2022 book *Healing: Our Path from Mental Illness to Mental Health*. Further, a September 2023 report from the Vitalyst Health Foundation, which involved extensive surveys of key constituencies in the Arizona crisis response chain, concluded that, “Overall, the investments and strategies implemented in Arizona are paving the way for more comprehensive and compassionate approaches to mental health crisis response. By diverting individuals from the criminal justice system and emergency departments and connecting them with appropriate support, Arizona is prioritizing the well-being and care of its residents facing mental health crises.” See Vitalyst Health Foundation, *Arizona First Responder Systems and Mental Health Integration* at 14 (Sept 2023), <https://vitalysthealth.org/wp-content/uploads/2023/09/VHF-FrstRspndrs-SprkRprt0923-FNL.pdf> (“Vitalyst Report”).

⁸⁹ Solari, *Our Programs*, <https://solari-inc.org/programs/> (last visited January 9, 2024).

A. Creation of Crisis Intervention Team

While PPD has employed CIT since 2001, the creation of the PPD CIT Squad in 2015 was a critical moment in reform efforts.⁹⁰ In 2015, the squad was made up of seven members who received continuous training on crisis intervention and were dispatched to as many calls involving mental health emergencies as possible.⁹¹ The CIT Squad's size, training, and mission has since expanded, though staffing shortages have temporarily curtailed further expansion. There are now two CIT squads that monitor radio traffic and respond to situations where a CIT response would be appropriate. The CIT squad or any of over 300 patrol certified CIT officers can also be requested by a patrol officer who responds to the scene and ascertains that additional support from CIT would be beneficial.

As discussed below, members of the CIT team also facilitate training for the department on crisis intervention and addressing individuals with mental health needs. In particular, members of the CIT squad partner with other leaders of its regional collaborators to train patrol officers and other key personnel in an intensive 40-hour crisis response program. Upon completing this training, CIT-trained officers can respond to calls involving people with mental health needs – ensuring that trained personnel can respond to these calls when members of the CIT squad cannot.

Members of the CIT team, including Detective Taylor, also regularly collaborate with other first responders and care providers on the crisis care continuum and perform training for the community on police culture and what to expect if you call the PPD.

B. Integrated Crisis Response Systems

A successful CIT program must have an “integrated crisis response” system.⁹² In the last five years, PPD has invested considerable time and resources – developing training, policies, and procedures – to ensure that all service calls involving individuals with health needs receive an integrated, appropriately tailored response from PPD and its partners. This system stands in stark contrast to other cities where the DOJ has investigated similar issues. In Portland, for example, DOJ observed that the “Crisis

⁹⁰ DOJ has repeatedly endorsed the “CIT model” in its pattern and practice investigations. See, e.g., U.S. Dept. of Justice Civil Rights Division, *Investigation of the Portland (Oregon) Police Department* at 4 (Sept. 12, 2012), <https://www.justice.gov/iso/opa/resources/9362012917111254750409.pdf> (hereinafter “Portland DOJ Report”).

⁹¹ Megan Cassidy, *Phoenix police assemble dedicated mental-health squad*, Arizona Republic, (Mar. 16, 2015), <https://www.azcentral.com/story/news/local/phoenix/2015/03/17/phoenix-police-assemble-dedicated-mental-health-squad/24886601/>.

⁹² CIT Best Practice Guide at 52, 56-57.

Response Unit” was made up of a single patrol car with one officer paired with a mental health official who worked four days per week.⁹³

We highlight the key portions of Phoenix’s integrated crisis response system below.

1. *Dispatch and Telephonic Interventions*

A critical first-step in ensuring an appropriate response to mental health needs service calls is the triage that occurs at the time of the call to 9-1-1. PPD’s Communications Bureau has received significant training, beginning in January 2019, on how to effectively triage and dispatch these calls. PPD has partnered with Solari to staff the Communications Bureau with highly-trained staff members who can assist dispatchers in real time with triaging, answer post-hoc questions, and provide real-time training for the dispatchers.

This partnership is a two-way street. On one hand, dispatchers and Solari professionals can, as appropriate, work together to “warm transfer” callers directly to mental health professionals at the 9-8-8 call center to mitigate the need for unnecessary police and response and to ensure the caller gets the least traumatic, least restrictive, evidence-based assistance with their emergency.⁹⁴ On the other hand, dispatchers are also trained to accept calls involving high risk of injury or violence *from* 9-8-8. During these calls, the 9-8-8 professional remains on the call to support the caller while working with the dispatcher to assemble a co-response of police (if needed) and a mobile crisis team. By January 2021, PPD had implemented a new policy manual for the Communications Bureau. In consultation with Solari and community partners, the manual, among other things, requires dispatchers to ask an additional four behavioral health screening questions to all incoming callers to help assess what, if any, integrated crisis response is required.

In 2022, an additional round of training was provided to Communications employees, which was intended to align with the mental health training received by patrol officers. And in 2023, Communications Bureau Shift Manager Myla Marovich was awarded CIT International’s CIT Telecommunicator of the Year for the creation and continued expansion of call diversion for PPD.

⁹³ Portland DOJ Report at 20-21.

