

# Investigation of the City of Phoenix and the Phoenix Police Department



United States Department of Justice  
Civil Rights Division

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## EXECUTIVE SUMMARY

On August 5, 2021, the Department of Justice opened a pattern or practice investigation of the Phoenix Police Department (PhxPD) and the City of Phoenix (“the City” or “Phoenix”). Our investigation revealed systemic problems within PhxPD that deprive people of their rights under the Constitution and federal law. We found pervasive failings in PhxPD’s policies, training, supervision, and accountability systems that have disguised and perpetuated these violations for years.

### FINDINGS

The Department of Justice has reasonable cause to believe that the City of Phoenix and the Phoenix Police Department engage in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law:

- PhxPD uses excessive force, including unjustified deadly force and other types of force.
- PhxPD and the City unlawfully detain, cite, and arrest people experiencing homelessness and unlawfully dispose of their belongings.
- PhxPD discriminates against Black, Hispanic, and Native American people when enforcing the law.
- PhxPD violates the rights of people engaged in protected speech and expression.
- PhxPD and the City discriminate against people with behavioral health disabilities when dispatching calls for assistance and responding to people in crisis.

Our investigation also raised serious concerns about PhxPD’s treatment of children and the lasting impact aggressive police encounters have on their wellbeing.

In the years leading up to our investigation, PhxPD officers shot and killed people at one of the highest rates in the country. Some city officials blamed a “more violent population” for the number of shootings, rather than police conduct. But we found a significant number of the shootings did not meet constitutional standards.

PhxPD relies on dangerous tactics that lead to force that is unnecessary and unreasonable. PhxPD has taught officers a misguided notion of de-escalation. Rather than teaching that de-escalation strategies are designed to eliminate or reduce the need

to use force, PhxPD has misappropriated the concept and teaches officers that all force—even deadly force—is de-escalation. According to one police official, this distorted view of de-escalation is “ingrained in the vernacular of the department.”

The harm caused by unconstitutional policing is not spread evenly across the City’s population. PhxPD targets people experiencing homelessness, retaliates against people who criticize the police, and disproportionately uses force against people with behavioral health disabilities. Officers enforce certain laws, including drug and low-level offenses, more severely against Black, Hispanic, and Native American people than against white people engaged in the same behaviors. And despite these disparate outcomes and longstanding community complaints, the City still claims it is “unaware of any credible evidence of discriminatory policing.”<sup>1</sup>

Like many other cities, Phoenix has a significant unhoused population. The problem of homelessness stems from multiple social, economic, and other factors, many of them beyond the control of the City and PhxPD. The Department recognizes that the city leaders have undertaken action to address homelessness, including soliciting grant funding, establishing new hotel shelters, and designating new resource centers, among other actions. This Report does not address the root causes of the homelessness problem faced by the City and PhxPD, but instead focuses specifically on law enforcement encounters and interactions with those experiencing homelessness. While city officials recognize that being homeless is not a crime, officers nevertheless roused people sleeping in public to send them to a small and dangerous part of Phoenix known as the Zone. The practice of stopping, citing, and arresting unhoused people was so widespread that between 2016 and 2022, 37% of all PhxPD arrests were of people experiencing homelessness. Many of these stops, citations, and arrests were unconstitutional. A federal court order has been insufficient to change these entrenched policing practices. In 2022, a court ordered the City to stop enforcing certain laws against unhoused people, seizing their property without notice, and destroying property without an opportunity to collect it. But PhxPD did not train officers how to follow the law nor supervise them to ensure they did. Property collection practices improved in highly visible areas, but elsewhere in the City, seizing and destroying personal property still fails to meet constitutional standards.

Police officials are aware that PhxPD’s practices in responding to protests served to erode public trust. We found officers used indiscriminate force against protestors, falsified allegations to arrest protest leaders, retaliated against people critical of the police, and prevented people from lawfully recording police conduct. PhxPD’s recent

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<sup>1</sup> *The Phoenix Police Department: The Road to Reform* at 25, available at [https://www.phoenix.gov/policesite/Documents/DOJ/PPD\\_RoadtoReform\\_January2024.pdf](https://www.phoenix.gov/policesite/Documents/DOJ/PPD_RoadtoReform_January2024.pdf) [<https://perma.cc/S2CA-TXAD>].

commitment to protecting free speech is important, but it would be premature to claim any new efforts are working.

Stated commitments by city and police officials have also not prevented violations of the Americans with Disabilities Act. The City has invested \$15 million in programs to send non-police responders to appropriate behavioral health calls. But the City and PhxPD have not supported 911 call-takers and dispatchers with the training they need. Too frequently, they dispatch police alone when it would be appropriate to send behavioral health responders. Officers act on the assumption that people with disabilities are dangerous and rarely modify their approach. Officers resort to using force rather than de-escalation tactics that would likely help a person with behavioral health disabilities follow directions. As a result, people with behavioral health disabilities suffer harm such as force, trauma, and criminal consequences, rather than receiving emergency mental health care.

Despite the unlawful practices we describe in this Report, we spoke with dozens of officers and city officials committed to serving the people of Phoenix with thoughtfulness and respect. Ensuring public safety in Phoenix presents unique challenges. Police officers have been asked to take the lead in addressing issues better handled outside the criminal justice system altogether. We acknowledge the considerable efforts they exert to provide vital services.

Some at PhxPD have acknowledged the need for change, and current leaders have committed to important reforms. PhxPD developed a new use-of-force policy and is training all officers on de-escalation and the duty to intervene. A citywide Crime Reduction Plan, unveiled in 2023, is a first step toward understanding the enforcement decisions officers make and whether those actions have an impact on crime. These and other efforts are commendable and can help PhxPD become the “self-assessing, self-correcting” department that Interim Chief Michael Sullivan envisions. But in the past, PhxPD has announced reforms that failed to curtail unconstitutional practices. And in a 2024 report detailing these and other changes, the department admitted that many of its reforms are still in the planning stage. This leads us to believe that PhxPD will need to be held accountable to implement the reforms we identify at the end of this Report. As one former PhxPD official told us, “How does the public ever trust us if we can't even police ourselves? Law enforcement will not work if the public doesn't trust us.”

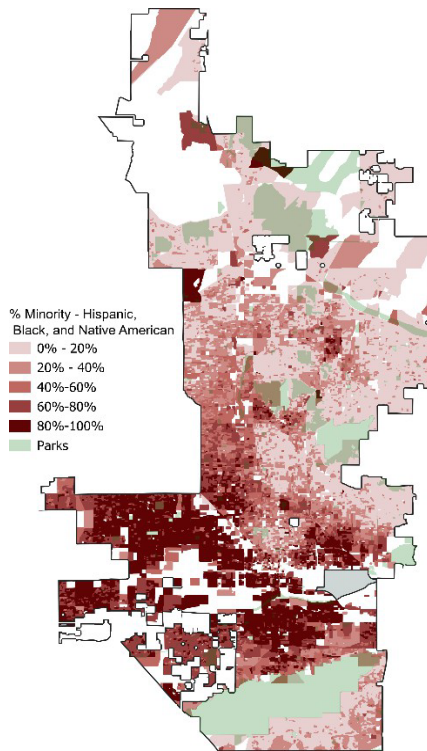
The Department of Justice expects to work constructively with the City and PhxPD to ensure the reforms necessary to remedy this unlawful conduct are timely and fully implemented.

## BACKGROUND

With over 1.6 million people, Phoenix is the largest city in Arizona and the fifth largest city in the United States.<sup>2</sup> Unlike denser cities, Phoenix itself is sprawling, at over 500 square miles. Located in “the Valley of the Sun,” Phoenix is the county seat of Maricopa County and is the quickest growing large city in the nation, adding nearly 200,000 people since 2020.

The City’s rapid development has created challenges. State officials project an insufficient water supply for Phoenix residents over the next century given the City’s growing population and drought-like conditions. In 2023, the state began limiting new construction amid severe water shortages. These shortages are compounded by Phoenix’s extreme heat. Phoenix experiences more triple-digit temperature days than any other large metropolitan area in the country. The City experienced its hottest summer on record in 2023, with temperatures exceeding 110 degrees for a month straight.

### 2023 map of racial density in Phoenix



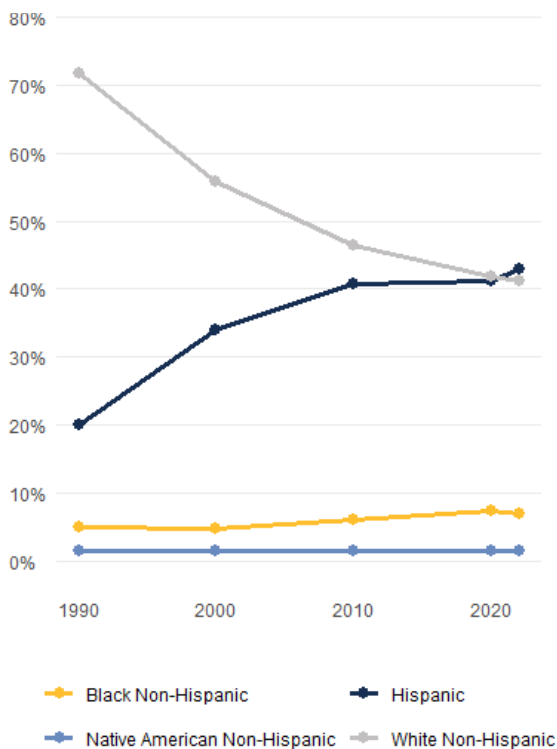
Phoenix also bears the geographic and economic scars of segregation. Real estate practices throughout the twentieth century reinforced the relegation of non-white communities to the south side of the City. The federal government’s Home Owners’ Loan Corporation created the redlining maps of the 1930s, deeming these neighborhoods “hazardous.” Restrictive covenants were written into deeds across central and northern Phoenix, prohibiting non-white people from home ownership in particular neighborhoods.

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<sup>2</sup> City of Phoenix, *Planning and Development, Phoenix Statistics and Census Data*, <https://www.phoenix.gov/pdd/planning-zoning/phoenix-statistics-and-census-data> [<https://perma.cc/CW5K-3BRL>].

Decades later, segregated residential patterns remain. The south side of the city was historically the location of heavy industry in Phoenix and thus has a higher concentration of pollution-producing industries, including transportation centers, interstates, recycling and landfill centers, and factories.

### Phoenix Population: 1990-2022



Though Phoenix remains segregated, its demographic makeup has shifted significantly over the last 30 years. In 1990, around 980,000 people lived in Phoenix, with a racial and ethnic breakdown of about 72% white non-Hispanic, 20% Hispanic (of any race), 5% Black, less than 2% Asian, and less than 2% Native American.<sup>3</sup> Today, Phoenix’s population of 1.6 million is approximately 43% Hispanic (of any race), 41% white non-Hispanic, 7% Black, 4% Asian, and 2% Native American.<sup>4</sup>

Phoenix’s segregation is compounded by economic inequality. Nearly 15% of Phoenix residents live below the poverty line. Hispanic, Black, and Native American residents are affected by poverty at twice the rate of the white population in Phoenix.

Phoenix has a significant population of people experiencing homelessness. As the broader Phoenix metropolitan area expanded to embrace nearly a million new residents between 2012 and 2022, its unsheltered homeless population tripled. Higher home prices and too few affordable housing options have overwhelmed the City’s shelter system. Since 2021, the City has dedicated \$140 million to address homelessness through shelters, affordable housing, and mental health and homeless services.

<sup>3</sup> See U.S. Department of Commerce, 1990 Census of Population, General Population Characteristics, Arizona, at Table 6, available at <https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-4.pdf> [<https://perma.cc/9UH9-ZU7G>]. Though the Census Bureau uses the term “American Indian and Alaska Native,” or “AIAN,” we use the term “Native American” in this Report.

<sup>4</sup> Quick Facts: Phoenix, Arizona, U.S. Census Bureau, U.S. Department of Commerce, <https://www.census.gov/quickfacts/fact/table/phoenixcityarizona/PST045222#PST045222> [<https://perma.cc/263S-CSQF>].



## **A. The City of Phoenix and PhxPD**

Phoenix has a council-manager form of government. The City is governed by the Phoenix City Council, comprised of the mayor and eight council members each serving four-year terms. The mayor is elected in a citywide election. Former councilmember Kate Gallego has served as mayor since 2019. Phoenix's City Manager, Jeff Barton, was appointed in 2021 by the City Council. Mr. Barton is responsible for the City's day-to-day management and operations, including its 14,500 employees and its budget of over \$3 billion. His office also oversees the police department.

PhxPD is the largest police force in Arizona with over 2,500 sworn officers, of whom 68% are white, 5% are Black, 21% are Hispanic or Latino, and 6% identify as other races. Women comprise 13.5% of the workforce. PhxPD also employs 900 civilian employees. In 2023, the City Council raised PhxPD's annual budget to nearly \$1 billion.

In July 2022, the City Manager named Michael Sullivan as the Interim Chief of Police. PhxPD's current leadership also includes two Executive Assistant Chiefs who oversee the Operations Section and the Administration, Accountability, and Transparency Section, as well as numerous Assistant Chiefs. Specialized units, such as the Training Bureau and the Professional Standards Bureau, are centrally housed within PhxPD's Administration, Accountability, and Transparency Section. All patrol units are located within the Operations Section, and PhxPD divides patrol operations among seven precincts throughout the City. Each precinct is led by a commander whose primary responsibility is directing enforcement activities and supervising officers.

## **B. Recent Events**

Jeri Williams served as Chief of Police from 2016 to 2022. During her tenure, the former Chief oversaw a tumultuous period in PhxPD's history, including controversies, lawsuits, and calls for external reviews. Following the protests of 2020, PhxPD and the Maricopa County Attorney's Office falsely claimed that 15 people arrested at a protest were members of a criminal street gang and sought charges against them that carried multi-year prison sentences. In response, former City Manager Ed Zuercher commissioned an independent investigation to determine PhxPD's role in and responsibility for violating protestors' civil rights. After the report was released in August 2021, former Chief Williams received a one-day suspension for her role in the gang charges, and the former City Manager ordered PhxPD to make changes to policies and procedures.

During his tenure, Interim Chief Sullivan has started implementing certain reforms, including updates to PhxPD's use-of-force policy and training. "I saw some uses of force that made me think that we need to do something different," he told Justice

Department investigators. The agency has also introduced a new Crime Reduction Plan and hopes to use data to inform crime control strategies and understand how PhxPD enforcement impacts different populations. Interim Chief Sullivan has emphasized his wish for PhxPD to become a “self-assessing, self-correcting agency.”

## INVESTIGATION

The Department of Justice initiated this investigation pursuant to its authority under the law enforcement misconduct statute and the Americans with Disabilities Act to determine whether there is reasonable cause to believe that PhxPD and the City are engaging in a pattern or practice of unlawful conduct that deprives people of their rights under the Constitution and federal law.<sup>5</sup> When such reasonable cause exists, the Department has the authority to bring a lawsuit seeking court-ordered changes.

Our investigative team consists of career employees from the Civil Rights Division of the Department of Justice. Subject matter experts assisted us. Collectively, these experts have decades of experience in assessing police tactics and training, internal investigations, 911 call-taking and dispatch, and statistical analyses. These experts reviewed documents and data and provided invaluable insights that informed the course of this investigation and this Report.

We conducted our investigation to ensure a thorough, independent, and fair assessment of policing in Phoenix. We interviewed city officials, including former City Manager Ed Zuercher, current City Manager Jeff Barton, former Chief of Police Jeri Williams, and Interim Chief of Police Michael Sullivan. We also interviewed PhxPD line officers, supervisors, and commanders. We spent significant time meeting with officers, participating in over 200 hours of ride-alongs, and observing trainings. We visited every PhxPD patrol precinct and rode with officers during every patrol shift.

We heard from hundreds of people who have interacted with the police department, including prosecutors, defense attorneys, judges, civil rights lawyers, community organizers, faith leaders, protestors, members of neighborhood associations, children, and people experiencing homelessness.

We reviewed information from the City and from other sources. We reviewed relevant police records, including policies, trainings, internal investigations, and hundreds of files documenting enforcement activity, such as pedestrian and traffic stops, arrests, and uses of force. We reviewed hundreds of hours of body-worn camera video. Assisted by statistical experts, we analyzed PhxPD's data on stops, citations, and arrests, as well as data on PhxPD's response to 911 calls for service.

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<sup>5</sup> See 34 U.S.C. § 12601; see also 42 U.S.C. § 12101 *et seq.* A pattern or practice exists where violations are repeated rather than isolated. *Int'l Bd. of Teamsters v. United States*, 431 U.S. 324, 336 n.16 (1977). A pattern or practice does not require the existence of an official policy or custom. *United States v. Colorado City*, 935 F.3d 804, 810 (9th Cir. 2019).

We thank the city officials, PhxPD officials, and rank-and-file officers who have cooperated with this investigation and provided us with insights into the operation of PhxPD. We are also grateful to the many members of the Phoenix community who have met with us during this investigation to share their experiences.

## FINDINGS

We have reasonable cause to believe that PhxPD and the City engage in a pattern or practice of conduct that violates the Constitution and federal law. First, PhxPD uses excessive force, including unjustified deadly force and unreasonable less-lethal force. Second, PhxPD and the City violate the rights of people experiencing homelessness by unlawfully detaining, citing, and arresting them and by unlawfully disposing of their belongings. Third, PhxPD discriminates against Black, Hispanic, and Native American people when making stops and arrests. Fourth, PhxPD violates individuals' First Amendment Rights. Fifth, PhxPD and the City discriminate in their response to people who have behavioral health disabilities. Finally, we have serious concerns about PhxPD's treatment of children, and the lasting impact aggressive police encounters have on their mental and physical wellbeing.

### **A. PhxPD Uses Excessive Force in Violation of the Fourth Amendment**

We reviewed PhxPD's force practices with the understanding that officers routinely place themselves in harm's way to keep the public safe. To resolve dangerous situations, officers must sometimes use force, including deadly force. They have the right and the obligation to protect themselves and others from immediate threat of bodily injury or death. We evaluated PhxPD's use of force with these principles in mind.

The use of excessive force by a law enforcement officer violates the Fourth Amendment. The constitutionality of an officer's use of force is assessed under an objective reasonableness standard: "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."<sup>6</sup> To determine objective reasonableness, one must pay "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."<sup>7</sup> This evaluation may also include how the suspect responds to warnings, whether "less intrusive" means are available to resolve the situation and whether the person has a behavioral health disability.<sup>8</sup>

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<sup>6</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989).

<sup>7</sup> *Id.* at 396.

<sup>8</sup> *Vos v. City of Newport Beach*, 892 F.3d 1024, 1033–34 (9th Cir. 2018) ("Other relevant factors include the availability of less intrusive force, whether proper warnings were given, and whether it should have been apparent to the officers that the subject of the force used was mentally disturbed.").

In conducting our investigation of PhxPD's force practices, we reviewed every PhxPD police shooting from January 2019 to December 2022. Not all investigative records were made available for shootings that occurred after February 2022, but we reviewed all available body-worn camera video for each shooting that year. PhxPD also did not provide all the requisite information for police shootings in 2023 or 2024, but we did review the department's "critical incident briefings" and other publicly available information.<sup>9</sup> To evaluate PhxPD's use of less-lethal force, we reviewed hundreds of incidents in which officers reported using force. We also reviewed the use-of-force policies in effect from 2016 to the present and observed dozens of hours of training. We spoke to officers, supervisors, and commanders. We interviewed people whom officers used force against and witnesses to those incidents. We interviewed family members of people who were injured or killed by police officers.

We have reasonable cause to believe that PhxPD engages in a pattern or practice of excessive force, including deadly force. Officers use unreasonable force to rapidly dominate encounters, often within the first few moments of an encounter. Officers fail to employ basic strategies to avoid force, like verbal de-escalation or using time or distance to slow things down. PhxPD's training has encouraged officers to use force when it is not lawful to do so, and to use serious force to respond to hypothetical, not actual, danger. PhxPD's precipitous force tactics put officers and others at risk and result in constitutional violations.

## **1. PhxPD Uses Unreasonable Deadly Force**

PhxPD uses unconstitutional deadly force. We identified several patterns:

- First, officers violate the Constitution when they fire their weapons at people who present no immediate threat of harm, and they continue to shoot at people after they are no longer a threat.
- Second, officers shoot when their own actions have created or greatly magnified the risk they face. We identified unconstitutional shootings that likely could have been avoided absent officers' reckless tactics.
- Third, officers unreasonably delay rendering aid to people they have shot, and at times use significant, unreasonable force against people who are already incapacitated, sometimes even unconscious, as the result of police gunfire.

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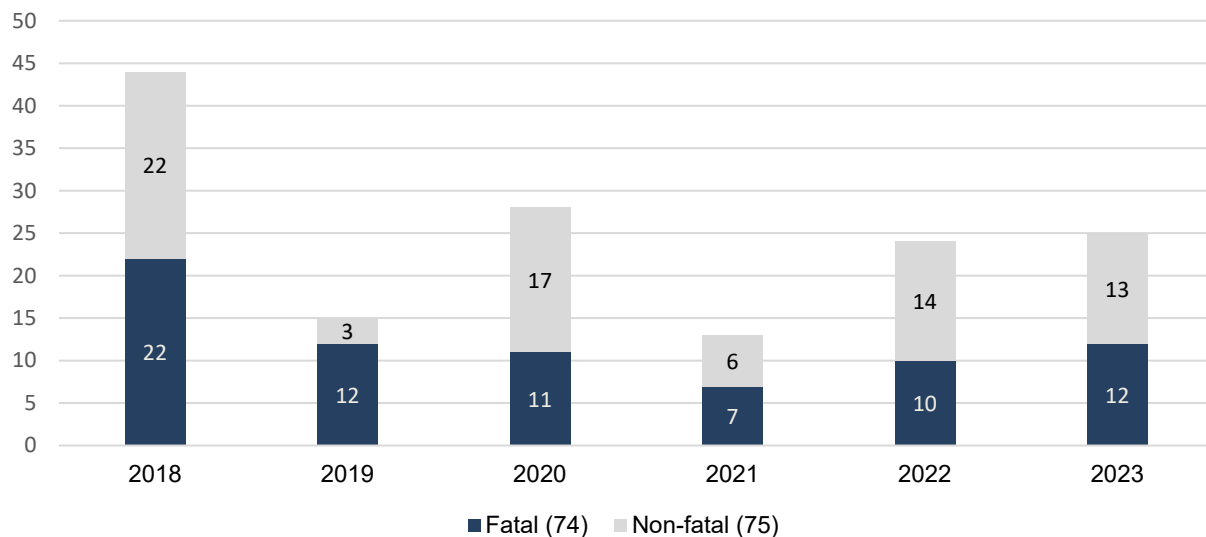
<sup>9</sup> Phoenix Police Department, *Police Transparency Critical Incident Briefings*, <https://www.phoenix.gov/police/transparency> [<https://perma.cc/V5YU-CSVA>].

- Finally, officers use restraints that put people at risk of asphyxiation, including neck restraints and other compression holds to the back and neck against people who do not present an immediate threat, including those who are restrained and have committed no crime.

For big city police departments, PhxPD has one of the highest rates of fatal shootings in the country per year. PhxPD typically reports more than 20 police shootings each year and sometimes significantly exceeds that number.

The below chart shows the number of police shootings since 2018.

**PhxPD Police Shootings by Year: 2018-2023**



City officials have speculated that the high number of shootings may be attributed, in part, to Arizona gun laws, which authorize open and concealed carry of firearms.<sup>10</sup> According to PhxPD records, 76% of police shootings since 2018 involved a person carrying a gun. But possession of a weapon alone without threatening behavior does not justify deadly force.<sup>11</sup> That guns are commonly carried in Arizona increases the need for PhxPD to prepare officers to use good judgment, de-escalate dangerous situations, and minimize the force used to safely resolve a situation, whether or not people are armed.

<sup>10</sup> In some circumstances, state law explicitly allows the “defensive display of a firearm.” A.R.S. § 13-421 (“The defensive display of a firearm by a person against another is justified when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the use or attempted use of unlawful physical force or deadly physical force.”).

<sup>11</sup> *Curnow v. Ridgecrest Police Agency*, 952 F.2d 321, 324–25 (9th Cir. 1991) (officers were not entitled to qualified immunity where suspect holding gun was not pointing it or facing officers).

### **a. PhxPD Officers Fire Their Guns at People Who Present No Immediate Threat**

PhxPD officers fail to properly assess whether to shoot once they see a person holding a weapon, even when the person presents no immediate threat. In one case, an officer shot and killed a suicidal man moments after he pulled a knife from his pocket and told the officers he wanted to die. The manager of a group home called the police because the man threatened to jump out a window. When officers arrived, the man stood at the top of an interior stairwell with his hands to his side. At first, officers spoke with the man calmly. One officer asked, "Are you trying to fight? Is that what you're trying to do?" "I'm trying to die," the man said, and pulled out a small pocketknife. The officers pointed their weapons and threatened to shoot him if he did not drop the knife. The man took two steps down the stairs. As the first officer said, "If you take one step..." the second officer fired his Taser, which was not effective. The man took another step, and the first officer shot him three times. Because the man was not physically aggressive, told officers he wanted to die, and never threatened the officers, the shooting was unreasonable.<sup>12</sup>

In another incident, an officer shot a man holding a knife to his own throat and saying he wanted to die. Two officers responded to a call of an attempted armed robbery and found the man in an empty area of a commercial parking lot. One officer drove up to the man and got out of her car saying, "Hey! Stop! Let me see both your hands right now. Stay right there. Stop! You come any closer I'll fucking shoot you!" "That's what I want," the man responded as he held the knife to his neck. For two minutes, the man paced back and forth asking the officers to shoot him in the head. The officers told the man they wanted to help him and that they would kill him if he came closer. The man made no threatening statements or gestures. But when he slowly stepped within about 20 feet of one of the officers, still holding the knife to his neck and saying, "Go ahead, ma'am," the officer shot him once in the lower abdomen. The man fell to the ground and began to scream, "Help me!" One officer kicked the knife away and both waited for backup, guns pointed at the man as he writhed on the ground. Officers with ballistic shields arrived and approached the man nearly five minutes later. They searched and handcuffed him, while he continued to yell for help.

At times, officers continue to shoot after any threat has ended. Under the Fourth Amendment, justification for deadly force, or any force, may end after the first gunshot. "[T]erminating a threat doesn't necessarily mean terminating the suspect. If the suspect is on the ground and appears wounded, he may no longer pose a threat; a reasonable

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<sup>12</sup> *Vos*, 892 F.3d at 1034 ("[I]ndications of mental illness create a genuine issue of material fact about whether the government's interest in using deadly force was diminished.")



officer would reassess the situation rather than continue shooting.”<sup>13</sup> In one case, a PhxPD officer unnecessarily fired a second shot at a man who had already fallen to the ground. Two officers responded to a call that a homeless man had threatened someone with a knife. When they found the man, they immediately jumped out of their car and chased him, yelling at him to drop the knife. An officer fired one shot at the man as he ran away from them, causing the man to fall. After pausing for a second, the officer fired a second shot at the man as he lay on the ground. The officer’s decision to shoot again was unreasonable.

#### **b. PhxPD Officers Use Tactics That Place Themselves in Jeopardy and Increase the Risk of Deadly Encounters**

PhxPD officers place themselves in situations of tactical disadvantage that substantially increase the likelihood that they will fire their guns. In some cases, officers ignore tactical fundamentals, such as using cover or concealment when encountering a potentially armed person. In other cases, officers create conditions where they are exposed or highly vulnerable. These poor tactics can result in unconstitutional force.

Officers sometimes ignore a position of safety and cover and step directly into harm’s way. In one case, officers shot and killed a man sitting in a parked car after they exposed themselves to an avoidable and dangerous situation. The officers responded to a call about a man with a knife and spotted a man sitting behind the wheel of a parked car. They blocked his car and approached him. They spoke with the man for a few moments, but he refused to get out of the car and instead rolled up his window. An officer then noticed the man held a gun in his hand.

The officers had boxed in the car with a patrol SUV, so there was little risk the man could flee. The officers could have backed away, cleared the immediate area of bystanders, and taken cover behind nearby vehicles. Instead, one officer positioned himself inches from the driver’s side window and pointed his gun at the man, shouting commands.<sup>14</sup> That officer summoned a second officer to stand next to him, exposing both officers to the armed man. A third officer approached the opposite side of the car

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<sup>13</sup> *Zion v. Cty. of Orange*, 874 F.3d 1072, 1076 (9th Cir. 2017).

<sup>14</sup> Officers standing in such a position—sometimes described in tactical training as a “kill zone”—are not only at grave risk to their own safety but are also far more likely to discharge their weapons in response to any sudden movements—whether or not the person is attempting to cause harm. See, e.g., *Belotto, Counter-Ambush Tactics for Patrol Officers*, 52:6 Law and Order 98 (2004).  
<https://www.ojp.gov/ncjrs/virtual-library/abstracts/counter-ambush-tactics-patrol-officers>  
[\[https://perma.cc/2USF-HMEZ\]](https://perma.cc/2USF-HMEZ).

and broke the front passenger window. Body-worn camera video showed that the driver flinched as the third officer broke the window, but the video did not capture whether the man did anything with the gun in his hand. Almost immediately, the first two officers fired 16 rounds into the car, killing the man.

In another case, an officer effectively set the stage for a shooting by stepping in front of a moving car and firing into it. While stopped in traffic, officers saw a car that matched the description of a car reported stolen at gunpoint. Despite the risks of confronting a potentially armed suspect in the middle of traffic, the officers got out of their car to make an arrest. One officer placed himself in front of the car. The driver tried to steer slowly around the officer to flee, but the officer twice moved to remain in the path of the car. As the car began to accelerate, the officer backpedaled and then fired at the car as it steered around him and sped away. The officer's partner also shot at the fleeing car. The teenage driver and teenage passenger were wounded. The officer's decision to place himself in harm's way made the use of deadly force more likely and risked the lives of the officers, the teens, and bystanders.

PhxPD officers sometimes magnify the risk of serious injury by abandoning cover and shooting when there is no threat to officers or the public. In one case, officers noticed a man throwing rocks at their vehicle as they passed him. They stopped down the road and called dispatch to request that an officer come to the scene with less-lethal projectiles—weapons designed to stop, but not kill, a person who presents a threat. But the officers did not wait for a less-lethal weapon to arrive. Instead, they drove back to the man, stopping within throwing distance of him, and got out of their car with guns drawn. The officers shouted at the man to drop the rock he was holding. When he started to throw another rock, officers unreasonably fired four shots and killed him. In 2023, the City of Phoenix agreed to pay the man's family \$5.5 million to settle a wrongful death claim. On April 10, 2024, PhxPD announced that Interim Chief Sullivan terminated one of the officers and overturned a PhxPD review board's finding that the shooting was within policy.

### **c. PhxPD Delays Medical Aid to Incapacitated Suspects and Uses Unreasonable Force on Wounded People**

After a shooting, seconds count. Delays in providing emergency treatment can prove deadly long before medical personnel arrive. The Fourth Amendment requires police to provide objectively reasonable care following a serious use of force.<sup>15</sup> But we reviewed body-worn camera footage depicting people lying motionless, seemingly unconscious,

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<sup>15</sup> See *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1099 (9th Cir. 2006); *Ostling v. City of Bainbridge Island*, 872 F. Supp. 2d 1117, 1129–30 (W.D. Wash. 2012).

while PhxPD officers stood by at a distance without rendering aid or allowing minutes to pass before starting CPR. In some cases, officers reported the person was “down,” the situation was secure, or the suspect’s weapon was out of reach, but they still failed to provide medical assistance.

In one incident, officers shot a woman 10 times, then waited more than nine minutes to approach her, even though she lay immobile on the ground. Before the shooting, the woman appeared suicidal, at one point telling an officer, “You’d better call for backup,” and, “If you touch me, I’m going to kill myself.” When the woman pulled out a gun, two officers shot her. A third officer fired two stunbag rounds, projectiles filled with ballistic fiber material that fire at approximately 180 miles per hour. After the woman fell, officers did not try to communicate with her or find out if she was conscious. Instead, they continued pointing their weapons at her and remained behind their patrol vehicles as more officers arrived to assist. About six minutes after the shooting, with at least six officers watching the woman, one officer said that the woman appeared to be still breathing, but not moving. An officer said that they should keep holding weapons on the woman and wait for a police dog, which never arrived. Nine minutes after the shooting, a group of officers finally approached the woman and attempted lifesaving measures. She did not survive her injuries.

