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**Via Overnight Mail and Hand-Delivery**

Clerk of Court, United States District Court  
Thomas Eagleton United States Courthouse  
111 South 10th Street  
St. Louis, Missouri 63102

**RE: *United States v. City of Ferguson*, Case No. 4:16-cv-0180-CDP  
Written Comments Regarding Status of Consent Decree**

Dear Judge Perry:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we appreciate the opportunity to comment on the status of the implementation of the consent decree in the above-captioned case. LDF has closely monitored policing reform efforts in Ferguson and collaborated with local activists, lawyers, and community members to advance constitutional policing practices in the city. In 2014, LDF supported Ferguson residents' request that the U.S. Department of Justice (DOJ) open a civil rights investigation of the Ferguson Police Department (FPD) after the police-shooting death of Michael Brown, an unarmed Black teenager.<sup>1</sup> Following the DOJ's investigative report findings that FPD and other city officials engaged in a pattern or practice of excessive use of force as well as racially-biased and unconstitutional policing and court practices in violation of the U.S. Constitution and federal and state laws,<sup>2</sup> we urged the DOJ and Ferguson city officials ("collectively, the parties") to develop and implement a consent decree. Additionally, prior to this Court's approval of the current consent decree, LDF submitted comments on how to support and strengthen the consent decree's provisions.<sup>3</sup>

On April 19, 2016 this Court approved the consent decree. For more than two years, LDF has monitored the implementation of consent decrees as well as similar agreements with police departments in New York City, New York and Baltimore, Maryland.<sup>4</sup> With this experience, and consistent with this Court's November 15, 2018 Memorandum and Order,<sup>5</sup> we offer the following

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<sup>1</sup> See Press Release, LDF, *LDF Commends President Obama's Call for Action in Ferguson* (Aug. 14, 2014), <https://www.naacpldf.org/press-release/ldf-commends-president-obamas-call-for-action-in-ferguson/>; see also NAACP LDF, *FERGUSON IN FERGUSON*, (2014), <http://www.naacpldf.org/publication/ferguson-in-focus>.

<sup>2</sup> Civil Rights Division, U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 28-41, 62 (March 4, 2018), [https://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson_police_department_report.pdf) [hereinafter DOJ Report].

<sup>3</sup> Press Release, LDF, *LDF Provides Written Testimony on Ferguson Consent Decree in Advance of Court-Ordered Public Hearing* (April 15, 2016), <https://www.naacpldf.org/press-release/ldf-provides-written-testimony-on-ferguson-consent-decree-in-advance-of-court-ordered-public-hearing/>.

<sup>4</sup> See generally *Davis v. City of New York*, Case No. 1:10-cv-0699-SAS (S.D.N.Y. Jan. 28, 2010) (challenging the unlawful stop, questioning and arrest of African American and Latino public housing residents and their guests by New York City Police Department officers); *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-0099-JKB.

<sup>5</sup> *United States v. City of Ferguson*, Case No. 4:16-cv-0180-CDP, Order, Dkt. No. 99.



comments and recommendations for ensuring Ferguson city officials' (the City) full and effective compliance with the consent decree's required reforms.

### 1. Timely and transparent selection process for a new FPD police chief

In October 2018, former FPD Police Chief Delrish Moss announced that he would step down as FPD police chief to care for his ailing mother.<sup>6</sup> Deputy Chief Frank McCall agreed to serve as the interim chief as the City completes a national search for a new police leader. Consequently, the City has had three police chiefs in two years. Certainly, it will be difficult to maintain compliance with the consent decree without a leader who is experienced in and committed to transforming a police department.

During the 2016 national search for a police chief, the City conducted a transparent selection process that included the participation of the Ferguson community members—Ferguson resident even assisted with interviewing the finalists.<sup>7</sup> Because “[m]aking sure a cross-section of our city has input into the hiring process is a critical first step,” the current police chief search should also include community input.<sup>8</sup> In fact, because the consent decree expressly requires the Neighborhood Policing Steering Committee (NPSC)<sup>9</sup> and Civilian Review Board (CRB)<sup>10</sup> to meaningfully participate in the hiring process of FPD officers, we recommend the participation of both entities at all stages of selection process for the new police chief. Additionally, we support the community's request that the City hold a public forum, wherein community members express the qualities they are looking for in the next chief—another practice other police departments routinely follow.<sup>11</sup>

When searching for a new police chief, soliciting the input of community members and stakeholders is not only common<sup>12</sup> but is critical to maintaining transparency and continuing to improve police-community relationships. Because all applications for the new Ferguson police chief position are due December 1, 2018, we urge the parties to commit to a selection process that includes the recommendations above.