⁹⁴ Of the approximately 33,500 calls made to Solari state-wide in May 2023, only 3% needed to be referred to law enforcement. In those instances, PPD dispatchers will generally assemble a co-response between PPD and mental health professions. A substantial portion of those calls (70%) resulted in “community stabilization” – *i.e.*, individuals experiencing crisis remaining in place and crisis system providers supporting their care over the phone. Vitalyst Report at 10.

2. *Mobile Crisis Teams*

Maricopa County partners with five state-funded community health providers that can dispatch Mobile Crisis Teams. These teams fall outside of the PPD chain of command and are generally dispatched by the state-wide 9-8-8 system where community stabilization is not possible. If a PPD member determines that a Mobile Crisis Team is required upon arriving on the scene, the member can request one through dispatch, which works seamlessly with Solari. Mobile Crisis Teams generally include a master's degree-level mental health clinician and a specially-trained behavioral health technician.

PPD has invested in its relationships with these community health partners to ensure robust, open dialogue and real-time assessment and improvement. Much of this dialogue occurs informally between Detective Taylor and her team and her counterparts at the community health partners. In addition, as discussed further below, several of these community partners also sit on PPD's Crisis Intervention Review Committee, which reviews PPD responses and discusses ways that care can be improved across the entire mental health care continuum. According to one survey of local mental health crisis providers, PPD accounted for 15,000 referrals to mobile crisis teams and crisis walk-in providers in 2021 and 12,000 referrals in 2022.⁹⁵

3. *The Community Assistance Program: Behavioral Health Units and Crisis Response Units*

In 2018, PPD recognized that its members were not consistently seeking assistance from the Mobile Crisis Teams. This lack of consistency appeared to be driven by two factors: (1) state-funding limitations that made it difficult to always have a mobile crisis team dispatched and (2) PPD members were hesitant to "pass off" service calls to non-PPD personnel. In response to this issue, PPD leadership sought funding from the City Council to build its own mobile crisis units.

The funding resulted in the \$15 million Community Assistance Program (CAP), which was funded in part by a "Smart Cities" grant. Through this program, PPD, in coordination with other PPD first response organizations, developed a plan to improve and expand their Community Response units (CRUs) while creating an additional fleet of units specializing in Behavioral Health (BHUs), both to be housed under a new Community Assistance Program within the Fire Department.

The City allocated over 150 positions to staff the CAP program and has since been able to fill close to 80 of these positions; the City is still aggressively seeking to fill the remaining positions. Similar to some mobile crisis teams, BHU teams are staffed

⁹⁵ Vitalyst Report at 6.

with a city-employed (masters-level) clinician along with a peer (a person with lived experience) who meets the qualifications of a Behavioral Health Technician employed by one of the community health partners (which PPD funds) and can be dispatched directly from the Communications Bureau. The private-public partnership within BHU creates a powerful synergy. The city-employed member of the team provides more direct accountability to PPD and mitigates perceived police and fire department member reluctance to use “alternative” responders. The community partner ensures an effective “hand-off” between PPD and the local care continuum – facilitating the placement of the individual with mental health needs with the partner organization, which can then manage the individual’s subsequent care. To date, BHUs have been a success. They have decreased response times, ensured more calls involving individuals with mental health needs get an appropriately-tailored response, and increased accountability and control over this process for PPD.

The Crisis Response Unit was initially a volunteer program but was funded and professionalized through the Community Assistance Program. These teams are principally responsible for assisting individuals who are experiencing trauma or devastating circumstances – *e.g.*, they were the victim of a crime, their house burned down, or someone close to them died. While the Crisis Response Unit can work alongside PPD or BHU during a response, its mission is more about guiding the individual through these difficult situations (*e.g.*, helping someone find a mortuary).

4. *Police Co-Response and the CIT Squad*

For cases requiring police response, PPD has policies and procedures geared toward ensuring the individualized needs of each service call are met. As discussed above, Communications Bureau dispatchers are trained to determine when a police response is necessary and can craft a joint police and mobile crisis team/BHU co-response within moments of receiving a service call.

Dispatchers can also make a specific radio request for a CIT-trained officer to respond to the scene. To date, over 300 officers in patrol are CIT trained with additional quarterly training scheduled to compensate for attrition, assignments to specialized units, and to increase the total number of officers with CIT training. In parallel, members of the CIT Squad monitor the radio and can immediately deploy, as needed. When a PPD officer responds to a scene where it becomes apparent that a co-response with mental health professionals would be helpful or appropriate, PPD members are trained to radio or call for mobile crisis teams or contact Solari directly for additional support over the phone.

PPD’s response to situations involving individuals with mental health needs is governed by Operations Order 4.15. That Order currently leaves it to the responding officer’s discretion whether to seek the assistance of a mobile crisis team or CIT-trained

officer.⁹⁶ At present, PPD believes that the policy should leave it to the sound discretion of the officer whether additional support is needed rather than attempt to mandate specific responses for particular types of circumstances. This is because there is a virtually limitless array of situations that can occur involving individuals with mental health needs, and PPD recognizes that each response must be appropriately tailored to the specific needs of the individual and the situation. If PPD were to define particular circumstances where a specific type of response is mandated, there would likely be a great number of circumstances where the wrong resources are deployed. PPD believes strongly that it can train its personnel, leveraging Solari and its community health partners, to reliably assess these situations in real time and work collaboratively to deploy the most appropriate response.