Sometimes, officers not only delayed providing medical aid, but used significant force on people who were incapacitated after being critically wounded. Officers can reasonably seek to ensure that a downed suspect no longer poses a threat. But it is unreasonable to use significant force on an immobile suspect merely to see if they are conscious.<sup>16</sup> In one incident, after shooting a man, officers fired multiple rounds from a less-lethal projectile launcher and sent a police dog to drag the man back to the officers. Video shows the object that had been in the man’s hand landed approximately eight feet away from him and he made no significant movement toward it. Yet over nine minutes passed from when officers shot the man to when they moved in to complete the arrest and render aid. At least a dozen officers were on the scene who could have provided lethal cover for other officers to approach and secure the man without further use of force. Instead, they released a dog that bit the man’s leg and dragged him back to the waiting officers. The man did not survive the shooting.

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<sup>16</sup> *Tan Lam v. City of Los Banos*, 976 F.3d 986, 997 (9th Cir. 2020) (though the man was moving after being shot, he was not a threat to the officer, so the court upheld the jury’s verdict that the officer violated the Fourth Amendment when using force against the man the second time).

## **“Give him a couple pops.”**

Officers responded to a call that an unknown man with a gun had entered a home. As the man walked into the backyard, he pointed a handgun at the officers. One officer shot him in the chest with a rifle, and the man fell forward on top of his gun.

A supervisor directed – **“If you're not seeing any signs of life, we're going to move up with less-lethal and give him a couple pops before we approach.”**

The man remained motionless on the ground for four minutes as numerous officers pointed guns and shouted commands at him. Multiple officers confirmed the man was not trying to get up, retrieve his weapon, or otherwise threaten officers. Over the course of nine minutes, the supervisor ordered the man shot with stunbag rounds from roughly 10 yards away. The pain inflicted from such rounds would be extraordinary, but the first two stunbags elicited no reaction to suggest the man was conscious or presented a threat. Yet the supervisor ordered officers to fire more rounds at the man.

After officers fired the sixth stunbag round at the man, one officer said he would need gloves to provide CPR. **“No rush, guys, no rush,”** the supervisor responded. The officers waited, fired two more rounds, then approached the man.

Fifteen minutes had passed since officers shot the man with a rifle. By then, his heart had stopped. Paramedics pronounced the man dead at the scene.

### **d. PhxPD Officers Routinely Use Neck and Compression Restraints that Put People at Risk of Serious Injury or Suffocation**

Improper placement of a person who is being restrained can cause positional or mechanical asphyxiation, resulting in serious injury or death in minutes. Keeping handcuffed people on their chest can restrict their breathing, and applying pressure or bodyweight to their head, neck, or back increases the danger. These types of compression restraints limit the amount of air entering the lungs.<sup>17</sup> Because of these risks, law enforcement agencies have long advised officers to roll a handcuffed person

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<sup>17</sup> Compression restraints can include rear neck restraints, back compression techniques, knee-to-neck maneuvers, rear C-clamps, or rear arm bars, among other restraints. When these restraints dangerously constrain the chest from taking in enough oxygen, they constitute deadly force. They also present a high risk of spinal injury.

onto their side or into a seated position, which does not restrict breathing.<sup>18</sup> Yet, PhxPD officers routinely keep handcuffed people face down and apply pressure to their head, neck, and back—even when the person is plainly in distress or says they cannot breathe.

PhxPD officers use these dangerous compression restraints against people experiencing a behavioral health crisis who do not present a risk to officers or others. In one incident, officers knelt for several minutes on the neck of a suicidal man who claimed to have stabbed himself with a nail file. Officers found the man sitting alone in his car in a parking lot. As they approached from all sides, the man asked, “What have I done?” and began to cry. One officer grasped the man’s left hand as the man held his mobile phone in the other, saying he wanted to record the encounter. A second officer entered the car and grabbed the man’s right hand but was unable to apply handcuffs. The first officer pulled the man onto the pavement and more officers moved in to restrain the man—four in all. They held him face down on the asphalt for roughly three minutes. One officer knelt on the back of his neck. Another held his hands on the man’s neck. Two other officers grabbed his legs and body. One officer then fired a Taser into the man’s back while another officer still held his neck.

Once handcuffed, the man spat on the pavement and told officers they had no right to treat him that way. Officers warned him not to spit at them, and once again pushed down on his head, neck, and back. After a few moments, the man stopped talking, his breathing became shallow, and he lost consciousness.

We saw other incidents in which officers applied dangerous compression restraints against people who were handcuffed, or against people who were defiant but not aggressive, sometimes even after they showed signs of serious physical distress. In one instance, PhxPD officers pressed a deaf man’s neck and head down for over 20 minutes after they had handcuffed and restrained him with leg ties. The man was crying and dry heaving, but when he tried to roll to his side, four officers pushed him back onto his stomach. The officers had been informed before arrival the man was deaf, but they repeatedly shouted at him to stop moving. One officer pressed his knee to the man’s neck and upper back for more than four minutes, removing it only after another officer pushed down on the man’s head to put him into a spit hood. The four officers kept their weight on the man’s neck, head, and body, even as his breathing shallowed. The man began to cry, cough, and eventually scream, before an EMT finally arrived.

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<sup>18</sup> See, e.g., Department of Justice, National Law Enforcement Technology Center, Positional Asphyxia—Sudden Death (June 1995), <https://www.ojp.gov/pdffiles/posasph.pdf> [<https://perma.cc/9KEA-3LHA>].

PhxPD also used similar compression holds on people suspected of committing minor offenses. When a teenager objected to an officer pressing his knee into the boy's head, the officer responded: "I know I am, purposefully." The teen was suspected of trespassing in an empty warehouse to attend an illicit party. In another incident, when a woman asked if an ambulance was on the way after an officer knelt on a man's neck, the officer said, "I put my knee on his skull to protect his head." The man was suspected of using drugs at a bus stop. Under the Fourth Amendment, such minor offenses do not justify potentially lethal restraints absent a significant risk of serious injury or death to officers or others.<sup>19</sup>

Like dangerous compression holds, neck restraints can severely limit oxygen from getting to the brain and lead to significant trauma, loss of consciousness, or death. Neck restraints are deadly force.<sup>20</sup>

Restraining the neck of a person who poses little threat is clearly excessive force.<sup>21</sup> Yet PhxPD officers use neck restraints casually, without regard for the risk of serious harm they can pose. One officer applied a chokehold even as a man gasped for breath, went limp, and tapped his hand on the ground to signal his submission. Another officer urged, "Keep going. He doesn't get to tap."

After the murder of George Floyd in 2020, PhxPD banned "carotid controls," neck restraints designed to slow the flow of blood to the brain and cause unconsciousness. PhxPD also expanded training on what trainers called "compassionate restraint." PhxPD shared a department-wide video training that demonstrated various carotid replacement techniques, including other "control holds" across the side of the neck. Trainers in the video stated, "If you are a big fan of the carotid and really miss the use of the carotid, we'll give you some ideas for what you can use that are still within our policy." The video failed to discuss the potential danger of these restraints should they block air or blood flow. As one trainer explained: "The idea of compassionate restraint is I decide how compassionate I am going to be based on the given circumstances."

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<sup>19</sup> *Hunter v. Durell*, No. C16-1445-MJP, 2018 WL 6249789, at \*11 (W.D. Wash. Nov. 29, 2018) (collecting cases).

<sup>20</sup> Int'l Ass'n of Chiefs of Police, National Consensus Policy and Discussion Paper on Use of Force, 15 (July 2020), [https://www.theiacp.org/sites/default/files/2020-07/National Consensus Policy On Use Of Force%2007102020%20v3.pdf](https://www.theiacp.org/sites/default/files/2020-07/National%20Consensus%20Policy%20On%20Use%20Of%20Force%2007102020%20v3.pdf) [<https://perma.cc/V7XE-BU56>]; see also American Academy of Neurology, AAN Position Statement on the Use of Neck Restraints in Law Enforcement, (June 9, 2021), <https://www.aan.com/advocacy/use-of-neck-restraints-position-statement> [<https://perma.cc/7R48-3D7L>] ("Because of the inherently dangerous nature of these techniques, the AAN strongly encourages federal, state, and local law enforcement and policymakers in all jurisdictions to classify neck restraints, at a minimum, as a form of deadly force.").

<sup>21</sup> *Barnard v. Theobald*, 721 F.3d 1069, 1076 (9th Cir. 2013) (emphasis in original).



PhxPD trainers demonstrate “compassionate restraint.”

Despite the change in policy, officers continue to use potentially deadly neck restraints. In 2021, an officer squeezed a man’s neck with both hands because the man stood up to get his identification from his back pocket. Officers stopped a group of people in a parking lot for trespassing, ordered them to sit on the curb, and asked each person for identification to check for outstanding warrants. An officer approached one man who stood up to get to his wallet, and told another officer, “He’s not listening, let’s just hook him.” The man told the officers that he was trying to follow directions, but both officers grabbed him, twisted his wrists, and slammed him down on the sidewalk. The man protested, “You’re breaking the law, I didn’t do anything!” One officer can be heard on body-worn camera saying, “It’s not breaking no law, bro!” as he wrapped his hands around the man’s neck. In his report, the officer wrote he did not “apply pressure to the male’s throat or squeeze his throat in any way.” PhxPD’s Professional Standards Bureau found the officer’s conduct departed from PhxPD training but stated PhxPD policy did not prohibit control holds to the neck.





The officer's incident report reads: "At no time did I apply pressure to the male's throat or squeeze his throat in any way."

## 2. PhxPD Uses Unreasonable Less-Lethal Force

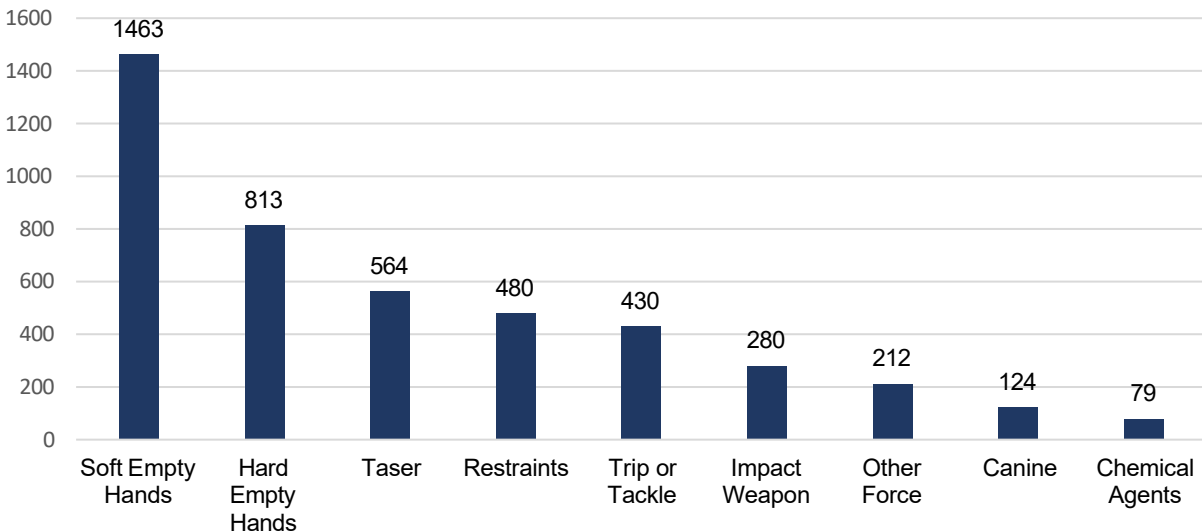
Less-lethal force includes tactics and weapons that are less likely to cause death or serious injury. The force may range from low-level physical tactics, such as restraining a person's wrists while handcuffing, to more serious force, like firing Tasers or releasing police dogs. Less-lethal force can be extremely painful and result in serious harm or even death. PhxPD policy requires officers to report a range of less-lethal force. The below chart shows less-lethal force incidents reported from January 2019 through March 2022.<sup>22</sup>

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<sup>22</sup> These totals do not reflect a full accounting of PhxPD's use of impact weapons, particularly Pepperballs, because PhxPD has only required a force report if an officer intended to hit a person with a projectile.



## Reported Uses of Less-Lethal Force: January 1, 2019 to March 31, 2022



We found that officers use unjustified less-lethal force against people who are handcuffed, people in crisis, and people accused of low-level crimes. Officers rely on less-lethal force to attempt to resolve situations quickly, often when no force is necessary and without any meaningful attempt to de-escalate.

### a. PhxPD Shoots Projectiles Prematurely and Indiscriminately

The immediacy of PhxPD officers using force, sometimes within the first seconds of an encounter, is a defining aspect of the pattern or practice of excessive force we found. It is particularly pronounced in PhxPD's use of less-lethal projectiles, such as Pepperballs, 40mm impact rounds, and stunbags. These impact weapons present serious risk of harm.

A Pepperball gun is a high-pressure air launcher that fires projectiles filled with a chemical powder similar to pepper spray. Courts have observed that the weapons are difficult to aim precisely over long distances, and they can cause serious injury if they strike a vital area of the body.<sup>23</sup> A 40mm launcher (40mm caliber) fires foam rounds at approximately 170 miles per hour. PhxPD officers use these weapons excessively, sometimes firing multiple rounds in quick succession at unarmed people.

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<sup>23</sup> *Nelson v. City of Davis* 685 F.3d 867, 878-79 (9th Cir. 2012) (Pepperball round struck an individual in the face, causing "significant damage to his eye, causing temporary blindness and a permanent loss of visual acuity.").

Officers shoot projectiles to surprise or confuse people and then offer little time for them to follow commands. In one incident, a group of officers shot 40mm foam rounds, a Taser, and over 20 Pepperballs at an unarmed man within 20 seconds of announcing their presence. The officers planned to take the man into custody for two open felony warrants related to probation violations. They surrounded a storage facility where he stood outside a unit repairing a bicycle. One officer yelled, “Hands!” seconds before firing Pepperballs and yelling, “Get on the ground!” While the officer continued to pelt him with Pepperballs, another officer struck the man with a 40mm impact round. The man turned away, screaming. Then, a third officer advanced and fired a Taser, incapacitating the man. As he fell—nearly hitting his head on the wall of the storage unit—an officer fired another 40mm round.

PhxPD officers also shoot projectiles abruptly and without evidence the person is an immediate threat. For example, officers shot dozens of Pepperballs at a man suspected of taking his mother’s car without permission. The man was leaving a laundromat when an officer immediately fired Pepperballs at him, and continued to fire after the man was on his knees and had curled his body onto the sidewalk. Officers reported the reason they fired projectiles on first contact was the man’s prior charges of aggravated assault on a police officer and resisting arrest. A person’s criminal history cannot be the sole basis for officers to use force.<sup>24</sup> Using force without assessing whether the man posed an immediate threat was unreasonable.

### **Projectiles as “Overwhelming Force”**

PhxPD’s investment in less-lethal projectiles stems, in part, from the high number of police shootings in 2018. Ten of PhxPD’s 44 shootings that year involved the Special Assignments Unit (SAU), a tactical squad. A lieutenant who previously oversaw the SAU told us the goal in acquiring 40mm launchers and Pepperball guns was to equip SAU officers with tools to use “overwhelming force” in lieu of shootings. Officers told us that quickly using more less-lethal projectiles would reduce the need for lethal force. PhxPD not only instructed officers to be “proactive” with projectiles, it took the weapons away from officers who did not use them enough.

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<sup>24</sup> See *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1328 (9th Cir. 1995) (in evaluating the reasonableness of a seizure, one relevant factor may be officers’ awareness of a person’s criminal history when “police officers are confronted with multiple factors indicating danger”); *Estate of Elkins v. Pelayo*, No. 1:13-CV-1483 AWI SAB, 2022 WL 1123117, \*26 (C.D. Cal. Apr. 14, 2022) (a suspect’s “known criminal history is admissible as part of the totality of the circumstances” evaluating the reasonableness of the force).

PhxPD has expanded deployment of 40mm and Pepperball weapons throughout the department. Evaluation of these new weapons focused primarily on reducing police shootings without enough attention to whether officers used projectiles reasonably. Indeed, PhxPD reported the pilot was successful because, in 2021, there were fewer overall shootings. Former Chief Williams explained: “Early indications show this program is proving very successful in preserving life while combating crime. We also believe less-lethal options have contributed to a 50% drop in officer involved shootings in 2021.” But officers only started using the weapons in late October 2021, and police shootings increased in 2022. In any event, the analysis of the reasonableness of force does not start and end with whether an officer fired a gun. PhxPD’s use of less-lethal projectiles violates the Fourth Amendment’s prohibition against excessive force.

**b. PhxPD Uses Unreasonable Force Immediately, Without Giving People Warning or an Opportunity to Comply**

PhxPD’s “force first” practices are not limited to the projectile weapons described above. Officers quickly resort to physical force, such as tackling or using “compassionate restraints,” to immediately subdue a person, regardless of the crime or the threat. These tactics often lead to excessive force.

In one incident, an officer grabbed a man by his hair and threw him to the ground before he could obey the officer’s orders. Officers approached the man in a parking lot after he was seen in a stolen car. The man had his hands up, but less than two seconds after yelling at him to lie down, an officer grabbed him by his hair with one hand, while pointing a gun at him with his other hand. The officer threw the man to the ground and wrapped his arm around the man’s neck while three other officers pulled the man’s legs and hands in different directions. “Put your arm behind your back!” one commanded. The man responded, “I’m trying!”

Sometimes, PhxPD officers unnecessarily use force before even trying to speak to a person. In one incident, officers arrived at an apartment complex to the sounds of yelling and screaming. An officer rushed into an apartment without announcing his presence, lifted a woman from behind, and pulled her outside. The officer then kicked her legs out from under her and slammed her face-first into the sidewalk, splitting her chin on the concrete. The woman was bleeding on the ground less than 40 seconds after the officers got out of their car. From review of the body-worn camera footage, it is unclear the woman even knew it was a police officer who grabbed her.

When a person is confused by an officer's commands, or has no time to obey them, officers report this as "resistance" to explain force that follows. But "[a] desire to resolve quickly a potentially dangerous situation" does not justify "force that may cause serious injury."<sup>25</sup> For example, officers grabbed a man and slammed him to the ground seconds after confronting him. A gas station attendant called police about a shirtless man trespassing and fist-fighting outside. When an officer arrived, he approached a man fitting the description and told the man to put his hands behind his back while grabbing his arms at the same time. In response, the man said, "For what?" and looked over his shoulder. The officer immediately swept the man's legs from under him, slamming his body to the pavement. "I'm not fucking playing with you, dude," he said. The man suffered a head laceration that required stitches.

PhxPD officers also resort to force quickly when investigating minor crimes, or at times no crime at all. In one example, two officers used excessive force after stopping a bicyclist who ran a red light. The man allowed the officers to search him. As one officer checked the man's pockets, the man appeared to move something from one hand to the other. The officers grabbed him, told him to put his hands behind his back, and then pulled him to the ground. The man asked, "What am I under arrest for?" An officer said, "For not obeying a police officer." The officers appeared to recognize they lacked a lawful basis for arresting the man, and one said, "We need to develop PC [probable cause]." Both officers then muted their body-worn cameras. PhxPD arrested him for resisting arrest and possession of marijuana. County and city prosecutors declined to pursue the charges.

In another incident, an officer tackled a man without warning for allegedly shoplifting \$38 worth of food from a grocery store. A grocery store customer called police, and officers soon located a man fitting the description walking on a sidewalk near two other people. As the officers pulled up, one yelled "Stop!" out the window. The man continued to walk, seemingly unaware that the officer was yelling at him. Seconds later, both officers jumped out of the car, ran at the man, and pushed him to the ground. Later, one officer bragged to the other, "You like that impact push, though? Sick." His partner agreed, "That was good, yeah."

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<sup>25</sup> *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001).

### c. PhxPD's Misuse of Leg Restraints Results in Unreasonable Force

PhxPD officers bind people's legs and arms together and keep them face down, creating a serious risk that the person will be unable to breathe.<sup>26</sup> PhxPD uses a restraint called the "hobble," which consists of an adjustable nylon cord that can be used to bind a person's ankles, knees, or elbows. According to the manufacturer, the hobble includes a "sit-belt" that circles a person's waist and can be connected to leg restraints. This belt is intended to allow officers to safely restrain a person while keeping them in a seated position.



The left image shows use of the "hobble" restraint according to the manufacturer. The right image shows a typical application by PhxPD.

PhxPD training instructs officers to roll a person restrained in a hobble into an upright, seated position. Instead, PhxPD officers connect leg restraints to handcuffs behind a person's back and keep the person face down on their stomach, including during transport in a police vehicle. This position inhibits breathing and is particularly dangerous for a person under the influence of drugs or alcohol. Several people have

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<sup>26</sup> That is because this technique creates a "four-point restraint," which is similar to a hog-tie position. Since 2002, the International Association of Chiefs of Police have recommended that "law enforcement agencies eliminate or seriously limit the use of the hog-tie position and similar four-point restraints." International Chiefs of Police, Training Key 541: The Four-Point Restraint (2002). That document also warned that positional asphyxia can occur, and therefore recommended that "when four-point restraints are absolutely essential for control of a suspect, they should be used with great care, and the condition of the suspect should be continuously monitored." *Id.*; see also *Slater v. Deasey*, 789 Fed. Appx. 17, 21 (9th Cir. 2019) (denying qualified immunity where an individual died after being placed in a hobble in a position similar to a hogtie).

died in PhxPD custody after being restrained in this way. Despite the serious risk of harm, PhxPD does not require supervisory review of the use of the hobble.<sup>27</sup>

In one example, an intoxicated man lost consciousness after officers held him face down with his hands and feet restrained. Officers responded to a call about a person passed out in a car. They arrived to find the driver unconscious behind the wheel with the engine running. Officers saw a bag of pills and woke the driver, who became upset and resistant. After a struggle, the officers held the man face down and connected leg restraints to his handcuffs behind his back. Officers left him face down, with one officer kneeling on his upper back. Though the man's breathing became louder and more labored, officers held him lying on his chest for nearly a minute. Only after he did not respond to questions did they roll him to his side and see that he was unconscious. Six other officers also did not act when the man's breathing became labored.

### **“Don't hogtie me, please!”**

PhxPD officers arrested a man at a group home for allegedly assaulting a staff member. After being handcuffed, the man began to struggle. Officers bound his hands and feet behind him, and then tightened the cord to bring them together. They left the man face down on the floor, hogtied in the manner explicitly prohibited by policy.

Within one minute, the man began to complain he could not breathe. Officers called for medical assistance as the man began to vomit. The Fire Department arrived and cleared the man for transport. Officers carried the man to a patrol car and laid him in the back seat, still hogtied. “You're going to be okay, child. Stop complaining,” they told him.

During transport, officers realized the man was throwing up again. They stopped and opened the car door to find the man face down in vomit.

For a second time, officers called for medical aid. They removed the hogtie restraint and permitted the man, still handcuffed, to sit up. Covered in his own vomit, the man lurched out of the police car and collapsed face down on the ground. “I can't breathe, I need some water,” he begged. “Stop being a baby,” one officer said.

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<sup>27</sup> PhxPD Operations Orders 1.5.

The Fire Department arrived and cleared the man again. When it was time to go, the man pleaded, “Don’t hogtie me, please, please.” The officers again bound his hands and legs together and placed him face down in the grass.

#### **d. PhxPD’s Use of Tasers is Unreasonable**

Since the early 2000s, PhxPD has equipped patrol officers with conducted electrical weapons, or Tasers. Officers use Tasers often. Of the 2,711 incidents in which officers reported force between January 2019 and April 2022, 21% involved the use of a Taser.

Tasers have two modes. In probe mode, an officer fires two barbs into a person’s body, striking the skin to send incapacitating jolts of electricity.<sup>28</sup> If deployed successfully, Taser probes temporarily override the central nervous system. This neuromuscular incapacitation can stop a threat. In drive-stun mode, an officer presses a Taser directly against a person’s body, pulling the trigger to activate electricity. Drive-stun mode does not induce neuromuscular incapacitation and can even provoke someone to fight back.<sup>29</sup> In both modes, a Taser can deliver excruciating pain, ignite flammable substances, and cause secondary injuries resulting from a fall. Contact with Taser electrodes in drive-stun mode may also burn the skin and cause permanent scarring.<sup>30</sup>

PhxPD officers fire Tasers at people with little or no warning and when people pose no threat. Officers rarely attempt de-escalation before firing a Taser. Officers fire Tasers at people with their hands up, after they surrender, or when they are restrained. We also saw many instances in which officers used Tasers in drive-stun mode to handcuff people who either refused or were unable to put their hands behind their backs. It is unreasonable to use Tasers against people who are under control.

Officers use Tasers against people who show signs of a behavioral health crisis. In many incidents we reviewed, officers failed to recognize that a person’s disability may impact whether they can understand commands or comply with them. For example, officers fired a Taser to subdue a suicidal man who asked a 911 operator to “have the

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<sup>28</sup> *Bryan v. MacPherson*, 630 F.3d 805, 824 (9th Cir. 2010) (explaining that, in probe mode, the taser fires a pair steel barbs that strike a person to send an “electrical impulse instantly overrides the victim’s central nervous system, paralyzing the muscles throughout the body”).

<sup>29</sup> *Marquez v. City of Phoenix*, 693 F.3d 1167, 1171 (9th Cir. 2012), *as amended on denial of reh’g* (Oct. 4, 2012) (“‘Drive-stun mode’ does not incapacitate the target, but instead encourages the suspect to comply by causing pain.”).

<sup>30</sup> Axon Enterprise, Inc., *TASER Handheld Energy Weapon Warnings, Instructions, and Information: Law Enforcement at 1–2, 5* (Rev. Sept. 20, 2022).

cops kill me.” When officers arrived at the man’s apartment, he stepped out into the middle of the street and waved. With a cigarette in one hand, he touched his head with his other hand in a finger-gun gesture and called to the officers, “Shoot me here.” Officers noted that he was unarmed as he ambled around ignoring their commands. With little warning, one officer called “Taser!” and immediately pressed the trigger, causing one of the metal darts to embed itself in the man’s forehead. (Paramedics were later required to pull out the dart.) A second officer then fired four stunbag rounds, striking the man in the back and chest. Firing a Taser at someone in the head, inches away from his eye, carries a heightened risk of serious injury or death. PhxPD found the Taser and stunbag deployment within policy, even though both were unreasonable and used against a man who was, at most, a risk only to himself.

At times, officers fire Tasers simply because someone does not follow commands. For example, moments after providing a warning, an officer fired two Taser probes at a naked unhoused man holding only a pair of sweatpants. The man was standing outside a strip mall explaining that it was “his home” and that he works for God. Four officers surrounded him, and one warned, “Hey, sir, if you don’t put your pants down, I will tase you.” At the same time, another officer commanded, “Put your pants on.” Less than ten seconds later, the first officer tased the man. The man presented no threat warranting the use of a Taser.

PhxPD supervisors sometimes encourage officers to use Tasers inappropriately and excessively. In one instance, within minutes of arriving on the scene of a behavioral health crisis, a PhxPD sergeant sprayed a man in the face with pepper spray for seven seconds and then fired a Taser at him. The man’s mother had called 911 because he stopped taking his medication and slapped her in the arm. Officers who arrived spoke calmly with the man and decided to seek emergency mental health treatment and wait. Things changed when a sergeant arrived. He told officers to arrest the man, “get a Taser ready,” and then sprayed the man in the face with pepper spray. As the man recoiled, two other officers grabbed him and, at the sergeant’s direction, one fired Taser darts in his leg. When the man fell to the ground, the sergeant took the Taser from the officer and tased the man again. Rather than obtaining mental health treatment, officers arrested him for assault, disorderly conduct, and resisting arrest. Prosecutors declined to pursue charges.

#### **e. PhxPD Fails to Exercise Control Over Police Dogs**

A properly trained police dog should be able to bite, hold, and release on command, without causing excessive injuries. PhxPD has a designated canine unit with three squads and 13 dogs. By policy, PhxPD requires officers to announce the presence of a canine before releasing the dog to search. The purpose is to “prevent innocent people



from inadvertently being injured by the canine and to allow the suspect(s) additional opportunity to surrender.” Accordingly, PhxPD requires officers to “wait sufficient time to ensure that anyone within the search area has ample opportunity to comply with instructions.” As soon as the suspect is in custody or no longer poses a threat, the dog must be recalled or otherwise restrained.

In practice, PhxPD canine handlers fail to maintain reasonable control over police dogs. We reviewed cases in which handlers permitted the dogs to bite people for dangerously prolonged periods, even after they had surrendered or were handcuffed.

For example, a PhxPD dog bit the arm of an unarmed and compliant homeless man for 47 seconds, including about 30 seconds after officers handcuffed him. PhxPD had received a report of a man with a suitcase entering a partially constructed apartment complex. Around midnight, a canine unit responded. Ten seconds after announcing their presence and warning that the police dog “will bite you,” the canine handler released the dog into the building. Immediately, the man called out, “Sir, I’m in the room right here.” Rather than recall the dog, the handler commanded it to bite and said, “Good boy! Get ‘em, buddy!” On body-worn camera video, the man can be heard screaming when the dog reached him. The dog thrashed the man’s arm from side-to-side and continued to bite while officers handcuffed him. The canine handler never commanded the dog to release the man; the dog released its bite only after the handler struggled to pull it away.

At the hospital, the man told one officer that he had been sleeping, heard the warning, and called out his location so “they wouldn’t release the dog, but he did anyway.” In an incident report, the same officer wrote: “He said he never heard us giving out commands because he was sleeping.” Officers sought to charge the man with burglary of a residence; the county attorney declined prosecution.

In another example, PhxPD officers allowed a police dog to continue biting two burglary suspects after they had been located and apprehended. A car tow lot owner reported that his surveillance video showed two people jump the fence to his property and break into vehicles. Officers arrived and saw two people in the lot, who then ran and hid. Officers surrounded the lot and called for a canine unit. Once there, the canine officer gave one warning: “Phoenix Police Department. Police dog to search. Anybody inside the fence lot make yourself known or you may get bit by a police dog.” The officer released the dog 10 seconds later. Within 40 seconds, officers heard cries of pain as the dog dragged a man out by his arm from underneath a vehicle. The canine handler allowed the dog to keep biting the man’s arm as other officers ordered the man onto his stomach for handcuffing. Finally, 35 seconds after the man started complying with commands, the handler pulled the dog off him. The canine handler repeated the

warning, and the dog pulled a second man out by the arm from under a different vehicle. As the second man pleaded, "Please!", the canine handler instructed another officer to drag the man by his feet into an open area. The dog, still attached to the man's arm, was pulled with him. The dog continued to bite the man even as officers handcuffed him. Both men had to be hospitalized for their injuries. Neither man was armed.

#### **f. PhxPD Uses Unreasonable Force Against Handcuffed People**

PhxPD officers use "gratuitous" force after a person is already handcuffed or restrained, and when there is no immediate threat.<sup>31</sup> This often occurs after a person criticizes the officer for using force. This is unlawful; force used only to punish an individual typically violates the Fourth Amendment.

For example, PhxPD officers painfully restrained a man because he kicked an officer during an arrest. When officers spotted the man, he was shirtless and crawling in gravel beside the street. One officer grabbed the man from behind without identifying himself and commanded: "Hands behind your back." The man reacted by kicking the officer two or three times. After officers handcuffed the man, they repeatedly contorted his arms behind his back, pulled up on them, and thrust them into the air as he cried out, "You're hurting me. Stop it." While continuing to pull his arms, the first officer retorted, "You know what else hurts? Getting kicked."

