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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN FRANCISCO DIVISION**

27 DELPHINE ALLEN, et al.)
28 Plaintiffs,)
v.) **Case No. 00-cv-04599 WHO**
CITY OF OAKLAND, et al.,) **JOINT CASE MANAGEMENT**
Defendant(s).) **STATEMENT**
Date: Sept. 4, 2024
Time: 3:30 p.m.
Courtroom 2, 17th Floor
Hon. William H. Orrick

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PLAINTIFFS' STATEMENT

PLAINTIFFS' CURRENT POSITION

The Independent Monitor for the OPD has issued two NSA Sustainability Period Reports (Seventh and Eighth Sustainability Reports) since the last Case Management Conference statement. This sustainability period involves the monitoring of the “last remaining and most critical Negotiated Settlement Agreement Tasks: 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45.” (Dkt. 1525, p. 2)

As of the publication of the Eighth NSA Sustainability Period Report of the IMT, OPD is in compliance with nine of these eleven Tasks:

1. Task 2 (Timeliness Standards and Compliance with IAD Investigations –in compliance when most recently assessed by during the Eighth NSA Sustainability Period Report.
3. Task 20 (Span of Control – in compliance when most recently assessed in the Third NSA Sustainability Period Report);
4. Task 24 (Use of Force Reporting Policy – in compliance per the Eighth NSA Sustainability Period Report);
5. Task 25 (Use of Force Investigations and Report Responsibility – in compliance per the Eighth NSA Sustainability Period Report);
6. Task 26 (Force Review Board (FRB) – in compliance when most recently assessed in the Third NSA Sustainability Period Report);
7. Task 30 (Executive Force Review Board (FRB) – in compliance when most recently assessed in the Third NSA Sustainability Period Report);
8. Task 31 (Officer-Involved Shooting Investigations Review Protocol – in compliance when most recently assessed in the Third NSA Sustainability Period Report);
9. Task 34 (Stop Data – in compliance when most recently assessed in the Third NSA Sustainability Period Report);
10. Task 41 (Use of Personnel Assessment System (PAS) and Risk

1 Management – in compliance when most recently assessed in the Third NSA
2 Sustainability Period Report)

3
4 As of this writing, OPD is not in compliance with two NSA tasks:

- 5 **1. Task 5 (Internal Affairs Division (IAD) Complaint**
6 **Procedures – in compliance when assessed by the**
7 **IMT in the 79th Report, “Deferred” in the First NSA**
8 **Sustainability Period Report, then deemed “not in**
9 **compliance” according to the Second, Third,**
10 **Fourth, and Fifth NSA Sustainability Period**
11 **Reports before returning to compliance in the Sixth**
12 **and Seventh IMT Reports. However, the most**
13 **recent (8th) IMT Sustainability Report determined**
14 **that OPD is again out of compliance with Task 5, an**
15 **assessment that is supported by public reporting**
16 **that will be cited at length, below**

17 , and

- 18
19 **2. Task 45 (Consistency of Discipline – this was in**
20 **partial compliance during the First NSA**
21 **Sustainability Period Report, then was moved to**
22 **full compliance during the period covered Second**
23 **NSA Sustainability Period Report. However,**
24 **between the Third Sustainability Report and the**
25 **most recent, Eighth Report, the IMT has reported**
26 **“no compliance finding” for this Task.**

27
28 Plaintiffs’ attorneys agree with the IMT that OPD is not currently in
compliance with these two Tasks. As recently as April of this year, OPD was still in
compliance with Task 5. That is no longer the case, and the Department is
objectively backsliding with regard to fulfilling its NSA obligations.

All nine other Tasks that are being actively monitored by the IMT during the
most recent Sustainability Period were in compliance at the time of the January
Case Management conference, and remained in compliance according to the IMT’s
Eighth NSA Sustainability Period Report, although the Department’s compliance
status with Task 2 was extremely tenuous and at the tipping point of mathematical
non-compliance. Plaintiffs will therefore focus on Tasks 2, 5 and 45, which will

1 determine whether and when OPD is able to finally achieve full compliance with the
2 NSA.

3 **I. Task 2 (Timeliness Standards and Compliance with IAD**
4 **Investigations)**

5 Task 2 requires that the Internal Affairs Department (IAD) of the OPD
6 complete internal investigations in a timely manner. This task was inactive from
7 2015 to July 2019, before abruptly falling out of compliance in the 62nd IMT Report.
8 Task 2 was out of compliance until February 2022, when OPD once again met the
9 mathematical threshold required for compliance.

10 OPD policy requires that “at least 85% of Class I misconduct investigations
11 and at least 85% of Class II misconduct investigations must be completed within
12 180 days to be considered timely.” Per DGO M-03, Class I offenses “are the most
13 serious allegations of misconduct and, if sustained, shall result in disciplinary
14 action up to and including dismissal and may serve as the basis for criminal
15 prosecution.”

16 The IMT reviewed 31 Class I misconduct cases during the period covered by
17 the Eighth OPD Sustainability and determined that 29 of these cases were
18 completed in a timely manner. This represented an 91% timely-completion rate,
19 which put OPD above the 85% minimum-threshold required for compliance with
20 NSA Task 2. During the period covered by the previous four OPD Sustainability
21 Reports, the IMT determined that only 85-89% of Class I misconduct cases were,
22 respectively, completed in a timely manner, and OPD’s continued compliance with
23 this Task was in serious jeopardy. Indeed, as recently as December 2022 (during
24 the period covered by the Second Compliance Report), OPD was completing 100% of
25 Class I misconduct cases in a timely matter. (Second Sustainability Period Report,
26 p. 3). The uptick in the timely-completion rate during the period covered by the
27 Eighth IMT report is a step in the right direction.

28 The IMT also reviewed 144 Class II cases during the period covered by the

1 Eighth OPD Sustainability Report, and found that 138 were in compliance with
2 established timelines. This represents a 96% timely completion rate, which was the
3 same percentage that OPD found in their previous two sustainability reports.

4 OPD was previously in compliance with this task for so long that it became
5 inactive, before suddenly falling out of compliance with no warning. After
6 reattaining compliance, OPD entered another cycle of slowly-reducing timely-
7 completion rates during the periods covered by Sustainability Reports 3-6, and it
8 once again appeared that OPD was at risk of once again falling out of compliance.
9 In fact, the IMT's review of Class I cases during the period covered by the Sixth
10 Sustainability Period Report showed that OPD met the absolute minimum 85%
11 required by the NSA. (This threshold, as Plaintiffs' attorneys have repeatedly
12 noted, is substantially lower than what is required by most other consent decrees).
13 Had even one more Class I investigation fallen outside of the established timelines
14 during the period covered by the Sixth Sustainability Report, OPD would have once
15 again fallen out of compliance with this Task.

16 More recent reviews by the IMT suggest that OPD may have righted the ship
17 with regard to timely-completion rates in Internal Affairs, but it is critical that OPD
18 remain vigilant about meeting the timeliness deadlines mandated by Task 2 going
19 forward. As ever, Plaintiffs' attorneys encourage IAD to continue to aim for a
20 compliance rate well above what is mandated by the NSA, so that the Department's
21 compliance with this Task isn't contingent on any single investigation. OPD must
22 remain in compliance with Task 2 if the Department wishes to exit the
23 Sustainability Period.

24 **II. Task 5 (Complaint Procedures for IAD)**

25 Task 5 pertains to Complaint Procedures for the Internal Affairs Division,
26 and consists of several subtasks, all of which the IMT had previously found in
27 compliance, including:

- 28 • Task 5.1, which requires that when a citizen wishes to file a complaint,

1 the citizen is brought to a supervisor or IAD, or a supervisor is
2 summoned to the scene.

- 3 • Task 5.2, which requires that if there is a delay of greater than three
4 hours in supervisory response, the reason for the delay must be
5 documented.
- 6 • Task 5.3, which requires that where a complainant refuses to travel to
7 a supervisor, or wait for one, personnel make all reasonable attempts
8 to obtain specific information to assist in investigating the complaint.
- 9 • Task 5.4, which requires that specific information be documented on a
10 complaint form and submitted to the immediate supervisor or, in
11 his/her absence, the appropriate Area Commander.
- 12 • Task 5.5, which requires that the supervisor or Area Commander
13 notify Communications and forward any pertinent documents to IAD.

14 During the Sustainability Period the IMT had focused on subtasks 5.15 to
15 5.19 and subtask 5.21, which address the quality of completed IAD investigations.

16 Prior to the onset of the Sustainability Period, the IMT determined that IAD
17 investigations had improved to the standards mandated by the NSA; in February
18 2022, OPD attained full compliance with Task 5. However, the First OPD
19 Sustainability Report moved the status of Task 5 from “in compliance” to “deferred
20 compliance”, and OPD was downgraded to “not in compliance” in the Second OPD
21 Sustainability Report. OPD remained out of compliance with Task 5 over the next
22 four reports as the Department, Plaintiffs’ attorneys, and the IMT crafted, refined,
23 and implemented policies relevant to the Internal Affairs function following the
24 publication of the “Conclusions and Recommendations Re: Vehicle Collision and
25 Elevator Discharge Incidents” drafted by the independent law firm, Clarence Dyer,
26 & Cohen LLP. (Dkt. 1564, “Clarence Dyer Report”)

27 Plaintiffs’ attorneys were active participants in this process, and reported to
28 the Court that many of the policies they worked to craft with various stakeholders

1 within the Department were published and in effect. Accordingly, during the period
2 covered by the 7th Sustainability Report, OPD regained compliance with Task 5, and
3 it appeared on the surface that the Department was making real strides toward
4 sustainable compliance with this Task and, therefore, meeting all requirements
5 mandated by the NSA.

6 It is therefore extremely disappointing to report that OPD has once again
7 fallen out of compliance with Task 5 in the most recent Sustainability Report, in
8 specific ways that echo previous catastrophic failures related to the Internal Affairs
9 function within the Department.

10 During the reporting period covered by the Eighth Sustainability Report, the
11 IMT “learned of investigations conducted by both the Community Police Review
12 Agency (CPRA) and an outside investigator into the actions of senior members of
13 the Department with regard to an earlier IAD investigation. The outside and CPRA
14 investigations resulted in sustained findings and discipline against several senior
15 members of the Department – to include terminations, demotions, and suspension.
16 (8th Sustainability Report, pp. 6-7)

17 Plaintiffs’ counsel was allowed to review both the City’s report (prepared by
18 an outside investigator) and the CPRA report in this matter after agreeing to,
19 signing, and filing a protective order regarding these materials with this Court.
20 The fully executed and filed protective order was entered as Dkt. 1642, and is also
21 attached hereto as [Exhibit 1](#).¹

22 Plaintiffs’ attorneys have abided by all terms of this protective order, which
23 includes a provision that plaintiffs’ counsel may not file in the public record any
24 Protected material. (Exhibit 1, p. 7:19-20). However, the protections conferred by
25 the protective order “do not cover... any information that is in the public domain at
26 the time of disclosure to Plaintiffs’ counsel or becomes part of the public domain

27 ¹ <https://ecf.cand.uscourts.gov/doc1/035124402737>
28

1 after its disclosure as a result of publication not involving a violation of [the
2 protective] Order.” (Exhibit 1, p. 3:10-13). Accordingly, all specific descriptions of
3 this matter, below, are sourced solely and entirely to public news reporting prior to
4 the date Plaintiffs’ Attorneys signed the Protective Order, and do not contain any
5 information that is not currently part of the public record, or that would otherwise
6 violate the protective order entered into by Plaintiffs’ attorneys.

7 On April 30, 2024, Darwin BondGraham and Ali Winston of The Oaklandside
8 published an article titled “3 Oakland police officers face discipline for obstructing
9 internal affairs case: 8 officers in total, including 4 commanders, allegedly botched
10 an examination of bribery and perjury charges against a homicide investigator.” A
11 copy of this article is included as [Exhibit 2](#) to this Case Management Conference
12 Statement)² (. Notably, it was published 18 days before the protective order was
13 signed and filed this matter. (Indeed, this reporting precipitated Plaintiffs’
14 attorneys request to see the City and CPRA reports in this matter. It is
15 inappropriate that the City of Oakland chose to withhold this information from
16 Plaintiffs’ attorneys and, apparently, the IMT, prior to the disclosure of the
17 underlying matter by journalists.)

18 According to Mr. BondGraham and Mr. Winston, “an investigator with the
19 Oakland Police Commission’s Community Police Review Agency – the city’s civilian
20 police watchdog – found [that] eight officers engaged in a range of serious violations,
21 including obstructing an internal affairs case and failing as commanding officers
22 and supervisors to properly oversee their subordinates and carry out their duties.
23 One officer was found to have lied.” (Exhibit 2, p. 1).

24 The Oaklandside article continues, further: “the case centers on allegations
25 that at least three officers obstructed an internal affairs investigation that OPD
26 opened in 2022 to look into possible bribery, perjury, and witness intimidation by
27

28 ² (<https://oaklandside.org/2024/04/30/oakland-police-officers-face-discipline-obstructing-internal-affairs-case-phong-tran/>)


1 OPD investigator Phong Tran. Tran’s actions resulted in two men being freed from
2 state prison after their murder convictions were overturned by the Alameda County
3 Superior Court judge who tried the case against the alleged murderers. In a highly
4 unusual development, the judge’s ruling followed a writ by both the District
5 Attorney and the Public Defender following the withholding of evidence by the OPD.
6 High-ranking OPD supervisors allegedly failed to oversee the internal affairs case
7 examining Tran’s actions, to ensure that it was fairly handled, and Tran was
8 allowed to return to work as a homicide investigator even though he would later be
9 criminally charged by the district attorney.” (Exhibit 2, p. 1)

10 An Alameda County Superior Court judge overturned the aforementioned
11 murder convictions after an eyewitness recanted her claims and said she “lied about
12 the case after receiving multiple cash payments from Tran.” (Exhibit 2, p. 3). In
13 August 2022, then-District Attorney Nancy O’Malley notified OPD about the
14 allegations against Officer Tran, and in 2023 Officer Tran was criminally charged
15 with perjury and witness intimidation. According to the Oaklandside’s reporting,
16 the OPD internal investigator who handled the investigation into Officer Tran
17 concluded that “[I]t may be acceptable practice for investigators to provide financial
18 aid [to witnesses] without proper documentation.” (Exhibit 2, p. 3). The OPD
19 Internal Affairs investigation also determined that the allegations against Tran
20 were “unfounded”, and this finding was approved by commanders with OPD.