On the whole, PPD has seen a consistent, year-over-year increase in the diversion of service calls involving individuals with mental health needs – and a growing percentage involving prompt and appropriate responses to these situations.

C. Training Initiatives

PPD's training program ensures that all officers have a baseline fluency in crisis intervention and the wide array of mental health challenges they may encounter in the line of duty.⁹⁷ Since 2015, all PPD officers have been required to undertake eight hours of mental health-related training as part of the annual officer training curriculum. The training generally includes a review of common behaviors associated with mental or behavioral health-related disorders, instruction on tailored crisis communication and de-escalation strategies⁹⁸, and interactive training scenarios⁹⁹. This program reflects many of the best practices set forth by DOJ in other investigations, including developing training with input from and transparency to the community, ensuring officers have a nuanced understanding of how mental health needs present themselves, and using interactive scenarios in training.¹⁰⁰

Also, since 2017, all recruits are provided with at least 40 hours of mental health-related training at the Academy. This training includes: (i) requiring officers to participate in simulations where they encounter an individual with mental health

⁹⁶ See Ops. Order 4.15(1)(C), (D).

⁹⁷ Accord U.S. Dept. of Justice Civil Rights Division, *Investigation of the Cleveland Division of Police* at 54 (Dec. 4, 2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf.

⁹⁸ 28 C.F.R. § 35.160(a)(1); see also Minneapolis DOJ Report at 59.

⁹⁹ Accord Portland DOJ Report at 21 (noting the importance of community).

¹⁰⁰ See, e.g., *id.*

needs; (ii) helping officers to recognize the signs of autism spectrum disorders and other cognitive disabilities and learn tactics for providing help and de-escalation; and (iii) helping officers effectively support victims from populations with disabilities and/or who are in trauma. Finally, PPD's department-wide ICAT Training (discussed above) includes training for encounters with individuals who have mental health needs.

PPD provides more intensive training for officers who volunteer to be CIT-trained and members of the CIT squad. Consistent with best practices, the CIT training is a 40-hour intensive program coordinated by a multi-disciplinary regional steering committee that includes Detective Taylor, representatives from Mercy Care (one of PPD's community health partners), and other local experts. Over five hundred members of the department, to date, have completed CIT certification training with over 300 assigned to patrol or first-responder roles. Consistent with the most recent CIT literature, PPD recognizes that it would be inefficient (and potentially counterproductive) to fully train all officers in CIT because it would dilute the importance of this specialized training and lead to a less consistent, lower quality response to situations where CIT support is required.¹⁰¹ Rather, PPD understands the importance of having "volunteer-specialist" CIT officers who are committed to excellence and continued training in their roles. DOJ expressed the same view in the context of its investigation of the Portland Police Department.¹⁰²

Finally, in coordination with the CIT personnel, members of PPD's Communications Bureau receive significant training and retraining on the policies and procedures discussed above – including two hours of virtual and two hours of in-person training – to ensure robust, consistent response by all PPD employees. In fact, PPD's Communications Supervisor and Detective Taylor served on the CIT International team that developed best practices training for 9-1-1 dispatch.

D. Crisis Intervention Review Committee

PPD is also leveraging its strong relationships with community stakeholders to implement real-time improvements across the entire mental health care continuum. In 2022, PPD convened a Crisis Intervention Review Committee composed of: a member of the Phoenix community; a social worker who works with people with disabilities; the president of Mental Health America, Arizona (an advocacy organization); and representatives from two mental health care organizations who operate mobile crisis team providers (Optum and MercyCare). The committee reviews unredacted reports and body worn camera footage from service calls to assess whether PPD has provided appropriate, individualized responses to people with mental health need and

¹⁰¹ See CIT Best Practice Guide at 163-164.

¹⁰² Portland DOJ Report at 19-20.

appropriately collaborated with mental health partners. The service calls are generally selected at random but must meet certain parameters to ensure the committee is seeing a variety of calls. The committee can also convene special meetings to review critical incidents. Any feedback for PPD, especially tactical and procedural feedback, can be implemented through Detective Taylor, who also sits on the committee. Training and policy feedback are communicated more formally by Detective Taylor to IC Sullivan. Additionally, any issues with the larger mental health system can be addressed immediately through the Mercy Care representative. The Committee also provides an annual report with recommendations that is circulated to PPD leadership.

The Committee's work is already paying dividends. For example, the discussion of one call involving a child on the autism spectrum sparked an important conversation about how dispatch and the mobile crisis teams need to remain in communication even after a patrol officer is dispatched to ensure there can be a seamless handoff from PPD to a mobile crisis team if an individual needs to be transported for additional care or observation. That conversation led to discussions about adhering to best practices within PPD (with Solari and dispatch) and the mobile crisis team organizations that sit on the committee.