At times, officers repeatedly use force to punish a handcuffed person. In one incident, two officers pressed on a man's head, neck, and body because the man mocked the weight of a female officer. The man had threatened to assault someone, and officers tackled and handcuffed him after he refused their commands to stop walking away. While handcuffed on his stomach, the man complained of the weight a female officer put on his legs and called her a "fat bitch." She laughed, said "Okay, I can do this," and pressed harder on his legs. Another officer then shoved his body weight onto the man's neck and shoulders and asked: "Want me to take you out of these handcuffs and we'll do it all over?" Later, while officers searched him, the man complained about the officers' actions, and spittle flew from his mouth onto an officer's face. The man immediately apologized, but the officer grabbed him by the hair and slammed his head into the patrol vehicle. Officers then threw the man onto the ground and applied the

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<sup>31</sup> *Ross v. City of Toppenish*, 104 Fed. Appx. 26, 29 (9th Cir. 2004) ("No reasonable officer could have thought ... that he was entitled to use such gratuitous force. That a police officer is not entitled to use such force against a handcuffed, secured and compliant citizen was clearly established ..." (quoting *Jones v. Buchanan*, 325 F.3d 520, 534 (4th Cir. 2003))).

hobble restraint, connecting his leg restraints to his handcuffs behind his back. All the while, the man did not resist.

### **3. PhxPD's Training and Weak Oversight Contribute to the Pattern of Excessive Force**

PhxPD training has mischaracterized the law and encouraged immediate and indiscriminate force, which predictably results in excessive force. Many of the problematic practices we saw originated with PhxPD training. Despite systems for oversight and review, PhxPD's chain of command approved nearly all use-of-force incidents, including those described above.

#### **a. PhxPD Training Encourages Officers to Use Unjustified Force**

PhxPD's training has explicitly encouraged officers to use force when there is no legal justification to do so. We reviewed hundreds of lesson plans and PowerPoints, interviewed members of PhxPD's Training Bureau, and personally attended dozens of hours of classroom and scenario-based training in Phoenix.

Under the Fourth Amendment, police may use reasonable force against immediate threats, not "speculative" risks.<sup>32</sup> PhxPD has trained officers to observe what trainers call "safety priorities," a hierarchy that begins with: (1) "Hostages," (2) "Innocents," (3) "Law enforcement," and (4) "Suspects." PhxPD teaches officers to prioritize the safety of hostages and innocents even when the risk of harm is only theoretically possible. In several trainings we observed, instructors directed officers to use force against an isolated person because bystanders might show up: "Innocents can pop up out of nowhere."

PhxPD also has trained officers to use serious force to respond to hypothetical, not actual, danger. For example, in a training for all supervisors at a station, PhxPD showed a video of an incident in which an officer shot a man carrying a knife with a 40mm round. Although the man was on a deserted street in downtown Phoenix at 2:45 a.m., trainers said the force was reasonable because there "was an element of jeopardy." The jail was across the street and people "could be" released at any time. Trainers have also taught officers to fire Tasers and 40mm projectiles against a person in a behavioral health crisis if the person does not comply with commands, whether or not the person

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<sup>32</sup> *Hultstedt v. City of Scottsdale*, 884 F. Supp. 2d 972 (D. Ariz. 2012).

presents a threat. The mindset that a theoretically possible future threat, however unlikely, justifies immediate force violates the Fourth Amendment.<sup>33</sup>

Phoenix has trained its officers that all force—even deadly force—is de-escalation. This attitude runs contrary to the basic principles of de-escalation, which offers strategies, such as time, distance, cover, and verbal persuasion, to help a person voluntarily comply with officers without the need to use force or to lessen the force needed.<sup>34</sup> PhxPD officers have been trained to “use escalation to de-escalate the situation” as quickly as possible. One trainer suggested immediate force stops a situation “before you really have to hurt someone,” and explained that “de-escalation, like talking nice, will get someone killed.” In practice, this translates to quickly using unreasonable force, often without considering whether any force is necessary at all.

Indeed, in some trainings we observed, trainers encouraged officers to use force without warning or just seconds after arriving at a scene, regardless of whether the person presented an apparent risk to officers or others. Trainers have stressed that officers must avoid “paralysis by analysis”—they must not hesitate or overthink but act quickly to use less-lethal weapons. To be sure, the use of a less-lethal weapon may be necessary and appropriate to resolve a dangerous situation without the need for greater force. But PhxPD must teach officers to use force only when reasonable under the Constitution. Instead, PhxPD trainers have featured unreasonable force as good de-escalation in training settings. In one PhxPD video used to train 40mm operators, a PhxPD officer shot a 40mm impact round at a man standing directly in front of a toddler in a crib. When someone in the training expressed concern that the toddler could have been struck had the officer missed the target, the trainer responded that the deployment was “one of the best executions of the safety priorities” and the only room for improvement was to fire the projectile sooner. Our review of force incidents demonstrates the prevalence of this mindset.

In a training we observed, PhxPD taught officers that when people do not immediately comply with commands, officers can use force to make them. For instance, if a person suspected of a low-level misdemeanor asks why they are being detained and does not sit down when told, PhxPD has taught that using force to make them sit down is a proper response. And if a person’s body naturally tenses in response to being grabbed, that is “active resistance,” which justifies greater force, including using chemical spray,

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<sup>33</sup> *Lowry v. City of San Diego*, 858 F.3d 1248, 1257 (9th Cir. 2017) (en banc).

<sup>34</sup> Guiding Principles on Use of Force, Police Executive Research Forum, at 40, 54-60 (Mar. 2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf> [<https://perma.cc/94RP-HYTR>].

wrapping arms around a person's head, tackling a person, or putting pressure on their neck.

Similarly, PhxPD has taught officers that it is appropriate to fire projectiles at people who are not following commands but pose no threat. Indeed, 40mm operators have been trained they can fire when faced with "passive resistance," such as when a person is defiant in response to commands, but not aggressive. For example, in a role-playing training we observed, officers stopped a driver on suspicion of assault. The actor got out of his car with his hands up but did not follow the trainee's directions and was moving around and yelling. Eventually, the trainee shot the actor with a 40mm round. During the debrief, instructors told the trainee that he should have taken more decisive action and fired the moment the actor did not comply with a command.

Other trainings highlight incidents in which officers used excessive force as exemplary behavior. For example:

- For a training on firing 40mm impact rounds, PhxPD provided several examples of what the agency considered effective 40mm deployment. This included the incident described on page 27 above, in which a group of officers deployed two 40mm impact rounds, a Taser, and over 20 Pepperball rounds at an unarmed man within 20 seconds of announcing their presence.
- PhxPD released a department-wide video that featured video of the incident described on page 97 below, in which PhxPD officers fired Pepperballs at a man in a behavioral health crisis less than two minutes after arriving on scene. The man had not hurt or touched anyone and was not armed, and officers had been advised before their arrival that he was beginning to calm down.

#### **b. PhxPD Officers Fail to Report Significant Force**

PhxPD sets a high threshold for reporting uses of force. As described above, many leg or neck restraints require no use-of-force report at all. To understand the scope of under-reporting, we reviewed a random sample of incidents in which it was conceivable that officers used force, but no force report was filed, such as incidents in which people were arrested for "resisting arrest." In a significant number of these incidents, officers used force but never reported it, either because policy did not require it or because the officers mischaracterized what occurred.

In one case, officers failed to report force that was so aggressive that bystanders objected. Two officers responded to a call from a hotel that a former employee was breaking items in the breakfast area. An employee pointed the man out, who was by

then talking on his cell phone while patrons ate their breakfast. When he saw the officers walk toward him, he put his hands up and said he would leave, saying, “Please don’t touch me.” One officer responded, “No, you’re gonna get touched.” They grabbed the man around the neck and forced him to the ground. They held him on the ground and handcuffed him as he screamed and as hotel staff and guests questioned the officers’ actions. Consistent with PhxPD policy, the officers did not report the force.

## Unreported Neck Restraint

The use of dangerous neck restraints or compression holds evades supervisory review because PhxPD considers these practices to be “soft empty hand control and restraining devices,” which are not subject to supervisory review. For example, supervisors never reviewed an incident where an officer held a teenager by the neck while handcuffing him. The teen’s mom had called the police complaining that her son, who was having a manic episode, had stolen her phone. As the teen swore at the officers and told them he was recording with his phone, officers grabbed him, took away his phone, and said, “You are making stupid decisions.” The teen remained seated but kept talking, so one officer grabbed him by the neck and applied pressure for approximately 15 seconds (as shown in the image below) as they handcuffed him. The officers did not report the force.



The officer held the teenager by the neck for approximately 15 seconds but completed no use-of-force report.

### **c. The Lack of Meaningful Supervisory Review Validates and Reinforces Unlawful Practices**

Supervisors provide little oversight of officers' use-of-force practices. PhxPD requires the chain of command to review certain types of force incidents—such as canine bites, Taser and 40mm deployments, punches, and kicks. Beginning in 2020, PhxPD also required supervisors to review incidents in which officers point their firearms at people. We found that supervisors fail to scrutinize the force used or the officers' tactics. At times, PhxPD supervisors even validate unlawful practices. As a result, unconstitutional behavior continues unabated.

Supervisors' use-of-force reports are perfunctory and boilerplate. Supervisors are required to evaluate whether force was reasonable and check a series of boxes to confirm the force complied with policy. They do not interview people involved in use-of-force incidents, whether witnesses or the subject of the use of force. We saw little evidence that supervisors consider the totality of officer tactics, such as engaging in risky foot pursuits of people suspected of low-level offenses. And we also saw incidents in which supervisors involved in the use of force conducted the supervisory review—thereby reviewing their own actions.

Many use-of-force incidents do not receive even cursory supervisory reviews. Most reported force consists of “soft empty hand techniques,” which is tracked but not reviewed. These “techniques” can include placing pressure to a person's face and neck, pushing someone's nose with an officer's hand, and wrapping arms around a person's shoulder or neck and then using a knee to force their legs to buckle. Officers often use these techniques to inflict considerable pain, yet PhxPD requires no supervisory review.

PhxPD supervisors determined that 98.7% and 99.4% of force incidents complied with policy in 2021 and 2022, respectively. Our review showed that PhxPD officers used unreasonable force in a significant share of incidents. Indeed, PhxPD supervisors approved nearly every force incident that we describe above. And every incident in which an officer reported pointing a gun at a person—6,013 in 2021 and 2022 combined—was found to be reasonable and within policy. PhxPD's failure to meaningfully review force incidents validates and reinforces unconstitutional practices.

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PhxPD's unconstitutional practices inflict additional harm on family members already distraught over a loved one's injury or death at the hands of officers. One family watched their son's final moments on police video and saw officers pelt their child with impact rounds, then send a police dog to drag his body. Other families learned that officers were slow to render aid or delayed paramedics from reaching their loved ones.

Families also shared their frustration with how the City and PhxPD treated them following a shooting. Some are still waiting, years later, to recover their family member's possessions. These families told us they organize in the hope they can prevent what happened to them from happening to someone else. A family member told us: "We're trying to have faith, but I don't have much faith anymore."



## **B. PhxPD and the City Violate the Rights of People Experiencing Homelessness**

We have reasonable cause to believe that PhxPD violates the rights of people experiencing homelessness in two ways. First, PhxPD stops, detains, and arrests people who are homeless without reasonable suspicion that they are engaged in criminal activity. Second, the City and PhxPD seize and destroy property belonging to people who are homeless without providing adequate notice or opportunity to collect their belongings. A person's constitutional rights do not diminish when they lack shelter. These practices violate the due process requirements of the Fourteenth Amendment and the Fourth Amendment's prohibition on unreasonable seizures.

To evaluate the City and PhxPD's practices, we rode with and interviewed officers about their views on homelessness and policing in Phoenix. We reviewed a random sample of incidents from PhxPD units whose focus is policing homeless people. We reviewed body-worn camera video. We also scoured city reports on the destruction of property belonging to homeless people. We toured shelter and service facilities and observed cleanups of homeless encampments. We talked to city prosecutors, defense attorneys, and officials responsible for the City's homelessness programs. Finally, we spoke with dozens of unhoused people about their experiences in Phoenix and with homeless advocates.

### **1. Homelessness in Phoenix**

Homelessness places a heavy burden on Phoenix's resources, including public and emergency health systems. Over the last decade, the number of homeless people who cannot find shelter anywhere has nearly tripled. Of the nearly 7,000 unhoused people in Phoenix in 2023, almost half were unsheltered.<sup>35</sup>

Until late 2023, a large concentration of Phoenix's unhoused population lived in a downtown outdoor encampment known as the Zone. Because there were not enough shelter beds in the city, hundreds of unhoused people camped in the Zone on the streets surrounding Phoenix's largest shelter. At its zenith in 2022, the Zone held over a thousand people sheltering in tents and under tarps.

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<sup>35</sup> In 2023, 3,333 homeless residents of Phoenix were without shelter. Maricopa Association of Governments, *2023 Point in Time (PIT) Report (2023)*, [https://azmag.gov/Portals/0/Homelessness/PIT-Count/2023/2023-PIT-Count-Report-Final.pdf?ver=3to\\_Hr4cxOTZboaVUI4H3Q%3d%3d](https://azmag.gov/Portals/0/Homelessness/PIT-Count/2023/2023-PIT-Count-Report-Final.pdf?ver=3to_Hr4cxOTZboaVUI4H3Q%3d%3d)

PhxPD contributed to funneling unhoused people into the Zone. PhxPD heavily policed unhoused people throughout the City, and officers repeatedly told people they could not sleep outside the Zone. At the same time, officers made clear to unhoused people that they would receive a reprieve from such enforcement if they relocated to the Zone.

But the Zone was not a safe place to live. Paramedics would not respond to emergencies in the Zone without a police escort. People in the Zone reported thirty rapes during 2021-2022. A dead fetus, estimated to be between 20 and 24 weeks old, was found in the street in 2022. In March 2023, a man was beaten, thrown into a dumpster, and set on fire. One PhxPD commander told a reporter that the Zone was “an environment that attracts people [who] want to prey on those individuals that are at the lowest point in their lives.”

Meanwhile, lawsuits in state and federal court pressured the City and PhxPD to change their approach to people experiencing homelessness. In October 2022, local property owners sued in state court claiming the Zone had become a public nuisance and was hurting business. One month later, a group of unhoused people and local advocates sued in federal court claiming the City and PhxPD were violating the constitutional rights of homeless people inside and outside the Zone. The federal court issued a preliminary injunction prohibiting the City and PhxPD from seizing or disposing a homeless person’s property without notice and from enforcing laws preventing camping or sleeping in public “against persons with no practical recourse to housing.”<sup>36</sup> In March 2023, the state court declared the Zone a public nuisance and ordered the City to clear it of tents.<sup>37</sup>

To its credit, the City accelerated efforts to relocate many of the Zone’s unhoused residents to shelters and temporary housing. The City received an amendment to the federal injunction allowing it to move people to a new, sanctioned outdoor shelter area with restrooms. By November 2023, the City had closed the Zone to overnight camping and provided shelter to 585 people who had been living there. Other residents dispersed and moved to small encampments scattered throughout the City.

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[<https://perma.cc/C2QB-LC33>]. In 2024, that number has decreased to 2,701. Maricopa Association of Governments, *2024 Point in Time (PIT) Report* (2024), <https://azmag.gov/Programs/Homelessness/Data/Point-In-Time-Homelessness-Count> [<https://perma.cc/HST5-GFK3>].

<sup>36</sup> *Fund for Empowerment v. City of Phoenix*, 646 F. Supp. 3d 1117, 11245 (D. Ariz. 2022).

<sup>37</sup> *Freddy Brown, et al. v. City of Phoenix*, Case No. 2022-010439 (Maricopa Cty. Sup. Ct., Mar. 27, 2023).

**Homeless residents make up more than 37% of all arrests**



**But less than 1% of all Phoenix residents are homeless**



The City has established a number of programs related to homelessness. In 2017, the City established the Community Action Response Engagement Services program, or “Phx CARES,” to address citizen complaints and help people access city services. Since 2021, the City has been allocated nearly \$100 million in federal grants to support programs to address homelessness. In 2022 and 2023, the City added 1,072 shelter beds. This year, the City has proposed a new shelter to open this summer.<sup>38</sup> Even with the additional proposed beds, some people will be unable to find shelter.

## 2. Homelessness and PhxPD

Policing homeless people has been a central pillar of PhxPD’s enforcement strategy. Between January 2016 and March 2022, patrol officers logged 376,600 hours on nearly half a million trespassing calls. The number of hours spent on trespassing is likely an undercount, as officers do not consistently record all trespassing activity.

PhxPD’s public policy is to “lead with services,” and this stated policy has encouraged officers to make referrals, not arrests. But between January 2016 and March 2022, people who were homeless accounted for over one-third—37%—of all PhxPD misdemeanor arrests and citations. One unhoused man came into contact with PhxPD 97 times between 2016 and 2022 and was arrested or cited at least 20 times between 2019 and 2022.

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<sup>38</sup> Last year, people experiencing homeless accounted for over half of the City’s record-breaking number of heat-related deaths.

Officers frame many of these encounters as outreach to people experiencing homelessness, but they check for warrants, search belongings, and make clear that people are not free to leave. In fact, PhxPD has dedicated several squads to this purpose. The squads start their shifts before dawn by conducting “rounds,” which means waking sleeping people, running their names for warrants, and ejecting them from sidewalks, parks, alleys, dirt areas, and canals.

Interim Chief Sullivan told us he believes police should have “limited involvement when it comes to homelessness. It’s not a crime.” But the City has chosen PhxPD officers as a primary response to address the homelessness crisis, leading to the pattern of violations we describe above.

### **3. PhxPD Detains, Cites, and Arrests Homeless People in Violation of the Fourth Amendment**

PhxPD’s approach to policing homeless people violates the Constitution. Police officers can engage in voluntary contacts with community members, but contacts become seizures when people are no longer free to go.<sup>39</sup> Under the Fourth Amendment, officers may only detain people for investigative purposes if they possess reasonable suspicion of criminal activity that is “individualized.”<sup>40</sup> An officer must have “specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity.”<sup>41</sup> Without reasonable suspicion, a person “may not be detained even momentarily.”<sup>42</sup>

We found that PhxPD often stops unhoused people for investigative purposes without reasonable suspicion. Officers initiate these stops based on indications the person is homeless, even when they are lawfully present on city property. These stops are particularly coercive when officers detain unhoused people early in the morning, while they are merely resting or sleeping on public property. These stops sometimes lead to unlawful citations, often for discretionary misdemeanor offenses like obstructing an alley.

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<sup>39</sup> *Florida v. Bostick*, 501 U.S. 429, 437 (1991). A consensual encounter “may evolve into a situation where the individual’s ability to leave dissipates.” *United States v. Ayarza*, 874 F.2d 647, 650 (9th Cir. 1989).

<sup>40</sup> *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000); *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

<sup>41</sup> *Liberal v. Estrada*, 632 F.3d 1064, 1077 (9th Cir. 2011) (quoting *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000)).

<sup>42</sup> *Florida v. Royer*, 460 U.S. 491, 498 (1983).

### a. Officers Frequently Lack a Lawful Basis to Detain Homeless People

Often, the unlawful stops seem to serve solely as a pretext for officers to demand a person's identification and check for outstanding warrants. But police violate the Fourth Amendment when they detain "a pedestrian to check his license without any evidence that the person is engaged in a crime."<sup>43</sup> In one incident, an officer stopped his squad car when he saw a man who appeared to be homeless balancing his belongings while riding a bicycle in an alley. Although the officer had no basis to suspect criminal activity, he stopped the man to check for warrants anyway.

Sometimes, officers justify their detentions by falsely claiming people are obstructing sidewalks or alleys. The Phoenix City Code broadly prohibits "obstruction or interference" of public property, and obstruction of a sidewalk or alley means the person's presence impedes traffic.<sup>44</sup> But we often saw officers stop unhoused people who were not obstructing anyone's access and were sometimes even taking care to stay out of the way. In a 2023 incident, PhxPD illegally detained two people for sitting in the shade, well off to the side of an alley. Neither person was impeding traffic; they were sitting on large chunks of concrete too heavy to move. Still, the officers cited them for "lying or sitting on a public right of way." One officer explained: "Try not to be hanging out in alleys. Otherwise, you're gonna see PD quite a bit."

Officers also routinely detain unhoused people in the predawn hours after waking them to run warrant checks then and then ordering them to move. Like the stops described above, these are not voluntary encounters. Our review demonstrates the purpose of these encounters is not to assist homeless people, to offer them services or support, or to intervene due to a medical emergency. Without suspicion of a crime, officers roust people sleeping on public property, demand their identification, detain them to ask questions unrelated to their welfare, and to tell them to move. Such encounters are coercive, unnecessary, and routinely lead to constitutional violations.

In Phoenix, sleeping in public, by itself, cannot be illegal if a person has no means to access shelter. Since 2019, sleeping on public property has been constitutionally protected under *Martin v. Boise*, in which the Ninth Circuit Court of Appeals held that

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<sup>43</sup> *Utah v. Strief*, 579 U.S. 232, 242-43 (2016) (Sotomayor, J., dissenting); see also *id.* at 242-43 (explaining if there "were evidence of a dragnet search" for outstanding warrants after unlawful stops, then the evidence exclusionary rule could be applied); *Rodriguez v. United States*, 575 U.S. 348, 354-56 (2015) (inquiries during a lawful stop cannot measurably extend the stop's duration); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

<sup>44</sup> See Phoenix City Code § 23-9.

criminal punishment for a person's unavoidable lack of shelter violates the Eighth Amendment's prohibition against cruel and unusual punishment.<sup>45</sup>

And in 2022, a federal district court in Arizona ordered the City to cease enforcement of laws that penalized sitting, standing, or sleeping on public property.<sup>46</sup> As the court explained: "Practically speaking, this threat [of being stopped and cited by officers] is also a hardship because it creates a sense of fear and instability among the City's most vulnerable residents through no fault of their own."<sup>47</sup> But we found that PhxPD officers continue to detain unhoused people for no reason other than that they are sleeping in public. Without suspicion of a crime, these early morning detentions are unlawful.

In a 2023 incident, after the injunction, officers woke a group of people and told them, "You're being detained because we don't know who you are and you're camping." One woman said she thought they were okay to be in the area because their tent was not blocking the alley. An officer told her, "The alley is made for city use. It's not even supposed to be walked through. As a person. You're not supposed to walk through an alley." In another incident, from 2020, officers woke a 55-year-old man and 51-year-old woman at 4:55 a.m. They were sleeping on the sidewalk under blankets, leaving plenty of room for foot traffic, though there was no one else present other than the police. One officer told the man: "Sir, you understand that you can't be sleeping on the sidewalk in the City of Phoenix?" PhxPD ran warrant checks, commanded them to leave the area, and told the woman "I need you to get up and get moving though, dear."

The U.S. Supreme Court took up the issue in 2024, and will determine whether punishing a person for sleeping outdoors, when they have nowhere to go, is cruel and unusual under the Eighth Amendment.<sup>48</sup> Regardless of any future Supreme Court ruling, the law in Phoenix has been clear since 2019 that, without more, PhxPD officers lack reasonable suspicion to stop people for merely sleeping on public property when they have nowhere else to sleep. PhxPD was required to adhere to this law and it did not.

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<sup>45</sup> *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019). The U.S. Supreme Court will consider this principle in its review of *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. 2022) (*cert. granted*).

<sup>46</sup> *Fund for Empowerment*, 646 F. Supp. 3d at 1132.

<sup>47</sup> *Id.* at 1124. Like the laws at issue in *Martin v. Boise*, the Phoenix City Code bars sleeping and camping on public property. See Phoenix City Code § 23-30(A) (banning public camping) and Phoenix City Code § 23-48.01 (prohibiting sleeping on public streets or walkways).

<sup>48</sup> See *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. 2022) (*cert. granted*).

## **b. Officers Cite or Arrest Homeless People Without a Lawful Basis**

PhxPD's practice of illegally waking people up and detaining them for sitting or lying on public property leads to unlawful citations and arrests. In the early mornings, officers cite or arrest homeless people for conduct that is plainly not a crime, such as sitting or lying down on public property or for "trespassing" on private property when they are on a public sidewalk.

For example, one 69-year-old man has accumulated multiple citations and arrests for sitting or sleeping on public property. In 2017, officers arrested him for "loitering in a closed park." He had been sleeping under a blanket, using his backpack for a pillow. In 2021, officers again found the man wrapped up in a blanket, sleeping upright in a canal. The officers instructed him to move through a rocky area in the dark, and he tripped and fell. While officers ran his name through a warrant check, the man asked, "Is there no end to the harassment of the homeless?" An officer responded, "Is there no end to the trespassing or the obstructing?" The other officers laughed. The man said, "I quietly leave in the morning." PhxPD cited him for third-degree trespassing, then told him to go back to get his blanket and backpack: "Just go in there and get your belongings. Get your trash."

**"Is there no end to the harassment of the homeless?"**

*69-year-old man, detained for sleeping*

### **The Charges Were "A Little Bit Iffy"**

Sometimes, when people attempt to leave these unlawful stops, PhxPD officers use force to detain them. PhxPD officers tried to detain a man for trespassing in 2020, and when he questioned their authority to stop him, they grabbed him, knelt on his neck, and fired a Taser at him. The officers stopped the man outside a convenience store where he was talking to two women. Though no one had called the police, they demanded his identification and told him that he might be trespassing. The man explained that no one had asked him to leave the store, and when an officer threatened to arrest him, the man backed away, complained the officers were "out of order," and again said that he had not committed a crime. Officers followed him, grabbed him, and forced him to the ground. One officer placed his knee, and later his forearm, on the man's neck. Another officer tased him. The officers arrested the man for resisting arrest and trespassing, though one acknowledged these charges were "a little bit iffy." Prosecutors declined to prosecute the charges.

Some officers seem to have gotten the message that citing homeless people is a priority. One officer told a group of unhoused people, “You guys need to find somewhere that’s sustainable. Like, not alleys, not parks, nothing like that because we’re cracking down on that stuff.” We heard an officer on the bike squad—a squad dedicated to waking and moving homeless people—say on body-worn camera that he needed to write a trespassing citation because, “I gotta get my tickets up this month.” In another incident, a different bike squad officer said he “need[ed]” to write a trespassing citation because, “[t]his puts me at 30.” In 2022, the bike squad received a commendation for their arrest record the year before. In another incident, an officer warned a woman that she needed to leave the alley and not come back. “And then if I find you in the alley again, I gotta arrest you. Which I hate to do that. That’s stupid right? Just for being in the alley? But I have to.”

### **c. Officers Abuse Trespassing Laws to Unlawfully Detain People Experiencing Homelessness**

PhxPD also cites people for misdemeanor trespassing, claiming that they are on private property when they are not. In one early morning incident, officers issued unlawful trespassing citations to a man and a woman sleeping in the dirt under a tarp. Officers claimed in their report that the “property belongs to ADOT (Arizona Department of Transportation),” which had an “authority to arrest” on file with PhxPD. But the officers were unsure who owned the location where the people were sleeping, even after several minutes of riding their bikes around the property and consulting their maps. Having come to no consensus, one officer said, “who knows,” and wrote the citation.

In February 2018 and February 2019, PhxPD issued bulletins reminding officers that they need to have reasonable suspicion to detain a person for trespassing or require them to provide identification. PhxPD also reminded officers that they cannot detain someone just to issue a trespass warning. But we found many instances where officers stopped and held people without reasonable suspicion and only then tried to determine whether they might be trespassing.

For example, officers check to see if a property has an “authority to arrest” on file with PhxPD after they have already detained homeless people. PhxPD encourages officers to help property owners obtain “authority to arrest” documentation, which permits PhxPD to cite or arrest people for trespassing on private property without contacting the owner. In one predawn example, officers roused a woman sleeping in the dirt on public property between a fence and the street. The dirt was approximately three feet wide, next to a business, with no paved sidewalk separating it from the street. Only after holding the woman by the side of the road for about six minutes did officers determine no “authority to arrest” existed. Instead, they cited her for “obstructing public areas”—



although she was not preventing anyone from using the area—and told her to pack up her belongings and move.

Citations—often given in lieu of arrest—require a person to appear in court. If the person does not do so, the court issues a warrant for failure to appear, which leads to arrests and time in jail. City officials and people experiencing homelessness told us that getting to court is challenging and bench warrants are commonplace for these citations.

PhxPD told us that they rely on prosecutors to tell them if there are issues related to their trespassing enforcement. In practice, however, this information rarely reaches prosecutors or any judicial adjudication at all. The courts and city prosecutors review only a small fraction of PhxPD’s trespassing charges because most people in custody plead guilty and are quickly released. When city prosecutors do look at trespassing charges, they decline to prosecute nearly 96% of them.<sup>49</sup> The high rate of declinations may indicate that officers lacked the necessary probable cause to cite people for trespassing, or that pursuing the matter in court was not worth the resources. But when we asked the PhxPD commander in charge of the shelter and street squads whether PhxPD had reconsidered the practice of waking people up, he told us, “We’re still going to wake people to arrest them.”

#### **4. The City and PhxPD Seize and Dispose of the Property of Homeless People in Violation of the Fourth and Fourteenth Amendments**

The City and PhxPD’s strategy for policing the homeless population extends to seizing and destroying their personal property without due process. Sometimes, this practice occurs following the illegal detentions described above. Other times, it results from a joint effort between PhxPD and other city agencies to clean up encampments, usually with help from PhxPD officers.

People experiencing homelessness do not lose Fourth Amendment property rights to their belongings, even if they leave them temporarily unattended on the sidewalk. The government cannot seize and destroy those belongings without affording the owner due process.<sup>50</sup> That means the government must take “reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return.”<sup>51</sup> Before destroying property, the government must provide adequate notice of

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<sup>49</sup> For example, of the approximately 1,727 citations and arrests third-degree trespassing in 2021, prosecutors reviewed only 268. They declined 257, or 95.9%.

<sup>50</sup> *Lavan v. City of Los Angeles*, 693 F. 3d 1022, 1031-32 (9th Cir. 2012); see also *Garcia v. City of Los Angeles*, 11 F.4th 1113, 1124 (9th Cir.2021) (“[T]he government may not summarily destroy the unabandoned personal property of homeless individuals that is kept in public areas.”).

<sup>51</sup> *Lavan*, 693 F.3d at 1032 (internal quotations omitted).

its intent to clean up areas where property may be seized, inventory property present, and store the property so that people may try to retrieve their belongings.

The City and PhxPD failed to follow these constitutional requirements. Until 2022, they routinely destroyed property without adequate notice or process during clean-ups at the Zone. And throughout the City, they continue to destroy property during clean-ups organized through the Phoenix CARES program, or during officers' day-to-day encounters with homeless people. We watched these practices on body-worn camera video, saw them first-hand, and found them in PhxPD officers' and city employees' own reports.

In 2022 and 2023, the City and PhxPD updated policies to require more process before throwing away a person's belongings. But the new policies failed to achieve constitutional requirements. Dozens of unhoused people have spoken to us about losing property they needed for survival, such as clothing, tents, medication, and identification. They also spoke of losing property of immense personal value, including family photographs, correspondence, and, according to one man's account, an urn containing a family member's ashes.

#### **a. Seizure and Destruction of Property in the Zone**

As described above, Phoenix closed the Zone in the fall of 2023. But from October 2020 to January 2022, the City's "clean-up operations" in the Zone routinely resulted in constitutional violations. These clean-ups, conducted three times a week, required significant city resources, including an entire police squad, multiple outreach workers, multiple city employees, and various city contractors.

Starting at 5:00 a.m., PhxPD officers would drive block by block, using patrol sirens and loudspeakers to warn residents that they had to move and that "anything left behind will be considered abandoned property. If you're looking to downsize, now's a good time to do it." PhxPD officers would then cordon off a block at a time so city employees could dispose of all property and trash. While observing these clean-ups, Justice Department investigators saw workers throw away a tent, tarp, duffle bag, purse, and sleeping bag, among other things. When each block was clear, residents were free to push, carry, or drag their property back to their assigned area, re-assemble their tents, and unpack their belongings. During one clean-up we observed, an officer asked people moving their property if they were familiar with the concept of "minimalism."

Despite public criticism of these practices, the City failed to provide legally adequate notice of the cleanups to people living in the Zone. Until January 2022, the City posted no signs to explain the frequency or duration of the clean-ups. For some homeless

residents, the first notice they received was the sunrise announcement by PhxPD officers, just before the clean-ups began. People who failed to move their property sometimes lost everything. In one example, an officer told a man who had been slow to move his things that unless he moved away and allowed city workers to destroy his property, the officer would cite him for obstructing the clean-up. In another example, a 56-year-old man was late moving his property and told officers “he was trying to move as fast as he could.” This man, too, failed to move his belongings quickly enough. The officers cited him for failure to obey an order and shoplifting because among his possessions, the man had two milkcrates bearing the name of a local dairy.