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<sup>6</sup> See Christine Byers, *Ferguson police chief resigning, city launching national search for replacement*, ST. LOUIS POST DISPATCH, Oct. 10, 2018, [https://www.stltoday.com/news/local/crime-and-courts/ferguson-police-chief-resigning-city-launching-national-search-for-replacement/article\\_90f41d62-052f-5048-9e3d-02b14258a784.html](https://www.stltoday.com/news/local/crime-and-courts/ferguson-police-chief-resigning-city-launching-national-search-for-replacement/article_90f41d62-052f-5048-9e3d-02b14258a784.html).

<sup>7</sup> See Aamer Madhani, *Ferguson names finalists for police chief post*, USA TODAY, Mar. 4, 2016, <https://www.usatoday.com/story/news/2016/03/04/ferguson-names-four-finalists-for-vacant-police-chief-post/81321354/>.

<sup>8</sup> See comments by St. Louis Mayor Lyda Krewson, Christine Byers, *St. Louis mayor forms citizen committee to search for new police chief*, ST. LOUIS POST DISPATCH, May 25, 2017, [https://www.stltoday.com/news/local/crime-and-courts/st-louis-mayor-forms-citizen-committee-to-search-for-new/article\\_c743bb9b-1e1b-53b8-95cf-ab5f89582d5e.html](https://www.stltoday.com/news/local/crime-and-courts/st-louis-mayor-forms-citizen-committee-to-search-for-new/article_c743bb9b-1e1b-53b8-95cf-ab5f89582d5e.html) (“Ensuring that the police department is community-oriented and accountable to the public is paramount in hiring a new police chief.”)

<sup>9</sup> Consent Decree at para. 21(e), *United States v. City of Ferguson*, Case No. 4:16-cv-0180-CDP [hereinafter Consent Decree].

<sup>10</sup> *Id.* at para 405(f).

<sup>11</sup> See News Release, Pasadena Office of the City Manager, Police Chief Recruitment – Updated Community Forum Meeting, Aug. 20, 2018, <https://www.cityofpasadena.net/city-manager/news-releases/police-chief-recruitment-updated-community-forum-meeting/> (“Public input is crucial to selecting the best individual to lead the Department. I encourage all community stakeholders to attend the upcoming forum(s) and share their thoughts on the characteristics and professional background they feel are most important when selecting a new Chief.”).

<sup>12</sup> See e.g., Lauren Linder, *Albany residents give input on selecting new police chief*, NEWS 10, Apr. 15, 2018, <https://www.news10.com/news/local-news/albany-residents-give-input-on-selecting-new-police-chief/1122975177>; see also WTVC, *How to pick a new police chief? City of Chattanooga releases plans*, May 15, 2017, <https://newschannel9.com/news/local/how-to-pick-a-new-police-chief-city-of-chattanooga-releases-plans> (“Including the perspective of those whom you serve is immensely important when making a decision such as this”).



## 2. Public comment periods for the development and review of FPD policies and training curricula

The consent decree appropriately acknowledges that the FPD can only effectively protect and serve the Ferguson community if it has a strong relationship with residents. To accomplish this goal, in October 2018, the parties—at the urging of Ferguson residents, including the Ferguson Collaborative and LDF, and consistent with national best practices<sup>13</sup>—agreed to a 30-day public comment period for all FPD policies and procedures. We commend them for their willingness to open the policymaking process.

The 30-day public comment period is to provide community members with an opportunity to carefully review, understand, and make meaningful comments and edits to FPD’s draft policies. This proved to be challenging, however, when city officials released 11 use of force policies (and accompanying appendices) at the same time,<sup>14</sup> giving community members—many of whom had never reviewed a police department’s policy before—very little time to thoroughly review, understand, and draft written comments on all 11 draft policies. Thus, we recommend the release no more than one to three policies at a time to ensure a meaningful opportunity for both FPD officers and members of the public to review, comprehend and comment on the policies within the 30-day time period. Additionally, we urge the parties and monitor to publicize a calendar of public comment periods so that members of the public can anticipate the release of certain policies. The parties in the *United States v. Police Department of Baltimore City, et al* consent decree follow this practice.<sup>15</sup>

Additionally, the parties and monitor involved in the Baltimore Police Department consent decree permit public comment periods for draft and revised training curricula. We recommend the same for the Ferguson consent decree to increase community input and acceptance of policing practice by both officers and residents.