21 However, the CPRA subsequently examined “how OPD’s internal affairs
22 division handled the allegations that Tran bribed a witness”, and Mr. BondGraham
23 and Mr. Winston re-published the CPRA findings in this matter, which were
24 originally posted online as part of the Police Commission’s April 25, 2024 meeting
25 agenda. According to this screenshot (Exhibit 2, p. 2), the CPRA investigated nine
26 OPD officers. One officer was cleared of wrongdoing, while the other eight “were
27 found to have committed at least one of three types of violations” (Exhibit 2, p. 2),
28 including three officers who obstructed the internal affairs process. The summary

1 information sheet originally published by the CPRA and then incorporated into the
 2 April 30, 2024 Oaklandside article is included for reference, below:

Attachment 2



CITY OF OAKLAND
COMMUNITY POLICE REVIEW AGENCY
Partial March 2024 Completed Investigations

Page 1 of 7
(Total Completed = 3)

Assigned Inv.	Case #	Incident Date	Completion Date	1-Year Goal	Officer	Allegation	Finding/Conclusion
YH	23-0459	4/4/2023	3/26/2024	3/27/2024	Subject 1	Obstructing the Internal Affairs Process	Sustained
						Truthfulness	Sustained
					Subject 2	Supervisors – Authority and Responsibilities	Sustained
					Subject 3	Obstructing the Internal Affairs Process	Sustained
					Subject 4	Commanding Officers – Authority and Responsibilities	Sustained
						Obstructing the Internal Affairs Process	Not Sustained
						Reporting Violations – Failure to Report Misconduct when Required	Not Sustained
					Subject 5	Commanding Officers – Authorities and Responsibilities	Not Sustained
						Obstructing the Internal Affairs Process	Not Sustained
					Subject 6	Obstructing the Internal Affairs Process	Sustained
						Commanding Officers – Authorities and Responsibilities	Sustained
						Reporting Violations – Failure to Report Misconduct when Required	Not Sustained
					Subject 7	Performance of Duty - General	Sustained
					Subject 8	Commanding Officers – Authorities and Responsibilities	Sustained
						Commanding Officers – Authorities and Responsibilities	Within OPD Policy
					Subject 9	Commanding Officers – Authorities and Responsibilities	Sustained

18
 19 On July 25, 2024, the Oaklandside published a follow-up report titled
 20 “LeRonne Armstrong and another OPD chief were investigated for leadership
 21 failures.” This article is attached as [Exhibit 3](#) to this Case Management Conference
 22 statement.³

23 According to this reporting, Chief Armstrong was investigated by “the Police
 24 Commission’s Community Police Review Agency and an outside firm”, who found
 25 that Chief Armstrong and his successor “failed to ensure OPD’s internal affairs
 26 division rigorously and fairly examined the accusations against [Officer Phong

27
 28 ³ <https://oaklandside.org/2024/07/25/leronne-armstrong-investigated-disciplined-phong-tran-internal-affairs-case/>

1 Tran].” (Exhibit 3, p. 1). The investigators concluded that the Chiefs “fell short in
2 their authorities and responsibilities as commanding officers”, and “recommended
3 that Armstrong face a suspension if he gets his job back.” (Exhibit 3, p. 1). Chief
4 Allison also served a two-day suspension as a result of the CPRA’s review of the
5 Tran case. (Exhibit 3, p. 2).

6 Given that the primary thrust of Task 5 monitoring by the IMT pertains to
7 the quality of IAD investigations, it is not surprising that OPD is out of compliance
8 with this Task. The IMT’s Eight Sustainability Report does not discuss the specifics
9 of the Tran case but notes: “**These personnel findings and systemic**
10 **deficiencies transcend the Department as a whole and call into question**
11 **the capacity of the Department’s internal investigatory process.** Based on
12 these investigations, the serious deficiencies in the Department’s Internal Affairs
13 Division render the Department out of compliance with Task 5.” (8th Sustainability
14 Report, pp. 6-7, **emphasis added**).

15 The very point of the NSA is to establish a framework for effective self-
16 governance without the perpetual involvement and/or oversight of Plaintiffs’
17 attorneys, the Monitor, and this Court. The public reporting about this
18 investigation – and, again, Plaintiffs’ attorneys cannot and will not discuss any
19 aspect of this matter subject to the signed Protective Order – indicates that OPD
20 commanders intentionally made “unfounded” findings in the IAD case pertaining to
21 allegations that Officer Tran bribed a witness for false testimony. An “unfounded”
22 determination indicates a determination that the underlying misconduct did not
23 happen. Given that Officer Tran is currently being prosecuted for perjury and
24 bribery, the “unfounded” determination appears to be wholly inappropriate or,
25 worse, intentionally obfuscatory. It is shocking that OPD’s Internal Affairs
26 investigators determined it was acceptable for a homicide detective to provide
27 undocumented cash payments to witnesses, especially as OPD Departmental
28 General Order O-4 prohibited this practice at the time. The very fact that the

1 CPRA investigation of this matter sustained officers for truthfulness and
2 obstructing the internal affairs process (among other violations) attests to
3 pervasive, systemic failures within IAD. Once again, Internal Affairs investigators
4 and OPD commanders have been faulted, and disciplined, for manipulating an
5 internal investigation.

6 This massive failure after over **20 YEARS** of monitoring is intolerable.
7 Unless the OPD sets forth a concrete plan for remedying this problem that is
8 approved by the plaintiffs' attorneys, the monitor and the court, plaintiffs' attorneys
9 will consider another motion to place the Oakland Police Department in
10 Receivership such as the one approved in significant part (Dkt. 885, incorporated as
11 [Exhibit 7](#)) by the Court on December 12, 2012 that created the Compliance Director.
12 The court should also consider making one high ranking supervisor specifically
13 responsible for the implementation of this plan by the OPD. This command staff
14 member should provide regular reports to the court at future court appearances and
15 reports to the Monitor/Compliance Director.⁴

16 When the NSA started, there were two major problems: (1) the wanton
17 beating and arrest of citizens, largely but not exclusively African Americans, and (2)
18 the failure of the Oakland Police Department to police itself in a competent, fair,
19 and complete manner.

20 In fact, there has been significant progress in the first category; plaintiffs'
21 attorneys, who had at least one wanton "beat up" case without cause nearly every
22 week, have seen such cases greatly reduced to the point where these cases are
23 extremely rare. This proves that the Oakland Police Department is capable of
24 significant change if the will to change and to discipline those officers who do not
25 change is there. It also proves that most patrol officers in Oakland are doing an
26 outstanding job despite budget shortfalls, significant crime, and other problems
27 they have to face every day.

28 ⁴ <https://ecf.cand.uscourts.gov/doc1/035110051505>

1 However, this recent massive corruption event proves that the Oakland
2 Police Department's attempts to police itself in a competent, fair and complete
3 manner have failed. At this late date in the NSA, drastic action is necessary to
4 prevent the NSA from going on for many more years. The Oakland Police
5 Department command staff has proven that they pay lip service to the NSA and
6 continue with "business as usual" despite court oversight. Plaintiffs' attorneys look
7 to the court and the Monitor/Compliance Director to implement a plan where
8 further transgressions of this type will be severely punished, even more so than has
9 already taken in place. In addition, as discussed above, an effective action plan is
10 necessary to ensure that this behavior does not repeat itself. And there must be
11 severe consequences for supervisors if this action plan is not effectively
12 implemented.

13 **III. Task 45 (Consistency of Discipline Policy)**

14 Task 45 requires that discipline is imposed in a fair and consistent manner.
15 OPD was in compliance with this NSA Task at the outset of the Sustainability
16 Period. However, following the publication of the Clarence Dyer Report, the IMT
17 downgraded OPD's compliance status with Task 45 to "no compliance finding",
18 citing "systemic and other deficiencies cited by the outside investigators were
19 exacerbated by investigative and disciplinary decisions, which were premised on the
20 status and positional considerations of both violators and decision-makers. (Dkt.
21 1577, Third Sustainability Period Report, p. 32). OPD has remained out of
22 compliance with Task 45 ever since, including in the most recent Eighth
23 Sustainability Period Report.

24 Recent Sustainability Reports have highlighted the Department's work "to
25 address cultural issues which, when unaddressed, perpetuate actual or perceived
26 disparities" as a "work in progress." (Sixth Sustainability Period Report, p. 17). The
27 IMT has noted the Department's efforts to address disparities within the
28 Department "through both analysis and policy", but that disparities nevertheless

1 “continue within the Department.” (Sixth Sustainability Period Report, p. 17). The
 2 most recent Eighth, Sustainability Report lauds the Department’s “effort to assess
 3 the nature of systems and practices that have contributed to a disparate
 4 environment”, but cautions that these “efforts continue to be more in the form of
 5 studies and analyses instead of real cultural change.” (8th Sustainability Report, p.
 6 15),

7 Last year, OPD issued a report titled “*2022 Analyses of Race in Internal*
 8 *Investigations Outcomes and Discipline: Supplemental Report Examining Failure to*
 9 *Accept or Refer Complaints*” (“OIA FTARC Report”, incorporated as [Exhibit 4](#)).⁵
 10 This report follows an earlier investigation which discovered differences “in the
 11 discipline between white and Black officers for the allegation of a Manual of Rules
 12 Violation for Failure to Accept or Refer a Complaint (FTARC).” (Exhibit 4, p. 3).
 13 According to the supplemental report, there were 112 allegations for FTARC.

14 The below table, incorporated on page 6 of the OIA FTARC Report, provides a
 15 breakdown of FTARC allegations compared to the demographics of OPD:

16 Breakdown of FTARC Allegations Compared to the Demographics of the Department

17 2022	% of Members in the Dept	% Allegations Received	% Sustained Allegations
18 Asian/Filipino	19%	16% (18)	18% (8)
19 Black	20%	18% (20)	27% (12)
20 Hispanic	28%	29% (32)	31% (14)
Other/Unknown	3%	4% (4)	12% (1)
21 White	29%	34% (38)	22% (10)
Total	100%	100% (112)	100% (45)

22 Another table, also on page 6 of the OIA FTARC Report, shows the sustained
 23 rate for FTARC allegations within OPD:

24
 25
 26
 27
 28 ⁵ <https://cao-94612.s3.us-west-2.amazonaws.com/documents/2022-Internal-Investigation-Outcome-and-Discipline-Report-Follow-Up.pdf>

1 Sustained Rate of FTARC Allegations

2

2022	Sustained Rate
3 Asian/Filipino	44% (8/18)
4 Black	60% (12/20)
5 Hispanic	43% (14/32)
6 Other/Unknown	25% (1/4)
7 White	26% (10/38)
8 Total	40% (45/112)

9

10 The OIA FTARC Report itself noted that the wildly divergent sustained rates
 11 for white sworn members (26%) and Black sworn members (60%) represent “a
 12 statistically significant difference.” (Exhibit 4, p. 6).

13 Plaintiffs’ attorneys have noted that supervisors and command staff often
 14 receive lighter discipline than rank-and-file officers. It was therefore unsurprising
 15 that the OIA review of the FTARC data in 2022 revealed that Officers received
 16 more FTARC allegations than command-level personnel, and that those allegations
 17 were sustained at higher rates for officers than command-level personnel:
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Allegation Findings by Rank and Race

Rank	Unfounded	Exonerated	Not Sustained	Sustained	Grand Total
Lieutenant of Police	0%	0%	100% (1)	0%	100% (1)
White	0%	0%	100% (1)	0%	100% (1)
Sergeant of Police	47%	6% (1)	18% (3)	29%	100% (17)
Black	0%	17% (1)	17% (1)	67% (4)	100% (6)
Hispanic	50% (1)	0%	0%	50% (1)	100% (2)
White	78% (7)	0%	22% (2)	0%	100% (9)
Police Officer	29% (27)	1% (1)	28% (26)	43% (40)	100% (94)
Asian	22% (4)	0%	33% (6)	44% (8)	100% (18)
Black	21% (3)	0%	21% (3)	57% (8)	100% (14)
Hispanic	33% (10)	0%	23% (7)	43% (13)	100% (30)
Other	50% (2)	0%	25% (1)	25% (1)	100% (4)
White	29% (8)	4% (1)	32% (9)	36% (10)	100% (28)
Grand Total (Allegations)	31% (35)	2% (2)	27% (30)	(45)	100% (112)

(OIA FTARC Report, p. 14)

As this graph shows, officers account for 84% of FTARC allegations, while Sergeants account for just 15% and Lieutenants account for less than one percent. Officers were also sustained at a much higher rate (43%) than Sergeants (29%), while Lieutenants were not sustained at all.

Given that black officers were more likely to be sustained than their colleagues, and that officers were more likely to be sustained than command-level personnel, it follows black officers were sustained at the highest rates and white commanders were sustained at the lowest rates. Specifically, the Sustained rate for Black officers was 57%, the highest of any officer race group. The Sustained rate for Black Sergeants was a whopping 67%, the highest of any Sergeant race group. And the Sustained rate for white Sergeants – zero percent – was the lowest for any Sergeant race group. (Exhibit 4, p. 14)

The disparities in OPD's internal discipline system described in the FTARC Report and noted by the IMT do not meet the standards mandated by Task 45 of the

1 NSA. OPD cannot be in compliance with Task 45 while it imposes inconsistent
2 discipline.

3 The IMT rightly emphasizes the importance of sustainable cultural change in
4 the 8th Sustainability Period Report: although policy and analyses are a necessary
5 prerequisite, they are not, by and of themselves, sufficient for compliance with Task
6 45. Task 45 requires that discipline is imposed in a fair and consistent manner, not
7 just that infrastructure and policies for achieving that goal at a future date are in
8 place. Plaintiffs' attorneys therefore agree with the IMT that OPD is not currently
9 in compliance with Task 45.