Around January 2022, the City and PhxPD changed their procedures for cleaning up the Zone. Officers no longer forced residents to move their property; instead, city staff and contractors cleaned around people’s tents and belongings, resulting in fewer complaints. At the end of December 2022, the City created a protocol for impounding and storing property during clean-ups. But these improvements were mostly limited to highly visible areas inside the Zone. Elsewhere in the City, as described below, the practice of seizing and destroying property without due process continues.

#### **b. Seizure and Destruction of Property throughout the City**

With PhxPD’s assistance, the City has facilitated hundreds of encampment clean-ups outside the Zone, which has also resulted in unlawful destruction of unhoused people’s property. The Phoenix CARES program was established to connect “the community with services like encampment cleanups, shelters, and other resources for individuals and families experiencing homelessness.” But it has largely evolved into a complaint-based response program that enables the unlawful seizure and destruction of property outside the Zone. Community members can make complaints online about homeless activity and encampments in their neighborhoods, prompting law enforcement to respond with other city agencies. PhxPD and city officials then force unhoused people to leave the area and destroy property left behind.

Prior to 2023, Phoenix had no policy to ensure unhoused people received notice of a clean-up or to determine whether they had abandoned their property. The City did not store property after seizing it, and it did not notify residents that their property had been taken nor tell them how to get it back. Instead, the City destroyed all property it found at encampments around the City.

PhxPD officers play a critical role in the encampment clean-up program. PhxPD assigns officers to respond to city-identified “hotspots” for routine clean-ups and outreach. For example, before weekly clean-ups in the Sunnyslope neighborhood, PhxPD’s bike squad makes its rounds with early morning wake-ups to expel homeless people from

the area. Then, city workers arrive to clean up the remains of any encampments and dispose of property along with the trash. PhxPD also coordinates with the City's Streets Department. A Streets Department employee emails a list of places targeted for clean-up to PhxPD officers. The next morning, PhxPD officers drive to the locations to warn about the cleanup, if anyone is present. A few hours later, city staff arrive with a bulldozer, scoop up everything without regard to what the items are, and dump it all into a garbage truck.

These efforts have resulted in the illegal seizure and destruction of property. Many people lost their only possessions. For example, during a ride-along in April 2022, a Justice Department investigator saw city workers throw away a tent, ice cooler, bedding, and shoes without providing notice. Someone had complained that an unhoused person was living in a tent in a dirt alleyway. In coordination with PhxPD officers, the City's Streets Department staff scooped up everything with a bulldozer and destroyed all the property. We were informed that this practice was routine. Indeed, we reviewed many case files that included photographs of the possessions taken and destroyed without notice.

In December 2022, a federal court ordered the City to stop seizing unhoused people's property without notice. The court also required the City to maintain any seized property in a secure location for at least 30 days, absent "an immediate threat to public health or safety." In 2023, the City created policies to provide 24-hour notice before cleanups, to distinguish between property and trash, and to store property. But even after the injunction and new policies were in place, we reviewed many cases in which city officials destroyed people's belongings without notice or the opportunity to reclaim them.

### **c. Failure to Impound Property After Arrests**

In some instances, when PhxPD arrested people experiencing homelessness for trespassing or other minor violations, officers failed to collect and impound the people's personal property. Usually, when officers make an arrest, they collect all personal items so the person may claim them upon release. But we saw officers forego this process entirely, forcing people to abandon their belongings on the street. People experiencing homelessness repeatedly told us they lost all their possessions after PhxPD arrested them.

For example, officers abandoned the property of seven people whom they illegally arrested for trespassing when they were sitting and sleeping along the edge of a wide public sidewalk. An officer roused the group by yelling: "This right here is trespassing. You cannot be here. Period." The officers took all seven people into custody and tossed their personal property onto the sidewalk rather than impounding it. One woman

pleaded, “Please. All my stuff is here. Everything. Please.” An officer looked at the blankets and clothes and told the sergeant: “This is all junk. There’s nothing.” The sergeant agreed, and the officers left the property on the sidewalk.

## **5. Unconstitutional Detentions and Property Destruction Harm People Who Are Homeless**

The City and PhxPD rightfully have an interest in maintaining public spaces in a clean and safe condition. But the punitive practices we saw have harmed the physical wellbeing and safety of unhoused people, making it more difficult for them to find stable housing or employment.

A man told us that having his property thrown away “most definitely made it harder to escape homelessness.” People told us about belongings the City had thrown away: tents, blankets, clothes, phones, sleeping bags, identification, court documents, medical paperwork, food stamp cards, social security cards, birth certificates, and insulin. “Basically anything and everything you need to survive out there is taken,” said one woman. Another woman missed her appointment for affordable housing vouchers because she was trying to keep her things from being thrown away. Another told us she lost her birth certificate when the City threw away her tent, which “made it impossible to get housing.” Others said they needed to ask friends to move their belongings if they could not be there for a sweep because they had work, a court appearance, a medical appointment, or some other need. Indeed, service providers told us that fewer people sought services on clean-up days.

People experiencing homelessness told us that they feel harassed by the City’s clean-ups and detentions. One man we spoke to said officers threw out his belongings while saying, “You guys are trash, and this is trash.” An unhoused woman told us that “police [are] forgetting that we are part of the community.” Another woman said, “I feel like I am a target. We are so afraid.” During our review of randomly selected incidents, we ran across body-worn camera video of the bike squad waking this same woman for trespassing on a City-owned dirt patch outside a homeless services center. “All we are trying to do is survive,” said another woman, referring to the bike squad’s frequent early morning patrols. She added, “I don’t know where they want us. They don’t want us here.”

Officers told people as much. One officer said, “You cannot sit. You can’t lie. You can’t sleep ... Go somewhere else.” When asked where they should go, the officer said, “There’s a lot of resources. So, I don’t buy that it’s cold, it’s rainy. You have a place to go. It’s called a shelter.” But we also saw officers cite people when they were sleeping outside shelters and soup kitchens, waiting for the facilities to open. One man woken

outside a soup kitchen in the early morning told officers he would leave. In response, an officer said: “You’re not free to go. You’re under arrest, and if you try to leave, you’re going to jail.”

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Phoenix is not alone in confronting the crisis of homelessness in our country. Cities understandably struggle to balance the needs of all of their residents in creating safe, livable environments. For too long, however, Phoenix has given law enforcement the responsibility of addressing this complex social problem. Banishing homeless people from public spaces by unlawful means, destroying their property, and cycling them through the criminal justice system does not solve the problem or address its root causes. And in Phoenix, it has led to a pattern of constitutional violations.

## C. PhxPD Discriminates Against Black, Hispanic, and Native American People When Enforcing the Law

We have reasonable cause to believe that PhxPD engages in racial discrimination, in violation of Title VI of the Civil Rights Act of 1964 and the Safe Streets Act.<sup>52</sup> These statutes prohibit police practices that have an unjustified disparate impact on the grounds of race or national origin. Police practices that disproportionately affect Black, Hispanic, or Native American people are unlawful unless there is a substantial, legitimate, nondiscriminatory justification.<sup>53</sup>

As we described in Section B of this Report, PhxPD's enforcement strategy has focused on policing low-level violations, including quality-of-life offenses that often involve people who are homeless. This enforcement strategy also results in stark disparities in how officers treat Black, Hispanic, and Native American people. We conducted rigorous statistical analyses that ruled out causes other than discrimination for these disparities. We found that PhxPD discriminates in several ways:

- PhxPD uses race or national origin as a factor when enforcing traffic laws. Officers cite a disproportionate number of Black and Hispanic drivers when compared to violations recorded by neutral traffic cameras in the same locations. PhxPD also enforces traffic laws more severely against Black and Hispanic drivers than it does against white drivers engaged in the same behaviors.
- PhxPD enforces alcohol use offenses and low-level drug offenses more severely against Black, Hispanic, and Native American people than against white people engaged in the same behaviors.
- PhxPD enforces quality-of-life laws, like loitering and trespassing, more severely against Black, Hispanic, and Native American people than it does against white people engaged in the same behaviors.

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<sup>52</sup> 42 U.S.C. § 2000d (Title VI); 28 C.F.R. § 42.104(b)(2) (Title VI); 34 U.S.C. § 10228(c)(1) (Safe Streets Act); 28 C.F.R. § 42.203(e) (Safe Streets Act).

<sup>53</sup> *Larry P. By Lucille P. v. Riles*, 793 F.2d 969, 982 n.9 (9th Cir. 1984) (abrogated on other grounds by *Alexander v. Sandoval*, 532 U.S. (2001)) (stating that, in the Title VI context, once a plaintiff has demonstrated that a practice has a discriminatory effect, the burden shifts to the defendant to show that the requirement “has a manifest relationship” to the program at issue); *Georgia State Conf. of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); *United States v. Maricopa County*, 151 F.Supp.3d 998, 1031 (D. Ariz. 2015) (granting summary judgment to the United States on Title VI claim regarding sheriff's office's discrimination against Hispanics); *see also Texas Dep't of Housing & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524 (2015); *Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 986 (1988).

This disparate enforcement violates the law.

Although it is common for major city police departments to use enforcement data to evaluate whether officers treat people differently due, in part, to race or national origin, PhxPD does not do so. Indeed, before we opened this investigation, PhxPD did not ensure that officers reported basic information about their enforcement activity, such as when they stopped people but did not make an arrest or issue a citation.<sup>54</sup> PhxPD still does not require officers to collect data on searches that do not yield contraband. And even where PhxPD is aware of specific claims of officer bias, the agency fails to respond appropriately, mishandling or even ignoring complaints of overt discrimination.

### **1. PhxPD Engages in Racially Disparate Law Enforcement that Harms Black, Hispanic, and Native American People**

The Constitution and federal law prohibit selective enforcement of the law based on race.<sup>55</sup> Our review of PhxPD's data revealed that PhxPD cites and arrests Black, Hispanic, and Native American people for low-level traffic, drug, alcohol, and quality-of-life offenses at rates disproportionate to their shares of the population.

PhxPD officers respond to calls for service but also engage in proactive policing, such as choosing to stop, cite, or arrest people. Bias can affect these decisions. Officers spend about 20% of their time on self-initiated enforcement.<sup>56</sup> We focused on these self-initiated encounters involving low-level offenses because officers have a high degree of discretion in choosing whether or how to enforce the law in these areas. We found unexplained disparities based on race and national origin in PhxPD officers' enforcement of traffic laws, drug and alcohol laws, and quality-of-life offenses.

Racial disparities are a clear sign that a police department must evaluate if officers are engaging in unconstitutional policing, or if, as here, department-wide practices have an unjustified disparate impact.<sup>57</sup> When we performed rigorous analyses of PhxPD's

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<sup>54</sup> As a result, we could not evaluate disparities in PhxPD officers' traffic and pedestrian stops that did not result in citations or arrests.

<sup>55</sup> *Whren v. United States*, 517 U.S. 806, 813 (1996) ("We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race."); 42 U.S.C. § 2000d (Title VI); 28 C.F.R. § 42.203.

<sup>56</sup> When we say officer "time," in this context, we mean the time that officers spend dispatched to an encounter, whether due to a 911 call or because the officer makes the decision to stop someone.

<sup>57</sup> See *Int'l Broth. of Teamsters v. U.S.*, 431 U.S. 324, 339-40 (1977) (noting that "(s)tatistical analyses have served and will continue to serve an important role' in cases in which the existence of discrimination is a disputed issue," but that "statistics are not irrefutable" and "their usefulness depends on all of the



enforcement to eliminate plausible race-neutral reasons for these disproportionate rates, we still found overwhelming statistical evidence that the racial and ethnic disparities in PhxPD's citations and arrests are due to discrimination. The results of these studies were clear: PhxPD unlawfully uses race as a factor when enforcing the law.

#### **a. PhxPD Engages in Discriminatory Enforcement of Traffic Offenses**

PhxPD has faced long-standing community criticism that officers use race and national origin as a factor in their traffic enforcement. Community members echoed these concerns to Justice Department investigators. Officers spend over one-quarter of their time making traffic stops. In PhxPD, as in many police departments, officers have a great deal of discretion in this area: They are allowed to decide for themselves which drivers to stop and whether to warn, cite, or arrest drivers for violations they observe. When officers use race or national origin as a factor in deciding how to apply their discretion, they “engender[ ] feelings of fear, resentment, hostility, and mistrust,” particularly in Black, Hispanic, and Native American people.<sup>58</sup>

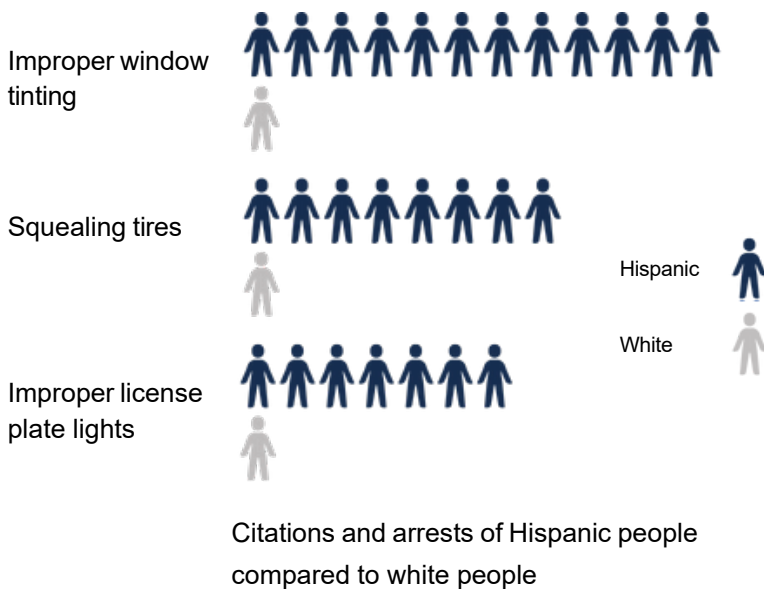
Our analysis of PhxPD's data validated the community's concerns. For instance, though Hispanic and white people make up roughly even shares of the Phoenix population, PhxPD cites or arrests Hispanic people for traffic-equipment related offenses at three times the rate of white people. This pattern holds when looking at specific low-level offenses. PhxPD cites or arrests Hispanic people 12 times as often as white people for improper tinting of windows, seven times as often for improper license plate lights, and more than eight times as often for squealing tires. Black people, too, experience a disproportionate share of traffic equipment-related enforcement in Phoenix. Black people make up only 7.4% of Phoenix's population, but on a per capita basis, Black people are cited or arrested three times as often as white people for traffic-equipment related offenses, including four times as often for improper license plate lights and three times as often for improper tinting of windows, and for having rear lights or reflectors that are not red.

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surrounding facts and circumstances”); *Chavez v. Illinois State Police*, 251 F.3d 612, 637 (7th Cir. 2001) (“The Supreme Court has long noted the importance of statistical analysis in cases in which the existence of discrimination is a disputed issue.”) (internal citation omitted); see also *Melendres v. Skinner*, 989 F.Supp.2d 822, 903 (D. Ariz. 2013) (noting that agency's failure to monitor its data for patterns of racial bias constituted evidence of discriminatory intent).

<sup>58</sup> *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 n.23 (9th Cir. 2000) (quoting P. Verniero, Attorney General of New Jersey, Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling 4, 7 (April 20, 1999) (insertion omitted)).

### Per capita rates of enforcement for low-level offenses



Even when it comes to using bicycles rather than cars, PhxPD disproportionately cites and arrests Black and Hispanic people, compared to their shares of the population. Black people are cited or arrested more than twice as often as white people for having bicycles without adequate brakes and nearly three times as often for failing to ride a bicycle on the right side of the road. Similarly, PhxPD cites or arrests

Hispanic people almost twice as often as white people for these violations.

Speeding enforcement is highly discretionary. We found similar disparities when we assessed PhxPD enforcement of speeding laws and other moving violations. PhxPD cites or arrests Black and Hispanic people for speeding over 1.5 times more often than it does white people. For other moving violations, Black people are cited or arrested at 1.6 times the rate and Hispanic people at almost twice the rate of white people. We also found disparities in PhxPD’s enforcement of specific offenses. For example, Black people are over 3.5 times more likely and Hispanic people almost four times more likely than white people to be cited or arrested for failing to signal 100 feet before turning.

Disparities like these in police enforcement can be caused by multiple factors and are not, by themselves, definitive proof of discrimination. We designed two rigorous analyses to evaluate whether the disparities were due to factors other than race.

**Violator Study.** First, to determine whether PhxPD officers engage in selective enforcement of the law in their traffic stops, we designed a “violator” study. In studying disparities in policing, violator studies have long been used by researchers to identify unwarranted racial disparities in traffic enforcement.<sup>59</sup> We compared PhxPD data on

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<sup>59</sup> See *State v. Soto*, 324 N.J. Super. 66, 83-84 (Law Div. 1996) (“Statistics may be used to make out a case of targeting minorities for prosecution of traffic offenses provided the comparison is between the racial composition of the motorist population violating the traffic laws and the racial composition of those arrested for traffic infractions on the relevant roadway patrolled by the police agency.”)

officers' traffic stops to data from Phoenix traffic cameras. Traffic cameras offer a unique opportunity for "benchmarking," or establishing a baseline against which to compare police enforcement. This is because these machines record traffic violations without regard to the race of the driver. Therefore, violations recorded by traffic cameras provide a benchmark to use when assessing the role of race in police officers' enforcement.

We used data collected by city red light and speeding cameras from 2016 through early 2020.<sup>60</sup> We compared the rates at which speeding cameras detected violations to the rates at which PhxPD officers issued speeding tickets. To ensure we evaluated the same population of drivers, we compared only speeding citations officers had issued in locations close to each camera, at a similar time of day, during the same period of the week (weekday vs. weekend), and during the same month of the same year. We excluded speeding citations when the police recorded that the driver had committed an additional offense that could have been the primary reason for the stop, such as the improper use of a left turn lane.

Next, we followed the same procedure when comparing violations found by individual officers to violations detected by red light cameras, with one modification. Because the City had far fewer red light cameras than speeding cameras, we did not have enough data to reliably compare only police enforcement for running red lights. To rectify this, we compared violations detected by red light cameras to PhxPD officers' enforcement of low-level, non-speed moving traffic violations.

If PhxPD officers did not take race into account when deciding which drivers to ticket or arrest for speeding and low-level traffic violations, we would expect them to cite or arrest drivers of all races at close to the same rate the cameras detect drivers in each group committing these violations. That is not what we found. Instead, PhxPD officers cite or arrest a significantly larger proportion of Black and Hispanic drivers than the race-neutral rates at which the cameras detect violations:

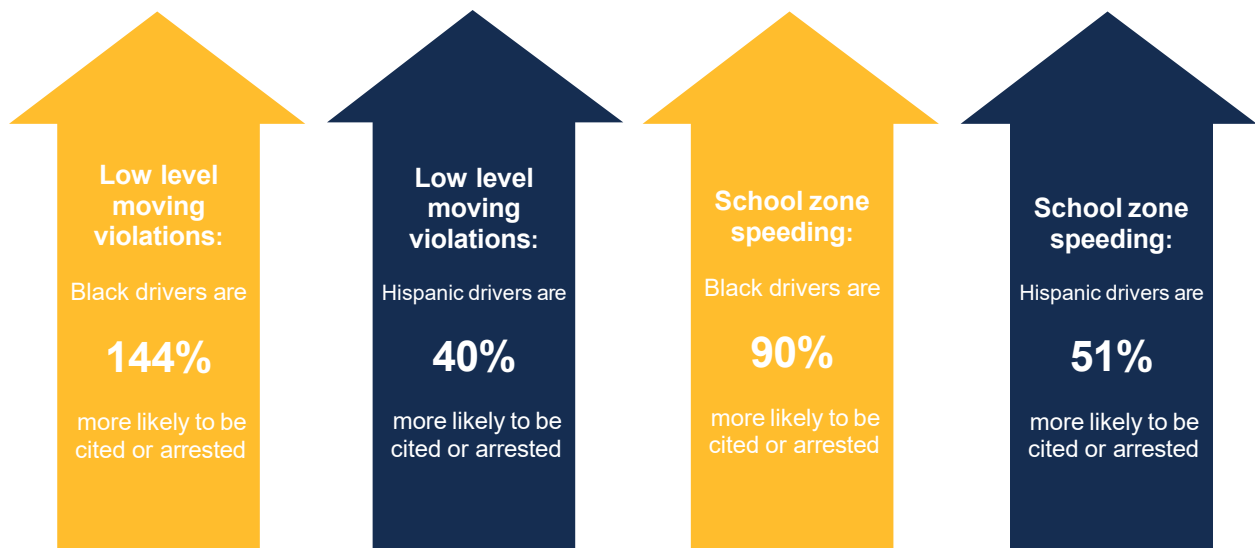
- Among drivers who speed near school-zone speeding cameras, Hispanic drivers are 51% more likely to be cited or arrested by PhxPD officers, compared to white drivers.<sup>61</sup>

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<sup>60</sup> The city terminated its most recent traffic camera program in 2020.

<sup>61</sup> Put differently, among speeding stops by PhxPD officers, Hispanic drivers were overrepresented by more than 10 percentage points, compared to how often speeding cameras found this group to commit violations in comparable places and times. (A percentage point difference expresses the difference between two percentages.) Among speeding stops by PhxPD officers, Black drivers were

- Among drivers who speed near school-zone speeding cameras, Black drivers are 90% more likely to be cited or arrested by PhxPD officers, compared to white drivers.
- Among drivers who engage in low-level moving violations near red light cameras, Hispanic drivers are 40% more likely to be cited or arrested by PhxPD officers, compared to white drivers.
- Among drivers who engage in low-level moving violations near red light cameras, Black drivers are 144% more likely to be cited or arrested by PhxPD officers, compared to white drivers.



We designed this analysis to rule out race-neutral reasons for PhxPD officers patrolling near the cameras at comparable times to detect a significantly higher proportion of Black and Hispanic drivers violating the law than the cameras do. These are statistically significant differences, and we ruled out all plausible race-neutral explanations for the difference between police enforcement and neutral enforcement by cameras.<sup>62</sup> The explanation for the difference is that PhxPD discriminates against Black and Hispanic drivers.

overrepresented by more than 4 percentage points, compared to how often speeding cameras found this group to commit violations in comparable places and times. Among stops by PhxPD officers for low-level traffic offenses, Hispanic drivers were overrepresented by more than 8 percentage points, compared to how often red light cameras found this group to commit violations in comparable places and times. And among stops by PhxPD officers for low-level traffic offenses, Black drivers were overrepresented by more than 6 percentage points, compared to how often red light cameras found this group to commit violations in comparable places and times.

<sup>62</sup> In the field of statistics, results are generally considered statistically significant if they would occur by chance no more than 5 times out of 100.

***Study of Similarly Situated People.*** We also analyzed PhxPD data from January 2016 through August 2022 to identify incidents in which PhxPD officers cited or arrested people of different races or national origin for the same conduct, based on officers' own words. Like the violator study, we designed this analysis to rule out explanations other than race for officers' disparate treatment. To make this comparison, we took all assertions PhxPD officers made in their reports at face value. In other words, we did not question officers' decisions about where to patrol, who to stop, who to search, which offenses to accuse people of, or how many charges to arrest or cite people for. To be "similarly situated" for our analysis, people had to be accused of committing exactly the same violations. We then examined whether there are differences by race or national origin in how PhxPD officers treat similarly situated people.

This second analysis confirmed our findings about PhxPD's disparate treatment in traffic enforcement. We compared officers' decisions to cite or arrest across thousands of stops with similarly situated drivers, evaluating whether PhxPD officers treat white people differently than similarly situated Black, Hispanic, and Native American people with regard to the amount of time they detain suspects, whether they cite or arrest suspects, and whether they book suspects rather than citing or simply releasing them.<sup>63</sup> We found overwhelming disparities across every non-white group for a range of low-level violations. These statistically significant disparities cannot be explained by reasons other than the race or national origin of the driver. The analysis showed that PhxPD officers treat Black and Hispanic drivers more harshly than white drivers they accuse of the exact same violations.<sup>64</sup> For example:

- PhxPD officers were 10% more likely to simply release white drivers they stopped for low-level traffic offenses, while they cited or arrested Hispanic drivers for the same violations.
- After stopping drivers for speeding, PhxPD officers were over 60% more likely to release white drivers in 30 minutes or less, compared with the lengthy detentions that they subjected Black drivers to for the same offenses.

Taken together, the violator study and the study of similarly situated people demonstrate that when PhxPD officers exercise their discretion to enforce traffic laws, they consider race as a factor.

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<sup>63</sup> We performed conservative multiple-testing corrections to avoid false positives when examining multiple groups and types of PhxPD decisions.

<sup>64</sup> As we discuss in more detail below, our study of similarly situated people also determined that disparities in PhxPD's enforcement of drug and alcohol offenses and quality-of-life offenses could not be explained by reasons other than race or national origin of the suspect. The affected groups in those areas of enforcement were Black, Hispanic, and Native American people.

These studies confirm the perceptions of people stopped by PhxPD. One Black rideshare driver told us that PhxPD officers unfairly targeted him for speeding multiple times. “They just need to stop profiling,” he said. “There’s a lot more stuff for people in Phoenix to do than target Black and brown people.” And a Black woman who complained to PhxPD that an officer racially profiled her when he stopped her for speeding and arrested her for allegedly refusing to provide her ID, shared the view that the police have misallocated their resources. “There’s people out there committing crimes and you’re pulling me and harassing me and detaining me in the jail,” she explained. According to PhxPD records of the encounter, the woman tried multiple times to complain about profiling, including to a PhxPD supervisor she spoke to while being booked. As the supervisor explained in his report, the woman told him that the officer “looked at her and in her opinion he saw a [B]lack face, a [B]lack woman and he used, exerted his badge... that is what she felt like.” The supervisor did not open a formal investigation, explaining: “I am not seeing any violation of policy.”

#### **b. PhxPD Engages in Discriminatory Enforcement of Drug and Alcohol Offenses**

We also found striking disparities when evaluating officers’ decisions to enforce laws criminalizing alcohol and controlled substances, including marijuana.<sup>65</sup> Studies show that Black and Hispanic people use marijuana at roughly the same rate as white people.<sup>66</sup> If PhxPD enforced laws prohibiting marijuana possession without regard to race, Black and Hispanic people would be cited or arrested at a similar rate to white people. But that is not what we found. Our review of PhxPD’s data showed massive disparities: PhxPD officers cited or arrested Black people in Phoenix for marijuana possession at almost seven times the rate they cited or arrested white people for the same offense. PhxPD officers were over three times more likely to cite or arrest

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<sup>65</sup> In 2020, Arizona voters approved a change in state law that, among other things, allowed adults (age 21 and older) to possess up to one ounce of marijuana. A.R.S. § 36-2852. The law also provided for the licensing of dispensaries that can legally sell marijuana. A.R.S. § 36-2858.

<sup>66</sup> U.S. Dept. of Health & Hum. Servs., Substance Abuse and & Mental Health Servs. Admin., 2021 Nat’ Survey on Drug Use & Health (NSDUH), at tbl. 1.27B, <https://www.samhsa.gov/data/sites/default/files/reports/rpt39441/NSDUHDetailedTabs2021/NSDUHDetailedTabs2021/NSDUHDetTabs1-26to1-28pe2021.pdf> [<https://perma.cc/CE2E-2X4G>]; see also 2021 NSDUH Annual Report (Dec. 2022), at 17, <https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlightsRE123022.pdf> [<https://perma.cc/73WD-VZRV>].

**Per capita rates of enforcement for marijuana possession**



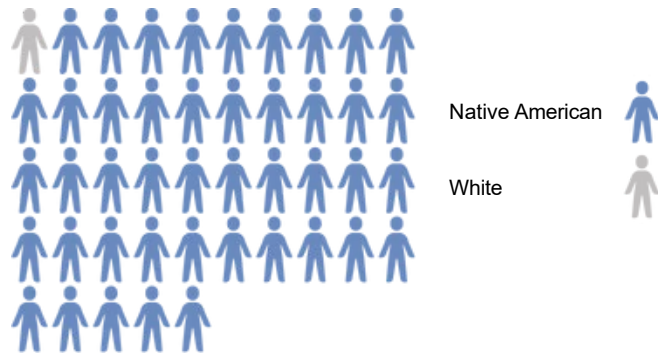
Citations and arrests of Black and Hispanic people compared to white people

Hispanic people for this offense, compared with the rate at which they cited or arrested white people.

We observed stark disparities in how PhxPD enforced alcohol laws against Native American people, as well. On a per capita basis, Native American people in Phoenix were 44 times more likely than white people to be cited or arrested for possessing or consuming alcohol. Disparities also exist for Black people: They were over five times more likely than white people to be cited or arrested for this offense.

Our study of similarly situated people, described above, confirmed that PhxPD uses race as a factor when enforcing these drug- or alcohol-related offenses. PhxPD officers were 11% more likely to take no action against white people for low-level drug offenses, while officers cited or arrested Black people stopped for the very same crimes. PhxPD officers also discriminate against Hispanic and Native American people in their enforcement of drug laws. When investigating drug-related offenses, PhxPD officers were 27% more likely to release white people in 30 minutes or less, while they detained Native American people accused of the same conduct for longer than 30 minutes. And PhxPD officers were 18% more likely to release white people in 30 minutes or less for possession of marijuana, compared to Hispanic people they accused of the same crime.

**Per capita rates of enforcement for public consumption**



Citations and arrests of white people compared to Native American people

When enforcing offenses related to public consumption of alcohol, PhxPD officers are harsher toward Native American and Hispanic people than they are to white people they accuse of the same conduct. PhxPD officers were 14% more likely to release white people in 30 minutes or less, while they subjected Hispanic people to extended detentions. And PhxPD officers were more than twice as likely to cite or arrest Native American people for these offenses, while letting white people whom officers stopped for the same conduct go.

### c. PhxPD Engages in Discriminatory Enforcement of Quality-of-Life Offenses

PhxPD also enforces what are known as quality-of-life offenses—minor violations of the public peace, including pedestrian traffic offenses, vagrancy, loitering, bans on camping and panhandling, and trespassing. We found that PhxPD officers enforce these quality-of-life offenses against Hispanic, Black, and Native American people disproportionately, compared with their shares of the population. For instance, on a per capita basis, Black and Native American people in Phoenix were over three times as likely as white people to be cited or arrested for failing to yield to traffic as a pedestrian. We found similar disparities in how PhxPD officers enforced the law prohibiting walking in the street when a sidewalk is provided: Black and Native American pedestrians were around five times more likely and Hispanic pedestrians two times more likely than white pedestrians to be cited or arrested for this offense. And PhxPD cited or arrested Black people more than 3.5 times as often and Native American people almost six times more often than white people for crossing a street against a “Don’t Walk” signal.

As discussed in Section B of this Report, PhxPD devotes substantial resources to policing the City’s unhoused population. We found disparities in how PhxPD enforces laws often used against this group, too. For instance, on a per capita basis, Native American people in Phoenix were 26 times more likely than white people to be cited or arrested for remaining at a bus stop

for over one hour in an eight-hour period, though Native American people make up only approximately 7% of the local homeless population while white people make up 68%. Black people, too, were cited or arrested disproportionately for this offense, at about four times the rate of white people, though the local homeless population is about 20% Black. And PhxPD cited or arrested Black and Native American people more than three times as often as

white people for lying or sitting on a public right of way. PhxPD also enforced trespassing statutes in a racially disproportionate manner. On a per capita basis, PhxPD cited or arrested Black people three times as often, and Native American people over 3.5 times as often as white people for trespassing offenses.