E. The Steps Taken Are Consistent with the Reforms and Recommendations Proposed by the DOJ in Other Cities

In Minneapolis and Louisville, where the DOJ has recently found comparable shortcomings, the DOJ has recommended reforms that focus on improved: (1) coordination with community mental health organizations; (2) training for dispatchers who can triage what, if any, police response is required for a particular service call involving an individual with mental health needs; (3) training that is clinically informed and geared to ensuring all officers can recognize an individual in crisis or with a mental health disorder and can effectively interact with that individual; and (4) adherence to CIT models and training.¹⁰³ We believe that the above-described reforms – paired with the leading role PPD takes among its partners on the Phoenix crisis care continuum – demonstrate that meaningful improvement, consistent with the DOJ's principles, has occurred and will continue to occur.

X. Homelessness Issues

From 2018 to 2022, the visible presence of homelessness in the Maricopa County region increased sharply, spurred in part by the pandemic and in part by the Ninth Circuit's ruling in *Martin v. Boise*, which precluded the enforcement of statutes prohibiting camping with respect to homeless individuals who had no access to

¹⁰³ See, e.g., Minneapolis DOJ Report at 86; Louisville DOJ Report at 83-84.

alternative shelter.¹⁰⁴ With a substantial investment of resources – and pressure from two competing lawsuits, a state court lawsuit which sought to clear a downtown area around the Human Services Campus with a large unhoused population, and a federal court lawsuit which sought to limit clearances in light of *Martin* – as of the end of 2023, Phoenix has succeeded in significantly improving its services for persons experiencing homelessness.¹⁰⁵

The reform efforts will continue in 2024, with the Community Court beginning operations in mid-January. The Community Court will join other Specialty Courts currently operating in the Phoenix Court System (the Behavioral Health Court, Veterans Court, and the Regional Homeless Court), and will offer people experiencing homelessness who have committed minor crimes the opportunity to receive pre-adjudication services – including housing, mental health, and addiction-related services – rather than going directly into the traditional criminal justice system.¹⁰⁶ If an individual completes their personalized plan and graduates from Community Court, they could receive a reduced sentence or see the charges against them dropped or lessened; if they do not, they are returned to regular court proceedings. In short, this is a creative alternative to the conventional handling of minor criminal offenses that addresses some of the fundamental causes of minor criminal behavior.

A. Independent Review of Police Disposal of Belongings

During the DOJ investigation, the City and PPD commissioned an independent review of the seizure and disposal of the belongings of individuals experiencing homelessness, one of the specific areas of investigation described in the August 2021 announcement. The review was conducted by Dr. Sheila D. Harris. Dr. Harris was the

¹⁰⁴ *Martin v. Boise*, 902 F.3d 1031 (9th Cir. 2018); *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019); Phoenix Communications Office, *Strategies to Address Homelessness* at 7 (Oct. 2020), <https://www.phoenix.gov/humanservicessite/Documents/Homeless%20Strategies%20Final%20Report.pdf>; Maricopa Association of Governments, *2023 Point-in-Time (PIT) Count Report*, <https://azmag.gov/Portals/0/Homelessness/PIT-Count/2023/2023-PIT-Count-Report-Final.pdf?ver=8CRzv7xw28C-V2G0sMdKfw%3D%3D>; Maricopa Association of Governments, *2022 Point-in-Time (PIT) Count Report*, <https://azmag.gov/Portals/0/Documents/MagContent/2022-PIT-Count-Report-Final.pdf>.

¹⁰⁵ Amy Schwabenlender, *It's Happening*, Human Services Campus: Reflections from the Front Lines (Nov. 1, 2023), <https://hsc-az.org/its-happening/>; Jack Healy, *Phoenix Encampment Is Gone, but the City's Homeless Crisis Persists*, N.Y. Times (Nov. 4, 2023), <https://www.nytimes.com/2023/11/04/us/phoenix-tent-camp-homelessness.html>.

¹⁰⁶ City of Phoenix, “Community Court Approved by Council” (June 29, 2023), <https://www.phoenix.gov/newsroom/district-1/2800>; Taylor Seely, ‘End the cycle’: Phoenix considers specialty court for people experiencing homelessness, Arizona Republic (June 15, 2023), <https://www.azcentral.com/story/news/local/phoenix/2023/06/15/end-the-cycle-phoenix-considers-specialty-court-for-people-experiencing-homelessness/70322753007/>.

founding Director of the Arizona Department of Housing, the Phoenix Program Director for the Corporation for Supportive Housing, and the Director of the Human Services Campus (HSC) from March 2017 to August 2018. She has worked in the neighborhood of the HSC for over 30 years.

Because of the specific issue identified in the DOJ's August 5, 2021 announcement, Dr. Harris focused her review on the treatment of personal property of persons experiencing homelessness. From September 1, 2022 through January 31, 2023, she interviewed 40 people: 18 people who work at the HSC or are affiliated with HSC service providers; 15 people who work for the City, in various departments, including PPD, the Phoenix Fire Department, and the Office of Homeless Solutions; four people from the neighborhood surrounding the HSC; and three people who were experiencing homelessness at the time of the interview. Six of the 33 HSC/City employees had previously experienced homelessness, some of them at the HSC.

Each interviewee was asked if they had witnessed PPD officers having inappropriate interactions with persons experiencing homelessness, and if they had witnessed police officers taking possession of the belongings of persons experiencing homelessness. Thirty-six individuals reported no improper action by PPD, while only four individuals reported activity that raised some relevant concerns.