10 **Conclusion**

11 Although the City of Oakland continues to represent that it is on the cusp of
12 full compliance with the NSA, OPD has not yet achieved compliance with Task 45,
13 and it has once again fallen out of compliance with Task 5. The Department is, by
14 the numbers, farther away from full NSA compliance right now than it was earlier
15 this year.

16 The most recent Internal Affairs fiasco regarding Officer Tran is not unique.
17 Time and time again, the Department's ability to investigate itself and its officers
18 fails to meet the standards mandated by the NSA. Such massive failures go all the
19 way back to the Riders case itself, where hundreds of African Americans had drugs
20 planted on them and were jailed for an aggregate of 40 years for crimes they did not
21 commit. This was followed by a virtually unsupervised officer molesting dozens of
22 Asian women who were stopped by him for no reason; warrants based on false
23 information and perjury that sent dozens of people to jail; the widespread practice
24 of strip searching African American men in public; the travesty of Occupy Oakland
25 where innocent people were arrested shot and beaten; two cases of successful class
26 actions for violations of Oakland's crowd control policy where hundreds of people
27 were sent to jail for no reason; and significant Oakland police misconduct in
28 demonstrations over the murder of George Floyd. The significant feature of these

1 and many other cases is that **every one of them occurred during the NSA**
2 **where Oakland Police were allegedly trying to reform themselves and**
3 **change illegal practices.**

4 There is still more.

5 In 2017, The Swanson Report on the City of Oakland's Response to
6 Allegations of Officer Sexual Misconduct (Dkt. 1144, attached as [Exhibit 6](#)
7 determined that "OPD's initial investigation of [that] case – both as a criminal
8 matter and an internal affairs matter – was seriously deficient." (Dkt. 1144, p. 3).
9 Not only was the investigation deemed "inadequate" but the "deficiencies of the
10 investigation were shielded from review" and "the tone at the top [of OPD]... sent
11 an unmistakable signal that this case was not a priority." (Dkt. 1144, p. 4). The
12 draft Report of Investigation (ROI) circulated by Internal Affairs Investigators "did
13 not accurately reflect interviews" (Dkt. 1144, p. 20), and "IAD did not properly
14 investigate its investigator." Dkt. (1144, p. 23). Throughout the Swanson Report,
15 various OPD investigators, supervisors and commanders were singled out as having
16 conducted wholly inadequate investigations. ⁶

17 In August 2020, the IMT released "The March 11, 2018 Shooting of Joshua
18 Pawlik by Oakland Police Officers: A Report by the Monitor/Compliance Director."
19 This document detailed staggering "incompetence, deception, and indifference."
20 ([Exhibit 8](#), Dkt. 1388, page 50)) and listed a cascading series of leadership failure,
21 from the highest levels of elected City officials, including the Mayor, to the Chief of
22 Police and the Department itself. ⁷

23 According to this report, the then-Chief pre-judged the shooting of Mr. Pawlik
24 and concluded that it was justified even before investigations were complete. The
25 report found that the Chief "prematurely assessed the shooting on the evening of its
26 occurrence, when she told the Monitor that Mr. Pawlik had 'pointed' a firearm at

27 _____
28 ⁶ <https://ecf.cand.uscourts.gov/doc1/035115588002>

⁷ <https://ecf.cand.uscourts.gov/doc1/035119611500>

1 the officers, and that the shooting ‘looks good.’ Her expressed predispositions of that
2 evening never wavered, even as the investigations moved forward”. (Exhibit 8,
3 Summary finding #2, p. 49). Further, “the Department attempted to provide a
4 justification for the shooting through its initial press releases describing the
5 incident.” (Exhibit 8, Summary finding #3, p. 49), and “the Chief also sought early
6 opinions, prior to the completion of the investigations, from at least 15 others,
7 including sworn and nonsworn personnel, in order to quickly vindicate the officers
8 and avoid placing them on administrative leave.” (Exhibit 8, Summary finding #10,
9 p. 49)

10 The Monitor also determined that the then-Chief took affirmative steps to
11 manipulate the investigation process by discussing her views of the shooting with
12 prospective Executive Force Review Board candidates. Specifically, the Monitor
13 found that Chief Kirkpatrick “acted improperly” and “corrupted that very process.”
14 (Exhibit 8, Dkt. 1388, page 50)

15 On January 14, 2021, this Court issued an Order regarding Internal Affairs
16 Case No. 21-0028 involving “serious matters that go to the heart of this case – the
17 culture of the Oakland Police Department and the efficacy of internal oversight
18 mechanisms within the Department, which were the primary reason for the
19 imposition of the NSA in the first place.” (Dkt. 1419, page 1). This pertained to the
20 public disclosure that current and former OPD employees, as well as other members
21 of Bay Area law enforcement organizations, were active participants on a racist,
22 sexist Instagram page with the online handle “@crimereductionteam”.

23 Many of the “@crimereductionteam” posts mocked OPD policies regarding use
24 of force reporting and police brutality, while others were overtly racist and
25 misogynistic. Although there was a Department-wide email in September 2020
26 referencing this social media account, OPD did not initiate an Internal Affairs
27 investigation regarding the “@crimereductionteam” account until Plaintiffs’
28 attorneys contacted the then-Chief in January 2021. Plaintiffs’ attorneys noted, at

1 the time, that OPD’s Internal Affairs Department and command staff had once
2 again missed an opportunity to proactively police itself.

3 The Clarence Dyer Report, which was published at almost exactly the same
4 time that OPD was first notified about the allegations against Officer Tran by then-
5 District Attorney Nancy O’Malley, highlighted “procedural irregularities and
6 possible violations of OPD policy committed by OPD members who conducted the
7 initial criminal and administrative investigations” (Clarence Dyer, & Cohen Report,
8 p. 8), and concluded that:

9 During the course of the three confidential Internal Affairs Division
10 investigations referred to above – one for the vehicle collision incident,
11 the second for the elevator discharge incident, and the third for the
12 investigation into the Department’s handling of the elevator discharge
13 – outside investigators encountered multiple deficiencies in process
14 and policy that undermined the full and complete discovery of the
15 facts. While some of these deficiencies stem from gaps in Department
16 policies, other deficiencies flowed from the Department’s failure to
17 follow or implement existing Department policies. Most disturbingly,
18 some of the deficits appear to stem from a failure of leadership and a
19 lack of commitment to hold members of the Oakland Police
20 Department accountable for violations of its own rules... **These
21 investigations revealed issues and shortcomings that go
22 beyond the conduct of individual officers to the very question
23 of whether the Oakland Police Department is capable of
24 policing itself and effectively holding its own officers
25 accountable for misconduct.**

(Clarence Dyer, & Cohen Report, p. 9, emphasis NOT original)

21 The Clarence Dyer Report also noted that Internal Affairs Division
22 investigations “were dogged by a lack of forthrightness by multiple members, both
23 subjects and witnesses, that betrayed a lack of commitment to the pursuit of truth
24 by the Internal Affairs process.” (Clarence Dyer, & Cohen Report, p. 10). The
25 report also described “multiple failures, at every level, to hold this sergeant
26 responsible, [that] belie OPD’s stated position that it can police itself and hold its
27 members accountable for misconduct. Instead, investigators were left with the
28

1 impression that the system is designed not to uncover the truth and hold those who
2 commit misconduct to account, but instead to find ways to minimize misconduct
3 such that OPD members are able to avoid serious discipline.” (Dkt. 1564, p. 16).

4 The Clarence Dyer report also found that discipline was imposed without a
5 full and complete review of the facts uncovered by the Internal Affairs Division, a
6 breach of the terms of Task 45. The report concluded that the then-Chief of Police,
7 LeRonne Armstrong, did not read Reports of Investigation before signing them, and
8 detailed scenarios where Internal Affairs commanders could demand revisions to a
9 Report of Investigation (ROI) over the objections of subordinates without any
10 documentation about such a directive.

11 Following each of these Internal Affairs-related fiascos, the Department and
12 City leadership promised policy and procedure changes to ensure these failures
13 would not recur. However, we now know that – just as OPD and the City of
14 Oakland were touting the implementation of reforms suggested by the Court in the
15 wake of the Clarence Dyer Report, at least three OPD officers obstructed the
16 internal affairs process into the bribery investigation of an OPD homicide
17 investigator, and multiple Chiefs “failed to ensure OPD’s internal affairs division
18 rigorously and fairly examined the accusations against [Officer Phong Tran].”
19 (Exhibit 3, p. 1).

20 OPD’s handling of its internal affairs investigation of Officer Tran, as
21 detailed by the Oaklandside and other outlets, fits a pattern: pervasive systemic
22 failures, as well as individual failures by high ranking OPD personnel, that are
23 wholly incompatible with the robust Internal Affairs process required by Task 5 of
24 the NSA, as well as the goal of fair and transparent discipline within the
25 Department that is mandated by Task 45.

26 Tasks 5 and 45 are foundational to the NSA, and to constitutional policing.
27 OPD has repeatedly demonstrated that it cannot perform competent Internal
28 Affairs Investigations or discipline its own officers fairly. Plaintiffs’ attorneys will

1 never agree that the OPD has attained compliance if members of the Command
2 Staff attempt to hide misconduct from appropriate supervisors (including the Police
3 Commission), and/or impose inconsistent discipline based on who you know, your
4 race, or what rank you have. These are concrete, incontrovertible breaches of the
5 letter of NSA Tasks 5 and 45, respectively.

6 The recently appointed Chief of Police, Floyd Mitchell, has publicly
7 acknowledged that changes are necessary. According to an August 16, 2024 KQED
8 news article (attached hereto as Plaintiffs' [Exhibit 5](#)),⁸ Chief Mitchell says that
9 OPD is once again reviewing its Internal Affairs policies. The relevant portion of
10 this article is embedded, below:

11
12 **Chief acknowledges failures over officer misconduct**

13 Mitchell said Friday that the department is reviewing its internal affairs policies and training after a
14 federal monitor said its response to alleged officer misconduct remains inadequate.

15 The federal monitor said in a report last week that Oakland police mishandled cases involving
16 perjury and bribery allegations against a homicide detective and a sergeant who fired his gun inside a
17 city building.

18 Asked about progress on the issue, Mitchell said turnover of the entire executive command staff is
19 partly responsible for addressing failures within the internal affairs division, but he's addressing
20 those issues now.

21 "Yes, there are some issues out there, but from my lens or the seat that I sit in, I want to make sure
22 that we are continuing to educate our staff so we don't continue to have these failures that keep us
23 out of compliance," Mitchell said.

24 There is a line where civil rights violations, and their cover-up by many
25 members of the command staff, become too numerous to be acceptable. Such is the
26 case here, with the Oakland Police Department.

27 The NSA was supposed to last 5 years, with a maximum of 7 years. The OPD
28 is now in its 22nd year. When the OPD has totally failed to comply with the NSA
under a system where the Monitor only has the power to determine whether a task

⁸ <https://www.kqed.org/news/12000598/oakland-police-say-violent-crime-is-down-but-guns-are-an-issue-in-west-oakland>

1 was in compliance or not in compliance, Plaintiffs' attorney believed that the OPD
2 would never attain under compliance unless the Monitor position was greatly
3 strengthened. Accordingly, we filed a motion to place the OPD in Receivership.

4 That motion was resolved by the Court's order of December 12, 2012 which
5 created the position of Compliance Director. (Dkt. 885, Exhibit 7) The Compliance
6 Director was given greatly expanded powers including the right to create policies,
7 demote Deputy Chiefs and fire the Chief of Police. The OPD attained compliance in
8 multiple tasks and was briefly in total compliance which triggered the current
9 Sustainability Period.

10 The Sustainability Period has dragged on for many years. The Oakland
11 Police Department has not attained total compliance for many years. It is clear
12 that a drastic solution is needed.

13 Over the years, we have suggested a number of ways the OPD can attain
14 total compliance and sustain it for one year as required by the NSA. We believe
15 that constitutional policing is the best policing and the best way to fight crime.

16 The NSA was drafted by two members appointed by the City of Oakland.
17 Our two appointees included a retired San Jose Police Officer and an author of
18 numerous prison regulations.

19 When the NSA was approved by Judge Henderson, we appeared at a press
20 conference with city officials, including the Oakland Chief of Police. There was no
21 discussion that compliance was impossible to attain.

22 It is clear from the Tran incident that compliance is not an important enough
23 goal for the City of Oakland and the Oakland Police Department. If a single
24 member of the command staff had spoken out when the Tran incident was taking
25 place and the OPD has issued appropriate discipline and training, we might very
26 well have been celebrating the end of the NSA as opposed to harshly criticizing the
27 defendants which we have done here.

28 **The point is that the NSA must end successfully and must become a**

1 **greater priority for the City of Oakland and the Oakland Police**
2 **Department.**

3 It is clear that Court and IMT oversight is still required in this matter. But
4 something more than the current oversight is required in order for the NSA to ever
5 end. Having individual supervisors be in charge of the completion of a task should
6 be reinstated. In the case of Task 5, it is suggested that the Task be disaggregated
7 and a command staff member should be responsible for each delineated section of
8 Task 5 with the Chief being responsible for the whole task. And there should be
9 consequences if command staff cannot attain compliance. We have met a number of
10 highly qualified, competent members of this Department, and if the current
11 command staff cannot attain compliance, these other leaders should be given a
12 chance to make a difference.

13 **The OPD is not in compliance with the NSA.** Plaintiffs' attorneys
14 therefore urge the Court to modify the Sustainability Period until, **at the very**
15 **least,** OPD regains full compliance with each and every NSA Task and there be a
16 one year sustainability period where every task remains in compliance.