**Per capita rates of enforcement for remaining at a bus stop for more than 1 hour**



Citations and arrests of white people compared to Native American people



Our analysis of how PhxPD treats similarly situated people confirmed that these trespass-related disparities are not explained by factors other than race. We found numerous statistically significant disparities. For example, when choosing whether to cite, arrest, or release suspects for trespassing, PhxPD officers were 54% more likely to release white people without taking enforcement action, while officers chose to arrest or cite Native American people for the same offense. Sometimes these differences in treatment meant jail time: PhxPD officers were 14.5% more likely to book Native American people for trespass-related offenses, while they cited or released white people stopped for the same violation. When investigating trespass-related offenses, PhxPD officers were also 7.6% more likely to release white people in 30 minutes or less, while they detained Native American people for more than 30 minutes. PhxPD officers' detentions of Hispanic and Black people for trespass-related offenses reflected similar patterns. PhxPD officers were 6.7% more likely to release white people in 30 minutes or less when investigating these offenses, while they subjected Hispanic people to lengthy detentions. And PhxPD officers were 23% more likely to release white people in 30 minutes or less for criminal third-degree trespass, while they subjected Black people suspected of the same crime to lengthy detentions.

#### **d. PhxPD Engages in Discriminatory Enforcement Based on the Racial Composition of Neighborhoods and Precincts**

Location matters when it comes to how often PhxPD enforces certain laws. On a per capita basis, PhxPD officers enforce low-level traffic, drug, alcohol, and quality-of-life laws more in neighborhoods with fewer white people.<sup>67</sup> In predominantly non-white neighborhoods, PhxPD officers arrest or cite people, regardless of race, for low-level drug and alcohol-related offenses at almost four times the rate that they enforce these laws in majority white neighborhoods. Enforcement of traffic equipment-related laws follows a similar pattern: Officers enforce these laws over 2.5 times more often in predominantly non-white neighborhoods, compared to majority white neighborhoods. The differences are even more stark with respect to certain violations:

- Officers cite or arrest cyclists for biking on the wrong side of the road almost eight times more in predominantly non-white neighborhoods, compared with white neighborhoods.

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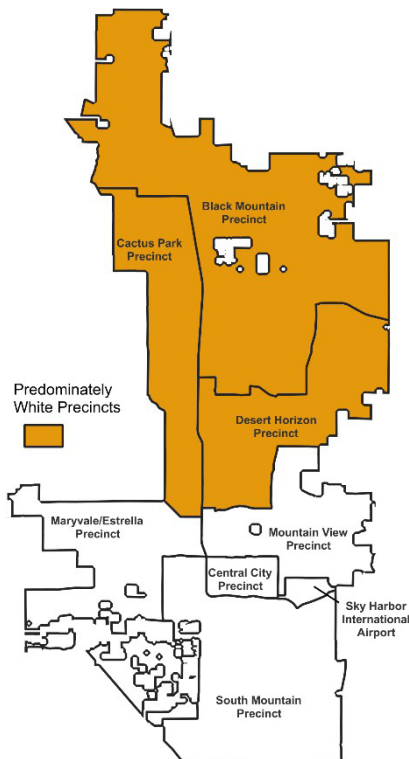
<sup>67</sup> For this analysis, we defined “predominantly non-white neighborhoods” as the collection of Census block groups with 0-25% white residents and “white neighborhoods” as the collection of Census block groups with 50-100% white residents. Both definitions are based on the Census Bureau’s 2017-2021 American Community Survey data.

- Officers enforce window tinting laws in predominantly non-white neighborhoods at more than 14 times the rate they enforce those laws in white neighborhoods.

Our analysis of similarly situated suspects also found discriminatory policing of Black, Hispanic, and Native American people based on the racial composition of the precinct where they encounter the police. In the three precincts with the greatest proportion of white residents—Black Mountain, Desert Horizon, and Cactus Park—non-white people are subjected to more severe enforcement than white people accused of precisely the same conduct. For example, in these three precincts, PhxPD officers are more likely to cite or arrest non-white people, while letting white people stopped for the exact same offenses go.

Instead of setting priorities at the command level, PhxPD has afforded officers discretion to make their own calls about how to enforce low-level offenses. That discretion has resulted in unlawful disparities in how PhxPD enforces the law against Black, Hispanic, and Native American people. The agency’s lack of a centralized enforcement strategy is a contributing cause of PhxPD’s racially disparate enforcement.

### Police Precincts in Phoenix



## 2. PhxPD Claims It Is Unaware of Any Evidence of Discriminatory Policing Despite Longstanding Community Concern

Earlier this year, PhxPD claimed that the department was “unaware of any credible evidence of discriminatory policing.” This statement is troubling in light of the stark disparities described above. But it is also unsurprising—we saw no evidence PhxPD engages in self-assessment to identify potentially discriminatory policing patterns.

However, community groups have raised concerns about PhxPD’s relationship with communities of color. For years, Black and brown communities in Phoenix have had a strained relationship with PhxPD. In 2018, a local non-profit surveyed almost 10,000 people, mostly in the non-white neighborhoods of south and west Phoenix,

about their experiences with PhxPD. The group released a public report with the survey

results.<sup>68</sup> Almost half of both Black and Hispanic respondents reported feeling scared, anxious, nervous, or intimidated when they saw a police officer or police car approaching them. In addition, results from the survey indicated that Phoenix residents' experiences with the police often varied along lines of race and national origin.

Longstanding community criticism regarding high-profile PhxPD incidents has also put the agency on notice of possible discrimination in its policing. In May 2019, after an alleged shoplifting incident, PhxPD officers made a traffic stop of a young Black family and quickly escalated the encounter. Officers held the family at gunpoint, shouted profanities at them, and tried to pull the couple's one-year-old from the pregnant mother's arms before arresting her and the father in front of their two children. It was ultimately revealed that the couple's four-year-old child had taken a doll from a store; the store manager declined to press charges. The incident made national news and brought intense scrutiny on PhxPD. After video of the incident went viral, then-Police Chief Jeri Williams and Mayor Kate Gallego issued public apologies to the couple and held a town hall for the community to respond to the incident. Over 2,000 people attended the town hall and spoke for more than two hours, criticizing the officers' actions and sharing broader concerns about systemic racism within PhxPD. PhxPD fired one of the officers involved in the incident, and the City settled a civil rights lawsuit brought by the family for \$475,000.

Shortly after that incident, in June 2019, the news organization Injustice Watch released the "Plain View Project," a database of Facebook posts attributed to officers from eight police departments across the country, including PhxPD. Researchers used publicly available police department rosters to identify profiles of law enforcement officers and flagged posts that researchers determined had the potential to "erode civilian trust and confidence in police." The researchers attributed 281 posts to PhxPD employees. Investigators in PhxPD's Professional Standards Bureau (PSB) reviewed the posts and determined they were made by 96 employees, including some PhxPD supervisors. At the time, investigators deemed some of the posts *not* "inappropriate," even when PhxPD officers made racist statements based on innuendo and racial stereotypes, including posts calling Kwanzaa a "fake holiday" and celebrating armed self-defense against "thugs" in "saggy pants."

Despite this high-profile public criticism from researchers and community members, Phoenix has failed to meaningfully attempt to understand the nature or extent of

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<sup>68</sup> See Poder in Action, "Phoenix Futuro, A People's Report on Policing and Safety," available at [Phoenix+Futuro-A+People's+Report+on+Policing+and+Safety.pdf \(squarespace.com\)](https://perma.cc/PF7W-GRVP) [<https://perma.cc/PF7W-GRVP>].

potential discrimination within its ranks and has ignored even specific allegations of officer bias.

**a. PhxPD Does Not Collect and Analyze the Data Needed to Identify Patterns of Discriminatory Policing or Provide Officers with Guidance**

PhxPD has inadequate internal controls—through data review or misconduct investigations—to detect discriminatory policing. PhxPD’s data collection practices have been deficient; the agency did not require all officers to document police stops that did not result in citations or arrests until after we opened our investigation. PhxPD still does not require officers to collect data on searches that do not yield contraband. The agency has never evaluated the data it does collect to determine whether it enforces the law differently for people of different racial and ethnic groups, as an agency or by individual officers and units.<sup>69</sup> PhxPD officials we spoke to told us they trusted the department’s “Compliance and Oversight Bureau” or its “Center for Continuous Improvement” to look for disproportionate impact but were “not briefed on the numbers in the aggregate.” Neither entity saw this as its role—personnel from the Compliance and Oversight Bureau told us they provided “high level review; just quality assurance.”

The agency’s software for storing electronic police records is “antiquated at best,” as Interim Chief Sullivan put it to us. PhxPD has been in the process of obtaining a new system since before this investigation opened, and these efforts remain underway. Some of the software limitations create significant barriers to the agency’s ability to evaluate its officers’ work. For example, PhxPD has no method for linking dispatch records with citations when officers do not make an arrest. As a result, when a police officer stops a pedestrian or a car and does not arrest anyone, PhxPD cannot assess whether that stop resulted in a citation and if so, what the citation was for. This disconnect between data systems prevents the agency from conducting important analyses on its stop data, such as assessing whether certain officers cite people more frequently for low-level traffic offenses—an area where we found that PhxPD officers engaged in discriminatory enforcement against Black and Hispanic drivers.

A primary factor that may contribute to systemic disparities we found is the lack of guidance officers have on how to use their discretion—which offenses officers should investigate and how punitive to be when they encounter violations. Former Police Chief Jeri Williams told us that she did not have information on how officers enforce low-level

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<sup>69</sup> *ee Melendres*, 989 F.Supp.2d at 904 (explaining that the Maricopa County Sheriff’s Office’s “failure to monitor its deputies’ actions for patterns of racial profiling was exacerbated by its inadequate recordkeeping, which made it more difficult to conduct such monitoring”).

offenses and that she would “guess” officers cite instead of arresting people on these charges.

For most of the period of our review, officers similarly lacked guidance on how to use time they have for “on view” work, or enforcement they initiate themselves. A patrol officer explained to a Justice Department investigator on a ride-along that PhxPD did not require him to tie his proactive traffic enforcement to public safety concerns. More recently, in June 2023, Interim Chief Sullivan released a Crime Reduction Plan for the City. PhxPD now expects officers to use their time meeting the goals of the Crime Reduction Plan, though it is not clear how officers are held accountable to this directive. We saw no evidence of any similar plan prior to Interim Chief Sullivan’s arrival at PhxPD, and he told us he was unaware of PhxPD evaluating how officers spend their time or how their enforcement decisions impact different racial groups. Thus, until recently, the agency has not even tried to assess whether bias might shape officers’ decisions.

#### **b. PhxPD Is Indifferent to Claims of Individual Officer Bias**

Even when a community member alleges that a PhxPD officer acted with overt bias, PhxPD’s internal accountability system does not adequately investigate the complaint. Often, the agency misclassifies allegations of discriminatory policing as something less serious. We found many instances in which people complained that PhxPD officers had unlawfully discriminated against them, but investigators classified the complaints as officer “rudeness.” For example:

- A Black driver in 2018 called PSB to complain that an officer conducted a traffic stop without a lawful basis and chose to investigate him for minor offenses, such as the tint on his windows, because of his race. “I feel like if I was white and I was driving a Prius, I wouldn’t have even got pulled over,” the man told the investigator. The man unambiguously alleged that the officer had engaged in racial profiling: “They assumed that I’m a Black man and I have a nice car, that it wasn’t mine and it was stolen, and that is not right,” he said.
- In 2019, a woman alleged that a PhxPD officer working at the airport made “racist” remarks to her about “Africans,” when the officer saw another traveler cut in front of the woman in line. According to the woman, the officer admonished the woman not “to acquiesce to people like that,” and warned her that “Africans” would cut in front of her in line if she let them.

When it does classify complaints as alleging discriminatory policing, PhxPD seldom takes them seriously. Between January 1, 2016, and April 1, 2022, PhxPD completed only two misconduct investigations into allegations of bias or racial profiling. Instead,

PhxPD usually handles complaints of biased policing by classifying them as informal administrative inquiries, a classification for cases in which supervisors initially determine that the allegation is “clearly unfounded,” making a full investigation unnecessary. Indeed, in all 90 administrative inquiries into allegations of “bias or racial profiling” during the same time period, investigators found that the allegations were “unfounded” or that the officers were “exonerated.”

PhxPD did not open a misconduct investigation into a November 2022 complaint of discriminatory policing against a Black *Wall Street Journal* reporter until the incident became a national news story in early 2023. A PhxPD officer responded to an emergency call from a bank, and the manager told the officer that a man outside had been bothering customers. The officer told the manager that he would talk to the man and see whether he would leave. The man, who was a reporter working on a story, was standing outside the bank on what appeared to be a public sidewalk. After the officer explained that the sidewalk was private property, the reporter twice offered to leave. But the officer refused to let him go, instead handcuffing him, illegally seizing his wallet, and forcing him to sit in a patrol car.

A bystander called PhxPD later that day to file a complaint and said, “It felt like the handcuffing was completely unnecessary, and dehumanizing and criminalizing, and ... it felt like there was racial bias at play.” The reporter also filed a complaint, alleging that the officer had bruised and cut him and threatened him with bodily harm. A sergeant called both the bystander and reporter and told them he had found no misconduct and the matter would be closed. A month later, after the *Wall Street Journal*'s editor-in-chief sent a letter to PhxPD and the incident became public, PhxPD opened a misconduct investigation. The agency ultimately found that, except for his unlawful seizure of the reporter's wallet, the officer's actions did not violate any policy. Months later, Phoenix's Office of Accountability and Transparency, charged with monitoring PhxPD internal investigations, found that the investigation into the allegation of racial bias “*was not* thorough and complete.”<sup>70</sup> Indeed, the PSB investigator never asked the involved officer any questions regarding the allegation of racial bias.

In the vast majority of cases, PhxPD simply dismisses complaints of discriminatory policing absent evidence that an officer made an overtly racist statement or admitted to engaging in racist profiling. Since people are unlikely to admit to such things, PhxPD's practice of requiring this evidence means that these complaints will necessarily be given short shrift. For instance, a PSB sergeant told us that he deemed one driver's claim of

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<sup>70</sup> Phoenix Office of Accountability and Transparency, Monitoring Report, Incident OAT22-007 at 6 (Feb. 22, 2024), available at <https://www.phoenix.gov/accountabilitysite/Documents/Incident-OAT-22-007.pdf> [<https://perma.cc/5W8G-W9ZW>].

being racially profiled unfounded because he reviewed the body-worn camera video and observed that the officer “never said, ‘I am stopping you because you are Black.’” Similarly, a PhxPD sergeant found a Black light rail rider’s discrimination complaint unwarranted because the PhxPD employee did not comment on the man’s race or admit to racial profiling. And when a Black man called PhxPD to complain that a police officer arrested him for obstruction of a thoroughfare, rather than giving him a warning, the PhxPD investigator dismissed the possibility that the officer could have been motivated by racial animus: “But sir, if you break the law, then there’s no racial profiling,” the investigator told the man. The investigator’s erroneous reasoning ignores that the Constitution prohibits selective enforcement of the law based on race.<sup>71</sup>

Agency leaders have ignored even overt discrimination at PhxPD. In 2021, a former assistant chief who oversaw PSB referred to a recently promoted Black commander as “Blackie.” The executive assistant chief at the time—the number two position in the agency and the assistant chief’s supervisor—heard the comment but did not report it.<sup>72</sup> Eventually, after an investigation by the City’s Equal Opportunity Department and a settlement, the executive assistant chief was permitted to retire honorably. The former assistant chief remains a commander at the agency.

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Community members reported to Justice Department investigators that they had felt the effects of PhxPD’s disparate enforcement. In and of itself, being stopped by the police can be degrading and humiliating. Citations and arrests have legal, financial, and social consequences, some of which are lifechanging.<sup>73</sup> Being stopped by police can also cause psychological harm, especially when it happens repeatedly. And when an encounter results in a use of force, the physical and emotional scars can be permanent. As the man whose family was held at gunpoint for alleged shoplifting said to us, “I know from living in Phoenix pretty much all my life. It’s been a thing of them treating people of color a little bit different ... PhxPD has a way of treating people of color pretty bad.”

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<sup>71</sup> *Whren*, 517 U.S. at 813 (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”)

<sup>72</sup> The former assistant chief denied making this comment, and the former executive assistant chief denied hearing it. Investigators in the City’s Equal Opportunity Department made detailed credibility determinations and found the witnesses who reported the incident to be credible.

<sup>73</sup> See *Utah v. Strieff*, 579 U.S. 232, 254–55 (2016) (Sotomayor, J., dissenting) (referring to the “65 million Americans with an arrest record [who] experience the ‘civil death’ of discrimination by employers, landlords, and whoever else conducts a background check.” (citing Gabriel “Jack” Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1805 (2012)).

## D. PhxPD Unlawfully Restricts Protected Speech and Expression

The First Amendment protects the rights of people to peaceably assemble, express grievances, and voice their thoughts and views without being punished by the government. These protections are fundamental to a free society. To evaluate whether PhxPD observes these protections, we reviewed PhxPD's response to protests in Phoenix between 2017 and 2022, as well as officers' day-to-day encounters with people in Phoenix.

We reviewed PhxPD's policies and trainings, police reports, complaints related to protests, contemporaneous emails, and court documents in relevant litigation, including county grand jury testimony, deposition testimony, and news reports. We also reviewed hundreds of hours of body-worn camera and surveillance video footage. We interviewed PhxPD supervisors and line officers who agreed to speak to us. We interviewed protestors, community organizers, plaintiffs' counsel, reporters, defense attorneys, and prosecutors.<sup>74</sup> Subject matter experts assisted our review.

We have reasonable cause to believe PhxPD engages in a pattern or practice that violates the First Amendment by retaliating against people for protected speech and expression. First, PhxPD retaliates against people engaged in core political speech by using unjustified punitive tactics against peaceful protestors and by targeting lawful protestors for arrest. Second, PhxPD retaliates against people in everyday encounters, reacting with unjustified force or arrest when people talk back or attempt to record officers' activities.

We make narrow findings about PhxPD's response to protests. In many of the protests where we observed conduct by PhxPD that violated the First Amendment, protestors were engaging in protected speech about policing. Such events are uniquely challenging for police departments; protestors may confront responding officers with intense criticism of themselves, their profession, and their response to the protest. Protestors may also find a police presence to be especially provocative. Yet protests with anti-police messages are entitled to the same First Amendment protection as any other demonstration. This protection persists even if some participants engage in

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<sup>74</sup> The City's cooperation was less than fulsome, however. The City allowed employees to decline our interview requests, and more than 40 officers and supervisors involved in PhxPD's protest response declined to speak to us. We believe these employees had relevant information about PhxPD's protest response and that interviewing them would have enabled us to complete our investigation more efficiently. The City also refused to produce external reports containing recommendations about PhxPD's protest practices in 2020, or to allow us to interview the consultants who conducted those reviews.



disruptive conduct. Police departments must ensure, even in the face of provocation, that their response is proportionate and protects the rights of peaceful protestors.

## 1. PhxPD Retaliates Against Protestors by Using Indiscriminate Force

Police may use force at protests to target specific and imminent threats of violence. But police may not ban the activity of peaceful protestors because of the violent acts of others.<sup>75</sup> The indiscriminate use of chemical gas, pepper spray, or projectiles against protestors can cause serious injuries and deter political speech.<sup>76</sup>

PhxPD officers have used force to deter speech. As described above, officers often resort to firing less-lethal weapons such as stunbags, 40mm impact rounds, and Pepperballs without legal justification. PhxPD has used these dangerous weapons indiscriminately during protests and demonstrations.

During the summer 2020 protests, PhxPD officers failed to warn protestors before shooting projectiles like stunbags<sup>77</sup> and Pepperballs, and they made little attempt to distinguish between peaceful protestors and those engaged in unlawful acts. At one summer 2020 protest we reviewed, an officer shot Pepperballs at a man's back even as he bicycled away in the direction officers had ordered him to go. Another officer shot Pepperballs towards cars as they drove away from a gas station, one of many instances we observed of officers shooting less-lethal projectiles in the direction of cars and people without warning. One protestor told us that he was on his way home when police fired at his car, shattering the windows. He described the shooting as coming out of nowhere, without advance warning. "I really, truly believe that there was no order out there," he said. "They were allowed to do whatever they wanted to do."

In another encounter in 2020, a small group of protestors trying to leave a protest approached a group of PhxPD officers blocking a street. A sergeant yelled at them to "Find another way," and the protestors asked which way to go. The sergeant responded by firing a "bore thunder" muzzle bang, a weapon that produces a deafening blast with a

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<sup>75</sup> *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 834 (9th Cir. 2020) ("The many peaceful protestors, journalists, and members of the general public cannot be punished for the violent acts of others.").

<sup>76</sup> These weapons are "sufficiently lethal" to deter protestors from protesting again. *Black Lives Matter Seattle-King Cnty. v. City of Seattle*, 466 F.Supp.3d 1206, 1214 (W.D. Wash. 2020) (allegation that police "indiscriminately threw an excessive amount of chemical agents at peaceful protests over police brutality" was evidence of officers' intent to chill the protestors' speech).

<sup>77</sup> A stunbag is a sock-shaped projectile filled with lead pellets. As we describe in Section A, PhxPD also equips officers with less-lethal projectiles outside of protests.

blinding flash. The explosive sound caused the protestors to scream, “What way do we go?” None of the approximately 20 officers with the sergeant answered the question.

Officers also unloaded projectiles on protestors after deliberately trapping them in a confined space. “Kettling” peaceful protestors by surrounding them on all sides and then using force against them can constitute retaliation.<sup>78</sup> One night in 2020, officers surrounded a group of protestors by rushing at them from the side to “box them in” and “cut off their avenue of escape,” as a sergeant put it in his report. The officers then fired into the group of trapped protestors. “We just lit ‘em up,” the sergeant bragged. “It was the perfect pitch ‘cause they can’t go anywhere,” he laughed. Similarly, in 2017, PhxPD intentionally drove protestors toward a group of officers who were waiting to fire less-lethal projectiles at them. PhxPD radio recorded the supervisor’s commands: “We’re pushing a group of about 40 people at ya.” He followed up with a direction to use force: “We’re driving ‘em to ya. Address the threat.” Not only can less-lethal projectiles be intimidating in the moment, they can also cause intense pain and bruising, with documented injuries including ruptured eyeballs, skull fractures, and internal bleeding.

On another night of the 2020 protests, officers shot less-lethal projectiles at one fleeing protestor, splitting his forearm open and breaking it. A PhxPD helicopter alerted officers on the ground that a group of protestors was running through an alley in their direction. Two officers moved into position to confront the protestors as they came out. One officer pointed his Pepperball launcher at the protestors and ordered them to stop. Four seconds later, the officer fired Pepperballs at the protestors’ feet and lower legs. A second officer then shot an OC impact round<sup>79</sup> at one of the protestors, splitting open his forearm. The protestor sustained a broken bone that required corrective surgery. Hours later, PhxPD officers dropped him off at a hospital, where they released him without any charges. “It was like we were being corralled and trapped,” the protestor told Justice Department investigators. He said he “felt like a rat in a trap.”

Officers also used excessive force when approaching protestors who were not a threat. These tactics included approaching protestors with their weapons drawn and immediately ordering them to lie face down on the ground. One example illustrates the pattern. One night in 2020, a sergeant urged, “Let’s jack ‘em up dude, fuck it,” as officers drove up to a group of protestors. He then gave a celebratory yell, exclaiming, “Yeah!” before he approached the protestors with his weapon drawn. Several people were standing in the intersection. They appeared unarmed and did not threaten the

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<sup>78</sup> *Goodwin v. District of Columbia*, 579 F. Supp. 3d 159, 164, 169 (D.D.C. 2022); *Anti Police-Terror Project v. City. of Oakland*, 477 F. Supp. 3d 1066, 1071, 1088 (N.D. Cal. 2020).

<sup>79</sup> An OC impact round is a projectile that contains a breakable cone filled with a chemical powder similar to pepper spray.

officers. The officers nonetheless pushed each of them onto the ground before handcuffing and arresting them.

PhxPD has long been on notice of concerns about excessive force against protestors and the chilling effect on speech that results. In 2017, officers gassed a large crowd of protestors because of the disruptive conduct of a small number of people. Outside the convention center in downtown Phoenix, approximately 6,000 protestors were demonstrating peacefully when a group of no more than 20 people began to shake a temporary police barricade. PhxPD officers shot Pepperballs at the ground in front of the disruptive group, which then dispersed into the surrounding crowd. Three minutes later, as some members of the group continued to be disruptive, officers threw tear gas canisters toward the crowd. While the disruptive conduct had been confined to a small area, the tear gas was not. Within minutes, the gas engulfed a “vast area” of downtown, as a television reporter described it during a live broadcast. PhxPD issued no warnings to the crowd until 16 minutes after releasing the gas. Protestors more than a block away soon experienced trouble breathing and burning in their eyes and sinuses. Fire department responders treated journalists for exposure. The tear gas even permeated the grounds of a nearby basilica, affecting the Franciscan friars who lived there. Predictably, scores of peaceful demonstrators were forced to end their protest and leave the area.

## **2. PhxPD Retaliates Against Protestors with Unlawful Arrests Based on Unsupported Allegations**

When police arrest protestors, it must be for a legitimate law enforcement purpose. It is unlawful to use the power of arrest to deter lawful protestors from organizing or returning to protest again.<sup>80</sup>

In 2019 and 2020, PhxPD used arrests to discourage peaceful protestors. PhxPD’s policy for handling civil unrest requires officers to “incarcerate as many individuals as possible,” once a commander gives the order. As a result, PhxPD officers have used the power of arrest as a tool to clear peaceful protestors from streets. On a night after a state-wide curfew went into effect, a commander ordered officers to achieve “maximum arrest.” He directed sergeants, “[J]ust systematically start sweeping this entire neighborhood. See if we can pick up anybody who’s walking around.” That night, the police arrested more than 200 people, according to an agency tally. Though some

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<sup>80</sup> *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1020 (9th Cir. 2015) (Police “may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment.”).

protestors entered guilty pleas when they appeared in court the next day, city prosecutors eventually dismissed almost 150 remaining cases.

PhxPD has also sought charges against protestors that were far more serious than the evidence supported. For example, PhxPD arrested more than 120 people for the crime of felony rioting during a protest in May 2020, using the same verbatim probable cause statement to justify each arrest.<sup>81</sup> People arrested included a community activist who said she had come downtown to hand out water and Gatorade to protestors, a family who told Justice Department investigators that they drove downtown to show support for the police, and a man whom police arrested while he was filming them—all of them had to spend the night in jail. PhxPD’s overreach quickly became apparent. At court hearings a day later, a judge determined that the identical statements were insufficient to support felony rioting charges and ordered those protestors to be released. Prosecutors later found the evidence did not support even minor charges and immediately abandoned more than 100 of the cases. One protestor told us that she lost her job as a security guard because the felony arrest appeared on her background check, even though prosecutors dismissed the charge. She said she would “second guess” herself before protesting again.

PhxPD officers have also sought to justify serious charges with false evidence.<sup>82</sup> In October 2020, a small group of protestors faced years in prison after PhxPD and county prosecutors falsely claimed they were members of a criminal street gang and had conspired to commit aggravated assault against PhxPD officers. On the evening of October 17, a group of 17 people, all wearing black clothing, marched to protest prosecutors’ decision not to charge a state trooper for the fatal shooting of a Black man in Phoenix earlier that year. As they walked down several streets, members of the group pulled construction barriers behind them, temporarily blocking the police cars trailing them. One or two of the protestors threw two smoke grenades on the ground in front of the police. After about half an hour, officers arrested the entire group, including a man whom officers incorrectly identified as a legal observer. In fact, he was an amateur

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<sup>81</sup> Felony rioting is a serious crime that carries a presumptive sentence of 1.5 years of imprisonment. ARS § 13-2903 (rioting is a class 5 felony); ARS § 13-702(D) (class 5 felony presumptive sentence is 1.5 years).

<sup>82</sup> Deviation from standard procedures can be evidence of retaliation when supported by other evidence supporting the claim. See *Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1220 (10th Cir. 2002); see also *Miranda v. Arizona*, 384 U.S. 436, 459 (1966) (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886) (ellipsis omitted) (“Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that ‘illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure.’”)).

photographer who happened to come across the protestors and began taking pictures of them.

PhxPD supported these serious charges with false statements. A sergeant testified to a county grand jury that the protestors, including the photographer, belonged to a criminal street gang known as “ACAB,” after a phrase the group chanted: “All Cops Are Bastards.” The sergeant analogized “ACAB” to violent street gangs, such as the Bloods and the Crips, and testified that the protestors identified themselves as members of “ACAB” by wearing black clothing and chanting “All Cops Are Bastards.”

The judge handling the case called the claim that the protestors were members of a criminal street gang “false, misleading, and inflammatory.” In June 2021, the court dismissed two charges against the protestors—assisting a criminal street gang and conspiracy to commit aggravated assault—*with prejudice*, meaning that prosecutors could not refile these charges. The court found that this highly unusual remedy was warranted due to the “egregious misconduct” of the prosecutor and the sergeant.

## The Genesis of the Gang Charges

The Maricopa County Attorney’s Office (MCAO) and PhxPD have blamed each other for the failures that led to the gang charges. MCAO’s degree of involvement in the constitutional violations we have identified is beyond the scope of our review. However, the Arizona bar ruled in December 2023, after a multi-day evidentiary hearing, that the MCAO prosecutor responsible for the gang charge prosecution should be suspended from the practice of law for two years for, among other things, her role in bringing these charges. This prosecutor worked closely with PhxPD during the 2020 protests and gave trainings to PhxPD officers on topics including bringing charges against protestors.

Email communications show that the idea for charging protestors as members of a street gang likely originated with PhxPD’s anti-terrorism task force. By June 2020, PhxPD had formed a protest “strike team” and in July, the squad’s sergeant sent a reminder to officers assigned to protests to notify him of any “protest related arrests” of “anyone believed to be affiliated with Antifa.” In August 2020, a sergeant who served as a supervisor during protests explained in an email that a detective in the protest strike team was going “to start identifying the hierarchy in these BLM [Black Lives Matter] type organizations.” And in September 2020, the sergeant for the protest strike team contacted the county attorney’s office, saying he wanted to talk about “building conspiracy and syndicate type cases as it relates protest/demonstration activities,” according to an MCAO report.

PhxPD officers also made false statements to support serious charges against protestors:

- To support felony charges, an officer falsely claimed that a protest leader stabbed a sergeant with the sharpened tip of an umbrella. According to the officer, the umbrella had “a 3-inch sharpened metal tip” that the protestor used “to stab him in the hand.” These claims were not true. Body-worn camera videos show that the protestor held the umbrella pointed toward the ground the entire time she was running. And a photograph of the umbrella tip shows that it had not been sharpened.
- Multiple officers falsely claimed that protestors “bull-rushed” a police line, when in fact it was the police officers who pushed into the protestors. As protestors faced a line of officers outside police headquarters in August 2020, one of the protest leaders called for calm, repeatedly telling the protestors to “relax.” The protestors stood still, but the officers stepped forward, pushing into them. In their incident reports, three officers falsely claimed that the leader and another protestor had “locked arms and aggressively charged” the officers, in a “lineman type rush,” “charging or bull rushing” the officers.

PhxPD has also singled out specific protestors for arrest because of expressive activities.<sup>83</sup> At a protest in July 2019, a PhxPD lieutenant directed officers to arrest a 62-year-old protestor while he was in the middle of giving an interview to a reporter. PhxPD had last ordered protestors to disperse 15 minutes earlier, and most of the crowd had moved out of the street. But the 62-year-old protestor, who carried a Soviet flag and a sign that called police “child killers,” stayed behind to speak to a reporter. Video from the interview captured the encounter. As the man began to answer the reporter’s question about the flag’s symbolism, officers ran up behind the man and, without warning, grabbed him by the neck and tackled him to the ground.