One interviewee reported that, for several months in approximately 2018, two to three PPD officers searched through the belongings of people experiencing homelessness without exhibiting proper regard for their possessions. The officers failed to replace the items in their original containers, and instead left them in disarray on the ground. This interviewee stated that the activity ceased completely when a new supervisor took over and has not been repeated since. Dr. Harris did not find corroboration for the improper disposal of property allegation from any other interviewee, and even this interviewee did not claim they were aware of officers disposing of any of the property they searched.

Another interviewee reported that, in approximately 2020, City staff were advised not to move items belonging to a particular individual, but the street cleaning equipment scooped it up a few minutes later. Dr. Harris noted that as this story was repeated, the details changed until the entity disposing of the individual's possessions "became" PPD.

Two other interviewees reported inappropriate verbal exchanges between PPD officers and persons experiencing homelessness on two separate occasions; it was reported to PPD both times. A supervisor of 8-9 people doing regular street outreach reported that their employees, when questioned regarding whether any of them had witnessed inappropriate conversations or behavior by PPD while doing their jobs, had "next to nothing" to report.

Dr. Harris did not discover any support for allegations that PPD had inappropriately interfered with the possessions of persons experiencing homelessness since 2020.

B. Current Practices for Cleaning Streets Surrounding the HSC

Since the DOJ investigation began, the City and PPD have made significant changes to improve interactions between city staff and persons experiencing homelessness – for example, the activities near the HSC formerly referred to as “cleanups” became “engagement opportunities,” where staff from the city’s Office of Homeless Solutions, created in October 2022, matched individuals with services.¹⁰⁷

Furthermore, the security presence at such engagements was provided by a private security firm rather than PPD. Significant outreach occurred at least a week prior to a cleaning, and since December 2021, the HSC has provided secure storage for possessions.¹⁰⁸ Currently, there is no private security presence during regular street cleaning. In the past, security was necessary to ensure the safety of people given the use of street sweepers and other machinery.

Commander Brian Freudenthal of the Downtown Operations Unit was a regular presence at the engagements that took place between May and November of 2023 and is fully invested in the collaborative model.¹⁰⁹

¹⁰⁷ The Office of Homeless Solutions was the result of the City’s October 2020 report, entitled *Strategies to Address Homelessness*. City of Phoenix, *Office of Homeless Solutions*, <https://www.phoenix.gov/solutions> (last visited January 9, 2024). See also Amy Schwabenlender, *It’s Happening*, Human Services Campus: Reflections from the Front Lines (Nov. 1, 2023), <https://hsc-az.org/its-happening/>; *Phoenix Finishes Clearing Downtown Homeless Encampment After Finding Shelter for More Than 500*, Associated Press (Nov. 4, 2023), <https://www.usnews.com/news/us/articles/2023-11-04/phoenix-finishes-clearing-downtown-homeless-encampment-after-finding-shelter-for-more-than-500>.

¹⁰⁸ Jessica Boehm, *Garbage bins and zip ties create “lifesaver” storage program for Phoenix homeless population*, Arizona Republic (Feb. 10, 2022), <https://www.azcentral.com/story/news/local/phoenix/2022/02/10/phoenix-homelessness-new-storage-program-lifesaver/6585998001/>; Christina Estes, *Phoenix touts more staff, outreach, cleanups addressing downtown homelessness*, KJZZ The Show (Jan. 7, 2022), <https://theshow.kjzz.org/content/1745876/phoenix-touts-more-staff-outreach-cleanups-addressing-downtown-homelessness>; Amy Schwabenlender, *Collaborating to Create Solutions*, Human Services Campus: Reflections from the Front Lines (May 31, 2023), <https://hsc-az.org/collaborating-to-create-solutions/> (“HSC offers unsheltered people Safe Storage, to provide a secure area on Campus for possessions to be held.”).

¹⁰⁹ See Erica Stapleton, *“They’re preying on those individuals”*: Phoenix PD talks about how things got so bad in “The Zone”, NBC 12 News (July 14, 2023), <https://www.12news.com/article/news/investigations/i-team/phoenix-police-how-things-bad-the-zone/75-fa17296e-9110-458c-94b3-0bfb6ae9dae8>.

XI. The Recent Pattern-or-Practice Consent Decree Experience – 2009–2023

During the 30-year history of pattern-or-practice investigations, the DOJ has employed various remedial strategies to address the problems that have led to DOJ findings of unconstitutional policing. The DOJ has provided technical assistance letters, entered into memoranda of agreement (MOAs), and negotiated consent decrees.¹¹⁰ However, beginning in 2012, the DOJ has largely abandoned MOAs and completely abandoned technical assistance letters. It has relied almost exclusively on the blunt instrument of consent decrees. Unfortunately, based on the recent historical record of the consent decrees, there has emerged a growing recognition among people involved in the consent decree process that, among other things, they are overly restrictive, cumbersome, expensive, and virtually endless.