THE CITY'S STATEMENT

OVERVIEW

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3 Although the City has experienced a setback, it is important to keep things in
4 perspective. We must not lose sight of the incredible progress the Department has
5 made and how its evolution has undeniably transformed policing in the City of
6 Oakland. The City has sustained compliance on 49 of the 51 NSA tasks for more
7 than two full years.⁹ The Department's culture has evolved since the inception of
8 the NSA. Its positive transformation is most evident in the Department's stop data,
9 risk management meetings, and use of force and force review. The Department's
10 embodiment of the spirit of the NSA is exhibited by the examples discussed herein.
11 The Department has meaningfully reduced racial disparity in policing. Officers use
12 appropriate force and accurately report force, and force review is consistently
13 thorough. The Department has identified and fixed observed disparity in internal
14 investigation outcomes. Diversity has increased among the Department's sworn
15 ranks. Internal investigations are timely completed. As the City previously
16 reported, other law enforcement agencies strive to follow the Department's example.
17 Dkt. 1467, *Joint Case Mgmt. Statement* 52 (Aug. 25, 2021).

18 The City understands, however, that it must show that it can similarly
19 sustain substantial compliance on tasks involving internal investigations. In order
20 to allow the parties, the Monitoring Team, and stakeholders to focus on Tasks 5 and
21 45, the City asks that the Court move Tasks 24 and 25 (force and force review), to
22 the inactive task list and discontinue affirmative ongoing assessment of these tasks
23 by the Monitoring Team.

24 The City does not disagree that there were failures in a Departmental
25 internal investigation in 2022 and early 2023 which led to the Monitor's recent Task
26 5 out-of-compliance assessment. But the City urges the Court to consider the timing
27 and context of the investigatory failures. The failures occurred before or shortly

28 ⁹ "Task 52" contains "Housekeeping Provisions."

1 after the January 2023 publication of the independent investigator's
2 recommendations to improve internal investigations. Dkt. 1564, *Order Re*
3 *Conclusions and Recommendations Re Vehicle Collision and Elevator Discharge*
4 *Incidents* (Jan. 18, 2023). The failures occurred *prior to* the City's April 2023
5 informal implementation of key reforms to immediately shore up internal
6 investigations processes. Dkt. 1622, *Joint Case Mgmt. Statement* 16-17 (Jan. 19,
7 2024). And the failures occurred *prior to* the City's November 2023 formal
8 implementation of new and revised policies. *Id.* at 17-20. The City's work in 2023
9 significantly improved the Department's internal investigations processes. The City,
10 including the Department's new Chief and leadership team, are focused on ensuring
11 that Department members follow policy and best practices to ensure consistent,
12 quality investigations. The City also understands it must address cultural aspects
13 of the Department's internal investigation system that have enabled or fostered
14 similar types of failures in the past several years. The City is hopeful that this
15 awareness and the improvements to Department policy and practice have resolved
16 the issues keeping it from sustaining compliance on the remaining tasks. The City
17 understands that because internal investigation failures have in many cases been
18 revealed many months after they occurred, more time is necessary before we can
19 assess the results of these improvements with confidence. The City requests,
20 however, that the Court remain open to considering giving the City credit for
21 compliance for at least some of the time after April 2023 assuming no additional
22 similar issues arise.

23 In May 2024 the City welcomed Chief of Police Floyd Mitchell. Chief Mitchell
24 is a veteran of the United States Air Force who began his law enforcement career as
25 a patrol officer with the Kansas City, Missouri Police Department. After 25 years
26 serving Kansas City, Chief Mitchell became the Chief of Police in Temple, Texas.
27 Chief Mitchell's most recent post prior to joining Oakland was as the Chief of Police
28 in Lubbock, Texas, where he served from 2019 to late 2023. Chief Mitchell's changes

1 to command staff and updated list of Department commanders responsible for task
2 compliance is attached. Ex. A, *Oakland Police Department NSA Task Compliance*
3 *Responsibility Chart* (Aug. 2024).

4 In this status report, the City provides an update on its most significant
5 accomplishments and acknowledges the important work that remains to be
6 completed.

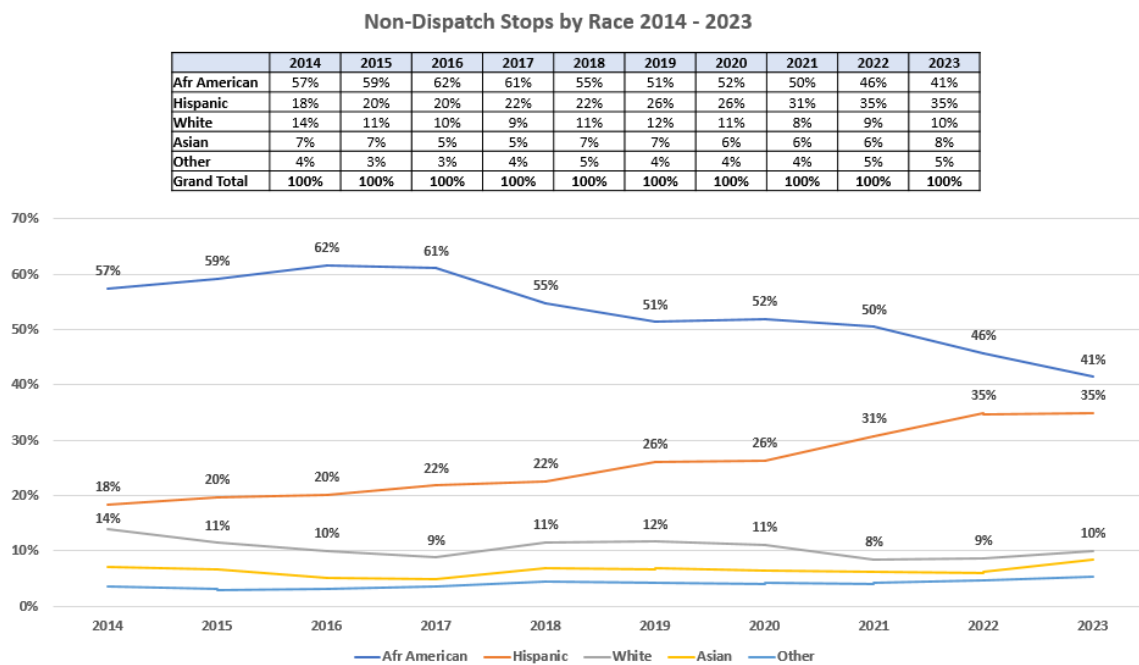
7 **I. THE CITY'S SIGNIFICANT ACHIEVEMENTS DEMONSTRATE THE**
8 **DEPARTMENT HAS EMBRACED THE SPIRIT OF THE NSA**

9 At the last Court hearing, the Court asked for the City “to update the stop
10 data – historic stop data as well as other meaningful metrics that show how the
11 OPD has embraced the spirit as well as the letter of the NSA.” Dkt. 1630,
12 Jan. 23, 2024 Court Tr. 6:8-11. The Department’s achievements are
13 numerous, remarkable, and reflective of sustained cultural values consistent with
14 the spirit of the NSA.

15 **A. The Department has meaningfully reduced racial disparity in stops.**

16 The City remains perpetually aware that “the nut of this case remains what
17 it was in the beginning, which is racial disparity.” Dkt. 1404, Sept. 22, 2020 Court
18 Tr. 3:22-23. The Department is and has been particularly concerned with
19 the historical overrepresentation of Black and African American individuals
20 detained in police stops. *See, e.g.*, [https://www.ppic.org/publication/racial](https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/)
21 [disparities-in-law-enforcement-stops/](https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/) (last visited Aug. 22, 2024). The Department’s
22 policy changes and command directives aimed to reduce the types of stops where
23 officers have a greater amount of discretion have yielded a significant and sustained
24 reduction in African American stops. In 2017, 61% of non-dispatch stops were stops
25 of African Americans. In 2023, 41% of non-dispatch stops were of African
26 Americans—a 20% rate reduction. *See Fig. 1*. When intelligence-led stops are
27 removed, the Department’s African American non-dispatch stop rate dropped to
28 38% in 2023. *See OPD 2023 Stop Data and Reports*,

1 <https://www.oaklandca.gov/resources/2023-stop-data-and-reports> (last visited Aug
 2 16, 2024).



15 *Fig. 1*

16 The impact of these metrics on African American individuals living in or visiting
 17 Oakland is incredibly significant. The stop rate reduction translates into 15,000-
 18 17,000 fewer non-dispatch stops of African Americans each year. *See Fig. 2.*

19 While the Department has reduced its African American non-dispatch stop
 20 rate, its Hispanic non-dispatch stop rate has risen. *Fig 1.* The Department has
 21 continued to track Hispanic stop rates and routinely discusses racial disparities in
 22 its stop data as part of Area, Bureau, and Citywide risk management meetings.
 23 Although the Hispanic non-dispatch stop rate has risen, the Department's
 24 decreased footprint has resulted in 3,500-5,500 fewer non-dispatch stops of
 25 Hispanics annually. *Fig. 2.*

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Non-Dispatch Stops by Race 2014 - 2023

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Afr American	19,061	22,506	20,410	19,784	10,924	7,517	6,189	3,099	3,570	4,273
Hispanic	6,087	7,504	6,685	7,047	4,492	3,809	3,131	1,890	2,724	3,608
White	4,622	4,335	3,318	2,835	2,282	1,701	1,323	513	681	1,026
Asian	2,320	2,484	1,667	1,588	1,374	991	773	381	485	865
Other	1,168	1,190	1,061	1,152	899	627	507	259	365	552
Grand Total	33,258	38,019	33,141	32,406	19,971	14,645	11,923	6,142	7,825	10,324

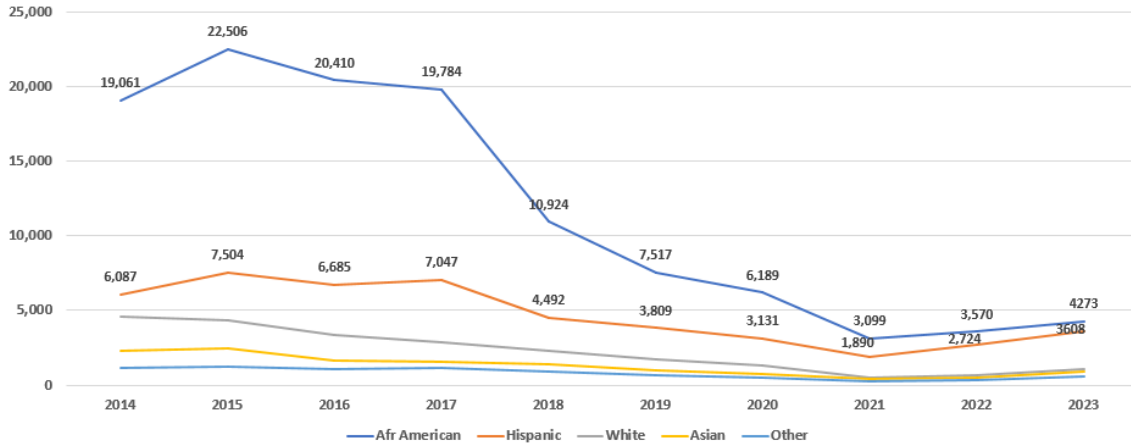


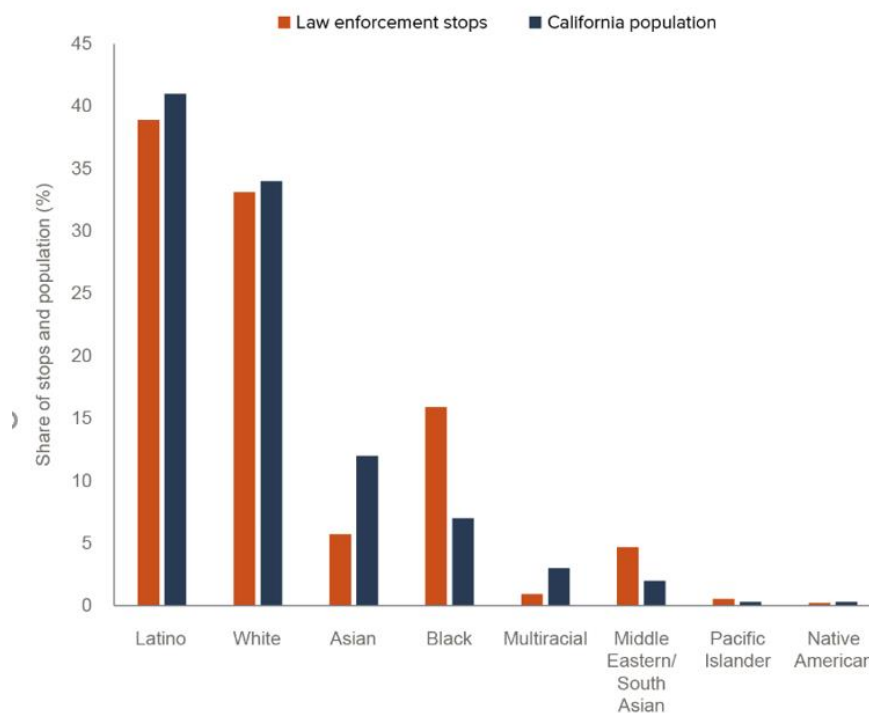
Fig. 2

The “stark racial inequities” between African American and white individuals in the criminal justice system, however, warrant a particular and enduring focus on African American stop disparities. According to a report published by the Public Policy Institute of California based on 2019 Racial and Identity Profiling Act (RIPA) data, African American or Black residents are considerably overrepresented in police stops statewide, while white and Hispanic residents are represented fairly proportionally in stops compared with their state population share. Magnus Lofstrom, et al., *Racial Disparities in Law Enforcement Stops*, 6-7 (2021), <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/> (last visited Jan. 9, 2023) (graphic reprinted below in *Fig. 3*).

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Black residents are overrepresented in police stops



SOURCES: Author calculations using California Department of Justice, Racial and Identity Profiling Act (RIPA) Wave 2 data, 2019; RIPA Board Report 2021 population calculations using American Community Survey (2018).

Fig. 3.