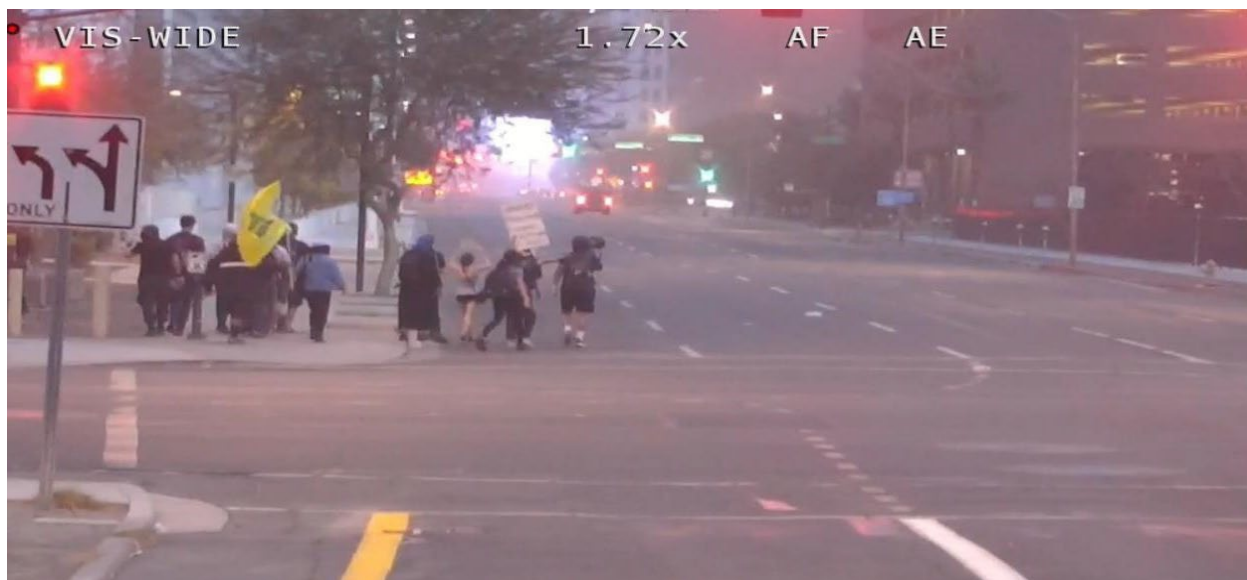
Other people remained in the same area at that time, also allegedly in violation of earlier dispersal orders. Yet officers arrested just the man and one other protestor, a community leader and vocal critic of PhxPD who was well known to the lieutenant in charge. PhxPD’s decision to target these two protestors, while allowing others to walk away, suggests that it was the protestors’ expressive activities that prompted PhxPD to select them for arrest. All charges against both protestors were dismissed the following day.

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<sup>83</sup> Targeting a person engaged in protected activity for arrest, while declining to arrest similarly situated people who are not engaged in protected activity is evidence that police arrested the person to retaliate against them. See *Nieves v. Bartlett*, 139 S.Ct. 1715, 1727 (2019).

PhxPD also targeted perceived leaders of the 2020 protests by singling them out for the crime of “obstruction of a thoroughfare,” which requires evidence of interfering with traffic. PhxPD made at least 26 arrests of protestors between June and October of 2020 in which the only violation was obstruction of a thoroughfare. PhxPD supervisors decided in advance which protestors to target. Before protests, the lieutenant in charge would distribute flyers to officers with protestors’ names and pictures. With careful instructions such as “Keep your eye on the leadership in the roadway,” the lieutenant would direct officers to record certain protestors on video to document their alleged violations.

In some cases, there were no violations—PhxPD arrested protestors for obstruction of a thoroughfare when their conduct plainly did not meet the elements of the offense. After at least one protest, PhxPD arrested protestors who marched on streets that were clear of traffic because police cars with flashing lights drove in front and behind the protestors. At another protest, police arrested protestors for obstruction of a thoroughfare even though, again, there was none—the few protestors who stepped in the street stayed close to the sidewalk and did not interfere with any traffic. Video we reviewed shows that cars were able to pass the group in multiple lanes that remained open. The obstruction of a thoroughfare charges were eventually dismissed.



PhxPD arrested protestors for obstruction of a thoroughfare when they did not interfere with traffic

Late in the summer, PhxPD seemed to recognize the legal flaw in arresting protestors for violations when they had no culpability. At one protest, the lieutenant in charge reminded officers not to block any traffic for the protestors: “Just a reminder, we are not

going to pre-block anything and hopefully they make the right decision to stay on the sidewalk.” He explained over the radio that this change was “so they can’t say we blocked a lane for them.”

The PhxPD lieutenant in charge ordered officers to arrest protest leaders for marching in the street without a permit, even though in other demonstrations we reviewed—demonstrations that were not about policing—PhxPD allowed protestors without permits to march without interference. Cities can impose reasonable restrictions—like permits—but officials cannot use “unbridled discretion” to deny permits and shut down protected speech.<sup>84</sup> Phoenix has no process for groups to obtain a permit if they wish to protest or demonstrate on city streets. Therefore, any protestors who march in the street risk arrest if the police department chooses to enforce the obstruction of a thoroughfare statute against them. PhxPD’s lack of standards and “completely uncontrolled discretion”<sup>85</sup> violated the First Amendment because the risk of random, arbitrary arrest is enough to dissuade reasonable people from engaging in protected political speech.

### Retaliatory Intent, In Officers’ Own Words

PhxPD officers’ own statements reflect a culture in which sworn officers flaunted their hostility toward protestors without recourse. While on duty and responding to protests, officers made malicious and demeaning statements about protestors, cheered the use of force, and celebrated their success in suppressing speech. For example:

- An officer implied to a protestor in 2020 that further protest activity would jeopardize her employment. The officer said: **“You’re still participating? Should we be calling your work? You work in the medical field, don’t you?”**

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<sup>84</sup> The First Amendment protects expressive activity in traditional “public forums,” such as streets, sidewalks, and parks. Cities may impose reasonable restrictions, such as requiring permits, on protestors, but governments cannot use the permitting process to censor speech. When a city denies a permit to protest, that decision must be based on “objective” factors, not a city official’s “unfettered discretion.” *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1885 (2018) (quotation marks omitted); *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 772 (1988).

<sup>85</sup> *Cox v. State of La.*, 379 U.S. 536, 556–57 (1965) (“The statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit. Nor are there any administrative regulations on this subject which have been called to our attention. From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion.”)



- One officer walked down a street shooting Pepperballs almost constantly over the course of seven minutes, finally stopping when he ran out of ammunition. He urged another officer to join him, saying **“Hit ’em, hit ’em, fuck ’em, hit ’em.”** That same night, the officer fired 1,000 Pepperballs all on his own.
- A sergeant celebrated in 2020 that PhxPD had 200 protestors in custody: **“Holy crap, we’ve got peeps. Nice job, boys,”** he said. **“This is what we need to do. This is how we cut the head off the snake.”**
- When deciding whether to take a teenager to jail or cite and release him for violating curfew, one officer said to another: **“But I guess you’re trying to prove a point, trying to make these kids not do it again and come down here tomorrow.”** (Immediately after making this comment, the officer muted his body-worn camera video.)

People in Phoenix are still at risk of having their First Amendment protest rights violated by PhxPD. As described below, PhxPD’s pattern of using immediate force is particularly pronounced when people talk back, criticize, or film the police. We also observed officers treat protestors unlawfully between 2017 and 2021. The City claims that it now safeguards the rights of protestors through recent reforms. But as of early 2024, any changes were only in their initial stages.<sup>86</sup> These belated and incomplete efforts do not establish that PhxPD officers will respond appropriately—and be held accountable if they do not—particularly when addressing future protestors or others exercising their First Amendment rights whom officers deem critical of law enforcement.

### **3. PhxPD Retaliates for Speech Protected by the First Amendment During Daily Encounters**

PhxPD officers unlawfully arrest or use force in response to criticism, insults, or perceived disrespect during daily encounters. Often, within seconds, officers react with force to verbal slights. For instance, while this investigation was ongoing, in 2022, PhxPD officers slammed a man into a police cruiser and began to arrest him seconds

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<sup>86</sup> For example, as of early 2024, the revisions to PhxPD’s civil disturbance response plan and its new “First Amendment Facilitation & Management Policy” were still in draft form; the agency had “reconstituted” the unit formerly responsible for crowd control under a new name; and according to PhxPD, it had planned but not yet delivered revised training to the new unit.

after he insulted an officer. The man confronted the officer to point out that police were not helping unhoused people across the street. As the man complained, the officer told him that, by arguing, he was “obstructing police operations.” The man laughed and called the officer a “dumbass.” Immediately, the officer grabbed the man’s arm and slammed him into the police cruiser in order to arrest him. When we spoke to the man, he told us that he had multiple cuts and bruises from the encounter and continues to experience nerve damage from his injuries over a year later. He explained that he sometimes changes his route to avoid passing a police station. “I’m moving around the city much differently,” he said.

In another incident, a police officer fired a Taser probe at a handcuffed man from six inches away, seconds after the man called him a “bitch.” The officer activated the Taser’s electrical cycles seven more times after the man was cuffed and lying face down on the asphalt. When the man asked him to stop, the officer responded, “I’ve got a long battery life in this, man.” This time, he attempted to justify the force by stating that the man was aggressive but he admitted in an internal affairs investigation that the “act of aggression” was merely the man yelling at the officer while the man was cuffed, seated on the pavement, and surrounded by three officers.

People have the right to verbally criticize law enforcement officers so long as they do not actively interfere with the officers’ lawful duties.<sup>87</sup> We reviewed multiple incidents in which police officers arrested or threatened to arrest bystanders merely because they challenged the lawfulness of the officers’ actions or because they appeared to annoy the officers. For example, PhxPD officers ordered a woman to leave a bus stop in March 2022 because she criticized them for their treatment of a man whom they suspected of using drugs. The woman watched officers pull the man from a bus stop bench by his hair and then kneel on his neck. As the man complained he could not breathe, the woman repeatedly asked why the officers were being so rough. In response, an officer told her to leave the area and issued an ultimatum: “I could trespass you from the bus stop if you’d like, and then you can’t use public transport.”

Officers also demonstrate in their incident reports that they do not consider insults and verbal challenges to be protected speech. We reviewed reports in which officers admitted that insults prompted them to act. In one report, an officer explained that a man “made obscene gestures and cursed at me,” prompting him to arrest the man for

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<sup>87</sup> The Ninth Circuit has affirmed that “[e]ven though the police may dislike being the object of abusive language,” they are not permitted “to use the awesome power which they possess to punish individuals for conduct that is not only lawful, but which is protected by the First Amendment.” *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1174 (9th Cir. 2013) (quoting *In re Muhammed C.*, 95 Cal.App.4th 1325, 1330–31, 116 Cal.Rptr.2d 21 (2002)).

jaywalking. In another report, an officer admitted that he handcuffed a teenager for refusing to provide his name or hang up his phone. Though the teenager had committed no crime, the officer explained in his report: “I informed him that he was under investigative detention, he replied with ‘Fuck you,’ so I placed him in hand cuffs. [He] was very angry, anti-PD, and uncooperative.” Even though opposing the police is a constitutionally protected viewpoint, officers label people, houses, apartment complexes, and even neighborhoods as “anti-PD,” as if this opinion presents an inherent threat.

#### **4. PhxPD Retaliates Against People for Attempting to Record Police Activity**

The First Amendment protects the right to peacefully film police officers performing their duties in public.<sup>88</sup> We found numerous instances where people filmed PhxPD activity from a distance without interfering with police operations, but officers arrested them, used force, or ordered them to leave the scene entirely.

In 2017, officers shot Pepperballs at a man who was filming the police at a protest from several yards away, even though he stood behind a police barricade in an area reserved for protestors and posed no threat to officers. After most of the crowd had left, a few people remained and faced the police line. The man began filming the police with his cell phone. The man presented no visible threat: He was shirtless and held the camera aloft with his right hand, while his left hand was visible at his side, distanced from his body. A PhxPD officer targeted him with multiple rounds of Pepperballs, and continued to hit him even after he backed up and fell to the ground. The man stopped filming and left the area.

In another incident, a man filmed officers while he leaned out of his car window. Officers surrounded the car, pointed a gun at the man’s head from less than a foot away, and then booked him for felony rioting. The arresting officer cited the man’s filming as justifying the arrest. When officers asked the man if he knew why he was arrested, the man responded, “No, I was just recording and I know I have the right to record.” County prosecutors rejected the charges.

In another encounter, officers impeded a man from recording an arrest though he was standing at least 20 feet away. Officers approached the man, blocked his view of the

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<sup>88</sup> *Bernal v. Sacramento Cty. Sheriff’s Dep’t*, 73 F.4th 678, 694 (9th Cir. 2023) (finding no probable cause for an arrest after a man refused to put down his phone and stop filming and yelling at officers); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (affirming the “First Amendment right to film matters of public interest”)

arrest, and told him to “get off the sidewalk because you’re not allowed to obstruct the sidewalk.” When the man asked for the officers’ sergeant, one of the officers replied, “Don’t worry about it,” and walked away.

PhxPD officers also interfered with individuals’ right to record police during everyday encounters. Police handcuffed and cited a man for “obstructing a sidewalk” because he filmed police as they arrested a homeless man in the Zone. A sergeant ordered the man to step out of the street while he filmed the arrest. The man followed directions, and continued filming from a nearby sidewalk. The officer then told him to “get off the sidewalk” and “get going.” The man reminded the officer that he had the right to stand on a public sidewalk. “If you want to play games, we’ll play games,” the officer responded. The officer then handcuffed the man and cited him, though two other people were near the man on the same sidewalk, standing just as he was, and were not arrested. The man told us that the incident has stayed with him. “I don’t film openly anymore because I know they’re going to come after me,” he said.

## **5. Policies, Training, and Supervision Fail to Protect First Amendment Rights**

PhxPD’s policies, training, and failure to hold officers accountable have created conditions that made violations of the First Amendment more likely. PhxPD has no policy on responding to lawful demonstrations, and its “civil disturbance response plan” conflates civil unrest and spontaneous demonstrations. PhxPD cautions that police should prevent “innocent citizens” from joining a spontaneous demonstration, implying that spontaneous demonstrations are inherently unlawful. In fact, spontaneous demonstrations are an important component of political speech.<sup>89</sup> As described above, the plan directs officers to “incarcerate as many individuals as possible” after the decision to arrest has been made. The plan also requires officers to “arrest as many of the crowd ‘leaders’ as possible” without explaining that arrests are lawful only where there is evidence a person committed a crime, regardless of their position of authority within the crowd.

PhxPD’s trainings have reinforced hostility toward constitutionally protected rights of assembly and speech. A training on crowd-control tactics we observed emphasized inflammatory video footage and offered no meaningful guidance to officers. The instructor referred to First Amendment rights as “very touchy,” and defined a “civil

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<sup>89</sup> *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring) (“[T]iming is of the essence in politics ..... [W]hen an event occurs, it is often necessary to have one’s voice heard promptly, if it is to be considered at all.”); *NAACP v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984) (“Where spontaneity is part of the message, dissemination delayed is dissemination denied.”)

disturbance” as “actively or passively oppos[ing] the police or government.” Opposition to the police or government is the core of protected First Amendment expression.<sup>90</sup>

Of particular concern was the evidence of malice directed toward constitutionally protected speech. The instructor on crowd control techniques used an image of protestors in pain as a laugh line during the presentation and described an incident in which a PhxPD officer shot a protestor in the groin with a projectile as “a textbook shot into the lower abdomen.” The instructor boasted that PhxPD executed search warrants on the protestor’s home and workplace, causing him to become “jobless and homeless at the same damn time.” In a prior version of the class we reviewed, the instructor showed news footage of the same incident, set to Whitney Houston’s rendition of “I Will Always Love You.” The clip was timed to emphasize the moment of the groin shot with the loud drum hit just before the song’s chorus.<sup>91</sup> In another class on protest response, a trainer taught that “anarchists” are the people responsible for inciting riots at protests. Police can tell who the anarchists are by firing a sound cannon to see who runs away—those who do not disperse are purportedly the anarchists. The trainer also suggested that those protestors who care about the First Amendment will talk to and cooperate with the police. Such statements have no basis in fact; they instead appear to reflect a deep-rooted bias against individuals critical of PhxPD or the government.

PhxPD supervisors pay little attention to the use of force at protests. Officers who use crowd-control weapons do not consistently report information that would be needed to assess the reasonableness of any force, such as target and impact locations, the approximate distance to targets, or injuries. Supervisors evaluate the use of chemical weapons only when a protestor complains of an injury. Until after we opened our investigation, PhxPD’s policy on reporting force did not address reporting requirements when officers used certain less-lethal projectiles, including Pepperballs. As described above, during 2020, officers deployed tear gas, OC spray, and fired thousands of projectiles. Despite this extensive use of crowd-control weapons, we saw no evidence of a formal process for reviewing their use. Instead, the officer who shot 1,000 Pepperballs on a single night of protests in 2020 remained in his position as a training officer and Pepperball instructor; the officer coordinated the 2021 course to certify officers in crowd-control methods.

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<sup>90</sup> *City of Houston v. Hill*, 482 U.S. 451, 462–63 (1987) (“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”).

<sup>91</sup> In 2022, after the local news reported on the use of the video clip in a 2018 training, PhxPD investigated and issued a written reprimand to the instructor.

PhxPD officers charged with accepting complaints repeatedly argued with protestors who called in to complain about excessive force or seizure of their property, accused the protestors of illegal action, and even referred a complainant for criminal investigation. During the summer 2020 protests, one caller explained that police severely damaged his car by firing less-lethal projectiles at it, even as he followed other officers' instructions about where to drive. A sergeant accused the caller of knowing about the protest and intentionally driving into it. Another protestor complained that police had injured her in May 2020 by firing multiple less-lethal projectiles at her when she was attempting to leave a protest, consistent with a dispersal order. Before PhxPD had conducted any investigation, a lieutenant concluded: "I feel like this woman was clearly in the wrong." A sergeant told a PSB investigator that the protestor should be considered a suspect: "If someone comes forward who has marks they are at least guilty of being in an unlawful assembly at worst they could be one of our outstanding [aggravated assault] on an officer" suspects, he wrote. The investigator followed the sergeant's instructions and gave the protestor's information to criminal investigators.

Finally, there is inadequate external oversight to ensure that PhxPD protects protestors' First Amendment rights. Prosecutors play a critical role in ensuring that officers do not abuse their power. We saw no evidence that city prosecutors communicated any concerns to PhxPD about the agency's approach to policing the 2020 protests, including targeting protest leaders for arrest for obstruction of a thoroughfare.

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Political speech is "central to the meaning and purpose of the First Amendment."<sup>92</sup> Protecting this speech, which is "indispensable to [decision-making] in a democracy," secures "confidence and stability in civic discourse."<sup>93</sup> Likewise, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."<sup>94</sup> But PhxPD has engaged in a pattern or practice of using its authority —through force and its power to detain and arrest—"to punish individuals for conduct that is not merely lawful, but protected by the First Amendment."<sup>95</sup>

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<sup>92</sup> *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 329 (2010).

<sup>93</sup> *Id.* at 349 (2010) (internal quotations omitted).

<sup>94</sup> *Houston*, 482 U.S. at 462-63 (1987); see also *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002) ("The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.").

<sup>95</sup> *Santopietro v. Howell*, 73 F.4th 1016, 1023 (9th Cir. 2023).

## E. The City and PhxPD Discriminate in Their Response to People with Behavioral Health Disabilities

The City and PhxPD violate the Americans with Disabilities Act (ADA) by discriminating against people with behavioral health disabilities when providing emergency response services.<sup>96</sup> The ADA prohibits the City from excluding people with disabilities from participation in or denying them the benefits of city services, programs, or activities, or subjecting them to discrimination.<sup>97</sup> To avoid discrimination, Phoenix must provide people with disabilities an equal opportunity to participate in or benefit from city services.<sup>98</sup> When providing a service to people with disabilities, the City must also ensure that it is as “effective in affording equal opportunity to obtain the same result ... as that provided to others.”<sup>99</sup> Phoenix’s public services and programs include its emergency response and law enforcement systems.<sup>100</sup> This means that PhxPD’s 911 call center, as well as officer encounters, are subject to the ADA.<sup>101</sup>

The City and PhxPD must make “reasonable modifications” to their normal policies, practices, or procedures when necessary to avoid discriminating on the basis of disability, unless they can show that making such modifications would “fundamentally alter the nature of the service, program, or activity” offered.<sup>102</sup> Just as a person in Phoenix experiencing a heart attack or other medical emergency receives a response from trained EMTs, in many circumstances a person experiencing the effects of a behavioral health disability should receive a health-centered response. But the City and PhxPD have failed to make important modifications necessary to avoid discriminating against people with behavioral health disabilities.

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<sup>96</sup> People with behavioral health disabilities are individuals who have a diagnosable mental illness and/or substance use disorder. This population includes individuals with co-occurring intellectual or developmental disabilities.

<sup>97</sup> The ADA applies to “public entities,” which includes a local government like the City of Phoenix. See 28 C.F.R. § 35.104 (“Public entity means...Any...local government.”); 28 C.F.R. § 35.130.

<sup>98</sup> 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(ii); see also *Updike v. Multnomah Cnty.*, 870 F.3d 939, 949 (9th Cir. 2017) (a public entity has an affirmative obligation to make accessible benefits, services, and programs to people with disabilities).

<sup>99</sup> 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(iii).

<sup>100</sup> See *Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), reversed in part and remanded on other grounds, *City and Cnty. of San Francisco v. Sheehan*, 575 U.S. 600 (2015) (holding that the ADA applies to arrests); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) (holding that the ADA encompasses “anything a public entity does” (citation omitted)).

<sup>101</sup> For ease of reference, this Report will refer to the telecommunications centers within the PhxPD Communications Bureau as the “PhxPD 911 call center.”

<sup>102</sup> 28 C.F.R. § 35.130(b)(7).

To evaluate the City and PhxPD's compliance with the ADA, we focused on the practices of first responders, including call-takers and dispatchers who must assess and triage 911 calls as they come in. We also reviewed how PhxPD officers respond to behavioral health emergencies, including incidents where a person's disability may not become apparent until an officer arrives on the scene. We worked with experts in dispatch, behavioral health services, and crisis response to analyze hundreds of incidents where behavioral health issues were a factor. We reviewed audio recordings of emergency and non-emergency calls for assistance, body-worn camera footage of officer encounters, and PhxPD reports and data, including Computer-Aided Dispatch (CAD)<sup>103</sup> records. We also reviewed PhxPD's communications policies and training practices, accompanied Crisis Intervention Team (CIT) officers<sup>104</sup> and the City's new Behavioral Health Units on ride-alongs, and spoke to call-takers, dispatchers, officers, and people with behavioral health disabilities who have had encounters with PhxPD.

We found two patterns based on this inquiry. First, the PhxPD 911 call center routinely fails to identify when callers need help with behavioral health issues. As a consequence, call-takers default to sending regular patrol officers, even though they have options to transfer the caller to clinical specialists or to send a specially trained team. Second, when PhxPD officers respond to behavioral health calls, they seldom make reasonable modifications to their approach when appropriate. When possible, officers should call for assistance from behavioral health responders and wait for them to arrive. In Phoenix, officers have access to this resource but rarely use it. Instead, officers escalate incidents and often use force that could be avoided.

To the City and PhxPD's credit, they have invested in programs that can divert behavioral health-related calls away from police and to more appropriate responders. These programs can provide people with behavioral health disabilities with equal access to the City's emergency response system. Despite these programs, 911 call center operators do not accurately identify behavioral health-related calls and route the calls to an appropriate responder. As a result, it remains the norm that police are called to respond.

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<sup>103</sup> CAD, or Computer-Aided Dispatch, is an electronic system that allows automation of some public safety operations and communications. A CAD system also generally stores information on each call for service received by an emergency response agency, such as police or fire. CAD should provide an accurate date and time stamp for every activity.

<sup>104</sup> The Crisis Intervention Team (CIT) model is a form of specialized police response to individuals with behavioral health disabilities. CIT relies on specially trained patrol officers to identify and de-escalate behavioral health crisis situations. The goals of CIT include improving officer knowledge about behavioral health, increasing connections to services for individuals in crisis, enhancing de-escalation, reducing reliance on the criminal justice system, and achieving cost savings through resolving crisis situations and diverting individuals from arrest.



## **1. Phoenix’s Emergency Response System Defaults to Sending Police to Behavioral Health Calls, Though Alternative Responses Are Available**

The PhxPD Communications Bureau is comprised of two 24/7 telecommunications centers that answer all 911 emergency calls for service in Phoenix, as well as non-emergency calls, called Crime Stop. Call-takers transfer most calls to police dispatchers or to the Phoenix Fire Regional Dispatch Center for fire or emergency medical response. Call-takers may also refer callers to other agencies or organizations for non-emergency matters, such as animal control. For each call, a call-taker makes a unique entry in PhxPD’s CAD and assigns a radio code to the call that describes the reported behavior, such as “900—Check Welfare” or “418T—Trespassing.” The call-taker also designates the call as priority one, two, or three (with priority one being the most urgent) and documents pertinent information from the caller in CAD. The PhxPD call center receives around two million calls per year, and dispatches police officers to approximately one-third of them.

Many of these calls involve behavioral health issues, and most of those are dispatched to the police. The City and PhxPD are well aware that people with behavioral health disabilities frequently come into contact with PhxPD. A 2016 community needs assessment on crisis response in Phoenix found that over half of the people with mental health issues surveyed had at least one encounter with the police and 24% had three or more interactions with the police. A 2021 study by Arizona State University (ASU) commissioned by the City of Phoenix found that about 10% of PhxPD’s dispatched calls for service relate to behavioral health, which amounts to over 5,000 calls per month. The same study found that many of these calls are categorized as “check welfare.” According to PhxPD’s own records, when responding to calls for service, officers collectively spent nearly 11% of their time on check welfare calls, totaling 404,360 hours between January 1, 2016, and March 28, 2022.

PhxPD has worked to reduce its reliance on police to respond to behavioral health incidents, with uneven results. PhxPD has developed a partnership with Solari, a non-profit that operates the local crisis line.<sup>105</sup> In early 2020, PhxPD embedded a clinician from Solari to work part-time in the 911 call center. The goal was to increase calls diverted to Solari’s crisis line, where Solari clinicians can stabilize callers on the line or

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<sup>105</sup> Solari has its own call and dispatching center and now operates the 988 crisis hotline throughout Arizona. Solari changed its name from the Crisis Response Network in 2021.

send mobile crisis teams when necessary.<sup>106</sup> Prior to the pilot, call-takers could transfer callers to Solari, though they rarely did. The pilot is now a permanent program with a clinician on site 20 hours per week. Still, call-takers remain hesitant to transfer calls to Solari, and PhxPD has struggled to reliably measure the volume of calls diverted. PhxPD data generally show an increase in diversions since the pilot began, with call-takers transferring around 500 to 600 calls per month to Solari.<sup>107</sup>

PhxPD dispatchers can also call Solari to request a mobile crisis team to respond alongside officers, but the agency's use of mobile crisis teams has remained stagnant for years. In March 2020, PhxPD began another pilot program focused on encouraging officers and dispatchers to request a mobile crisis team from Solari even after officers were dispatched. PhxPD provided no specific training for 911 operators related to the effort, just an email encouraging dispatchers to request mobile crisis teams in certain situations. The 911 call center did not collect data related to the pilot, and we saw no evidence that the pilot led to increased requests for response by a mobile crisis team.

The City has recognized there is still significant need for a behavioral health response. In 2021, Phoenix dedicated \$15 million to expand the Fire Department's Community Assistance Program. As part of this expansion, the City created Behavioral Health Units (BHUs), civilian teams that can respond to behavioral health calls for service. The first BHUs launched in the summer of 2022, and there are now four BHUs operating citywide, seven days per week, 20 hours per day. The City plans to have nine BHUs available 24/7 by the end of 2024. Phoenix data show that call-takers have begun sending calls to BHUs, rising from 17 calls in August 2022 173 calls in April 2024. These calls sent to BHUs supplement the calls already transferred to Solari each month. As BHU capacity expands, PhxPD will continue to have access to Solari and its associated mobile crisis teams, as well.<sup>108</sup>

The City and PhxPD's efforts to meet the needs of Phoenix residents with behavioral health disabilities are commendable. These programs, and especially the City's

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<sup>106</sup> A mobile crisis team includes trained behavioral health staff who respond to individuals in need of urgent behavioral health assistance wherever the person is located. The team can resolve the immediate need and connect the person with ongoing behavioral health services as appropriate. The mobile crisis teams that Solari dispatches operate throughout Maricopa County.

<sup>107</sup> Combined with requests from officers in the field for mobile crisis teams, there are about 700-800 total diversions from PhxPD to Solari per month.

<sup>108</sup> There are some differences in the types of calls that can be transferred to Solari versus BHUs. Solari will only engage with a caller and/or send a mobile crisis team if the person needing assistance is in a safe, fixed location and gives consent. BHUs will respond to third-party calls and do not require that a person confirm their willingness to receive services before responding. Additionally, Solari stabilizes about 80% of callers over the phone, sending mobile crisis teams to 10-20% of calls. Stabilizing callers over the phone is not currently part of a BHU dispatcher's job.

investment in BHUs, hold promise for changing the landscape of how people with behavioral health disabilities in Phoenix receive emergency services. However, the PhxPD 911 call center consistently fails to identify behavioral health-related calls that require a modified response, so the City does not know the true scope of the need. As one PhxPD official stated, “Nobody tracks the unmet need, and I think it’s bigger than we imagine.” Thus, people with behavioral health disabilities receive a police-only response when they need behavioral health assistance. The failures within the call center result in discrimination under the ADA.

**a. The PhxPD 911 Call Center Does Not Accurately Identify Behavioral Health-Related Calls for Service**

PhxPD call-takers do not adequately identify, consider, or communicate behavioral health issues when answering 911 calls, which can result in unnecessarily sending the police. Call-takers seldom use the applicable mental health call code (918). They told us they do not feel they can “diagnose” a person’s behavioral health issue. Instead, call-takers use a host of inaccurate call codes for behavioral health. Call-takers may type “poss[ible] 918” or “poss[ible] CIT” into the dispatch notes to alert officers of behavioral health issues, but PhxPD policy does not require them to do so, nor does it require them to elaborate on the specific behavioral health needs or symptoms a caller may have. These practices can leave officers with little to no information regarding the behavioral health aspects of a call.

One consequence of these inconsistent practices is that call-takers can elevate the apparent seriousness and dangerousness of calls.<sup>109</sup> For instance, in the sample of calls we reviewed, we found a pattern of call-takers designating certain calls, including behavioral health-related calls, as “fights” when the caller did not indicate the situation involved any fighting. Police at the scene changed one-third of these “fight” calls in our sample to codes such as check welfare, trespassing, mentally ill subject, or drunk or disturbing—codes for which a non-police response would generally be considered

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<sup>109</sup> Studies have shown that when call-takers inaccurately elevate the seriousness and dangerousness of calls, it can prime police for a more aggressive response and contribute to negative interactions between police and the public. See Gillooly, J. (2020). How 911 callers and call-takers impact police encounters with the public: The case of the Henry Louis Gates Jr. Arrest. *Criminology and Public Policy*, 19, 787–804; Taylor, P. L. (2019). Dispatch priming and the police decision to use deadly force. *Police Quarterly*, 23, 1–22; C. Ritter et al., “Crisis Intervention Team Officer Dispatch, Assessment, and Disposition: Interactions With Individuals With Severe Mental Illness,” *International Journal of Law and Psychiatry* 34, no. 1 (2011): 30-38, available at <https://www.sciencedirect.com/science/article/pii/S0160252710001184> [<https://perma.cc/SRL9-7HL6>].

appropriate.<sup>110</sup> Our analysis of PhxPD data further revealed that some call-takers are much more likely than their peers to elevate calls with no danger to a priority one, the most serious type of call. When any call-taker elevates the seriousness of a call in this way, it eliminates the possibility of sending a non-police response.

If call-takers do not identify and communicate the behavioral health aspects of calls, opportunities to send an alternative response are lost. For instance, a call from a mother about her 15-year-old daughter, who was upset and would not get into the mother's car, could have been handled by Solari and would have been appropriate to send to a mobile crisis team. The girl's mother told call-takers that her daughter had "behavioral issues" and it "takes her awhile to calm down." Nevertheless, the call-taker immediately routed the call to patrol officers, who escalated the situation and had the girl on the ground in handcuffs in less than three minutes. Officers ultimately arrested the girl for aggravated assault on an officer and criminal damage and booked her into the juvenile correction center. Her mother protested, "That's not going to help her mental health." Civilian responders could have supported the mother and worked with the girl to address her concerns rather than demanding immediate compliance, as officers did.