## 3. Timely completion of key consent decree requirements

Nearly three years after the effective date of the consent decree, numerous actions required in the consent decree—even those with a specific deadline—remain incomplete or unreleased. To ensure the City’s timely and effective compliance with the consent decree, we urge the Court to mandate timely completion and status updates of the following areas:

### a. The Monitor’s Work Plan

Paragraph 424 of the consent decree requires the monitor to, “[w]ithin 90 days of assuming the duties of Monitor . . . develop a plan for conducting: (a) reviews of policies, training curricula, and

<sup>13</sup> See *Final Report of the President’s Task Force on 21st Century Policing* at 2, 15, May 2015, <https://ric-zai-inc.com/Publications/cops-p311-pub.pdf>; see generally *Beyond the Conversation: Ensuring Meaningful Police-Community Engagement*, <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5b29056a758d460f539bc079/1529415022872/Policing+Project+Beyond+the+Conversation.pdf>.

<sup>14</sup> The released use of force policies included: General Use of Force (Policy 4.1.0), Use of Force Reporting (Policy 4.1.1), Use of Force Review (Policy 4.1.2), Electronic Control Weapons (Policy 4.3.0), Canines (Policy 4.7.0), Batons (Policy 4.5.0), and Firearms (Policy 4.2.0), Vehicle Pursuits (Policy 4.8.0), OC Spray (Policy 4.6.0), Less Lethal Shotgun Ammunition (Policy 4.4.0), Critical Incidents Response (Policy 4.2.1).

<sup>15</sup> See BPD Monitoring Team, *Public Feedback: Make Your Voice Heard on Proposed New BPD Policies*, <https://www.bpdmonitor.com/public-feedback/>, (last visited November 28, 2018); see generally, BPD Monitoring Team, Revised and Updated First-Year Monitoring Plan, <https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/5b9bf4abcd836603dd08b250/1536947372976/BPD+-+Updated+1st+Year+Monitoring+Plan+9+-+13-18.pdf> (listing comment periods for draft policies and training curricula).



other written materials requiring Monitor review or approval; (b) evaluations and audits of whether the material requirements of this Agreement have been implemented; and (c) outcome assessments, including the community surveys required by this Agreement.” Paragraphs 425-441 further describe the what should be included in the monitor’s plan (the work plan). The work plan provides a clear view of the work needed to continually implement the consent decree and is therefore critical and time-sensitive.

While we acknowledge that the consent decree has been assigned to two lead monitors in two years, this transition should have had limited impact on the City’s obligation to implement the consent decree’s requirements in a timely manner. Indeed, the monitoring team’s role is to review and make recommendations to the City on how to fully comply with the consent decree. That said, a work plan developed by the monitor that includes a schedule for the review and audit of each requirement would guide the City’s compliance and notify the public of when various requirements will be considered and completed. During this Court’s September 18, 2018 status hearing (September status hearing) the monitor told the Court that she had previously submitted a draft of the work plan to the parties and planned to meet with the parties later that day to further solidify the work plan.<sup>16</sup> To date, the monitor has not shared a completed work plan with the community or filed it with this Court.

#### **b. Creation and Implementation of Bias-Free Policies and Protocols**

Ensuring FPD officers refrain from discriminating based on race, sex, religion, language ability, age, or other factors is crucial to the success of the consent decree. Paragraphs 70-74 of the consent decree reflect this principle by prioritizing the development and implementation of policies that instruct and train officers on bias-free policing practices. Specifically, the City must assess the accuracy and reliability of FPD’s current processes for collecting and analyzing state-mandated “racial profiling” data by developing protocols for collecting and analyzing such data and outlining additional data that should be collected to improve the accuracy and reliability of FPD’s data collection methods. After this, the City must take immediate corrective action to ensure that any discriminatory action or disparate impact due to any FPD policy, plan, procedure, initiative, activity, or service in question is not further applied or administered in a discriminatory manner.<sup>17</sup> Similarly, paragraph 72 instructs both the City and FPD to develop cost-feasible protocols for annually conducting data-based assessments of the impact of all FPD and court programs, initiatives, activities, and services to determine whether they impose a disparate impact based on protected characteristics. Paragraph 73 requires the monitor to conduct ongoing disparate impact assessments and finally, paragraph 74 instructs the City to develop protocols for correcting such disparate impact.

