

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO**

_____		)	
UNITED STATES OF AMERICA,		)	
		)	
	Plaintiff,	)	
		)	
v.	)	)	CIVIL NO: 1:14-cv-1025-RB-SMV
		)	
THE CITY OF ALBUQUERQUE,		)	
		)	
Defendant.	)	)	
_____		)	

**JOINT MOTION REQUESTING APPROVAL AND ENTRY OF THE  
SETTLEMENT AGREEMENT AS AN ORDER**

Plaintiff, the United States of America, and Defendant, the City of Albuquerque (“City”) (collectively, “the Parties”), having entered into the attached Settlement Agreement (“Agreement”), jointly move for approval and entry of the Agreement as an Order to resolve this litigation and ensure that the Agreement’s comprehensive measures are implemented fully and faithfully. As set forth in Paragraph 337 of the Agreement, the Parties respectfully request that the Court retain jurisdiction over the Agreement for the purpose of enforcing its terms until the City has achieved full and effective compliance with the Agreement. The Parties also respectfully move for an opportunity for community members and other stakeholders to express their views as *amici curiae* to assist the Court in its consideration of the Agreement.

Through the Agreement, the Parties seek to implement comprehensive reforms of the Albuquerque Police Department to fully address the United States’ claims on officers’ use of force under the Fourth Amendment and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”). The Agreement’s measures are specifically tailored

to the needs of the Albuquerque Police Department and are designed to ensure constitutional and effective policing, promote greater trust between police officers and the communities they serve, and protect officer and public safety.

## **I. BACKGROUND**

In November 2012, the United States, through the Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of New Mexico, opened a civil investigation into use of force by the Albuquerque Police Department. Following an exhaustive and independent review, the Department of Justice issued a letter detailing its investigative findings on April 10, 2014. Dkt. #1, Ex. A. In its findings letter, the Department of Justice concluded that it had reasonable cause to believe that the Albuquerque Police Department engages in a pattern or practice of use of excessive force, in violation of the Fourth Amendment and Section 14141. *Id.* at 2-3. The Department of Justice also outlined a series of minimum remedial measures to address its findings. *Id.* at 41-45.

In June 2014, the Parties initiated discussions to resolve the Department of Justice's findings. The discussions gained momentum in July 2014 and involved City and APD officials, police practices consultants, and multiple attorneys for the Parties. Over the course of these discussions, the Parties collectively spent hundreds of hours in a series of in-person and telephone conferences that culminated in a joint announcement on the final Agreement on October 31, 2014. On November 6, 2014, the Albuquerque City Council held a special session to consider the Agreement and heard from members of the public. At the conclusion of the session, the Albuquerque City Council voted unanimously to endorse the Agreement.

On November 12, 2014, the United States filed a Complaint seeking equitable and declaratory relief against the City under Section 14141. In the Complaint, the United States

alleged that: (1) Defendant engages in a pattern or practice of use of unreasonable deadly force by Albuquerque police officers, including use of unreasonable force against individuals known or suspected of having mental illness and experiencing mental health crisis; (2) Defendant engages in a pattern or practice of unconstitutional use of less lethal force by Albuquerque police officers, including punches, kicks, violent takedowns, and use of electronic control weapons; and (3) Defendant has failed to correct systemic deficiencies that have caused or contributed to the pattern or practice of use of excessive force by the Albuquerque Police Department, in violation of the Fourth Amendment and Section 14141. The United States filed its April 2014 findings letter in support of its Complaint. Dkt. #1, Ex. A.

Defendant denies the existence of any past or current pattern or practice of unconstitutional conduct by Defendant or its agents, including the Albuquerque Police Department and its officers, and accordingly did so in its Answer filed November 14, 2014. Dkt. #7. The City of Albuquerque, however, believes that the proposed agreement is a fair and equitable resolution of the dispute and will benefit the people of Albuquerque.