Even when callers specifically ask for crisis assistance, call-takers have sent officers without communicating the caller's concern. For instance, a motel desk clerk called 911 about a man with "some mental issues" who was "not a threat or anything," but "roaming around the property," "crawling on the ground," and saying, "I'm looking for my mom." The caller even said, "I'm sorry, I meant to call the non-emergency line," and "I don't know if I need the crisis unit or something." However, the call-taker coded the call as "Trespassing" and sent officers to respond. In the call notes, the call-taker wrote "subj said he was looking for his mom" and "subj poss having cit situation," but gave officers no further information about the man's behavior or the caller's concern. The first officer to arrive said, "Let's go, man, you don't belong here." The man said, "Go where?" and another officer responded, "Not here." Police walked behind the man until he left the motel property. This police response did not provide the help this man needed. If the call-taker had treated this as a behavioral health call, it would have been appropriate for a behavioral health response.

Sometimes, behavioral health calls do require police presence due to safety concerns. But in those situations, PhxPD call-takers rarely request that a mobile crisis team

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<sup>110</sup> Research suggests that in some jurisdictions, officers at the scene downgrade between 20% and 40% of all crime calls entered by 911 call-takers. Our audio analysis indicates that some of this disparity results from call-taker decision-making.

respond as well.<sup>111</sup> Mobile crisis teams can help police modify their response and can even take over if officers are no longer needed. For instance, a call-taker sent only officers when a mother called 911 about her adult son who was homeless and throwing things from the median of a major roadway. The woman also stated that her son had an outstanding petition for involuntary mental health treatment. Still, the call-taker sent officers to respond alone.

When officers arrived, the woman told them that her son had a serious mental illness and was living on the streets, becoming aggressive, and “emaciated” and “basically starving to death.” The woman also told officers about the petition for involuntary mental health treatment. When officers found the man, they walked up, asked his name, and immediately grabbed and handcuffed him. The man began to try to pull away as they walked him to the police vehicle. In response, they pushed the man to the ground on his stomach, pulled his arms up behind him, and asked, “Are you going to walk then?” as the man cried out and apologized. Officers then took the man to a crisis center. Behavioral health professionals could have worked with the man in a trauma-informed manner, increasing the likelihood that he would have agreed to go voluntarily, and potentially avoiding the use of force.

When we did see PhxPD request a mobile crisis team, the incidents were resolved without arrest or use of force. In one incident, a call-taker immediately recognized the need for specialized behavioral health assistance.<sup>112</sup> A woman called 911 to report that her husband, who had advanced stage dementia, had thrown knives the night before and torn up their house earlier in the day. The call-taker sent officers but also connected the woman with Solari and requested a mobile crisis team. A responding officer advised the woman that she could either wait for the mobile crisis team or petition her husband for an involuntary evaluation at a crisis center and have the police transport him. She chose to wait for the mobile crisis team, which assisted the woman with transporting her husband to the emergency room.

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<sup>111</sup> Many of these calls would have also been appropriate for co-response by a behavioral health professional paired with a police officer, but after a short-lived pilot of embedding a clinician with the King squads in 2019-20, PhxPD abandoned the co-response model.

<sup>112</sup> In our random sample of possible behavioral health-related calls, this was the only call in which the call-taker contacted Solari.

PhxPD has no effective system for identifying frequent callers with behavioral health needs. PhxPD has made some attempts to identify frequent callers and connect them to services. But we saw no evidence that they included personnel who oversee the 911 call center in doing so. Separately, in early 2023, the 911 call center began trying to identify frequent callers and make ad hoc referrals for behavioral health assistance. But call center officials told us they had no data on the success of these efforts. PhxPD should adopt a coordinated approach focused on defining the scope of the problem of repeat callers and meeting their specific needs.

**“I’m going to hang up. You won’t cooperate at all. I don’t understand why you keep calling.”**

*Call-taker to a man in crisis who repeatedly called 911*

## **Frequent Caller**

In 2021, a homeless man in Phoenix called 911 at least 75 times in one day and more than 300 times over several days. Call recordings and call-taker notes demonstrate the man was experiencing a behavioral health crisis. But the man did not get the help he needed. Instead, call-takers answered his calls with increasing levels of frustration, and when they traced the man’s location to an abandoned commercial building, they sent only officers to respond. The officers eventually found the man lying on the floor in an empty office. They booked him for criminal trespass and “using electronic communication to harass,” because he called 911 too many times.

This man is not alone. We identified other people whose repeated calls to 911 demonstrated their need for behavioral health services, not police.

### **b. PhxPD Has Failed to Make Sufficient Reasonable Modifications within the Call Center**

PhxPD has added behavioral health training for 911 operators over the last few years, but the training has not equipped call-takers with the skills needed to identify behavioral health-related calls and route them to the appropriate response. Current PhxPD policy does not give call-takers clear guidance on how to identify a behavioral health call, how to code such calls, and when and where to transfer those calls. Call-takers have told us that they often send police to non-violent behavioral health calls out of fear that something bad might happen. But the presence of officers can lead to more harm for people with behavioral health disabilities. Phoenix itself has recognized that “the lack of an appropriate response can lead to an arrest or a negative interaction with sworn

personnel, which otherwise could be avoided and ultimately does not benefit the individual or the community.”<sup>113</sup> PhxPD created a new policy to address call-takers’ fears, but some remain hesitant to divert calls from the police. PhxPD must improve and increase its training and develop a clear policy for call-takers to ensure the resources available for behavioral health calls are accessed consistently.

Supervisors in the PhxPD 911 call center do some monthly quality assurance to ensure call-takers follow policies and protocols, but it is not focused on behavioral health. PhxPD should modify its practices to evaluate how call-takers code and direct behavioral health calls to ensure that calls eligible for an alternative response receive one. In addition, PhxPD should have access to specialized behavioral health support in the call center at all times to help call-takers route calls to the most appropriate response.

## **2. PhxPD Violates the ADA by Failing to Make Reasonable Modifications when Officers Interact with People with Behavioral Health Disabilities**

Because PhxPD does not ensure that behavioral health-related calls receive an alternative response when appropriate, PhxPD officers remain the default responders for most behavioral health calls in Phoenix. As described above, people with behavioral health disabilities have unequal access to Phoenix’s emergency response system. This discrimination is often compounded by PhxPD officers’ actions. In a significant number of use-of-force incidents we reviewed, including police shootings, officers knew or should have known the person had a disability and could have safely made reasonable modifications, such as calling in the assistance of a mobile crisis team, waiting for a CIT-trained officer skilled in crisis response, or using effective de-escalation techniques.<sup>114</sup> The duty to avoid “confrontational tactics” and accommodate a person in crisis is not diminished when that person fails to immediately follow commands, reacts poorly to an officer’s arrival, or behaves unexpectedly. But we often saw PhxPD officers respond with very confrontational tactics to people with behavioral health disabilities acting this way. When officers fail to modify their approach when it would be reasonable to do so, PhxPD harms people with behavioral health disabilities and violates the ADA.

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<sup>113</sup> City of Phoenix Research Report, Budget and Research Department, “Public Safety Behavioral Health and Crisis Response Calls for Service” (April 20, 2021).

<sup>114</sup> PhxPD would not have to modify its approach if the person requiring the modification poses a direct threat to the safety of an officer or others. See 28 C.F.R. § 35.139. A direct threat is “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.” 28 C.F.R. § 35.104. In many of the incidents we reviewed involving individuals with mental health disabilities or in crisis, however, the person against whom force was used did not meet the definition of “direct threat” as that term is used in the ADA.

**a. PhxPD Officers Default to Using Unnecessary Force and Fail to Call for Specialized Assistance when Appropriate**

PhxPD officers often approach individuals with behavioral health disabilities with a “force first” mentality. For example, an officer fired Pepperballs less than two minutes after responding to a call regarding a man at a behavioral health center, rather than requesting help from a mobile crisis team or a clinician at the center. An employee of the center called 911 to report that one of their clients with a history of mental illness had become upset, started yelling, and punched a vending machine. Before officers arrived, dispatch relayed that the employee called back to say the man was “starting to calm some” and they thought he “should remain calm with the staff with him for now.” Nevertheless, the first officer to arrive confronted the man with a Pepperball launcher in hand. The man tried to move away as other officers, including a CIT officer, began to surround him. The first officer fired three Pepperball rounds against the wall next to him. The officers handcuffed the man to transport him for involuntary mental health treatment as he apologized and cried, “I didn’t do nothing wrong! Please don’t take me, please!” None of the officers attempted traditional crisis response techniques to help resolve the situation, including the CIT-trained officer. This encounter likely could have been resolved without force if officers had called a behavioral health specialist rather than needlessly confronting the man with force. PhxPD approvingly used this video to inform patrol about the appropriate use of Pepperballs, though the officer’s actions violated both the ADA and the Fourth Amendment.

PhxPD officers also escalate interactions with youth with behavioral health disabilities. In one incident, a teenage girl left home after threatening to kill herself, but both the 911 call-taker and officers failed to request a behavioral health response. Instead, within five minutes of finding the girl, who was calmly answering their questions, PhxPD officers grabbed and handcuffed her, saying she “ha[d] to behave” and go home to her mother. The girl told the officers they scared her and came off as aggressive, to which one officer responded, “quite frankly we could have been a lot more aggressive already.” Officers ultimately arrested the girl for breaking a picture frame at home earlier in the day. PhxPD failed to accommodate this young woman’s disability in any way and defaulted to criminal charges rather than treatment.

Even when transporting a person for behavioral health treatment, we saw examples of PhxPD officers defaulting to aggressive, escalating tactics. In one example, officers used excessive force and arrested a man with a serious mental illness while responding to transport him for an involuntary mental health assessment. The transport order said the man had schizophrenia, was hearing voices, and that his mother was frightened. After finding the man in the bathroom, neither officer explained why they were there or made a serious attempt to talk to the man. Instead, they grabbed him less than ten



seconds after opening the bathroom door. Officers should have been trained to expect that grabbing at a person in crisis would escalate the encounter and all but guarantee a defensive reaction. But when the man pulled back, the officers tackled him, put a knee on his neck for over a minute, and placed him in leg restraints. Officers arrested the man and charged him with aggravated assault on an officer, claiming he kicked them, scratched them, and grabbed at an officer's Taser. Body-worn camera video shows the man appeared scared and confused by the officers' actions. The County Attorney dismissed the charges due to "no reasonable likelihood of conviction." Rather than transport the man to behavioral health treatment as his family requested, officers criminalized the effects of his disability and took him to jail.

When PhxPD officers fail to modify their tactics, people in crisis can predictably become confused or defensive. For instance, when a woman called 911 because her boyfriend had attempted suicide, PhxPD officers responded, escalated the situation, and used force. The caller described the suicide attempt, which did not involve the use of weapons. Neither the call-taker nor the officers requested that a mobile crisis team respond, though the man was not at home when officers arrived, and they had 30 minutes to do so. When the man returned, an officer immediately grabbed at his arms. The man pulled away and backed into his apartment. The officer followed. Inside, the officer advanced and cornered the man, who then shut and locked the front door to prevent another officer from entering. The officer inside tackled the man and tried to open the door. Here, too, the presence of a CIT officer failed to de-escalate the encounter. Instead, the CIT officer entered through another door and helped tackle the man and forcefully restrain him. Then, multiple officers surrounded the man and spoke to him while the CIT officer berated him.<sup>115</sup> After paramedics took the man to the hospital, officers

**"I want you all to leave. This is my home. This is where I live. This is where I sleep. This is where I eat. This is where I enjoy myself, and you guys are making it horrible. You're making everything worse. You're not helping me. You're not."**

*A suicidal man, after PhxPD officers tackled and arrested him in his home*

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<sup>115</sup> The ADA requires that a public entity must "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1). When an individual is experiencing a behavioral health issue and officers do not use well-known methods for properly communicating with that individual, such as designating one officer as the primary communicator, the law enforcement agency may not have taken appropriate steps to ensure that communications with individuals with disabilities "are as effective as communications with others."

booked him into jail for assaulting an officer and criminal damage for throwing his own phone and breaking it.

Because the suicidal man refused to open the door and grabbed at an officer who followed him inside, PhxPD was justified in using some force to ensure their safety. But the officers' actions leading up to that moment—squandering 30 minutes at the scene waiting for the man, approaching the man without waiting for a CIT-trained officer, grabbing at the man, cornering him, failing to de-escalate, and not clearing bystanders from the apartment—led to the avoidable use of force. These kinds of failures to provide a modified response violate the ADA and can lead to unnecessary uses of force.

Incidents we reviewed, like some of those above, suggest that PhxPD's CIT program is not a sufficient modification because CIT officers may act inappropriately and exacerbate a behavioral health situation. Approximately 20-30% of PhxPD officers have received CIT training. PhxPD has not given call-takers or dispatchers the ability to assign a CIT officer to a specific call, though it is a standard expectation that dispatchers can match call type to officer specialty, including CIT. Instead, a patrol officer must specifically request CIT assistance. The dispatcher will then put out a call for CIT. PhxPD relies on CIT officers to voluntarily respond in this situation. We saw no evidence that PhxPD tracks requests for CIT officers or their response rate.<sup>116</sup> Additionally, PhxPD has two squads comprised solely of CIT officers whose main mandate is to transport people for court-ordered mental health evaluations and treatment. Due to the number of such transports needed in Phoenix each year and the limited size and availability of these squads, our analysis showed that they perform fewer than 2% of mental health transports. They also rarely respond to non-transport calls. Patrol officers, many of whom have received no CIT training, still do most mental health transports.<sup>117</sup>

PhxPD policies and training also contribute to the violations we observed. As described above in Section A, PhxPD training primes officers to use "force first." PhxPD training also disregards the ADA's rule that agencies may not base safety requirements on "mere speculation, stereotypes, or generalizations about individuals with disabilities."<sup>118</sup> We reviewed and observed training that reinforced the stigma and stereotype that

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<sup>116</sup> Our statistical experts estimate that officers trained in crisis intervention responded to about 30% of calls that call-takers identified as being behavioral health-related during our review period. This is likely an overcount, as PhxPD does not consistently identify behavioral health calls. In a sample of calls with indicia of behavioral health issues that we reviewed, less than 15% of the calls to which PhxPD responded received an officer with CIT training.

<sup>117</sup> Our analysis indicates that PhxPD officers with no CIT training perform approximately 60% of mental health transports.

<sup>118</sup> See 28 C.F.R. § 35.130(h).

people with behavioral health disabilities or those in crisis are inherently dangerous. For instance, a mandatory eight-hour Mental Illness Awareness training given to all new officers erroneously teaches that people with bipolar disorder are “Dangerous to responding officers. Prone to unprovoked violence.” Separately, in a training for supervisors on Patrol Tactics and Leadership, we heard a trainer describe a behavioral health disability as a “pre-attack indicator,” a signal that an officer should be ready for an attack. And the PhxPD policy on individuals with disabilities explicitly warns officers that “mentally ill subjects ... may be a danger to themselves and/or others.” Data show that people with mental illness are no more likely to be violent than anyone else. PhxPD teaches and perpetuates false and harmful stereotypes that prime officers to escalate encounters with people with behavioral health disabilities.

We did see PhxPD officers treat people with behavioral health disabilities with empathy, respect, and compassion in our review. But we also saw scores of incidents where PhxPD officers tried to resolve the situation as quickly as possible, often by using force, without accommodating people’s disabilities. These tactics can make force inevitable, place officers in jeopardy, and result in unnecessary arrest or institutionalization. The failure to reasonably modify stems from PhxPD policy and training, which presents the stereotype that people with disabilities are dangerous and require a quick and forceful response. When officers follow their training, PhxPD violates the ADA.

#### **b. PhxPD Has Failed to Ensure that Officers Make Reasonable Modifications When Responding to People with Behavioral Health Disabilities**

In theory, PhxPD provides officers with multiple ways to reasonably modify their approach when responding to people with behavioral health disabilities. In practice, officers rarely employ these modifications, and we saw no evidence that the agency holds them accountable for that failure.

PhxPD is fortunate to have access to Solari and a network of mobile crisis team providers within Maricopa County. Yet in only one call for service in the hundreds of hours of ride-alongs we did, and the hundreds of incidents we reviewed, did officers call for mobile crisis team assistance. PhxPD’s 2020 pilot to encourage officers and dispatchers to call for mobile crisis teams had no notable effect on officer behavior. In all, mobile crisis teams have responded to about 150 PhxPD requests per month for the past decade, with no significant changes. We saw no evidence that PhxPD holds officers accountable for not requesting mobile crisis teams on behavioral health-related calls. PhxPD could modify its policies and practices to require that officers request and wait for a mobile crisis team in appropriate situations, but it has not done so.

To be sure, even with improvements at the 911 call center, there will be some behavioral health calls that will need a police response. PhxPD should modify its CIT program to ensure that the officers sent to such calls are well-trained to accommodate people's disabilities. After the typical 40-hour CIT training class, PhxPD requires no ongoing or refresher training for officers to maintain CIT certification. However, continuing education is integral to a successful CIT program. PhxPD has a general policy on individuals with disabilities, but no CIT-specific policies to guide CIT responses and interactions with other officers. PhxPD recently assembled a committee to evaluate the quality of CIT responses. But the committee does not generally review calls involving force and is limited by PhxPD's failure to accurately identify pertinent calls. PhxPD must do more to ensure its CIT program is effective.

Finally, to accommodate people with behavioral health disabilities, PhxPD must train its officers in true de-escalation. Some behavioral health-related incidents will certainly need an immediate patrol response, but many more do not. As long as PhxPD trains officers to misinterpret a person's behaviors and use force quickly, people with behavioral health disabilities in Phoenix will continue to experience trauma, physical harm, and unnecessary arrest rather than behavioral health treatment.

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Researchers have found that “the success or failure of alternative response depends largely on the decisions made inside dispatch about which type of responder to send.”<sup>119</sup> Phoenix has made a number of attempts over the years to respond to people with behavioral health disabilities in the way that best meets their needs. But PhxPD call-takers and officers alike still treat behavioral health issues as dangerous even when they are not or fail to identify them altogether. To ensure the success of its alternative response programs and to avoid continued violations of the ADA, PhxPD must commit to giving 911 operators the training, tools, and support necessary to do their difficult but critical jobs. And when there is a need to send police, PhxPD must prepare officers to modify their response to properly accommodate behavioral health disabilities.

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<sup>119</sup> Gillooly, J., Leech, T., and Bond-Fortier, B., *Transforming Denver's First Response Model: Lessons in Multi-level Systems Change*, at 4. Policing Project, NYU School of Law (Sept. 2023), available at <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/6532bfbf8268bd785cc14f3b/1697825559611/Transforming+Denver%27s+First+Response+Model> [<https://perma.cc/XGY6-DXVW>].

## F. PhxPD Fails to Modify Practices During Encounters with Children

PhxPD does not take into account the vulnerability of children and their stage of development. As one sergeant explained, “We don’t really treat youth any differently than adults.” Consequently, PhxPD’s problematic tactics and unlawful conduct can have particularly harmful consequences for children’s physical and mental wellbeing, including higher post-traumatic stress, increased levels of depression, and diminished academic performance and sleep.

To assess PhxPD’s policing of youth, we reviewed policies and analyzed body-worn camera footage. We interviewed Phoenix personnel, including those involved with the school resource officer program; local and statewide community organizations; juvenile public defenders; group home and school administrators; social workers; and academics. We also spoke directly with children and their parents.

During encounters with children over minor issues—sometimes where no crime has been committed—PhxPD officers escalate situations with combative language and needless force. In one such incident, two officers threw a 15-year-old Latino boy against a bus stop pole, held the back of his neck, and handcuffed him after he asked to call his mother. While on patrol, the officers saw the boy briefly look inside a truck in a car dealership’s parking lot during business hours, then leave to catch the bus. The officers followed the boy onto the bus and ordered him off. The boy listened to the officers and followed all of their orders. But when one officer demanded that the boy take off his backpack, the boy looked up at him and asked, “Why?” The officer’s response was aggressive and demeaning: “Because I fucking told you to.” The officer then ordered the boy to stand up, turn around, and place his hands on his head. The boy started to do as he was told, but then looked down at the phone in his hand and asked whether he could call his mother. The officer immediately grabbed him, held his neck, and slammed him into the pole of a bus stop. The boy’s hands remained above his head until officers roughly cuffed him. The officers also questioned the boy while he was handcuffed, without informing him of his *Miranda* rights, and performed a warrantless—and unlawful—search on his backpack. They later released the boy but lectured him that the entire encounter was his own fault.

In another example, an officer handcuffed a teenager after confronting him at his workplace about a traffic citation. Three months earlier, the officer cited the teenager for speeding. According to the teen, the officer told him to “shut the fuck up” after he asked to call his mother during the stop. When the officer learned that PhxPD did not process the citation due to a technical error, he re-issued the ticket and went to the grocery store where the boy worked to get him to sign it again. The teenager was confused. He had been to court for the ticket and did not understand why he was being asked to sign

something. According to the teen, the officer “snapped,” threatened to take him to jail, handcuffed him in the middle of the store, and would not release him until after a PhxPD lieutenant came to the scene. The next day, the boy’s mom helped him file a complaint about the way the officer had treated him. When asked by a supervisor, the officer admitted that he may have told the teenager to “shut the fuck up,” but it was because the teenager was “argumentative and verbally combative.” A sergeant found no policy violations and did not discipline the officer.

PhxPD officers also use excessive force during encounters with kids. Nearly every child we interviewed complained officers closed handcuffs on their wrists so tightly that they reached the point of pain and injury. The abusive application of handcuffs is unconstitutional. For some children, officers put on handcuffs so tightly that their hands went numb and left marks on their wrists for months. Others said they sustained deep cuts on their wrists and, when they asked officers to loosen the cuffs, PhxPD instead tightened them further.

In 2022, officers handcuffed and used neck restraints on a 13-year-old boy with autism who had walked out of school without permission. An officer spotted the boy walking alongside a road near the school and told him to stop. The boy kept walking, and the officer ran after him, grabbing his arms from behind, tackling him, and holding him down. With the officer’s knee in his back and hand on his neck, the boy pleaded to be let go: “My mom’s right there. I can’t breathe. I’m just trying to get home.” Over the boy’s phone, his mother could be heard screaming, “I’m coming!” When she arrived, she told the officer her son had lung problems; despite this information, the officer held the boy by his sweatshirt hood as he forced the boy to his feet. The officer then uncuffed the boy and shoved him toward his mother, saying, “He’s your problem now.” “What’s your issue?” the boy asked. “Why don’t you shut the fuck up,” the officer replied.

The tackle and neck restraint left abrasions on the boy’s arms and neck, but we saw no evidence that PhxPD recorded the incident as a use of force. When the mother complained to PhxPD about the way officers had treated her son, a supervisor defended the officers’ conduct, saying they used “reasonable and necessary force” to detain the boy for leaving school without permission.



A PhxPD officer grabbed the 13-year-old boy by the neck of his sweatshirt to force him to his feet, while the boy's mother (left) arrived on the scene

PhxPD officers often question people without informing them of their right to remain silent or to call an attorney in violation of *Miranda v. Arizona*.<sup>120</sup> Questioning children in custody is particularly coercive, as children are more likely to believe they have no choice but to answer an officer's questions, even when that questioning is unlawful. PhxPD has a *Miranda* warnings card that translates the *Miranda* warnings into child-appropriate language and gives children the option of asking for a parent before questioning. But we reviewed multiple incidents in which PhxPD officers did not use the card and ignored the requirements of *Miranda* altogether, questioning children in custody about the specifics of alleged offenses without first advising of them of their right not to answer.

The demeaning way that some Phoenix officers speak to children also increases the harm they experience. During interviews, youth told us that PhxPD officers' comments left them feeling traumatized and degraded. One teenager reported that an officer performing a pat down said: "If I was your dad, I would have beat the fuck out of you." Another youth shared that he felt fearful and angry after officers called him and his siblings "gangbangers." Officers "talk to you like they hate you," he said. Disparaging and disrespectful language from adults in positions of power can have a lasting effect

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<sup>120</sup> Under *Miranda v. Arizona*, before police may lawfully question people in custody, they must inform people of their right to remain silent, to consult an attorney, to have an attorney present during questioning, and to have an attorney appointed if they cannot afford one. 384 U.S. 436, 459 (1966).

on kids. It can also contribute to fear and distrust of law enforcement from the next generation of Phoenix residents.



## **CONTRIBUTING CAUSES TO VIOLATIONS**

The pattern of constitutional violations we describe above is due, in part, to poor accountability, policies, training, and supervision at PhxPD. Over the years, PhxPD has taken steps to increase accountability, but these efforts have not led to meaningful change in behaviors or outcomes. Between 2016 and 2023, the City paid over \$40 million to settle claims of police misconduct in no fewer than 75 claims or lawsuits. In 2023 alone, the City settled cases for more than \$12 million; there are outstanding claims asking for millions more. Several payouts came from encounters in which PhxPD internal investigators found no violations of department policy. The City is presently litigating cases involving PhxPD’s response to protests, treatment of unhoused people, and use of excessive force.

To understand PhxPD’s systems for supervising and holding officers accountable, we interviewed investigators, supervisors, and other personnel responsible for setting performance standards and assessing conduct. We reviewed a random sample of hundreds of complaint investigations closed between 2016 and 2023, and other relevant records and data. We spoke to city officials and community members involved in oversight. Finally, we spoke with dozens of people who have tried to file misconduct complaints, local advocates, community groups, police unions, neighborhood associations, community organizers, and others pressing for greater police accountability in Phoenix.

### **A. PhxPD Lacks Effective Systems to Hold Officers Accountable for Misconduct**

PhxPD’s Professional Standards Bureau (PSB) handles complex investigations of serious misconduct that could result in significant discipline. An officer’s direct supervisor typically handles minor misconduct investigations that could lead to discipline not greater than a written reprimand. Both types of review are considered “formal investigations” that entitle officers to certain procedural rights, such as written notice of the investigation, union representation, and the opportunity to be heard.

In practice, PhxPD handles most complaints informally as “administrative inquiries” that require no formal investigation. PhxPD opens an administrative inquiry under two circumstances. The first type of informal inquiry is for allegations of minor policy violations or “performance issues” that might result in non-disciplinary counseling or training. The second type includes any allegation—even a serious misconduct allegation—that an investigator or supervisor does not believe constitutes a policy violation. PhxPD decides an allegation should be handled as an administrative inquiry after a cursory assessment of the complainant’s credibility, reviewing body-worn camera

video, or looking at officer reports. The agency classifies most complaints (82.3% from January 2017 to April 2022) as administrative inquiries. Investigators have wide discretion for handling administrative inquiries, as no policy describes the appropriate process. Despite layers of review, administrative inquiries routinely demonstrate investigative failures, such as overt bias in favor of officers and the failure to collect or preserve material evidence.

## **1. PhxPD Fails to Accept Complaints of Officer Misconduct**

As a federal district court in Arizona observed, “a non-intimidating complaint intake process is essential to having a constitutionally adequate internal investigation process.”<sup>121</sup> In Phoenix, it is difficult to complain about police misconduct, in part because PhxPD both discourages people from making complaints and discourages officers from accepting them.

When people file a complaint, PhxPD warns them they may face criminal liability for “misrepresenting a fact” or “misleading a peace officer.”<sup>122</sup> One person we spoke to worried that he risked going to jail if there were any inconsistencies in his complaint. He explained, “It felt like I needed to be very careful with my words ... It felt like an intimidation tactic ... Felt like it was designed to make me not want to talk to them.” The complainant also said that he had to call PhxPD at least three times to get through to PSB only to be told, 11 days later, that no misconduct had occurred.

Some people do not make complaints out of fear of retaliation or because they think they will not be taken seriously. In other instances, officers and supervisors outright ignore complaints. We also spoke with complainants or listened to recordings of conversations complainants had with investigators in which PSB debated whether their experience with PhxPD was unprofessional, biased, or retaliatory. PhxPD has threatened some citizens with arrest for trying to make a complaint.

PhxPD also effectively discourages officers from reporting misconduct directly to PSB. While PhxPD policy requires officers to call supervisors to the scene of alleged misconduct, it does not explicitly address direct reporting to PSB. PhxPD supervisors confirmed their expectation that the chain of command would make the decision to refer misconduct to PSB, not individual officers. It is important for supervisors and

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<sup>121</sup> *Melendres v. Skinner*, No. CV-07-2513-PHX-GMS, 2021 WL 4458241, at \*1 (D. Ariz. Sept. 29, 2021).

<sup>122</sup> Since 2021, Arizona law has required all police departments in the state to provide this warning. But PhxPD mandated the warning for years, due to requirements in the union contracts. In 2021, the City successfully bargained with the union to eliminate the requirement, only to have the State impose the requirement on all Arizona police departments months later.

commanders to identify and address misconduct, but PSB should also be accessible to any officer who wants to make a complaint.

Even if PSB is alerted to misconduct, it may not open an investigation. According to PSB personnel, the decision to move forward with an investigation is a moving target. Some of these decisions are documented in a phone log database, where PSB records all its calls, walk-ins, and emails. Among the phone logs are many records in which complainants alleged serious misconduct, only for the investigator to close the complaint shortly after intake with minimal review. In one case, a person called PSB to complain about her treatment during a traffic stop. According to the phone log, the woman alleged that officers pointed their guns at her and illegally held her in the back of a patrol car for 45 minutes. “I think it was racial profiling,” she said. Investigators documented the case closure in a phone log that same day, noting that “nothing she said indicated there was a policy violation during this incident.”

### ***Miranda* Warnings**

As described above, supervisors often engage in cursory reviews that find no fault when officers used unreasonable force. Their incident reviews fail to recognize other constitutional violations as well. During encounters, officers routinely violate the rules imposed by *Miranda v. Arizona*, which requires police to inform people before in-custody questioning of their right to remain silent, to consult an attorney, to have an attorney present during questioning, and to have an attorney appointed if they cannot afford one. We reviewed cases in which officers questioned people in violation of *Miranda* even after they clearly invoked their rights.

Even when raised in a citizen complaint, PhxPD’s systems of accountability fail to identify and correct *Miranda* violations. A person called PhxPD to complain that he was questioned after invoking his right to counsel and then mocked for doing so. The officers’ body-worn camera video confirmed what the complainant told officers: **“I’m going to call a lawyer. I don’t want to talk to you anymore.”** An officer began questioning the man—who was still on the phone with his attorney. The man repeated, **“I don’t want to talk to you no more.”** A second officer said, **“I think he’s talking to his lawyer because we’re abusing his rights.”** Despite the clear invocation of his constitutional rights, officers asked the man three more rounds of questions.

Investigators did not include the complainant's allegations regarding *Miranda* in their report, which refers instead to officers "making jokes." The report states that "footage of 13 officers' body worn cameras (BWC) were inspected by 3 tiers of supervision." Despite this careful review, the report does not mention the *Miranda* violations and concluded that the allegations were "baseless" and "without merit." County prosecutors declined to prosecute all the man's charges.

When PSB closes a complaint in a phone log, including the example above, the record is rarely linked to the accused officer or tagged for the specific allegations made. PhxPD also summarizes multiple complaints from different people about unrelated incidents into one narrative. Supervisors in the field may not document complaints at all if they address them informally. The resulting incomplete record means that PhxPD cannot track the true number of complaints made across the department, nor see how often specific officers receive complaints. The process has effectively buried citizen complaints, obscured patterns of misconduct, and shielded officers from supervisory review.

## **2. PhxPD Fails to Conduct Thorough and Fair Investigations**

When PhxPD does open a misconduct investigation, it is often deficient. Investigators show bias toward officers and routinely fail to investigate all allegations.

PhxPD does not take steps to prevent conflicts of interest. For example, PhxPD referred multiple complaints related to the summer 2020 protests to supervisors who oversaw the protest response. In closing the complaints, these supervisors tended to conclude allegations of misconduct by officers under their command were meritless. In another case, a man complained to a sergeant that an officer had exceeded the speed limit and behaved unprofessionally during a traffic stop, telling the man, "I am not afraid to scuffle ... I will follow the fucking law and you can back the fuck out of my face ... You may have just stepped into a world of shit." When the sergeant spoke with the man at the scene, he defended the officer's conduct, saying "I don't blame him" for cursing at the man. Later that day, the man contacted PSB to file a formal complaint about the incident. PSB then sent it to the same sergeant for investigation. Unsurprisingly, the sergeant found "nothing unprofessional during the contact."