The recent record of consent decrees is as follows:

- Virgin Islands Police Department (2009) – The DOJ entered into a consent decree with the Government of the Virgin Islands and the Virgin Islands Police Department in 2009, which addressed a large number of issues, including use of force, use of force policies, and incident investigation and review, among others. The consent decree is now entering its 15th year. It is now in the hands of its fifth independent monitor and its third federal judge.¹¹¹
- Seattle Police Department (2012) – The DOJ entered into a consent decree with the City of Seattle in 2012, which focused on excessive force and discriminatory policing. After eleven years and the City’s reported expenditure of \$200 million, the Court presiding over the consent decree found that Seattle and its police department had finally come into compliance with most but not all of the provisions of the consent decree. The Court retained jurisdiction over the key

¹¹⁰ U.S. Dept. of Justice Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994–Present* (Jan. 2017), <https://www.justice.gov/media/872116/dl?inline>.

¹¹¹ Suzanne Carlson, *New independent monitor tapped to manage VIPD’s compliance efforts*, The Virgin Islands Daily News (Nov. 28, 2022), https://www.virginislandsdailynews.com/news/new-independent-monitor-tapped-to-manage-vipds-compliance-efforts/article_bcb33e1d-bfa7-507f-afb5-79305d9b477a.html. Full disclosure: Michael R. Bromwich was the original monitor selected by the DOJ and the Government of the Virgin Islands in 2009 but had to withdraw from the position when he was selected by President Barack Obama to help deal with the 2010 Gulf Oil Spill. The White House, “President Obama Announces Bromwich to Fix Oil Industry Oversight” (June 15, 2010), <https://obamawhitehouse.archives.gov/the-press-office/president-obama-announces-bromwich-fix-oil-industry-oversight>.

issues of accountability and crowd control, with no indication of the length of the continuing oversight.¹¹²

- Portland Police Bureau (2012) – The DOJ entered into a consent decree with the City of Portland (Ore.) in 2012, which centered on excessive use of force against persons suffering from mental illness. In November 2023, eleven years after the consent decree was entered, the DOJ and the City of Portland announced their intention to seek a *partial* termination of the consent decree, and to seek for the first time an independent monitor to continue federal oversight over a wide range of issues, including use of force, training, information systems, and accountability, with no timeline for the termination of the monitor’s oversight. Previously, review and oversight were conducted by a group collectively described in the consent decree as the “Compliance Officer and Community Liaison.”¹¹³
- New Orleans Police Department (2013) – The DOJ completed its investigation and issued a findings report in March 2011, but the consent decree with the city and its police department was not entered as a court order until January 2013, nearly two years later. The consent decree addressed issues involving the excessive use of force; unlawful stops, searches, and arrests; and racial and gender discrimination. The consent decree has been in effect for almost 11 years, with no end in sight. The most recent monitoring report characterized its most recent review of NOPD’s progress under the decree as a “mixed bag.”¹¹⁴ At a recent conference in Fort Worth, Texas, the judge presiding over the NOPD consent decree stated, “Consent decrees never really go away,” and recalled the New Orleans City Attorney stating, “I wish every city department had a consent decree,” which to the audience suggested the judge’s embrace of the idea. Such comments demonstrate the risk of consent decrees being entrusted to federal judges who stray beyond the role assigned to them by the consent decree itself.

¹¹² Mike Carter, *Judge ends most federal oversight of SPD, after 11 years and 3 chiefs*, Seattle Times (Sept. 6, 2023), <https://www.seattletimes.com/seattle-news/law-justice/judge-ends-most-federal-oversight-of-spd-after-11-years-and-3-chiefs/>.

¹¹³ U.S. Dept. of Justice, “Justice Department and City of Portland, Oregon, Seek Independent Monitor and Partial Termination of Consent Decree Covering the Portland Police Bureau after Substantial Progress in Policing Reform” (Nov. 8, 2023), <https://www.justice.gov/opa/pr/justice-department-and-city-portland-oregon-seek-independent-monitor-and-partial-termination>; see *Portland COCL*, <https://www.portlandcocl.com/> (last visited January 9, 2024).

¹¹⁴ Office of the Consent Decree Monitor, New Orleans, *Report of the Consent Decree Monitor For the New Orleans Police Department Consent Decree Covering the Second Quarter of 2023* at 9 (Aug. 15, 2023), <https://nopdconsent.azurewebsites.net/Media/Default/Documents/Reports/0736%202023-08-15%202nd%20Quarter%202023%20Report.pdf>.

- Puerto Rico Police Department (2013) – The DOJ entered into a consent decree with the Commonwealth of Puerto Rico and the Puerto Rico Police Department in 2013, which centered on the use of excessive force, First Amendment violations, and unlawful searches and seizures. The June 2023 report of the federal monitor makes clear that, after ten years operating under the consent decree, the Commonwealth and its police department are not close to satisfying the consent decree requirements.¹¹⁵
- Albuquerque Police Department (2014) – The DOJ entered into a consent decree with the City of Albuquerque and the Albuquerque Police Department in 2014, which focused on the use of excessive force, including deadly force. In April 2023, after nine years under the consent decree, the parties agreed to modify but not end it in recognition of the City and PD’s having achieved 80% of operational compliance (reform implementation) with the decree. In seeking the amendment of the consent decree, the US Attorney for New Mexico stated, “The revisions will not relieve the city from the requirements related to the original purpose of the settlement agreement, but rather ensure that the requirements reflect the current reform efforts.” There is no estimate of how much longer the modified consent decree is expected to last.¹¹⁶
- Cleveland Division of Police (2015) – The DOJ entered into a consent decree with the City of Cleveland and the Cleveland Division of Police in 2015, which centered on the excessive use of force. In October 2023, the new independent monitor – the fourth since the decree was entered – filed the 13th Semiannual Report. That report demonstrates that, after close to nine years under federal oversight, the City and police department are nowhere close to substantial compliance with all of the decree’s 340 paragraphs.¹¹⁷
- Los Angeles County Sheriff’s Department (2015) – The DOJ entered into a consent decree with Los Angeles County and its Sheriff’s Department in 2015, which focused on the harassment and profiling of black and Latino residents. The most recent monitoring report, published in June 2023, reflects the failure of the consent decree to facilitate reform:

¹¹⁵ John Romero, *Eighth Report of the Federal Monitor: Covering the Period from October 2022 through March 2023* (June 2023), <https://fpmpr.org/reports/2023-06-cmr-8/Doc-2430-1-CMR-8-Report-CourtFiled.pdf>.

¹¹⁶ Amanda Pampuro, *Feds amend consent decree with Albuquerque Police Department*, Courthouse News Service (Apr. 12, 2023), <https://www.courthousenews.com/feds-amend-consent-decree-with-albuquerque-police-department/>.

¹¹⁷ Independent Cleveland Police Monitoring Team, *13th Semiannual Report* (Oct. 2023), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/652db44d02c47410896d189b/1697494094239/13th+Semiannual+Report+%28FINAL%29.pdf>.

Over the last two years, the Monitors' reports to the court have emphasized our frustrations regarding lack of progress, lack of executive leadership, resistance to reform, denial of responsibility, and tactics, such as requesting renegotiation of previously agreed-upon issues, seemingly designed to distract the [monitoring team] from doing our job. In two separate reports, we asked the Parties (LA County, LASD, and DOJ) to appeal to the court for intervention because no other strategies had proven effective in ensuring LASD's investment in compliance.¹¹⁸

- Ferguson Police Department (2016) – The DOJ entered into a consent decree with the City of Ferguson (MO) and the Ferguson Police Department in 2016, which addressed unlawful stops and arrests, First Amendment violations, the excessive use of force, and discriminatory policing. More than seven years later, the independent monitor's most recent report enumerated the huge amount of turnover of people in responsible positions, which contributed to her conclusion that, "[P]rogress has remained slow."¹¹⁹ Ferguson and its police department are far from satisfying the requirements of its consent decree.
- Newark Police Department (2016) – The DOJ entered into a consent decree with the City of Newark and its police department in 2016, which focused on unlawful stops, searches, and arrests, discriminatory policing, excessive force, and thefts by police officers. The independent monitor's most recent report, filed in May 2023, reflects that the Newark Police Department is not close to substantial compliance with all the requirements of the consent decree.¹²⁰
- Baltimore Police Department (2017) – The DOJ entered into a consent decree with the City of Baltimore and the Baltimore Police Department (BPD) in early 2017, which addresses unlawful stops, searches and arrests, discriminatory policing, excessive force, and First Amendment violations. A December 2022 comprehensive reassessment by the independent monitoring made clear that the

¹¹⁸ Antelope Valley Monitoring Team, *16th Semi-Annual Report* at 1 (June 2023), <http://www.antelopevalleysettlementmonitoring.info/content/documents/reports/16%20Semi-Annual%20Report,%20June%202023.pdf>.

¹¹⁹ Status Report for Fall 2023, Dkt. 179 at 1, *United States v. City of Ferguson*, No. 4:16-cv-180-CDP (E.D. Mo. Oct. 16, 2023).

¹²⁰ Peter C. Harvey, *Independent Monitor – Twenty-Second Semiannual Report* (May 31, 2023), <https://www.newarkpdmonitor.com/wp-content/uploads/2023/06/Twenty-Second-Semiannual-Report.pdf>.

city and BPD are not yet close to achieving substantial compliance with the consent decree.¹²¹

- Chicago Police Department (2019) – In a findings report issued in January 2017, the DOJ found that the City of Chicago and the Chicago Police Department (CPD) engaged in a pattern or practice of using excessive force, including deadly force. When the DOJ declined to pursue a consent decree because of a change of administration in January 2017, the Illinois Office of the Attorney General moved forward based on the DOJ investigation. The State of Illinois entered a consent decree with the City of Chicago and CPD in 2019. The independent monitor’s most recent reports demonstrate that the city and CPD are from satisfying the requirements of the consent decree.¹²²

Closer to home for the people of Phoenix, following an investigation and related litigation, the DOJ found that the Maricopa County Sheriff’s Office (MCSO) under Sheriff Joe Arpaio had engaged in a pattern or practice of discriminatory policing against Latinos; unlawful stops and arrests; and unlawful retaliation against persons criticizing the MCSO. Attempts to negotiate a consent decree failed, and in May 2012, the DOJ filed a lawsuit. In January 2014, in related private litigation in which the DOJ had intervened, US District Judge Murray Snow appointed Robert Warshaw of Warshaw and Associates, Inc., to serve as the independent monitor to administer the Court’s 2013 permanent injunction and judgment order.¹²³ In most practical respects, the permanent injunction and order are virtually identical to a consent decree.