Despite the consent decree’s clear emphasis on bias-free policing and the parties and monitor’s commitment to develop bias-free protocols and policies in the first year of the consent decree’s implementation,<sup>18</sup> according to the *Independent Monitor Spring 2018 Semiannual Report and Appendices (Spring 2018 Status Report)* bias-free “policy development has yet to begin” but “should be completed within the next reporting period.”<sup>19</sup> Accordingly, we urge the Court to instruct the parties

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<sup>16</sup> See Transcript 12:1-13, Quarterly Status Hearing, Sept. 18, 2018, <file:///C:/Users/Ktopps/Downloads/70.-Transcript-of-Status-Conference-09.18.18.pdf> [hereinafter September Status Hearing].

<sup>17</sup> Consent Decree, *supra* note 12, at paras. 70 and 71.

<sup>18</sup> *Independent Monitor Spring 2018 Semiannual Report* at 13, <https://fergusonmonitor.com/wp-content/uploads/2018/06/Ferguson-Monitor-Spring-2018-Status-Report-and-Appendices.pdf> [hereinafter *Spring 2018 Status Report*].

<sup>19</sup> *Id.*



to give a detailed status update for all requirements outlined in paragraphs 70-75 and a firm timeline for completion of all incomplete tasks, including the development of bias-free policing policies.

**c. The Citizen Complaint Form and Disciplinary Matrix**

Paragraph 372 of the consent decree requires the City to develop an easily understandable and usable citizen complaint form that individuals may use when making a misconduct complaint. It further requires the City to make these complaint forms and other materials outlining the complaint process—including relevant telephone numbers and email addresses to obtain additional information—widely and permanently available, including on the City and FPD websites; the lobby of City Hall; all Ferguson schools staffed by FPD employees; FPD headquarters; and the Ferguson Municipal Court. To date, the City has neither completed nor widely disseminated the complaint form. We urge the Court to push the City to create and disseminate this form as soon as possible, for the benefit of Ferguson residents.

Additionally, the FPD disciplinary matrix sets forth guidelines for what form of discipline should be imposed when an officer engages in misconduct. When the parties shared FPD's draft use of force policies for public comment and review, many of the policies referenced the disciplinary matrix. However, the parties did not disclose the disciplinary matrix. Though the initial comment period for the use of force policies has closed the community will continue to provide feedback on FPD draft policies that refer to the disciplinary matrix. Therefore, we recommend public release of the disciplinary matrix.

**d. Data-Collection, Publication, and Analysis**

The lack of an established, transparent, and reliable data collection method—and subsequent data collection, analysis, and publication—is one of the parties' most alarming deficiencies to date. Data collection is critical to adhering to nearly every part of the consent decree, and as this court noted nearly three months ago, necessary for measuring FPD's actions.<sup>20</sup> Yet, many basic data sets remain uncollected, analyzed, or published.<sup>21</sup> Worst, the consent decree requires most data collection on a periodic basis; meaning, the failure to collect data only increases as more time passes. As we approach the third year of the consent decree with significant data deficiencies, and the City attempts to transition to a new data collection system, the Ferguson community is only left to hope the parties will finally catch-up to all the data requirements in the consent decree, accurately review the collected data, and then timely modify its behavior to improve policing services.

Thus, we urge the court and monitor to not only require the City to produce detailed status updates on the new data collection system and all data requirements listed in the consent decree, including a data collection plan as required by paragraph 412,<sup>22</sup> but to also require timely completion of these requirements. These instructions should also be applied to the consent decree's data publication requirements.<sup>23</sup> By continuing to delay complete and accurate data collection and

<sup>20</sup> See September Status Hearing, *supra* note 16, at Tr.28:15-23 and 16:19-25; see also Tr.17:1-10 (DOJ stating the same).

<sup>21</sup> See *id.* at Tr. 19:14-17 (“[B]ecause of the limitations with data collection, there are still uncertainties regarding how uses of force are actually going to be documented and recorded.”).

<sup>22</sup> The Monitor noted in the September 18, 2018 September Status Hearing that it recently provided FPD with a template showing FPD “how they can *start* figuring out what data they actually need to collect.” *Id.* at 17:4-5.