B. The Department has meaningfully reduced racial disparity in handcuffing.

In the last decade, the Department has substantially reduced its overall handcuffing rate as well as the racial disparity in its handcuffing rates. *See* Table 1.

African Americans have historically been handcuffed at disproportionately higher rates compared to other racial groups. Stanford prepared a frequently referenced report on post-stop outcomes—handcuffing, search, and arrest—using the Department’s data for stops occurring between April 1, 2013 and April 30, 2014. *See Data for Change*, <https://sparq.stanford.edu/data-for-change> (2016) (last visited Aug. 14, 2024).

Between April 1, 2013 and April 30, 2014, the Department’s non-dispatch stop handcuffing rate was 34.6% for African Americans, 21.5% for Hispanics, and

1 12.5% for whites. *See id.* at 15 & 92. In 2023 the handcuffing rate was 28% for
 2 African Americans, 18% for Hispanics, and 17% for whites. *See 2023 OPD Stop*
 3 *Data and Reports, supra.* Thus, the disparity in handcuffing rates between African
 4 American and white individuals in all non-dispatch stops shrank from 22
 5 percentage points in 2013-2014 to 11 in 2023. *See Table 1.*

6 **Table 1: OPD Handcuffing Rates by Race**

	All Non-Dispatch Stops		Non-Dispatch Stops Excluding Arrests		Non-Dispatch, Non-Intel Led Stops, Excluding Arrests ¹⁰
	2013-2014 (Stanford) ¹¹	2023	2013-2014 (Stanford) ¹²	2023	2023
Race					
Black or African American	34.6%	28%	21%	13%	5%
Hispanic	21.5%	18%	12.1%	5%	2%
White	12.5%	17%	5.7%	7%	2%
Asian	14%	10%	6.7%	4%	2%
Other	15.1%	16%	7.5%	6%	2%

17
 18 In its report, Stanford also calculated the handcuffing rate in non-dispatch
 19 stops that did not result in arrest. Because arrest tends to trigger automatic
 20 handcuffing, arrest may provide a race-neutral reason for an officer's decision to
 21 handcuff. *See Data for Change, supra* at 92 & 94. Therefore, handcuffing rates
 22 excluding stops resulting in arrest provide a fairer comparison of handcuffing rates
 23 by race.

24 Stanford found that between April 1, 2013, and April 30, 2014, the
 25 Department's handcuffing rate in non-dispatch stops, excluding stops that resulted

26
 27 ¹⁰ At the time of Stanford's report the Department did not code stops as intelligence-
 led versus non-intelligence-led.

28 ¹¹ *Data for Change, supra* at 263.

¹² *Data for Change, supra* at 94.

1 in arrest, was 21% for African Americans, 12.1% for Hispanics, and 5.7% for whites.
 2 See Table 1. By comparison, in 2023 the Department's rate was 13% for African
 3 Americans, 5% for Hispanics, and 7% for whites.¹³ *Id.* Using this metric, the
 4 disparity in handcuffing rates between African American and white individuals
 5 shrank from 15.3 percentage points in 2013-2014 to 6 in 2023.

6 When intelligence-led stops and arrests are excluded, 2023 African American
 7 and white handcuffing rates are within 3 percentage points: the rate is 5% for
 8 African Americans, 2% for Hispanics, and 2% for whites (2023 non-dispatch, non-
 9 intelligence-led stop handcuffing rate, excluding arrest).

10 Based on the foregoing data, the Department has significantly reduced the
 11 racial disparity in handcuffing observed by Stanford in 2013-2014.

12 **C. The Department's consistent application of policies, including its**
 13 **policy limiting parole and probation searches, contributes to the**
 14 **reduction in disparity.**

15 In 2019, the Department enacted *Department General Order (DGO) R-02:*
 16 *Searches of Individuals on Probation, Parole, Mandatory Supervision and Post-*
 17 *Release Community Supervision (PRCS)*. In basic terms, pursuant to DGO R-02,
 18 members may not inquire about supervision status at the beginning of a police
 19 interaction unless there is an immediate threat to safety. *DGO R-02* at 2,
 20 <https://public.powerdms.com/OAKLAND/documents/1800988> (last visited Aug. 24,
 21 2024). Once officers know of and verify a search condition, officers may invoke the
 22 search condition if a supervisee is on supervision for a "violent offense" as defined
 23 by the policy. *Id.* at 4. Officers may only invoke the search condition on individuals
 24 on supervision for a non-violent offense (an offense where violence or use of a
 25 weapon was not a factor) when there are articulable facts that demonstrate that the
 26 supervisee is an imminent threat to safety or connected to criminal activity. *Id.* at 3.
 27 Officers may not invoke the search condition for a non-violent offender in any stop

28 ¹³ This calculation includes intelligence-led stops. The data set is the same as was
 used for the February 2024 Citywide Risk Management Meeting.

1 for a traffic infraction unless there are articulable facts that demonstrate that the
 2 supervisee is an imminent threat to safety or connected to criminal activity. *Id.* at 4.
 3 If a cursory search is justified, however, officers may invoke a search condition to
 4 conduct a full search regardless of the nature of the underlying conviction. *Id.* at 4.
 5 Officers are required to document in police reports facts demonstrating adherence to
 6 the policy. *Id.*

7 Following implementation of DGO R-02 in October 2019, the number of
 8 searches justified solely based on a condition of supervision shrank drastically.

9 **Table 2: OPD Stop Data—Parole/Probation Searches¹⁴**

Year	Total # Searches	# Searches Where Only Documented Stop Data Basis is Search Condition	# Searches Where Only Documented Stop Data Basis is Search Condition				
			Black or African American	Hispanic	White	Asian	Other
2014	9309	3301* (35% of total)	2637	386	151	98	29
2015	11519	3857*	3101	512	121	82	41
2016	11668	3855*	3171	450	123	53	58
2017	11947	3936*	3151	525	134	71	55
2018	7254	1836*	1443	244	64	39	46
2019	5468	567 (10% of total)	431	81	20	31	4
2020	11501	218 (2% of total)	148	39	14	11	6
2021	8161	67	41	17	4	4	1
2022	8210	77	52	20	3	0	2
2023	6899	42 (0.6% of total)	29	9	2	0	2

19 In 2023, searches justified solely by conditions of supervision constituted just
 20 over one-half of one percent of searches. Of the 42 searches justified solely by a
 21 search condition to supervision, 29 involved dispatch and/or intelligence-led stops.
 22 This is significant because dispatch and intelligence-led stops involve less officer

23 _____
 24 ¹⁴ All source data available at <https://www.oaklandca.gov/resources/stop-data> (last visited Aug. 16, 2024).

25 *From 2014-2018 stop data entry only allowed officers to select a single justification
 26 for a search. Beginning in 2019, stop data allows officers to enter multiple
 27 justifications for a search. In addition, while this chart includes data from all
 28 searches reported in the stop data by corresponding year, from 2014-2018 stop data
 forms were only required for non-dispatch stops. Beginning in 2019 stop data forms
 were required for all stops—dispatch and non-dispatch.

1 discretion. The 2023 data stands in stark contrast to 2014 when more than one-
2 third of the Department's searches were justified by a search condition of
3 supervision. To be fair, prior to 2019 officers were permitted to enter only a single,
4 primary justification for a search, so it is likely that many of the parole and
5 probation searches between 2014 and 2018 had additional justifications not
6 observable based on the data alone. The 2019 and 2020 data contrast is probably
7 most meaningful because DGO R-02 was published in the last quarter of 2019. In
8 both years (2019 and 2020) officers were permitted to enter multiple reasons
9 justifying a search. Therefore, 2020 reflects the first full year of data after DGO R-
10 02 was implemented. The difference between these two years is dramatic. In 2019,
11 searches justified solely by conditions of supervision constituted 10% of searches.
12 This dropped to just 2% in 2020.

13 The majority of people officers search based *solely* on a condition of
14 supervision are African American. This is likely driven at least in part by the fact
15 that African Americans have a higher rate of parole, probation or similar
16 supervisory status. *See e.g.,* Horowitz, J. & Utada, C., *Community Supervision*
17 *Marked by Racial and Gender Disparities* (Dec. 6, 2018), available at
18 [https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-](https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities)
19 [supervision-marked-by-racial-and-gender-disparities](https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities) (last visited Aug. 16, 2024).
20 The racial gap resembles that in incarceration: Black adults are about 3.5 times as
21 likely as whites to be supervised, and although Black and African American
22 individuals make up 13 percent of the U.S. adult population, they account for 30
23 percent of those on probation, parole, or similar supervisory status. *Id.* Although the
24 data does not indicate disproportionate representation of Hispanics on supervision,
25 many states do not report ethnicity data so Hispanics under supervision are likely
26 undercounted. *Id.* For these reasons, this policy change has had the greatest impact
27 on the African American population and has likely contributed to the reduction in
28 racial disparity in searches and stop results, including handcuffing.

1 **D. Officers use and report force appropriately and Department review**
2 **is consistently thorough.**

3 Throughout all eight quarters of the NSA Sustainability Period, the
4 Department has demonstrated consistently excellent internal command oversight of
5 force and force reporting. The Department's dependability inspires confidence in the
6 Department's continued internal monitoring of force-related tasks independent of
7 the Monitoring Team's oversight. *See* Dkt. 1656, *Eighth NSA Sustainability Period*
8 *Report of the Independent Monitor* 14 (Aug. 2, 2024), Dkt. 1637, *Seventh NSA*
9 *Sustainability Period Report of the Independent Monitor* 15 (Apr. 16, 2024) ("We
10 have found that this additional oversight and review has continued to identify and
11 properly address concerns prior to our Team identifying them.") Based on the
12 Department's demonstrated ability over the last two-and-a-half years to effectively
13 monitor force and reporting on its own, the City asks that the Court end affirmative
14 monitoring of Tasks 24 and 25.

15 The Monitoring Team filed two reports since the last Court hearing. The
16 reports included assessments of force incidents that occurred between November
17 2023 and March 2024. Both reports reiterated positive observations noted in
18 previous reports. In addition to sergeants and the chain of command identifying and
19 appropriately addressing any force and force reporting issues (e.g., delayed body
20 camera activations or boilerplate language in reports), there were also fewer
21 deficiencies identified and "ongoing positive trends" including "improved planning
22 and communications, more detailed [use of force] reports, more positive
23 communications with the public, [and] improved de-escalation techniques." *Eighth*
24 *Period Report, supra* at 9; *Seventh Period Report, supra* at 10.

25 The Department's consistent, effective review has resulted in better force reporting
26 and reviews at every level of the organization as well as improvements in patrol
27 officers' compliance with body-camera policy, use of de-escalation techniques,
28 reporting writing, and community interactions.

1 The Department's most recent accomplishments involving force and force
2 reporting include the following:

- 3 • All uses of force reviewed were appropriately reported (*Eighth Period Report*,
4 *supra* at 10; *Seventh Period Report*, *supra* at 12);
- 5 • The few concerns with announcement of police and use of inappropriate
6 language or profanity were all identified and addressed by a reviewing
7 supervisor or the use of force command review team (*Eighth Period Report*,
8 *supra* at 8, *Seventh Period Report*, *supra* at 10);
- 9 • The use of force command team continues to not only review cases for use of
10 force compliance but addresses any other concerns identified with the
11 entirety of each incident (*id.*);
- 12 • There were only two delayed body-worn camera activations and four other
13 "concerns with [] activations." The delays and other concerns were all
14 appropriately addressed by the Department (*id.*);
- 15 • There were no instances of officers using boilerplate or "pat" language
16 (*Eighth Period Report*, *supra* at 13, *Seventh Period Report*, *supra* at 15);
- 17 • There were no instances where force was not deescalated or stopped
18 reasonably when resistance decreased (*Eighth Period Report*, *supra* at 14,
19 *Seventh Period Report*, *supra* at 15);
- 20 • There were no instances where officers could have made additional efforts to
21 explain to subjects being detained why the detention was occurring prior to
22 using force (*id.*);
- 23 • There were several instances where officers used commendable patience and
24 empathy when dealing with members of the public who were being detained
25 (*id.*);
- 26 • There have been no concerns identified with the use of Tasers on fleeing
27 suspects since September 2022 (*Eighth Period Report*, *supra* at 14, *Seventh*
28 *Period Report*, *supra* at 16).

The Department's successful quality control mechanism has improved force review,
reporting and, ultimately, officers' conduct. The City is confident that the
Department's command team review will continue to result in additional tangible
improvements.

///

E. The Department Uses Deadly Force Less Frequently than Other California Police Departments and Departments in Cities with Similar Violent Crime Rates.

The parties previously shared that from 2013 to 2019, the Department averaged the fewest officer-involved shootings per number of arrests among similarly sized cities. See Fig. 4, *Police Shooting Rates in Cities*, chart graphic reprinted from <https://policescorecard.org/findings#clear-pattern> (last visited Aug. 16, 2024).¹⁵

Police Shootings Rates in Cities

Rate of police shootings (fatal and nonfatal) per 10k arrests among police depts with jurisdictions of over 400k population.