## **II. DISCUSSION**

The Parties request that the attached Agreement be approved and entered as an Order of the Court. The Tenth Circuit recognizes the settled view that “the law should favor the settlement of controversies” as a matter of sound policy. *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969). District courts have also held to “the strong policy favoring the voluntary settlement of disputes” in determining whether to approve a consent decree. *United States v. Weiss*, No. 11-cv-2244, 2013 U.S. Dist. LEXIS 159652, at \*7-8 (D. Colo., Nov. 6, 2013) (internal citations omitted). This policy has even more force where, as here, “a government actor committed to the protection of the public interest has pulled the laboring oar in

constructing the proposed settlement.” *Colorado v. City and County of Denver*, No. 10-cv-1303, 2010 U.S. Dist. LEXIS 112685, \*11 (D. Colo. Oct. 22, 2010) (quoting *United States v. Cannons Engineering Corp.*, 899 F.2d 79, 84 (1st Cir. 1990)). In assessing whether to approve a proposed settlement, courts “must ensure that the agreement is not illegal, a product of collusion, or against the public interest.” *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991). A district court must also determine that the settlement agreement or the consent decree is “fair, adequate, and reasonable before it is approved.” *Id.*, see also *United States v. Telluride Co.*, 849 F.Supp. 1400, 1402 (D. Colo. 1994) (stating that the relevant standard is whether the proposed decree “is fair, reasonable and equitable and does not violate law or public policy.”). The attached Agreement satisfies all of these requirements.

**A. The Agreement Is the Product of Fair and Arms-Length Negotiations**

The Parties engaged in fair and arms-length negotiations to resolve the Department of Justice’s findings regarding a pattern or practice of use of excessive force by the Albuquerque Police Department. After the Department of Justice released its findings letter and recommended remedial measures, the Parties committed to an aggressive negotiation schedule to avoid costly and protected litigation. Between June and October 2014, attorneys for the Department of Justice engaged in vigorous and detailed negotiations with the City Attorney’s Office and special counsel representing the City’s interests. The negotiations were facilitated by the direct and active participation of the Albuquerque Police Chief and his Assistant Chief.

As a result of the Department of Justice’s civil investigation and findings and the City’s own efforts, the Parties possessed the necessary familiarity and expertise concerning the Albuquerque Police Department’s policies, practices, and protocols and the necessary measures to achieve constitutional and effective policing. During negotiations, both the United States and

the City consulted with their own police practices experts to ensure that each provision in the Agreement was necessary and tailored to the specific area needing reform. This adversarial dynamic, combined with zealous advocacy by the Parties, provide further assurances that the Agreement is the product of good faith negotiations among equally matched adversaries.

The provisions of the Agreement are necessary and are not intended to violate the law or infringe on the rights of third parties. The Agreement is also not intended to limit the lawful authority of Albuquerque police officers to use objectively reasonable force or to otherwise fulfill their law enforcement obligations under the Constitution and laws of the United States and the State of New Mexico. Ex. A, Agreement, ¶ 7.

**B. The Agreement Furthers the Objectives of Section 14141 and the Public Interest**

The attached Agreement is in harmony with the Congressional objectives that led to the enactment of Section 14141. Congress enacted Section 14141 to forbid law enforcement officers from engaging in a pattern or practice “that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” 42 U.S.C. § 14141. It contains no limitation on the nature of the constitutional or federal rights that it protects. Where a pattern or practice of constitutional or statutory violations exists, Congress granted the Department of Justice the authority to sue state and local governments and their police departments to correct the underlying policies and practices that lead to the misconduct. H.R. Rep. No. 102-242, pt. 1, at 137.

Here, the Agreement’s substantive provisions relate directly to the policies, procedures, training, and oversight that the United States alleges cause or contribute to the pattern or practice of use of excessive force in violation of the Fourth Amendment. In the United States’ Complaint, the United States alleges that these patterns or practices are evidenced by aggregate

data on specific incidents, as well as systemic deficiencies in the Albuquerque Police Department. *See* Complaint, Dkt. #1. In the Agreement, the Parties negotiated and agreed upon revisions to policies, procedures, and practices to address the allegations in the United States' Complaint and thus further the purpose of Section 14141 of protecting the civil rights of Albuquerque residents.