<sup>23</sup> Paras 411, 413, and 414 of the consent decree require the City to publish certain data, reports, and resources on its website (“The City agrees to make publicly available on request and on the City’s website all FPD and municipal court policies and protocols, as well as all public reports described in this Agreement . . .” and “[o]n at least an annual basis, the City will make data collected pursuant to paragraph 411 publicly available on the City website in summary form, unless



publication, the City deprives the court, monitor, and community the ability to evaluate the constitutionality of FPD's current policing practices.

**e. Monitor audits**

At the September status hearing, the monitor informed the court that due to data collection failure, the monitoring team struggled to obtain enough data to review FPD's 2017 uses of force incidents. Specifically, the monitor explained that she was unable to obtain proper data to complete the mandatory audit of FPD's uses of force from January 2017 through June 2018.<sup>24</sup> When the monitor asked city officials to provide her with arrest, field interview, and use of force reports for that time period, the City provided "only a handful of field interview reports from which we could draw any information" and about 78 use-of-force reports, leaving the monitor "still trying to figure out whether ... [the team will] get the entire population of those [use-of-force reports]."<sup>25</sup>

In addition to use of force audits, paragraphs 434 and 435 of the consent decree detail extensive assessment requirements outside of FPD's uses of force. However, the monitor's *Spring 2018 Status Report* was limited to an audit report of the parties' municipal court reform efforts.<sup>26</sup> Similarly, pages 18-21 of the same report include a detailed chart listing: the status of all municipal court reform efforts required under the consent decree, whether the parties have begun this work, and the corresponding audit status. We thus recommend the monitor produce a similarly detailed chart and description of: all actions the consent decree requires the City to complete (except for the municipal court reform efforts), the status of the City's implementation of such requirements, and status reports on all corresponding and required audits—and noting whether the incomplete audits are due to lack of data of reliable data. Keeping a detailed record would not only highlight all areas of noncompliance but would also identify areas where the City may require additional guidance or support.

**f. Development and administration of annual community and police surveys**

During the September status hearing, the DOJ told the Court the Police Foundation will assist with creating the required annual police and community surveys required by paragraph 429 of the consent decree.<sup>27</sup> Because the monitoring team already administered a police survey in 2017 but was "unable" to administer a similar survey for community members, we urge the parties to prioritize development and administration of the community survey.<sup>28</sup> Importantly, the consent decree not only requires the monitor to "conduct a reliable, comprehensive, and representative survey of members of the Ferguson community" "[w]ithin one year of the Effective Date, and every year thereafter," it expressly requires the monitor conduct an initial survey to establish a "baseline" of the community's sentiments, satisfaction, and quality of engagements involving FPD and the municipal courts. No baseline survey, according to the consent decree, was ever administered.

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prohibited by law."). To ensure compliance with this provision, the City should also publish the 2017 Officer Attitudes and Perceptions Survey.

<sup>24</sup> See September Status Hearing, *supra* note 16, at Tr. at 7-8.

<sup>25</sup> *Id.* at Tr. 5:5-10 and 7:17-23.

<sup>26</sup> The Monitor noted in the *Spring 2018 Status Report* that "more progress has been made on the municipal court reform section of the Consent Decree than in other areas"—we agree the parties have achieved great progress in addressing the consent decree's requirements for municipal court reform. Given this, we are interested in the extent of progress completed in the *other* areas under the consent decree; see *Spring 2018 Status Report* at 7.

<sup>27</sup> See September Status Hearing, *supra* note 16, at Tr. 11:2-12; see also Consent Decree, *supra* note 12, at para. 429.

<sup>28</sup> See *Spring 2018 Status Report* at 13.



Notably, in 2015, the Ferguson Collaborative (FC) unilaterally decided to create a short survey to gather data on the community's sentiments; the FC administered the survey to community members and gathered its subsequent data.<sup>29</sup> The FC survey and its accompanying data is attached hereto as Exhibit A. We urge the court, monitor and parties to review this community survey, incorporate its questions and data in the required police and community surveys, and use it as a baseline to evaluate whether the community's views and interactions with FPD and the municipal courts has changed since implementing the consent decree.

Additionally, we recommend that the St. Louis Ethical Society of Police and the NPSC participate in the creation and administration of the forthcoming community and police surveys. This would be consistent with paragraph 430(e) of the consent decree, which states the monitoring team will "[e]ngage in informal conversations with Ferguson residents, FPD officers, court staff, and DOJ representatives, and observe community meetings..." as it conducts the annual community surveys. Finally, we urge the parties to create, finalize and administer the first consent-decree mandated community surveys by no later than June 2019.