	2013	2014	2015	2016	2017	2018	2019
DETROIT, MI	14.9	13.4	13.8	9.2	20.6	6.6	7.5
OKLAHOMA CIT..	4.7	7.2	5.1	3.8	4.6	7.6	7.0
HOUSTON, TX	4.3	5.2	5.7	4.5	3.2	4.2	5.6
FORT WORTH, ..	2.4	3.1	4.1	4.5	3.5	4.5	5.4
TULSA, OK	9.8	4.7	10.8	14.0	3.9	3.0	4.8
LOUISVILLE ME..	0.6	1.7	1.5	0.5	1.9	2.2	4.8
SEATTLE, WA	4.6	6.8	2.8	2.7	4.1	1.3	4.7
LOS ANGELES, ..	5.0	3.4	5.9	5.1	6.0	4.7	4.1
SAN ANTONIO, ..	2.2	2.3	2.6	3.1	2.3	2.1	4.0
WASHINGTON, ..	5.9	3.8	7.2	4.6	4.5	1.5	4.0
DENVER, CO	4.0	2.0	3.3	4.0	2.0	2.7	3.8
JACKSONVILLE, ..	2.7	3.5	4.2	4.8	4.1	2.3	3.7
ALBUQUERQUE,..	4.3	3.1	4.1	2.9	4.3	4.5	3.6
MILWAUKEE, WI	3.3	2.5	4.4	2.9	2.1	2.6	3.6
DALLAS, TX	4.7	6.0	4.1	3.8	2.2	1.3	3.4
EL PASO, TX	1.5	0.5	3.3	1.8	1.2	1.2	3.1
LOS ANGELES, ..	5.0	3.8	4.2	4.0	2.6	2.6	2.9
ARLINGTON, TX	2.3	1.2	2.9	0.9	7.1	2.1	2.9
CHARLOTTE-ME..	2.6	3.0	2.0	5.1	2.1	2.3	2.8
SAN JOSE, CA	3.3	2.3	7.4	3.8	5.7	3.9	2.7
PHOENIX, AZ	4.4	3.5	3.3	5.6	4.2	8.4	2.7
MEMPHIS, TN	2.7	2.3	3.2	2.8	1.3	2.6	2.6
BALTIMORE, MD	2.5	2.4	4.3	4.4	3.4	2.3	2.4
LONG BEACH, CA	8.2	3.1	5.8	5.4	6.6	3.0	2.4
SAN FRANCISCO..	4.6	5.4	5.4	2.0	4.3	3.6	2.1
AUSTIN, TX	2.4	1.1	2.1	2.6	3.2	4.5	2.1
CHICAGO, IL	6.0	7.3	5.9	7.6	5.9	3.9	2.0
SAN DIEGO, CA	2.2	2.2	3.3	1.7	2.0	1.8	2.0
INDIANAPOLIS, ..	2.0	5.3	5.0	4.3	2.0	1.2	2.0
TUCSON, AZ	2.8	1.9	1.9	2.4	0.7	3.5	1.9
LAS VEGAS ME..	1.7	2.3	2.4	1.5	3.2	2.9	1.8
VIRGINIA BEAC..	1.6	0.9	2.0	0.0	2.1	0.6	1.8
MINNEAPOLIS, ..	0.7	1.2	2.0	0.8	1.7	2.6	1.7
SACRAMENTO, ..	1.6	2.5	1.1	1.8	3.6	1.4	1.5
NEW YORK, NY	1.1	0.9	1.1	1.3	0.9	0.8	1.3
MESA, AZ	1.2	2.1	2.3	3.5	2.1	5.3	1.2
MIAMI, FL	1.6	0.3	1.2	1.2	0.5	1.0	0.5
OMAHA, NE	3.1	2.5		3.7		2.6	0.5
OAKLAND, CA	6.6	0.0	6.5	0.0	1.0	1.1	0.0

Fig. 4

A recent analysis of deadly force data in the 100 largest police departments in the

¹⁵ The Police Scorecard is the first nationwide public evaluation of policing in the United States. The Scorecard calculates levels of police violence, accountability, racial bias and other policing outcomes for over 16,000 municipal and county law enforcement agencies, covering nearly 100% of the U.S. population. The Police Scorecard integrates data on police arrests, personnel, funding, incarceration rates and homicide clearance rates from official federal and state databases such as the FBI Uniform Crime Report (UCR), the Bureau of Justice Statistics' Annual Survey of Jails, the U.S. Census Bureau's Survey of State and Local Government Finances and the California Department of Justice's OpenJustice database. See <https://policescorecard.org/about>.

country ranks Oakland 84th for the average number of annual police deadly force fatalities between 2013 and July 31, 2024—only 16 agencies had a lower annual average rate. *See* <https://mappingpoliceviolence.us/cities> (last visited Aug. 11, 2024).¹⁶ Eighty-three agencies had a higher rate. In California, only San Jose, Chula Vista, and Irvine departments had a lower rate than Oakland. *See id.* Most significantly, for the ten agencies with the highest violent crime rates Oakland ranked last with the lowest annual average rate. *See Fig. 5, Average Police Killings Rate per 1 million people, 2013-2024*, chart graphic reprinted from <https://mappingpoliceviolence.us/cities> (last visited Aug. 11, 2024).

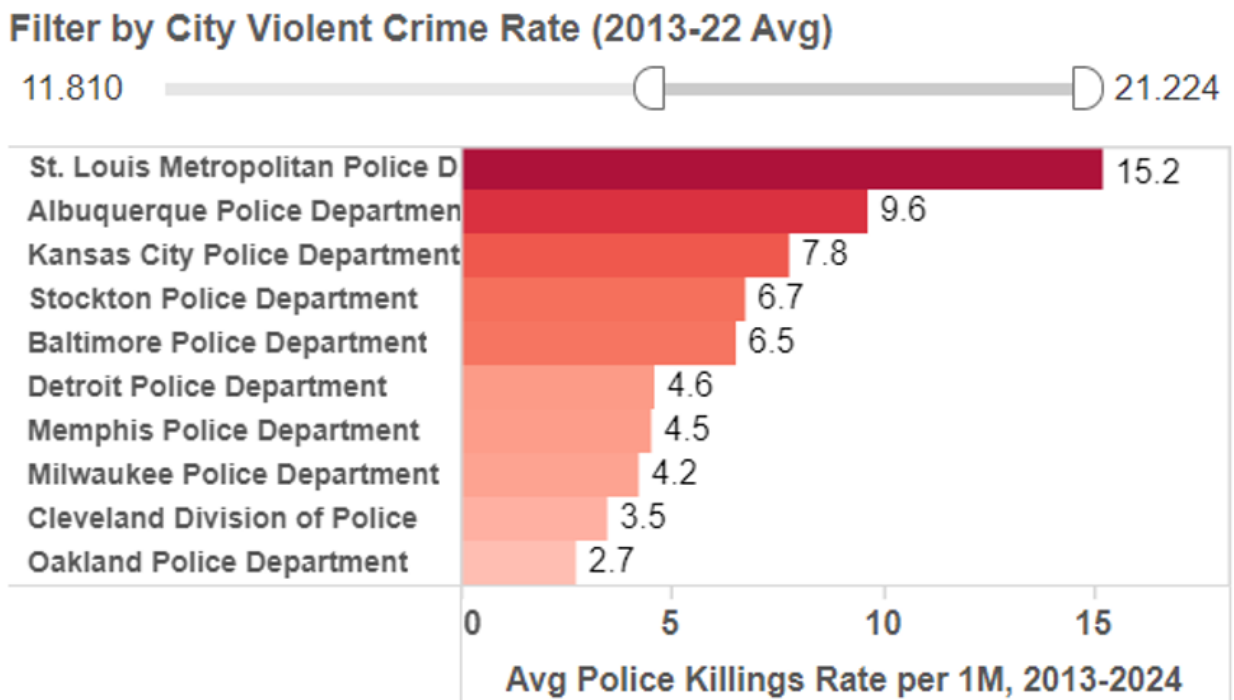


Fig. 5

¹⁶Rates calculated using data from Mapping Police Violence, along with US Census population data by race and crime data from the FBI Uniform Crime Reports. Police departments included in this analysis reflect the police forces of the 100 largest U.S. cities. *See* <https://mappingpoliceviolence.us/aboutthedata> (last visited Aug. 11, 2024).

F. The Department Has Increased Diversity in its Ranks.

The Department continues its strategic outreach efforts to attract and recruit officers who reflect the diversity of Oakland, racially and otherwise, and who live in or have meaningful ties to the City. *See Jan. 26, 2024 SUPPLEMENTAL-OPD Biannual Staffing Report*, available at <https://oakland.legistar.com/Legislation.aspx> (File # 23-0838) (last visited Aug. 11, 2024). The Department's efforts have resulted in greater diversity and an increase in officers who live in or have meaningful ties to Oakland.

1. Recent Academy Demographics.

In June 2024, the Department commenced its 194th Basic Academy. Thirty-six police officer trainees entered the 194th Academy. There are currently 28 trainees remaining in the academy class. Tables 3 and 3.1 reflect the demographics of the police officer trainees currently enrolled in the 194th Academy. Women make up 29% of the entering academy class. More than 80% of the entering class is non-white. Six of the trainees are Oakland residents (21%).

Table 3: OPD's 194th Basic Academy Demographics (Aug. 2024)

Gender		Race/Ethnicity		Residency		Language		Education	
Female	8	Asian	4	Oakland	6	Spanish	7	High School	5
Male	20	Black or African American	2	Other	22	Arabic	1	Some College	13
		Hispanic	11			Bosnian	1	AA/AS	4
		White or Caucasian	5			Korean	1	BA/BS	6
		Other	6			Hmong	1		
Total	28	Total	28	Total	28	Total	11	Total	28

Table 3.1: Race/Ethnicity & Gender in OPD's 194th Academy (Aug. 2024)

Race/Ethnicity	Female	Male
Asian	2	2
Black or African American	1	1
Hispanic	2	9
White or Caucasian	2	3
Other	1	5
Total	8	20

2. Department Demographics Over Time.

The Department has significantly increased non-white representation among its sworn ranks in the past decade. Between 2016 and 2020, the Department was losing approximately 0.5% of its Black officers each year. *See Figs. 6 & 7*, reprinted from *Quarterly Police Staffing Report* at 5 (Aug. 28, 2019), and *Jan. 26, 2024 SUPPLEMENTAL-OPD Biannual Staffing Report, supra* at 15. Since 2020, the Department has increased Black officers in its ranks by an average of more than 1.5% each year. The Department's current percentage of Black officers closely mirrors representation in Oakland's population. *See Fig. 7.*

Race* / Ethnicity* by Year – OPD Sworn Staff as of June 30, 2019

Race/Ethnicity	US 2010 Census-Oakland Pop.	OPD 2016	OPD 2017	OPD 2018	OPD 2019
White	34.5%	39.7%	38.8%	38.4%	37.0%
Black	28.0%	18.0%	17.3%	16.7%	16.8%
Asian	16.8%	15.1%	15.3%	16.9%	16.3%
Hispanic	25.4%	23.7%	24.6%	25.2%	27.1%
Other	--	3.5%	4.0%	2.7%	2.8%

* Note: "Asian" includes Filipino; "Other" includes Native American and Undeclared

Fig. 6

///

Race/Ethnicity* by Year – OPD Sworn Staff as of December 31, 2023

Race/ Ethnicity	US 2022 Census- Oakland Pop. ⁷	OPD 2020	OPD 2021	OPD 2022	OPD 2023
Asian	15.9%	18.1%	18.55%	19.23%	19.72%
Black or African-American	21.8%	16.7%	18.70%	20.52%	21.40%
Hispanic	26.6%	28.2%	27.97%	28.55%	28.95%
Other	3.40%	3.0%	3.33%	3.44%	3.92%
White	32.3%	34.0%	31.45%	28.26%	26.01%

*Note: "Asian" includes Filipino; "Other" includes Native American and Undeclared

Fig. 7

Additionally, as the national percentage of female sworn officers decreased slightly between 2007 and 2022, the Department's percentage of sworn women has increased. See Fig. 8, data from Nov. 7, 2018 *Monthly Police Staffing Report 5*, available at oakland.legistar.com, File No. 18-1164 (last visited Aug. 27, 2024), and Jan. 26, 2024 *Biannual Staffing Report*, *supra* at 15.

Gender	National Percentage 2007	National Percentage 2022	OPD 2015	OPD 2023
Female	14.3%	13.94%	11.9%	14.59%
Male	85.7%	86.06%	88.1%	85.41%

Fig. 8

G. The Department Has Met Internal Affairs Investigation Timelines for More than Two Full Years.

In each of the eight quarters of the NSA Sustainability Period the Department has met the timeliness standard imposed by its own internal policy. The Department accomplished this feat despite significant disruption caused by a ransomware attack, despite a voluminous and complex caseload.

H. The Department Resolved the Disparity Observed in 2022 Internal Affairs Case Outcomes.

The Department's annual policy-mandated Internal Affairs Investigation Outcome and Discipline Analyses Report revealed no statistical evidence of disparity in the treatment of non-white sworn members, or by rank or gender, when

1 looking at allegations per case, sustained findings, and discipline in 2023. *See 2023*
 2 *Internal Investigation Outcome and Discipline Report*,
 3 [https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-](https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-discipline-report-2)
 4 [discipline-report-2](https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-discipline-report-2) (last visited Aug. 11, 2024).

5 Significantly, the disparity observed in 2022—Black officers sustained at a
 6 higher rate for Failure to Accept or Refer Complaints (Unintentional)—was not
 7 observed in the 2023 data. The disparity observed in 2022 is resolved. Whether the
 8 issue resolved because 2022 was an anomaly, the Department’s awareness of the
 9 issue fixed the problem, the Department’s changes to policy fixed the problem, or
 10 some combination of those factors, the requirement that the Department not only
 11 identify and address the problem but “fix[] the problem” has been fulfilled.
 12 *See* Dkt. 1630, Jan. 23, 2024 Court Tr. 5:3-4 (“But to be in compliance with task 45
 13 means fixing the problem. That's what is required.”)

14 **II. THE DEPARTMENT’S INTERNAL INVESTIGATIONS HAVE** 15 **IMPROVED SINCE EARLY 2023**

16 The City does not disagree that the Department’s investigatory failures
 17 through early 2023 raise concerns. In 2023 the City overhauled Department policy
 18 to address internal investigation failures. As a result, the Department’s internal
 19 investigation procedures throughout 2024 are significantly improved from early
 20 2023. Therefore, the City asks that the Court take into account the timing of those
 21 failures and the context in which they occurred and leave open the possibility that
 22 the Department’s changes in practice may ultimately have the intended impact on
 23 the integrity of internal investigations.