Investigators also consider their own views about an officer when assessing the credibility of a complaint. One PSB investigator relied on his prior experience supervising an officer, without any tie to the underlying incident, to dispense with a complaint. In that case, a rideshare driver called PSB to complain that the officer was

aggressive and rude, allegedly telling him, “Do you know I can ruin your whole day right now by giving you a citation? ... I can ruin your whole entire career today by giving you this ticket.” In closing the complaint, the investigator assured the complainant, “I have not seen him act unprofessional during my time supervising him,” and, “if you say his attitude was unprofessional or rude, that’s, like, very subjective ... But as far as a full-blown investigation, there is no investigation because there is no misconduct.”

Investigators also skip key investigative steps, such as speaking to all witnesses, reviewing all evidence, or identifying all allegations. For example:

- A woman complained that five PhxPD officers retaliated against her for refusing to sign a citation. The woman said officers arrested her and held her in an overheated patrol car without air conditioning in the middle of the summer. The investigator looked into the conduct of only one of the five officers involved, did not speak to the complainant or civilian witnesses, relied on another officer’s summary of the body-worn camera video, made no finding about whether the complainant was held in an unreasonably hot patrol vehicle, and otherwise found no violations.
- A person complained that an officer arrested him in retaliation for attempting to record the officer while the officer was searching and arresting someone else and then lied on the arrest report. The investigator sought to collect video evidence from the complainant but failed to reconnect with him after a few attempts. The investigator closed the file even though he had sufficient information to proceed, including the accused officer’s name and badge number and the date of the incident. Had the investigator pulled the incident report, he would have identified at least two other witnesses to the incident.

Investigators also fail to appropriately consider whether officers have received similar complaints in the past. In one case, store surveillance video showed an officer slapping a handcuffed shoplifting suspect hard enough to knock him from his seat; the man suffered an orbital bone fracture and swelling to his face, neck, and back. PhxPD had previously suspended the officer for striking a suspect in handcuffs and had received complaints from two different people complaining of similar misconduct in the four years before this complaint.

The deficiencies in PhxPD investigations are due, in part, to ineffective training of investigators. New PSB investigators do not attend a formal training program. Instead, they “shadow” more experienced investigators and certify they have read the relevant policies. Even though field supervisors handle most misconduct complaints, newly promoted sergeants receive only a 90-minute overview of the investigative process when they are first promoted. PhxPD does not require PSB investigators or supervisors

to take specialized training on internal investigative techniques or legal issues, such as the rights afforded by the state peace officer's bill of rights, collective bargaining agreements, or the duty to report exculpatory evidence.

### **3. PhxPD Fails to Adequately Discipline Officers Who Engage in Misconduct**

PhxPD administers discipline in accordance with a discipline matrix. The level of discipline is set to the most serious of the sustained violations; additional sustained violations can be considered aggravating circumstances. PhxPD also uses "progressive discipline," where the officer's recent history of misconduct can escalate the consequences that stem from new sustained policy violations. The Chief is the final authority over discipline. Officers have the right to appeal disciplinary decisions to the City's Civil Service Board, a five-member board appointed by the City Council.

PhxPD affords officers multiple opportunities to challenge findings of misconduct or negotiate discipline. When a formal investigation concludes, but before the final determination, the officer who is the subject of the investigation has the right to an Investigative Review Process (IRP), a hearing during which the officer receives a draft of the investigative report and any underlying support, including interviews. The officer (and their representative) may then meet with the investigator (and their unit Commander) to challenge the allegations brought, findings made, and any discipline that might result. Misconduct findings become final only after the IRP is completed or waived.

For serious misconduct, including excessive force, officers also have the chance to dispute what discipline should be imposed. The Disciplinary Review Board, which is a group composed of an officers' peers, PhxPD leadership, and members of the community, reviews sustained investigations and makes recommendations to the Chief for the appropriate level of discipline. Once again, the subject officer may review all materials shared with the board and may appear in front of the board to argue why a proposed outcome is unjustified. Complainants are not allowed to attend the Disciplinary Review Board and may not present evidence or testimony. Officers may appeal to the Chief, put forth new evidence, and negotiate resolutions.

PhxPD does not track how often findings are changed as a result of officers' repeated opportunities to influence investigations and their outcomes. But we found that these opportunities, which exceed what the law requires, have led to overturning findings or downgrading discipline, even where the underlying factual findings have not changed. For example, PSB sustained an allegation that an officer lied to investigators about receiving and refusing to sign a criminal traffic citation, a finding which likely would have

resulted in his addition to the *Brady* list if not also increased his likelihood of termination.<sup>123</sup> After the IRP and a subsequent hearing with the Chief, PSB changed the finding from sustained to “unresolved,” and the officer accepted a 240-hour suspension without appeal in lieu of termination.

The failure to properly discipline has led to officers engaging in repeated misconduct. One officer avoided termination by persuading PhxPD to convert his discipline to a suspension. The officer was arrested for driving with a blood alcohol level of 0.154 (which qualifies as an “extreme DUI” in Arizona), while carrying a firearm for which he was not certified—violations that the officer admitted to. At the time of the DUI, the officer had been with PhxPD for two-and-a-half-years and had been found to have violated minor policies in three prior investigations. The officer had a disciplinary hearing scheduled with former Chief Williams and, for reasons not apparent in the file, PhxPD cancelled that meeting. Instead, the officer struck an agreement to take a 120-hour suspension and a written reprimand. Less than one year after serving this discipline, PSB investigated the same officer for starting a sexual relationship with the victim of a crime he was assigned to investigate. PSB sustained the allegation, and the Disciplinary Review Board recommended termination. The former Chief, again, rejected termination and imposed a 240-hour suspension with a “last chance agreement.” The officer remains employed at PhxPD.

Even if the Chief issues discipline, it may be reversed. In 2021, PhxPD terminated an officer who shot and killed a man only seconds after he answered his apartment door. The Civil Service Board reinstated the officer five months later and he remains employed by PhxPD. The City of Phoenix agreed to pay the man’s family \$3 million to settle their claim. In another example, PhxPD tried to terminate an officer three times before it finally stuck. PhxPD tried to fire the officer in 2019 for making knowingly false statements on a search warrant affidavit and then lying to PSB investigators in the subsequent investigation. The Civil Service Board reinstated the officer, even though this was the second time the agency tried to terminate his employment—the first time being in 2009 for failing a drug test—and even though he had served multi-day suspensions in 2018 for interfering in a felony criminal investigation on behalf of a friend and in 2019 for failing to complete supplemental reports in 34 ongoing robbery investigations. In 2021, in its third attempt, PhxPD successfully terminated the officer when he was criminally charged with fraud.

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<sup>123</sup> The “*Brady* list” refers to a list kept by prosecutors of police officers with histories of dishonesty or other integrity issues. Under *Brady v. Maryland*, prosecutors must disclose evidence that is favorable to the accused. 373 U.S. 83, 87 (1963).

#### **4. The City’s Implementation of the Office of Accountability and Transparency Does Not Provide Effective Handling of Civilian Complaints**

In May 2021, the City established the Office of Accountability and Transparency (OAT), after years of calls from community members for civilian oversight. The process was the subject of months of debate about the structure, powers, and independence of the agency. In creating OAT, the City’s goal was to ensure complaints against officers are handled fairly and objectively, and it gave OAT jurisdiction to investigate and monitor PhxPD’s use of force, in-custody deaths, and other community complaints. Implementation stalled, however, when the state legislature passed a law to limit civilian participation in the investigation of police misconduct.<sup>124</sup> Still, the City hired a civilian director and non-sworn investigators to monitor cases and issue reports. OAT began monitoring investigations in September 2022.

OAT is still finding its footing as an agency, but it is not clear whether it will be able to deliver consistent and effective civilian review of PhxPD. One community advocate we spoke to expressed frustration that the model of independent oversight they championed “has been shredded.” OAT published its first monitoring reports in early 2024. OAT has provided pointed feedback that echoes some of the same issues we describe above, such as PhxPD’s failure to classify or investigate complaints of racial bias and the problems with administrative inquiries. PhxPD has responded to the first two reports with proposed actions. The OAT reports also complain that PhxPD has not fully cooperated with OAT in sharing information, despite a formal agreement between the two agencies. For example, PhxPD has failed to notify OAT of relevant incidents or provide timely and complete documentation. OAT’s first director resigned in January 2024, alleging the City compromised OAT’s independence—an allegation the City and the new interim director dispute. It is unclear whether OAT in its current form can keep its promise to promote fair and objective misconduct investigations.

#### **B. Poor Policies and Deficient Training Contribute to PhxPD’s Systemic Legal Violations**

Due to deficiencies in policy and training, in many of the incidents described above, officers were doing what PhxPD trained them to do. Officers’ illegal use of neck and leg restraints stem from PhxPD’s failure to guide officers on the appropriate use—and limits—of these restraints. The numerous unlawful arrests of protestors during peak

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<sup>124</sup> Arizona law now requires that any entity that investigates police misconduct must be made up of at least two-thirds officers from the agency. See Ariz. Rev. Stat. Ann. § 38-1117 (2024).



protests in 2020 can be connected to PhxPD policy directing officers to “incarcerate as many people as possible” after declaring an unlawful assembly. We also found systemic problems with PhxPD’s methods for developing and implementing new policies. Until 2023, PhxPD’s policy unit was effectively one detective who had a mainly administrative role. PhxPD entrusted policy development mostly to the individual units, with minimal oversight. Public input was largely limited.

In the past, PhxPD has made public commitments to change policy in response to high-profile incidents or public scrutiny. But in some cases, we found little follow through. For example, PhxPD announced it would develop a foot pursuit policy after a 2015 ASU study found that foot pursuits often preceded PhxPD police shootings, a practice that we also saw in some of the shootings we reviewed. The policy apparently took over six years to implement. We asked about the lengthy process when we interviewed officers assigned to PhxPD’s Center for Continuous Improvement, a unit responsible for making recommendations for policy and training changes. The lieutenant told us he thought the written policy had been completed in 2015 or 2016 but had no idea what happened to it.

PhxPD training also contributes to the pattern of violations we describe above. This is not because the Training Academy lacks resources; as Interim Chief Sullivan told us, “Facility-wise, this is the best facility I’ve seen in any department.” Despite these resources, PhxPD has not developed a comprehensive training plan to ensure officers receive up-to-date training on legal standards and effective tactics. Officers need only the minimum training required to maintain state certification, typically eight hours per year, along with firearms qualifications. As a result, officers receive little training on constitutional practices in critical topics like use of force; stops, searches and arrests; de-escalation; and engaging people with behavioral health disabilities. And when officers opt in to receive specialized training, it often primes them to engage in unlawful and dangerous behavior, as described above.

We also found PhxPD’s training programs for new officers lacked consistency and uniformity across the department. Before 2021, each precinct and unit administered its own Field Training Officer (FTO) program, with minimal supervision from the Training Academy. PhxPD revamped the on-the-job training program in 2021; earlier that year, the City had hired law enforcement consultants at 21CP Solutions to review the department’s FTO program, in addition to its handling of the 2020 protests. The City refused to allow us to review the 21CP report, so we cannot assess what deficiencies the report identified, or whether the changes to the FTO program addressed those concerns. In any event, PhxPD leadership told us that the department sought more uniformity in the FTO program. PhxPD now operates the FTO program out of three precincts and exercises more centralized control over each site. But the Field Training

Officers we spoke to said that individual precincts sometimes reject directives on how to run the program and make unapproved decisions to customize the approach.

PhxPD has taken steps to improve policy and training, including during our investigation. For example, PhxPD completed the Arizona Law Enforcement Accreditation Program certification, invited wide public comment on several key policy revisions, and expanded its policy unit with sworn and non-sworn staff. PhxPD finalized a new use-of-force policy in late 2023, after months of development. And PhxPD began to require officers to attend trainings on Active Bystandership for Law Enforcement (ABLE) and Integrating Communications, Assessment, and Tactics (ICAT). ABLE aims to empower officers to intervene to prevent harmful conduct. ICAT is a use-of-force training designed to help officers safely and lawfully respond to volatile situations.

But PhxPD needs a comprehensive plan to address its current offerings of problematic training, incorporate the new training, and ensure the Academy consistently promotes constitutional policing. This plan must recognize that years of training have ingrained a “force first” culture at the department that will take concentrated effort to change.

### **C. PhxPD Does Not Adequately Supervise Officers**

Robust supervision is essential to safe and effective policing. Supervisors at all levels have a role in enforcing policies and upholding standards among their subordinates. Supervisors who fail to do so should be held accountable for misconduct and poor performance. PhxPD regularly falls short of these expectations.

Part of the problem is structural. Precinct commanders are afforded significant discretion in how they execute public safety strategies. Unlike most other large city police departments, PhxPD does not have a “CompStat” or equivalent, in which commanders report to department leadership about crime trends and policing strategies.<sup>125</sup> We saw little evidence that leadership coordinates geographic crime strategies in any systematic way. Interim Chief Sullivan confirmed CompStat “is a process we are still building.”

Even within precincts, individual officers have significant discretion in how they use their time. For example, PhxPD’s 911 dispatchers do not assign specific patrol cars to

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<sup>125</sup> “CompStat” is a police management system developed in the early 1990s intended to provide daily updated crime statistics to police leadership. The most widely recognized element of CompStat (short for Compare Statistics) is regularly occurring meetings at which police leaders discuss and analyze crime issues. Often, each CompStat meeting may focus on a specific geographic area. Police Executive Research Forum, *Compstat: Its Origins, Evolution, and Future in Law Enforcement Agencies* (2013), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF-Compstat.pdf> [<https://perma.cc/WW2U-CYD6>].

respond to calls for service. And PhxPD does not evaluate whether the appropriate number of officers respond to each call, nor provide guidance to officers. Instead, officers on patrol may respond to the scene of any 911 call if they are available. We observed these practices during our ride-alongs. Interim Chief Sullivan told us he was unaware of PhxPD analyzing how officers spend their time or make decisions about enforcement.

PhxPD supervisors lack essential tools for identifying concerning behavioral patterns and making key personnel decisions. Former Chief Williams acknowledged the need to know an employee's full history to make the best decisions. But PhxPD limits supervisors from documenting or acting on certain performance problems. Supervisors are implicitly encouraged to omit negative comments or misconduct from supervisory notes and performance evaluations. They are also limited in how much they may consider an employee's history of misconduct when making discipline, promotion, and transfer decisions.

PhxPD's longstanding practice of deleting misconduct records from the department's files adds to the challenge of appropriately addressing uses of force and officer misconduct. State law requires law enforcement agencies to keep employee records, including discipline, for five years beyond an officer's employment. Before 2021, however, PhxPD was required to send misconduct records to the City's Human Resources Department at an employee's request and destroy the records that police supervisors and internal investigators could access within PhxPD systems. PhxPD also periodically purged thousands of misconduct records that did not result in formal discipline. Since 2021, PhxPD no longer allows officers to request a purge. But thousands of misconduct records remain inaccessible to PhxPD supervisors because of these practices. Our analysis of PhxPD's files shows that 53% of misconduct cases opened in 2016 are now purged from PhxPD's systems. These purged records prevent supervisors from accessing information about their officers, shield officers from public scrutiny and internal discipline, and allow problematic officers to remain employed and win promotions, even when they have a pattern of misconduct.

PhxPD has also repeatedly rehailed the agency's Early Identification and Intervention Program. The goal of the system is to alert supervisors to officers who may be having performance problems, based on patterns in their enforcement activities, complaints, and other criteria. PhxPD has replaced its early intervention program three times in the last seven years. The current system, which started in 2021, had resulted in only one formal intervention one year later to address an officer's attendance and punctuality. Meanwhile, we found no intervention for an officer who, from April 2021 to April 2022, reported using force eleven times, including an officer-involved shooting (his second in eight months) and an incident that resulted in a death in custody. In the same time

span, this officer also pointed his gun at someone on at least eight occasions; had an out-of-policy, high-speed vehicle pursuit that resulted in significant property damage and civilian injuries; an out-of-policy minor traffic accident; and at least two other allegations of potential misconduct. This officer generated 13 alerts, none of which compelled a supervisor to intervene.

Finally, PhxPD impedes effective supervision by allowing officers to use the “muting function” on body-worn cameras. PhxPD policy requires officers to activate their body-worn cameras during law enforcement contacts, such as stopping a car or interviewing witnesses to a crime. The policy does not address muting, though the department has configured its body cameras to enable this function. Officers frequently mute their body-worn cameras following a use of force. Many times, we saw no clear reason for muting, yet officers and sergeants routinely did so. In other incidents, the timing of officers’ decisions to mute raises concerns that they did so to intentionally obfuscate or to enable more free conversations that they knew were inappropriate. In one example, after deploying chemical munitions against summer 2020 protestors, one officer told another: “I’m up there assaulting those guys. Next thing I know, I see your guys launch gas at ‘em. I’m like, oh yeah, thank God, this is great.” About 10 seconds later, the other officer looked down at his colleague’s camera, noticed it was recording, and told him to mute it, which he did.

## **D. PhxPD Tolerates Disrespect Toward the People It Serves**

The failures described above have allowed for open disrespect within PhxPD of certain Phoenix communities and for the celebration of retaliatory violence to proliferate among officers. For example, following a 2017 protest at which officers unloaded canisters of tear gas on peaceful protestors, PhxPD officers circulated a “challenge coin”—a memento normally used to commemorate moments of valor and pride during service. This challenge coin instead depicted a protestor whom an officer shot in the groin with a 40mm impact round. The coin showed an image of the protestor with a star over his groin and the words, “Good night, left nut” encircling him. On the back, the coin read, “Making America Great Again – One Nut at a Time.”

When supervisors learned that a box full of the coins and related memorabilia had been found at a PhxPD precinct, they decided to throw away all evidence of the coin and created no record of what had happened. And although they prohibited officers from having the coins at work, they did not refer the matter to PSB to investigate how this box of inappropriate collectables mocking a protestor ended up in a PhxPD precinct.



PhxPD Challenge Coin depicting a protestor shot in the groin with a stunbag during a 2017 protest (left depicts the front of the coin; right depicts the back of the coin)

More than three years later, local news reported on the coin, connecting the coin's "Good Night Left" slogan and imagery to hate speech. Immediately, PhxPD issued a public statement denying that the department sanctioned the coin and claiming that a "review at the time by a Commander with the Department was unable to substantiate any claims of misconduct related to a challenge." When asked to clarify the scope of PhxPD's claimed "review" of the challenge coin, two Phoenix commanders declined to speak with Justice Department investigators about the topic.

As a result of this inaction and despite significant media attention and scrutiny, five years after the challenge coin's initial appearance, PhxPD has continued to celebrate the incident in training. As we describe in Section D of this Report, with Justice Department investigators observing, an instructor in a 2022 training described the incident as "a textbook shot into the lower abdomen." The instructor then boasted that PhxPD executed search warrants on the protestor's home and workplace, causing him to become "jobless and homeless at the same damn time."

PhxPD took a similarly casual approach when, in June 2019, the news organization Injustice Watch found social media posts by PhxPD employees—including supervisors—celebrating violence against protestors. In one posting, the message "Mace in yo face" appeared with an image of a police officer spraying pepper spray into a man's face as another officer looked on. Other posts endorsed explicit violence.

Former Chief Williams admitted that “[t]he posts and the comments ... clearly promoted and created hate,” and she directed PSB to investigate. But PSB chose to classify many posts pertaining to protestors as administrative inquiries, requiring no formal investigation. And beyond the PSB referral, PhxPD did not address why officers across ranks displayed open contempt for people exercising their rights, or the impact this may have on officers’ conduct on the field, the community’s trust, and people’s willingness to exercise their First Amendment rights in the future.

## RECOMMENDED REMEDIAL MEASURES

In a 2024 report, the City outlined several new and ongoing initiatives designed to ensure constitutional policing.<sup>126</sup> Phoenix and PhxPD acknowledge in the report that reforms are necessary but claim they can be achieved without the intervention of the Justice Department or oversight by a federal court. Our experience shows that reforms on paper are not enough to address entrenched unlawful practices of the degree we describe in this Report. And past PhxPD efforts—including some of those outlined in the City’s report—have failed to mitigate the violations we found. Although the City’s plans are a positive step, they are not enough to achieve durable reform.

The initial remedial measures we recommend below provide a foundation for changes that Phoenix and PhxPD must make to improve public safety. But only with true accountability will the department be able to build the trust of the Phoenix community and comply with the Constitution and federal law.

### Use of Force

- 1. Improve Use-of-Force Policies, Reporting, and Review Procedures to Minimize the Use of Force.** Revise force policies to emphasize avoiding force and increasing de-escalation and require officers to consider less-intrusive alternatives before employing force. Provide clearer guidance for when certain force options, including projectiles or Tasers, may be appropriate. Implement force reporting and review systems to ensure that officers report all uses of force, including neck and leg restraints, and that PhxPD conducts timely, thorough force reviews. Ensure that supervisors’ performance reviews evaluate the quality of their force reviews.
- 2. Improve Use-of-Force Training.** Develop new training to ensure adherence to legal requirements. Provide clear guidance to officers about when it is appropriate to use different force options and de-escalation, the duty to render aid, and the requirement to modify force as resistance changes. This should include scenario-based training and testing that reinforces these concepts.
- 3. Enhance Force-Related Accountability Mechanisms.** Require supervisors to conduct use-of-force supervisory reviews and identify violations of policy or law. Ensure that supervisors promptly refer evidence indicating misconduct or criminal

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<sup>126</sup> *The Phoenix Police Department: The Road to Reform*, available at [https://www.phoenix.gov/policesite/Documents/DOJ/PPD\\_RoadtoReform\\_January2024.pdf](https://www.phoenix.gov/policesite/Documents/DOJ/PPD_RoadtoReform_January2024.pdf) [<https://perma.cc/RN3V-HTSA>].

conduct to the appropriate investigative unit or agency. Take appropriate corrective or disciplinary action when officers violate force policies.

4. **Improve Data Collection and Assessment of Force.** Assess data to identify trends and develop policies, trainings, and recommendations to reduce the use of force. Ensure that supervisors and command can effectively review force data.
5. **Develop Force Policies Appropriate for Vulnerable Populations, Such as Youth and People with Behavioral Health Needs.** Ensure policies recognize and account for vulnerable populations, such as children, people with behavioral health disabilities, and unhoused people.

### **Treatment of the Unhoused Population**

1. **Improve Policies and Review Procedures Regarding the Seizure and Destruction of Property.** Revise policies to ensure that adequate notice is given before the seizure of property. Train and supervise staff to ensure that policies are uniformly followed; staff can distinguish between personal property and abandoned items; they give proper notice before and after the seizure of property; and they create sufficient inventory records so that individuals may reclaim their property. Implement systems of supervisory review to ensure that staff are complying with policy.
2. **Improve Policies and Review Procedures Regarding the Stops, Detentions, and Arrests of Homeless People.** Revise policies and review procedures on reasonable articulable suspicion and probable cause to stop a person, unhoused or otherwise. Clarify the limits on consensual encounters. Ensure training on constitutional prohibitions is given promptly. Require reporting for all community contacts, including consensual encounters, that captures the reason for the contact, basis for stops, and results of each encounter. Implement systems of supervisory review to ensure that staff are complying with policy.
3. **Improve Documentation of Police Activity.** Capture data on a person's housing status for all encounters and stops, not only arrests.

### **Identifying and Reducing Racial Disparities**

1. **Improve Documentation of Police Activity.** Ensure public safety data collection allows for analysis of racial disparities, including for stops, searches, citations, arrests, force, and investigative activities. Ensure data captures the basis for enforcement action, including reasonable articulable suspicion or probable cause for stops and searches, the basis for consent searches, and the results of each search. Differentiate between traffic and



pedestrian stops. Link enforcement data with dispatch records, to allow for comprehensive analysis of PhxPD's stop data.

- 2. Improve Policies for Discretionary Enforcement.** Develop policies on stops, searches, and arrests to guide officers' discretion and ensure constitutional and non-discriminatory treatment when enforcing traffic, drug, and quality-of-life laws.
- 3. Analyze Data from Enforcement Activity.** Develop capacity to analyze data about disparities based on race or national origin in enforcement activities overall and to assess the impact of any specialized units, initiatives, or programs.
- 4. Reduce Unjustified Disparities.** Where enforcement disparities based on race or national origin exist, take steps to understand the cause of the disparities and address them.

### **Protecting First Amendment Rights**

- 1. Improve Policies and Training Related to Protests and Demonstrations.** Revise policies on responding to civil disturbances and disorderly conduct to improve planning for protests, including designating information that PhxPD gathers about protestors; emphasizing First Amendment freedoms; protecting the right to gather and to record police activity; limiting the use of less-lethal weapons; and providing daily after-action reports about force, officer wellness, and effectiveness. Training should address the challenges of protecting public safety and First Amendment rights during demonstrations critical of law enforcement.
- 2. Improve Accountability for First Amendment Violations.** Ensure that force reviews and reviews of misconduct complaints assess whether an officer's conduct violated the First Amendment. Ensure that the agency consistently follows an after-action review process following protests to evaluate the performance of officers and commanders.
- 3. Improve Permitting Process for Protests and Demonstrations.** Revise permitting process to ensure that protestors can participate in spontaneous demonstrations without violating laws prohibiting obstruction of a thoroughfare.
- 4. Improve External Oversight of Protest Response.** Create mechanisms for city prosecutors to help PhxPD identify officers' actions that may have impinged on First Amendment rights.

### **Responding to People with Behavioral Health Disabilities**

- 1. Ensure the PhxPD 911 Call Center is Dispatching Appropriate Responders.** Update policies, procedures, and training for calls for service involving behavioral health issues. In doing so, collaborate with Solari

and the Phoenix Fire Department to ensure that 911 operators understand when to request the assistance of a mobile crisis team or a BHU. Prioritize 911 call center staffing issues and quality assurance processes to assess call-taking, dispatches, and responses to such calls. Implement after-action reviews of calls involving behavioral health issues, including debriefings for system, call-taker, and dispatcher improvement and to ensure modifications are consistently appropriate.

- 2. Improve Call Coding, Data Collection, and Analysis in the PhxPD 911 Call Center.** Refine call coding practices to better capture the behavioral health aspects of calls. Create consistent, systematized processes to collect and analyze call data to identify the full universe of behavioral health-related calls received by the agency and the responders deployed to those calls.
- 3. Develop and Implement Appropriate Policies and Training Relating to Behavioral Health and Assess Their Impact.** Train PhxPD officers in proper de-escalation and appropriate modifications to activities to accommodate people with behavioral health disabilities. Provide clinically informed training for PhxPD officers and supervisors that delivers accurate information regarding behavioral health disabilities. Ensure policy and training addresses coordinating responses with other key actors, including Solari, mobile crisis teams, and BHUs. Track and analyze CIT-certified officer responses to behavioral health-related calls, including calls where force is used. Require recertification training every two years for all CIT officers.
- 4. Develop and Implement Appropriate Quality Assurance Methods to Assess Impact and Identify Resource Needs.** Implement systems of supervisory review to ensure that officers are complying with policy. Implement systems of supervisory review of calls involving behavioral health issues, including debriefings for system and officer improvement and to ensure modifications are consistently appropriate.

## **Responding to Youth**

- 1. Develop and Implement Policies and Training Appropriate for Youth.** Recognize the unique characteristics of youth and modify patrol practices as necessary. Develop evidence-based policies and training that address youth-specific characteristics and vulnerabilities.

## **Accountability**

- 1. Identify, Address, and Document All Allegations Raised in Misconduct Complaints.** Ensure all allegations of misconduct are accepted, comprehensively reviewed, and resolved with appropriate documentation

explaining decision-making. Hold supervisors accountable for failing to report or address misconduct. Expressly prohibit all forms of discouragement, intimidation, coercion, or retaliation against any person who makes a complaint.

- 2. Require Officers to Report Misconduct.** Allow officers to report misconduct directly to PSB. Where officers fail to report misconduct, ensure they are held accountable. Ensure protections against retaliation for officers who report the misconduct of other officers.
- 3. Ensure Consistent Processes for Investigating Misconduct.** Eliminate Administrative Inquiry investigations and require standardized processes for investigating misconduct complaints. Ensure PSB reviews all findings, material evidence, and outcomes for completed investigations assigned for unit-level or criminal investigation for tracking, monitoring, and qualitative assessment.
- 4. Improve Misconduct Investigations.** Ensure all allegations of misconduct are fully investigated, and that the complainants are kept up to date on the complaint status. Train PhxPD investigators and supervisors on investigative practices and the particular challenges of police misconduct investigations. Prohibit conflicts of interest.
- 5. Fully Staff PSB.** Ensure that PSB is fully staffed with enough qualified, well-trained investigators to complete all investigations in a timely and consistent manner. Ensure that investigations are thorough, interviews are conducted appropriately, all relevant evidence is accepted and appropriately weighed, and sound determinations of witness credibility are made where there is conflicting evidence.
- 6. Facilitate External Oversight.** Ensure PhxPD provides any external oversight body, including OAT, with the broadest and most prompt access to agency data, systems, documents, and personnel permitted by law.
- 7. Improve the Review Process for PSB Investigations.** Streamline the review process for administrative investigations to facilitate their timely resolution. Establish reasonable time limits for each stage of review and document all decisions.

## Supervision

- 1. Require a Coordinated Approach to Public Safety.** Ensure commanders report to department leadership about crime trends and policing strategies. Hold command staff accountable to employing public safety strategies consistent with agency priorities and community policing principles.
- 2. Require Consistent Activation, De-Activation, and Review of Body-Worn Cameras.** Require officers to consistently activate body-worn cameras to document interactions with the public. Require supervisors to review footage to monitor officer performance and ensure compliance with PhxPD policies. Prevent officers from muting cameras.
- 3. Require Review of Discretionary Activity.** Require supervisory review of the reasonable articulable suspicion for any stops and frisks, the probable cause of any searches, and the basis for any consent searches. Require periodic analysis of the efficacy of certain practices where officers have more discretion, such as pretext stops or consent searches.
- 4. Enhance Early Identification and Intervention Program.** Ensure supervisors take appropriate action when they receive alerts about a subordinate. Document decision-making over whether to undertake a preventative intervention. Employ effective, tailored interventions.

## Training

- 1. Develop a Comprehensive Training Plan.** Ensure that all officers are regularly trained on constitutional policing, de-escalation tactics, procedural justice, intervening to prevent violations of law or policy, and how to respond to persons in crisis.
- 2. Improve and Expand Training Department-Wide.** Use qualified instructors, employ best practices in adult learning, and include outside experts and community-based instructors. Increase annual in-service requirements to ensure officers receive adequate training on constitutional policing. Involve training officials in after-action evaluations of force incidents.
- 3. Improve Training for Supervisors.** Train supervisors to promote effective and constitutional police practices by leading subordinates, monitoring and assessing their performance, evaluating written reports, investigating uses of force, building community partnerships, and de-escalating conflicts.

- 4. Improve the Field Training Officer Program.** Improve standards for training and selection of Field Training Officers so that they will consistently model and support PhxPD values and standards. Standardize the Field Training Officer program to ensure all officers and recruits are evaluated consistently and fairly.

## **Policies**

- 1. Develop a Centralized Policy Development Process.** Create centralized process for developing policies and training consistent with legal requirements and community engagement principles.

## **CONCLUSION**

The Department of Justice has reasonable cause to believe that Phoenix and PhxPD engage in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law. The pattern or practice includes (1) using excessive force; (2) violating the rights of people experiencing homelessness; (3) using enforcement strategies that result in unjustified disparities in how police treat Hispanic, Black, and Native American people; (4) retaliating against people who are engaged in constitutionally protected expression; and (5) violating the rights of people with behavioral health disabilities. We also identified concerns regarding PhxPD's failure to use appropriate practices in encounters with children. Phoenix and PhxPD's unlawful practices have violated the public trust and impaired the effectiveness of policing in Phoenix. These Findings are intended to help the City, PhxPD, and the community in Phoenix better understand the full scope of the problem—and the corresponding scope of the reforms that will be needed. The United States stands ready to work with the City and PhxPD on a constructive path forward.