#### **g. Displacement of Ferguson Apartment Residents**

Paragraph 25 requires, within 180 days of the effective date, the City to assist with the establishment of a neighborhood association in each of Ferguson's apartment complexes including, Canfield Green, Parkridge, and Northwinds. Importantly, paragraph 25 also requires the City to work with these apartment complex Neighborhood Associations "in the same manner that the City consults and works with other Neighborhood Associations, such as Old Ferguson East, Jeske Park, and Old Ferguson West."

Within the last few months some of the very Ferguson apartment complexes noted in paragraph 25 have failed mandatory health and safety inspections, were deemed condemned, and began evicting and displacing the residents therein.<sup>30</sup> We recommend that the City provide a status report on its interactions with the Neighborhood Associations listed in the consent decree, including how it is working with them to ensure the residents continually have safe and secure housing.

#### **h. Community Involvement**

Paragraph 26 requires the City to, within one year of the effective date, develop FPD crime-prevention and community-policing plans to ensure policing is oriented around community priorities and partnerships. Additionally, paragraph 33 requires the City to, within 180 days of the effective date, develop a plan for providing neighborhood mediations in Ferguson. These plans are merely a first step in creating positive community and policing relations. It appears the City has not implemented these plans. We recommend the City provide a status update and timeline for creating and implementing all plans.

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<sup>29</sup> See *A Community Voice—A Survey of Ferguson Stakeholders and a Vision of Community Policing*, Interim Report, August 2015 (attached hereto).

<sup>30</sup> Nassim Benchaabane, *Confusion reigns at Ferguson apartments where tenants were ordered out*, ST. LOUIS POST-DISPATCH, Nov. 15, 2018, [https://www.stltoday.com/news/local/metro/confusion-reigns-at-ferguson-apartments-where-tenants-were-ordered-out/article\\_8ff7caa2-10d3-5eb4-b441-a52c901fbdec.html](https://www.stltoday.com/news/local/metro/confusion-reigns-at-ferguson-apartments-where-tenants-were-ordered-out/article_8ff7caa2-10d3-5eb4-b441-a52c901fbdec.html); see also Roche Madden, *Ferguson residents forced out of apartments after building labeled unsafe*, Fox 2, Oct. 10, 2018, <https://fox2now.com/2018/10/10/ferguson-residents-forced-out-of-apartments-after-building-labeled-unsafe/>.



### **i. School Resource Officers**

In the *Spring 2018 Status Report* the monitor noted that, as required by paragraph 210, the parties began developing a School Resource Officer (SRO) program and operations manual. Additionally, she noted that the parties, in accordance with paragraph 211, drafted a Memorandum of Understanding (MOU) between FPD and the Ferguson-Florissant School District (FFSD), the FFSD commented on the MOU, returned it to FPD, and are now awaiting the monitoring team's review of the revised version. We ask the court to request a status update on both the SRO program and the revised MOU. Importantly, to demonstrate the City's commitment to meaningful community involvement, we also encourage the parties to solicit community review and feedback on the SRO program and MOU.

### **j. Civilian Oversight**

Paragraph 405 of the consent decree lists several tasks for the CRB. These include, among other things: a) review, make findings, and recommend disciplinary action for all Force Review Board investigations involving misconduct complaints and all investigations of complaints by members of the public against FPD alleging misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, racial slurs; b) develop and recommend a program to promote awareness throughout the broader Ferguson community about options available for filing misconduct complaints and the misconduct complaint process; c) review FPD policies, procedures, training plans and curricula, and make recommendations for modifications; serve on officer hiring and promotion panels; d) develop and implement ways to enhancing FPD's relationship with the community; and e) review crime data, racial profiling data, and complaint statistics to identify patterns and trends.<sup>31</sup>

Given these requirements, we urge the Court to inquire as to the status of all CRB requirements under the consent decree. Specifically, the Court should ask the parties how CRB provided oversight on the areas detailed in paragraph 405, to what extent was that oversight documented, whether the CRB's recommendations and findings followed, and what requirements remain incomplete and why. In answering the Court's inquiry, the City should specify whether they have complied with all paragraph 405's reporting and implementation requirements, including whether CRB was consulted in the FPD's recent hires and revised policies, plans, and procedures.