24 **A. The City Has Addressed the Failures that Occurred in 2022 and** 25 **Early 2023 (Task 5).**

26 The measures that the City implemented in 2023 have substantially
 27 improved internal investigations. In April 2023 the Department employed practices
 28 to immediately prevent investigatory deficiencies. Dkt. 1579, *Joint Case Mgmt.*
Statement 2-3 (Apr. 4, 2023). By November 2023, the City completed formal changes

1 to Department policy including IAD 23-01, Internal Affairs Policy and Procedure
2 Manual (rev. Nov. 2023); TB V-T.01, Internal Investigation Procedure Manual (rev.
3 Nov. 2023), Department General Order M-04.1, Criminal Investigation of
4 Department Members and Outside Sworn Law Enforcement Personnel (rev. Nov.
5 2023), and the Criminal Investigation Division Investigative Training Program 23-
6 01 (Sept. 2023). Dkt. 1622, *Joint Case Mgmt. Statement, supra* at 18-20.

7 Because of the chronological and substantive overlap between the
8 investigation referenced in the Monitor's *Eighth NSA Period Report* and the vehicle
9 collision and elevator discharge incidents, the 2023 policy revisions addressed
10 investigatory failures across all three cases. The revisions took a full year to finalize
11 and involved input from all stakeholders. The revisions were thoughtfully and
12 deliberately made to ensure rigor and accountability in both administrative and
13 criminal internal investigations. *See* Dkt. 1622, *Joint Case Mgmt. Statement, supra*
14 at 18-20.

15 The City's work in 2023 significantly improved the Department's internal
16 investigations processes. Because internal investigations often take months to
17 complete, however, investigatory failures may not be identified in real time. Thus,
18 the City appreciates that more time is necessary before the we can confidently
19 assess the results of the City's work to strengthen internal investigations.

20 **B. The City Embodies the Spirit of the NSA Even As it Struggles to**
21 **Sustain Long-Term Task 5 Compliance.**

22 **1. The City Cares About the Integrity of Internal**
23 **Investigations and Accountability.**

24 In the vehicle collision and elevator discharge incidents, the Monitor directed
25 the outside investigation. In the investigation referenced by the Monitor in its most
26 recent report, the City directed the investigation and engaged an independent
27 investigator. Additionally, the City's independent civilian internal investigation
28 team (CPRA), conducted its own parallel investigation. While this in no way excuses
the City's failures in the initial internal investigation, the fact that the City itself

1 (CPRA) investigated the failures as well as directed a parallel independent
2 investigation *without Monitor intervention or direction* is a step in the right
3 direction and demonstrates the City’s commitment to integrity in internal
4 investigations.

5 **2. The City Demonstrates its Commitment to Ensuring Police**
6 **Accountability by Empowering Civilian Oversight.**

7 In the past year, the City has followed new practices to improve
8 communication about internal investigations with the Commission and CPRA. *See*
9 *Dkt. 1579, Joint Case Mgmt. Statement, supra* at 20-21, 48. These practices include
10 advising the Commission and CPRA of any new proposals to hire outside
11 investigators to conduct internal investigations and providing status reports on
12 subjects and misconduct allegations under consideration in any outside
13 investigations already in progress. *Id.* at 21. In addition, any new third-party
14 investigation contract must include a term that allows the Commission and CPRA
15 to obtain status updates directly from the investigator (the content of updates may
16 be limited to ensure independence of any parallel ongoing or anticipated CPRA
17 investigation). *Id.* Having these new practices on place—and adhering to them—
18 facilitated CPRA’s ability to conduct an effective parallel investigation of the
19 Department’s initial deficient investigation.

20 The City is also continuing longer-term efforts to further empower CPRA as a
21 means of improving accountability in investigations of Department members. In
22 2021 the Oakland Reimagining Public Safety Task Force recommended transferring
23 most of IAD to CPRA. *Reimagining Public Safety Task Force Final Report and*
24 *Recommendations* (Apr. 2021) 13, 217-18,
25 [https://www.oaklandca.gov/documents/reimagining-public-safety-task-force-report-](https://www.oaklandca.gov/documents/reimagining-public-safety-task-force-report-and-recommendations-public-safety-committee-4-13-21)
26 [and-recommendations-public-safety-committee-4-13-21](https://www.oaklandca.gov/documents/reimagining-public-safety-task-force-report-and-recommendations-public-safety-committee-4-13-21) (last visited Aug. 25, 2024).
27 In May 2021, City Council ordered the City to “explore possible transfer” of most of
28 IAD to CPRA. *See Oakland City Council Resolution No. 88607* (Jul. 13, 2021),

1 available at <https://oakland.legistar.com>, File No. 21-0350. *See also* Dkt. 1604, *Joint*
2 *Case Mgmt. Statement* 48 (Sep. 19, 2023).

3 As previously shared with the Court, in 2023 the City Council approved a
4 proposal to hire a City Administrator employee to help plan for and assist with the
5 transition from IAD to CPRA and provide an additional layer of civilian review of
6 high-profile and serious IAD investigations. *Id.* at 26. Ultimately, the position was
7 not filled. Instead, in or about June 2024, the City hired consultants to assess the
8 practical aspects of transferring IAD responsibilities to civilian oversight (CPRA).
9 The consulting team is led by attorney Andrew Lah, Managing Partner at Moeel
10 Lah Fakhoury LLC, and police auditor Russell Bloom. The City understands that
11 there is much to discuss about the practical aspect of any transition, budgetary
12 requirements, and the impact on NSA compliance. The City will keep the Monitor
13 and the Court updated on its progress on this long-term project.

14 **3. The Department's Internal Introspection Demonstrates its**
15 **Commitment to Integrity and Consistency in Internal**
16 **Investigations.**

17 Chief Mitchell, Bureau of Risk Management Deputy Chief Angelica Mendoza,
18 and Office of Internal Accountability Captain Bryan Hubbard have read the reports
19 of investigation completed by CPRA and the City's independent investigator to
20 understand the Department's investigatory failures and prevent such failures from
21 recurring. The Department's review aims to determine lessons learned from these
22 particular investigations as well as taking a broader view to determine lessons
23 learned from the Department's repeated failures between 2021 and 2023 (also
24 encompassing the Instagram, vehicle collision, and elevator discharge
25 investigations). The Department is committed to rooting out the flaws in the system
26 that foster superficial or unprincipled investigations and ultimately enable the
27 recurring failures.

28 The City is forced to be circumspect in addressing the investigatory failures
referenced in the Monitor's *Eighth Period Report*. Pursuant to law the City cannot

1 discuss the factual details of these confidential internal investigations. Cal. Penal
2 Code §§ 832.7 & 832.8. While the City agrees that the online media reports cited by
3 plaintiffs' counsel are in the public domain, the investigation reports themselves are
4 not in the public domain. Media reports are not proof of the truth of the matters
5 asserted therein. If plaintiffs' counsel were to say that they know the details
6 reported to be true because they reviewed confidential reports, that would be a
7 violation of the protective order. As a technical matter, discussing and attaching
8 media reports may not violate the protective order. However, doing so opens the
9 door for plaintiffs' counsel to confirm facts reported by the media and thus
10 circumvent the protective order. Moreover, regardless of plaintiffs' counsels' intent,
11 including such discussion of media reports further confuses matters for the public
12 by making it appear that the facts reported by the media are true and taken within
13 the proper context simply because they appear in a court filing. In conclusion, the
14 media reports themselves are not relevant and the parties are otherwise legally
15 prohibited from disclosing confidential personnel information. Therefore, any
16 discussion of the facts in the confidential reports of investigation is inappropriate.

17 **C. The Department Maintains an Effective, Sustainable Process to**
18 **Monitor and Ensure Consistency of Discipline (Task 45).**

19 The City has worked with the Monitoring Team and Stanford researchers for
20 five years to build and effectively use a process to detect and eliminate discipline
21 disparity. The Department's mandatory data analysis program has proven
22 successful in allowing the Department to identify and eliminate disparity in
23 investigation outcomes and discipline. The Department's 2023 data did not reflect
24 any disparity in case outcomes or discipline.¹⁷

25 _____
26 ¹⁷ The City uses the term "disparity" interchangeably with "statistically significant
27 differences." Statistical significance is a measurement of how likely it is that the
28 difference between two groups (e.g., race, gender, rank) occurred by chance or
occurred because the two variables are actually related to each other. Put another
way, it measures whether the outcomes are linked to a variable (e.g., race), versus
whether the outcomes occurred randomly.⁴⁵

1 Despite working hand in hand with the Department and encouraging the
2 development of a sustainable analytical process to identify and address disparity,
3 the Monitoring Team now suggests that such efforts do not count toward real
4 cultural change. *Eighth Period Report, supra* at 15 (“[T]he Department’s efforts
5 continue to be more in the form of studies and analyses instead of real cultural
6 change.”) The City challenges that notion. Culture change is complex and
7 multifaceted and involves a range of strategies. Among those strategies is allowing
8 Department members access to objective facts and data across all investigation
9 outcomes and discipline to give them all the ability to make their own observations
10 about discipline equity beyond one-off anecdotes and the rumor mill. Moreover, the
11 Department’s analytical process has resulted in actual changes in Department
12 training, policy, and operations.

13 In 2023 as the result of the Department’s annual study of case outcomes and
14 discipline, the City revised DGO M-03, *Complaints Against Department Personnel*
15 *and Procedures* (revised by Special Order 9213 on Dec. 5, 2023). The Department
16 also identified inconsistency in how corrective action is documented in Supervisory
17 Notes Files (SNFs). Consistent SNFs foster more efficient reviews of corrective
18 action, facilitate identification of potential bias or disparity, and support the
19 appropriate assessment of behavioral patterns. SNFs are typically not warranted
20 for members who have exhibited patterns of misconduct. *See Dept. Response to*
21 *OIA’s 2023 Internal Investigation Outcome and Discipline Study 2* (Jun. 14, 2024),
22 [https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-](https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-discipline-report-2)
23 [discipline-report-2](https://www.oaklandca.gov/documents/2023-internal-investigation-outcome-and-discipline-report-2) (last visited Aug. 11, 2024).

24 Culture change is the process of changing or adopting values, beliefs, and
25 behaviors. Therefore, clarifying the behaviors and values the Department demands
26 pertaining to community complaints, appropriate use of SNFs to correct
27 misconduct, and consistent interpretation and application of policy is “real culture
28 change.”

1 The City previously contended that it was in substantial compliance with
2 Task 45. Dkt. 1622, *Joint Case Mgmt. Statement, supra* at 21-25. The City has not
3 changed its position. But to the extent that Task 45 is “completely intertwined” with
4 Task 5 (Dkt. 1630, Jan. 23, 2024 Court Tr. 5:5-7), the City understands that
5 compliance with these two tasks may rise and fall together.

6 The City is optimistic that based on its 2023 reforms, elimination of the
7 discipline disparity observed in 2022, and long-term compliance on all Task 5
8 subtasks, that it will regain an in-compliance assessment by the Monitor on Tasks 5
9 and 45 in due course. The City understands that because internal investigation
10 failures have in many cases been revealed many months after they occurred, more
11 time is necessary before we can assess the results of our 2023 reforms with
12 confidence.

13 CONCLUSION

14 The City’s accomplishments demonstrate that it is capable of and committed
15 to sustaining substantial compliance with all NSA tasks. The City appreciates the
16 Court’s time and guidance and looks forward to further discussing the foregoing
17 issues at the upcoming Court hearing.

1 **THE OAKLAND POLICE COMMISSION'S STATEMENT**¹⁸

2 **I. Introduction**

3 The Oakland Police Commission (“Commission”) welcomes the opportunity to
4 share the community’s perspective on the status of the Oakland Police
5 Department’s (“OPD” or the “Department”) readiness to transition from court
6 oversight. Marked by its civilian leadership and its commitment to the community
7 it serves, the Commission stands as a distinctive oversight body that represents the
8 formal community voice in matters concerning OPD oversight.

9 During the Negotiated Settlement Agreement (“NSA”) Case Management
10 Conference (“CMC”) held on January 23, 2024, this Court asked all NSA
11 stakeholders to respond to the question of “whether [it is] appropriate to end the
12 monitorship ..., to change its form or to ... maintain the status quo.” (CMC
13 Transcript at 6:5-7). Some months later, the Court similarly asked the stakeholders
14 to “provide a more knowledgeable perspective about the need for or future of federal
15 court oversight (either continuing the monitorship, revising it, or dissolving it).”
16 Order Continuing Case Management Conference, *Delphine Allen v. City of Oakland*
17 (June 4, 2024).

18 The Commission has considered the Court’s question thoroughly. In 2012,
19 this Court appointed a Compliance Director tasked with addressing the deficiencies
20 that led to the Department’s noncompliance and developing a plan for facilitating
21 sustainable compliance with all outstanding tasks. The Commission requests that
22 the Court consider separating the Monitor and Compliance Director roles as
23 originally envisioned and executed. The community, through the *Reimagining*
24 *Public Safety Task Force*, also recommends that same model: separate Monitor and
25 Compliance Director roles. This recommendation highlights one of the many

26 ¹⁸ Counsel for the Oakland Police Commission provided the City’s counsel with this
27 statement from the Oakland Police Commission for inclusion in the court filing
28 pursuant to the Court’s January 24, 2023 request for the Commission’s perspective.
The Oakland Police Commission’s authority arises from Section 604 of the City’s
Charter.

1 proposals the Commission makes within this document.

2 While the Commission applauds the improvements and successes of OPD's
3 compliance to date, several obstacles must be overcome before an end to court
4 monitorship would be prudent. The Commission identified the following essential
5 areas for improvement which still need to be addressed before ending court
6 oversight:

- 7 • Stabilize Incoming OPD Leadership
- 8 • Strengthen Oakland Police Commission Capacity
- 9 • Improve Stakeholder Communication and Cooperation
- 10 • Change OPD Culture
- 11 • Sustain Compliance

12 Of these, the most important and most difficult is ongoing OPD resistance to
13 culture change. Recounting the City saying that it would be in compliance by
14 December 31, 2005, the distinguished jurist Thelton Henderson, overseeing the
15 NSA, said in 2010, "Today we have a new Chief, a new monitoring team and the
16 benefit of five years time... Yet I am unconvinced that the promise of change is any
17 more real today than it was then." ALI WINSTON AND DARWIN BONDGRAHAM, *THE*
18 *RIDERS COME OUT AT NIGHT* 272 (2023).