The Agreement is tailored to the alleged deficiencies identified by the United States in the Department of Justice's April 10, 2014 findings letter and the needs identified by the Albuquerque Police Department as part of its own performance improvement efforts. Accordingly, it is consistent with and furthers the objectives of Section 14141 because it embodies the agreement of the City of Albuquerque to protect individuals' civil rights and eliminate the use of excessive force. The Parties have agreed to the implementation of extensive measures that will result in sustainable reform in critical areas such as use of force, crisis intervention, use and deployment of specialized units, supervision, management, misconduct investigations, and data collection and analysis. The Agreement also creates mechanisms to increase transparency and community involvement in the oversight of the Albuquerque Police Department's reforms.

Approval and entry is also appropriate here because voluntary compliance is more likely to conserve public resources and accomplish the statutory goals of Section 14141, than orders imposed at the end of protracted litigation. *See* Fed. R. Civ. P. 16(b) advisory committee's note ("Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible."); *Kirkland v. New York State Dep't of Correctional Services*, 711 F.2d 1117, 1128 n.14 (2d Cir. 1983) (explaining that in the Title VII context, settlements "may produce more favorable results

for protected groups than would more sweeping judicial orders that could engender opposition and resistance”); *United States v. City of Jackson, Miss.*, 519 F.2d 1147, 1152 n.9 (5th Cir. 1975) (“Because of the consensual nature of the decree, voluntary compliance is rendered more likely. . . . At the same time, the parties . . . minimize costly litigation and adverse publicity and avoid the collateral effects of adjudicated guilt.”). Indeed, “the value of voluntary compliance is doubly important when it is a public employer that acts, both because of the example its voluntary assumption of responsibility sets and because the remediation of governmental discrimination is of unique importance.” *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290 (1986) (O’Connor, J., concurring).

Here, the Agreement provides the best opportunity to continue the Parties’ considerable efforts to reform the Albuquerque Police Department. To date, the United States has conducted a thorough investigation that identified deficiencies in the Albuquerque Police Department’s policies and practices with the full cooperation of the City of Albuquerque; the City has begun to institute its own reform initiatives; and the Parties jointly negotiated a comprehensive agreement to address those deficiencies, build upon these reform initiatives, and resolve this litigation.

The Parties agree that the measures contained in the Agreement will enhance Albuquerque police officers’ ability to provide effective and constitutional policing, will promote officer and public safety, and will increase public confidence in the Albuquerque Police Department. As a result, the Agreement will improve relationships with various constituencies in Albuquerque and facilitate effective community policing by the Albuquerque Police Department. Settling this dispute without protracted litigation thus allows the City, the United States, and the Albuquerque Police Department to achieve one of their primary goals: ensuring effective and constitutional policing for the residents of Albuquerque. This undertaking will

enjoy far broader support as part of the negotiated Agreement than as one ordered by the Court after litigation.

**C. The Agreement Is Fundamentally Fair, Adequate, and Reasonable**

The Agreement is a fair, adequate, and reasonable resolution of this matter. Fairness contains both procedural and substantive components. *Weiss*, 2013 U.S. Dist. LEXIS 159652, at \*6 (citing *Cannons*, 899 F.2d at 86). “To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance.” *Id.* A substantively fair settlement agreement or consent decree incorporates “concepts of corrective justice and accountability: a party should bear the cost of harm for which it is legally responsible.” *Id.* at 87. Substantive fairness overlaps with the requirement that the settlement or decree be equitable. *See Colorado*, 2010 U.S. Dist. LEXIS 112685 \*12-13. In determining whether a proposed settlement agreement or consent decree is reasonable, courts must consider such factors as whether it is in the public interest and upholds the objectives of applicable law, whether it is technically adequate to accomplish the law’s goals, and whether it reflects the relative strengths or weaknesses of the settling party’s position. *Weiss*, 2013 U.S. Dist. LEXIS 159652, at \*7. Courts place substantial weight on the first factor, namely, whether the agreement or decree is in the public interest and upholds the objectives of the applicable law. *Id.* (internal citations omitted).

The negotiations between the Parties in this instance satisfy the standard followed by the Tenth Circuit. As discussed above and consistent with these requirements, the Parties negotiated the Agreement vigorously over the course of several months, with the assistance of subject matter experts independently retained by both Parties.