In November 2023, more than nine years after his appointment, Mr. Warshaw filed his 37th quarterly report.¹²⁴ The report makes clear that although the MCSO has come into compliance with numerous provisions of the permanent injunction and judgment order, there is still much work to be done before the MCSO will be found to have reached the required level of compliance. Importantly, the DOJ submitted a 16-page set of comments disagreeing with the monitor’s finding of compliance on a

¹²¹ Baltimore Consent Decree Monitoring Team, *Second Comprehensive Reassessment* (Dec. 22, 2022), <https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/63a47b387869bc665cf100c7/1671723833253/SECOND+COMPREHENSIVE+REASSESSMENT.pdf>.

¹²² Margaret A. Hickey, *Independent Monitoring Report 8 and Comprehensive Assessment Part I* (Nov. 1, 2023), <https://cpdmonitoringteam.com/wp-content/uploads/2023/11/2023.11.01-Independent-Monitoring-Report-8-and-Comprehensive-Assessment-Part-I-website.pdf>.

¹²³ Order Appointing Monitor, Dkt. 649, *Melendres v. Arpaio*, No. CV-07-2513-PHX-GMS (D. Ariz. Jan. 17, 2014), available at <https://media.phoenixnewtimes.com/9477159.0.pdf>.

¹²⁴ Robert S. Warshaw, *Thirty-Seventh Report – Independent Monitor for the Maricopa County Sheriff’s Office* (Nov. 27, 2023), <https://www.mcso.org/home/showpublisheddocument/1412/638366983904470000>.

substantial number of issues.¹²⁵ In other words, the DOJ has asserted that the MCSO is even further away from the finish line than the monitor's reports suggest.

Issues surrounding the work of the independent monitor surfaced very publicly this fall in the Phoenix metropolitan area. In early October, MCSO Sheriff Paul Penzone, who had defeated Sheriff Arpaio in 2016 and was re-elected in 2020, announced that he would not be running for re-election in 2024 and would be resigning effective January 2024, a full year before the expiration of his term. In announcing his decision, Sheriff Penzone stated that among the factors in his decision were the continuing constraints of federal oversight, in the form of the independent monitor and the DOJ:

'What happened then [during the period that was the subject of the litigation] doesn't happen now,' Sheriff Penzone said. 'It's a thing of the past. What is not a thing of the past is the quarter of a million dollars of taxpayer money that's still being spent because of oversight that in my opinion, has overstayed.' ...

'The federal court oversight is more concerned about internal punishment than it is about external public safety and that hurts the people of this community. When I have more people investigating internal affairs and compliance issues than I do crimes in our community, something is wrong.'

'I'll be damned if I'll do three terms under federal court oversight for a debt I never incurred and not be given the chance to serve this community in the matter that I could --- if you'd take that other hand from being tied behind my back,' Penzone said.¹²⁶

Shortly before Sheriff Penzone's announcement, in late September, the Phoenix media reported that Mr. Warshaw had not visited the Phoenix area for over three years despite continuing to charge Maricopa County large sums of money – \$210,000 for July 2023 alone and millions per year – as well as being reimbursed for rent on 3,200 square feet of downtown office space at an annual cost of \$97,000.¹²⁷

¹²⁵ *Id.* at 290-305.

¹²⁶ Micaela Marshall, *Penzone won't seek 3rd term as Maricopa County Sheriff, will step down in January*, Arizona Republic (Oct. 2, 2023), <https://www.azfamily.com/2023/10/02/penzone-wont-seek-3rd-term-maricopa-county-sheriff-will-step-down-january/>.

¹²⁷ Amy Cutler and Cody Lillich, *Federal monitor overseeing the Maricopa County Sheriff's Office hasn't been to Phoenix since 2020*, Arizona Republic (Sept. 26, 2023), <https://www.azfamily.com/2023/09/27/mcso-paying-office-space-federal-monitor-who-hasnt-been-arizona-since-2020/>.

This press coverage has inevitably influenced city decisionmakers and the public as they await the DOJ's findings report. City officials and broad swaths of the public are committed to reform, but they are extremely frustrated by the lack of transparency during the 29-month investigation, disturbed by the DOJ's decision not to share a draft of the findings report in advance of its public release, and concerned that the recent history of the DOJ's insistence on consent decrees reflects a lack of flexibility in determining a path forward for continuing progress, reform, and improvement.

XII. Conclusion

The main purpose of this report is to demonstrate that PPD, with the full support of the government of the City of Phoenix, is well on its way to becoming the type of self-assessing, self-correcting law enforcement agency spoken about repeatedly by IC Sullivan. Without the benefit of the DOJ's analysis or findings, PPD has developed and implemented a large number of reforms in areas ranging from the use of force to responses to individuals experiencing mental health issues. Although the City and PPD welcome the additional insights that the DOJ findings report may bring, they are not willing to hand over PPD's continuing reform to a consent decree process that is complicated, expensive, and cedes control to the DOJ, an independent monitor, and a federal judge. A more appropriate solution is for the DOJ to issue a set of remedial recommendations similar to those issued in Louisville and Minneapolis, but in the form of a technical assistance letter, with appropriate mechanisms for ensuring the proper implementation of those remedial recommendations that are fully supported by the facts.