In addition to CRB's tasks, the monitor is required to develop protocols to assess whether a) CRB is representative of the broader Ferguson community and b) CRB is effectively serving the civilian oversight functions described in Mo. Rev. Stat. § 590.653 and the consent decree. The Civilian Review Board Task Force is also required to conduct a comprehensive assessment of the CRB's operations to ensure that it is providing effective civilian oversight. The monitor should provide an update on the status of all the above.

### **k. Approximately 1,800 Remaining Amnesty Cases**

The consent decree requires the City to create an amnesty program that, at the very minimum, creates a mechanism in which all cases that were initiated before to January 1, 2014 and yet, remain currently adjudicated (the amnesty cases) are reviewed in accordance with the good-cause standard.

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<sup>31</sup> However, the *Spring 2018 Status Report* only notes that the City enacted the establishing ordinance for the CRB, which includes protocols for the selection of members, and has developed training materials for its members. It makes no reference to the other CRB's other duties.





Though the City has dismissed over 7,000 amnesty cases under this provision, it has decided to keep approximately 1,800 amnesty cases open.

Worse, the DOJ investigative report explicitly details how the city attorney's office, municipal court officials, city officials, and FPD collectively over-policed and over-prosecuted Ferguson's Black residents for decades, resulting in severe fines and unconstitutional stops, arrests, charges, and jail time for cases just like the remaining 1,800 amnesty cases.<sup>32</sup> The DOJ report provides real examples showing that Black residents are more likely to be stopped and given duplicative charges, especially for charges generally brought at an officer's discretion, and "once a charge is filed in Ferguson municipal court, a number of procedural barriers imposed by the court combine to make it unnecessarily difficult to resolve the charge."<sup>33</sup> In other words, due to undeniable racially discriminatory practices between the FPD and municipal courts, "[c]ourt cases involving black individuals typically last longer than those involving white individuals and therefore, on average, an African-American defendant is 68% less likely than other defendants to have a case dismissed . . . and three times less likely to receive the Voided outcome than others."<sup>34</sup>

Ferguson residents named in the remaining 1,800 amnesty cases are currently experiencing the same uncertainty, fear, and financial instability discussed in the DOJ report. We therefore urge the City to, and the Court to support, a dismissal of *all* remaining 1,800 amnesty cases. Given the City's documented discriminatory history and the need for transparency, if any amnesty cases remain, to create transparency and public confidence in City officials, we ask that the City specify the status, offense, and rationale for continuing each case. This will allow both the monitoring team and the community to evaluate the remaining cases, in a fully informed manner. Finally, we ask that the monitor and her team fully review all remaining cases, rather than the 10% cited at the September status hearing.<sup>35</sup>

#### **I. Stop, Searches, and Voluntary Contact**

Paragraphs 75 and 109 require the City and FPD to develop protocols for regularly conducting cost-feasible, data-driven and qualitative assessments of its voluntary encounters, stops, searches, and arrests. The City and FPD must identify deficiencies and opportunities for improvement; implement appropriate corrective action; and document measures taken. We ask the parties to provide the Court with a status report on the creation and implementation of the above protocols and data analysis.

#### **4. Conclusion**

According to DOJ's investigative findings, the Ferguson community experienced years of discriminatory and unconstitutional policing and municipal court practices. FPD's policing practices targeted Black residents, permitted excessive and deadly force, duplicative charges, and a deprivation of numerous constitutional rights. To change this culture, the consent decree's principles and requirements must equate to more than mere words on paper. We commend the Court, parties, and monitor for progress made to date to ensure the timely and vigorous implementation of every requirement in the consent decree. Significant work remains to be completed and the stakes could not

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<sup>32</sup> See U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, March 4, 2015, at 9-16 and 71, [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>33</sup> *Id.* at 68.

<sup>34</sup> *Id.* at 69.

<sup>35</sup> September Status Hearing, *supra* note 16, at Tr. at 9:21-23 ("Ms. Aghedo [of the monitoring team] is going to review approximately 10 percent, maybe a little bit more. . .").



be higher. Therefore, we urge the Court, parties, and monitor to consider and adopt our recommendations.

If you have any questions, please contact Katurah Topps at 212-965-2254.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Monique Dixon".

Monique Dixon  
Deputy Director of Policy & Senior  
Counsel

Katurah Topps  
Policy Counsel