The result of the negotiations between the Parties further satisfies the requirements of fairness and reasonableness. As discussed more fully above, the Agreement furthers the objectives of Section 14141 by increasing accountability for officers' use of force. The Agreement also furthers the public interest by conserving public resources that would otherwise be spent on contested litigation and investing in sustainable reforms to ensure effective and constitutional policing in Albuquerque. The Agreement also provides a robust and fully developed compliance scheme that includes internal auditing and self-reporting by the Albuquerque Police Department; external oversight by the Civilian Police Oversight Agency and an independent monitor; structured feedback and strategic partnerships with Community Policing Councils and a Mental Health Response Advisory Committee; periodic public reports and meetings; and ongoing review by the Department of Justice. The Agreement provides outcome measures and performance indicators that emphasize even-handed and equitable treatment by police, rather than focusing simply on the development of policies and procedures, to measure the effectiveness of reforms. The Agreement promotes greater transparency and accountability, and assists the Parties and the community in determining whether the Agreement is resulting in more constitutional policing and community participation, by providing for the collection and public dissemination of information about the Albuquerque Police Department's practices.

The Agreement itself marks a first step towards robust community participation, as it incorporates the input of a broad array of community groups and individuals, including rank-and-file Albuquerque police officers, with whom the Parties met and solicited ideas for reform. For instance, as part of its outreach efforts, the Department of Justice met with hundreds of Albuquerque police officers, held numerous community meetings, and handled over a thousand emails concerning the Albuquerque Police Department. On November 6, 2014, the Albuquerque

City Council also voted to unanimously endorse the Agreement in a special session open to the public.

Under the Agreement, officers will develop the skills and knowledge, as well as receive the support they need, to provide effective and constitutional policing through: clearer policy guidance, increased scenario-based training, continuous performance improvement, thorough force investigations, early intervention from supervisors that includes non-punitive and learning-based options, improved deployment of staffing resources, and wellness programs. Accordingly, as a comprehensive and detailed blueprint for sustainable reform, the Parties agree that the Agreement bears the mark of fairness and reasonableness and offers the best path forward for the Albuquerque Police Department.

**D. Community Input Will Assist the Court in Determining Whether to Approve and Enter the Agreement as an Order**

Community members, stakeholder organizations, and advocates have been a critical component of the investigation and negotiations that led up to the Agreement, and the Parties incorporated their ideas and insights into the Agreement. Therefore, while a fairness hearing like those conducted in class action proceedings is not required in this case, the Parties recommend that the Court designate a process for interested third parties to be heard in this matter prior to deciding whether to approve the Agreement and entering it as its Order.

The Parties therefore recommend that the Court issue an order that invites any bona fide governmental or private entity duly represented by counsel that is admitted to this Court to file an *amicus curiae* brief within 30 days of the order. Those submitting briefs should then be permitted to argue their positions at a hearing shortly thereafter for the purpose of giving the Court and the Parties the best possible perspective on their concerns and arguments.

### III. CONCLUSION

The attached Agreement represents a compromise created through in-depth and extensive negotiations between experienced and sophisticated litigants and their seasoned counsel aided on both sides by subject matter experts, and with an eye towards the Parties' shared goals of reform. The Agreement resolves the allegations in the United States' Complaint, developed following an exhaustive investigation of the Albuquerque Police Department's policies and practices; benefits from the views expressed by police officers and members of the public as a result of extensive community outreach; and furthers the intent of Congress in enacting Section 14141 and the public interest's in guaranteeing constitutional rights and conserving public resources.

For those reasons and others described herein, the Parties request that this Court enter the Agreement, including the provisions and terms that create obligations for the Parties to comply with the Agreement, as an Order of the Court and that it retain jurisdiction to ensure that the Agreement is implemented fully and faithfully. The Parties further request that this Court permit interested third parties to participate in assisting the Court in determining whether to approve the Agreement by participating as *amici curiae*.

Respectfully submitted this 14th day of November, 2014,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2014, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system, which will send a notice of electronic filing to the attorneys of record.

*s/ Luis E. Saucedo* \_\_\_\_\_