19 Ongoing and chronic cases of misconduct, scandals, and cover ups in the
20 ensuing years prompted current NSA Judge William Orrick to comment that "[i]t's
21 this lack of integrity, this culture that plays favorites, that undercuts constitutional
22 policing." Natalie Hanson, *Judge Narrows Federal Monitoring of Oakland Police*
23 *Department Despite Concerns*, COURTHOUSE NEWS (April 11, 2023)
24 ([https://www.courthousenews.com/judge-narrows-federal-monitoring-of-oakland-](https://www.courthousenews.com/judge-narrows-federal-monitoring-of-oakland-police-department-despite-concerns/)
25 [police-department-despite-concerns/](https://www.courthousenews.com/judge-narrows-federal-monitoring-of-oakland-police-department-despite-concerns/)).

26 Independent Monitor Robert Warshaw's most recent Report shows NSA Task
27 5, Complaint Procedures for IAD, is not in compliance. Following the investigative
28 findings of both the Community Policing Review Agency ("CPRA") and an outside

1 agency, Warshaw’s Report notes that “[b]oth investigations resulted in serious
2 sustained findings and discipline and revealed systemic deficiencies in the
3 Department. Deficiencies in internal investigations have unfortunately repeated
4 themselves and need to be rectified. We find this to be both serious and troubling.”
5 WARSHAW, EIGHTH NSA SUSTAINABILITY PERIOD REPORT OF THE INDEPENDENT
6 MONITOR FOR THE OAKLAND POLICE DEPARTMENT 16 (August 2, 2024).

7 The Commission’s judgment that there is room for improvement in OPD’s
8 compliance with the NSA does not signal that the Commission believes that the
9 OPD should remain under monitorship for the long-term. However, in the short-
10 term, the Department must address these challenges for an exit from court
11 monitorship into full civilian oversight to be feasible.

12 **II. Charting the Path**

13 **A. Stabilize Incoming OPD Leadership.**

14 At the time of the January 23, 2024 CMC, the City of Oakland (“City”) had
15 not chosen a new chief to lead the OPD. Since then, the Commission worked to pare
16 down potential candidates. The Commission hosted a public forum for community
17 members to hear from the candidates and share their opinions with the Mayor
18 about what they wished to see from a new chief. The Commission presented a slate
19 of four highly-qualified, diverse candidates on March 1, 2024, on time and as
20 promised. On March 22, 2024, the Mayor announced the selection of Floyd Mitchell
21 as the new Chief of the Oakland Police Department. The Commission is proud to
22 have brought only the most qualified candidates to the City’s attention and looks
23 forward to working with Chief Mitchell to achieve the constitutional policing and
24 reforms required to ensure fairness and justice for all the residents of Oakland.

25 With the appointment of a new chief, the OPD entered a transitional phase.
26 Most of the Chief’s high-level command staff retired soon after his appointment
27 and, like any new chief from outside of Oakland, he will need time to acclimate,
28 understand, and commit to the constitutional policing and civilian oversight

1 objectives overseen by the NSA and supported by independent authority of the
2 Oakland Police Commission. While the community is confident that Chief Mitchell
3 is up to the task, the Commission does not expect an immediate resolution to the
4 outstanding issues. Dissolving the monitorship right now would not benefit the
5 community as OPD transitions to new leadership.

6 B. Strengthen Oakland Police Commission Capacity.

7 Oakland's Police Commission is a more recent participant in OPD's
8 movement toward reform. Created by an overwhelming majority of Oakland voters
9 in 2016, the Commission is comprised of community members and operates
10 independently from the City of Oakland. As a volunteer, community-led body, the
11 Commission is authorized to resolve disputes regarding police misconduct
12 allegations. The Commission values and actively seeks community input and
13 champions community oversight priorities. Since the Court's January CMC, the
14 Commission had several significant successes, including:

- 15 • Collaborated with the Department to modify its policies to increase to 45 the
16 number of pre-disciplinary due process ("Skelly") hearing officers available to
17 address the backlog of 171 Skelly hearings in an effort to decrease the \$3
18 million per year spent on officers on paid administrative leave;
- 19 • Sustained the first-ever racial profiling allegation of police misconduct
20 through its Community Police Review Agency ("CPRA");
- 21 • Prepared a racial profiling cultural accountability statement;
- 22 • Created a reporting template to guide the OPD in tailoring its twice monthly
23 reports to the Commission toward matters of constitutional policing oversight
24 within the Commission's jurisdiction, rather than sharing general
25 information on local crime;
- 26 • Directed the OPD to redefine "pattern" for the purposes of identifying
27 repeated instances of police misconduct;
- 28 • Addressed the 192nd and 193rd Police Academies' graduations; and

- 1 • Attended the Orientation of the 194th Police Academy.

2 These accomplishments aside, the Commission found itself with a
3 vacancy, with Inspector General Michelle N. Phillips announcing her resignation to
4 lead Minneapolis' Department of Civil Rights. The Office of the Inspector General
5 ("OIG") is responsible for program and performance-based audits, evaluations,
6 inspections, and reviews of both the OPD and the Commission's CPRA to reduce
7 instances of racial profiling and discriminatory policing practices. Inspector General
8 Phillips takes with her a depth of experience about the OPD and the Commission's
9 essential role in civilian oversight. While the Commission is far along in the hiring
10 process, the fact remains that the next Inspector General ("IG") will have large
11 shoes to fill. Once the NSA sunsets, the OIG will take responsibility for overseeing
12 OPD's ongoing compliance with the NSA's 52 Tasks. The new IG will need time to
13 acclimate, understand, and commit to the constitutional policing and civilian
14 oversight objectives overseen by the NSA and supported by independent authority
15 of the Oakland Police Commission.

16 Even once the new IG begins, the OIG will face an additional challenge:
17 Oakland finances. Although the City of Oakland regularly experiences deficits, the
18 current budget shortfall affects the Commission's ability to perform its duties.
19 Recently, the Commission sought to request the IG to conduct a review audit of
20 OPD's compliance with NSA Tasks 5 and 45 and provide any necessary policy
21 recommendations specifically about OPD and CPRA's investigation process and
22 procedures with regard to Internal Affairs Case No. 23-04. The IG responded that
23 she could not coordinate the review audit because the City had not funded the OIG's
24 audit function. As this Court is aware, the Monitor found the Department out of
25 compliance with Task 5. The inability to audit the associated investigation (even its
26 own CPRA investigation) stymies the OIG's – and therefore the Commission's –
27 power to aid the OPD in reaching and sustaining NSA compliance.

28

1 The Commission's Community Police Review Agency ("CPRA") ensures
2 vigorous police oversight by providing independent investigations of community
3 members' allegations of misconduct against sworn OPD officers. Supervised by the
4 Commission, the CPRA will also serve as the body that investigates OPD officer
5 misconduct, should the Department's own Internal Affairs Division be abolished.
6 Due to City budget deficits, CPRA's allocated staff positions are frozen, threatening
7 the pace at which it can intervene as the impartial investigative body for OPD
8 misconduct when monitorship ends.

9 Despite these setbacks, the Commission is strengthening its processes to
10 perform its duties as effectively as possible as it prepares for the NSA's completion.
11 As always, the community's voice is vital to these efforts. The Commission's
12 Enabling Ordinance Ad Hoc Committee endeavored to resist the City Council's
13 proposed revisions to the Oakland Municipal Code that would strip fundamental
14 powers from the Commission. Along with the Commission, a small team of
15 dedicated community members on the Ad Hoc Committee has labored to preserve
16 the Commission's powers, remove outdated terms, and propose new, clarifying
17 language.

18 In recent months, the Commission has also been the target of additional
19 proposed changes. Several of its central functions (including the oversight of the
20 OIG and its authority to weigh in on the hiring and termination of the Chief of
21 Police) were marked for repeal by a City Council Charter amendment. In the wake
22 of substantial community outrage, the authoring Councilmember withdrew the
23 proposal. This result demonstrates the Oakland community's continued
24 commitment to strong civilian oversight of the OPD and its intention to guard the
25 authority granted the Commission.

26 The Commission routinely strives to peel back the layers of OPD culture. In a
27 recent report before the Commission, OPD advised that sworn officers had been on
28 paid administrative leave for one to two years while they awaited the assignment of

1 a Skelly Officer and/or an attorney of their choice to represent them. OPD reported
2 that, because Skelly hearings have no deadline, these officers could remain on
3 administrative leave indefinitely at an annual cost of \$2.9 million to the
4 Department. Until the Commission called attention to the wastefulness of allowing
5 officers to remain on open-ended paid leave rather than zealously pursuing Skelly
6 hearings, the Department appeared oblivious to the problematic nature of
7 squandering millions of dollars in OPD funds.

8 Despite (or due to) the Commission's successes, the Office of the City
9 Attorney continues to refuse the Commission access to essential investigative
10 documents necessary to assess the Monitor's conclusion that:

11 [T]he Department is out of compliance with Task 5, following the
12 findings of investigations conducted by both the Community Police
13 Review Agency (CPRA) and an outside investigator into the actions
14 of senior members of the Department with regard to an earlier IAD
15 investigation. Both investigations resulted in serious sustained
16 findings and discipline and revealed systemic deficiencies in the
17 Department. Deficiencies in internal investigations have unfortunately
18 repeated themselves and need to be rectified. We find this to be both
19 serious and troubling.”

20 WARSHAW, EIGHTH NSA SUSTAINABILITY PERIOD REPORT OF THE INDEPENDENT
21 MONITOR FOR THE OAKLAND POLICE DEPARTMENT 16 (August 2, 2024).

22 Charter Section 604 (f)(2) authorizes the Commission to access the following
23 documents: “[a]ll Department files and records, including the Department's Internal
24 Affairs Division files and records, related to sworn employees of the Department, in
25 addition to all files and records of other City departments and agencies related to
26 sworn employees of the Department, as IAD, including, but not limited to, the same
27 access to electronic data bases as IAD as permitted by law.”

28 The inability to access the IAD and CPRA investigative documents as
authorized by the aforementioned Charter section prevents the Commission from
executing its duty of due diligence to review and ensure that OPD has not engaged

1 in disparate discipline under Task 45. In fact, the City Attorney's actions deny the
2 Commission the opportunity to review the adequacy of its own CPRA investigation
3 under Task 5. Finally, the Commission is prohibited from reviewing the work
4 product of its direct report, the CPRA Director.

5 Although it has accomplished much, the Commission could achieve even more
6 if it were fully staffed. Due to City budget constraints, the Commission faces an
7 uphill battle to receive the administrative staff positions necessary to support its
8 mission. Long-term Commission vacancies similarly undercut the Commission's
9 ability to achieve its objectives. To accomplish its goals, the Commission needs a full
10 slate of active Commissioners. Without the requisite seven Commissioners and two
11 alternates, the current Commissioners must labor twice as hard to discharge the
12 Commission's jurisdictional obligations. The Commission can function at full
13 capacity only when the selection authorities prioritize filling the existing
14 Commission vacancies.

15 This Court recognizes that, not only the OPD and the City, but also the
16 Commission (and its divisions: OIG and CPRA) are "integral to the success of the
17 NSA." (CMC Tr. 43:15-16). Despite great effort and progress, the Commission's OIG
18 and CPRA, along with the OPD, are currently in a state of flux. The Commission
19 expects each entity will continue to build on their foundations as the OPD turns
20 into the final stretch of NSA compliance.

21
22 C. Change OPD Culture.

23 This Court observed the need for the City to demonstrate that "the OPD has
24 embraced the spirit as well as the letter of the NSA." (CMC Tr. 6:8-11). More than
25 any gauge, an internal transformation in culture will indicate that OPD is prepared
26 to move forward without backsliding once the Court terminates its oversight.
27 Although the NSA has been the greatest driving force for improvement in OPD's
28 standards, the Department continues to struggle with a culture that lacks

1 transparency, accountability, and integrity. Past incidents of racial profiling, an
2 absence of empathy, and lack of professionalism eroded public trust significantly,
3 and the repercussions linger within the community. To align the Department's
4 practices with the letter and spirit of NSA compliance, a substantial cultural shift
5 remains necessary.

6 The Commission recognizes that the cultural challenges embedded in NSA
7 Tasks 5 and 45 transcend policy adjustments and a "moment-in-time" compliance.
8 Rather, true compliance is rooted in "sustainability and organizational culture."
9 (Former Interim Chief Darren Allison, CMC Tr. 13:12-13). The Commission's
10 recommendations for cultural change within the Department stand as a testament
11 to our belief in the power of community-led change and our collective commitment
12 to achieving a future where the OPD's culture aligns with the values of the Oakland
13 community.

14 Viewing the OPD's culture from the public's perspective, the opportunity for
15 positive transformation is evident. The Court consistently emphasized the
16 importance of OPD's evolution to an entity that can self-regulate, hold itself and its
17 officers accountable, and uphold the principles of integrity and constitutional
18 policing. Specifically, in April 2023, the Court observed that there was "a cultural
19 inability of OPD to police itself, to hold itself and its officers accountable without
20 fear or favor; a culture that lacks integrity; a culture that plays favorites and
21 protects wrongdoers that undercuts the foundations of constitutional policing."
22 These observations highlighted several facets of the current culture that continue to
23 require attention:

- 24 1. **Addressing Historical Challenges:** Acknowledging a historical
25 backdrop of racial profiling and racial disparities, which regrettably
26 persist in certain aspects of the department's culture.
27
28

1 2. **Fostering Empathy:** Encouraging the development of empathy
2 towards the community that OPD serves, recognizing that true
3 understanding and compassion are essential.

4 3. **Upholding Professionalism:** Elevating professionalism within the
5 ranks to ensure that officers represent the highest standards of law
6 enforcement.

7 4. **Rebuilding Trust:** Taking deliberate actions to rebuild trust within
8 the community, as past actions have, at times, contributed to a sense of
9 mistrust.

10 To promote ethical behavior within the OPD's culture, the integration of
11 comprehensive training programs that include the Department's historical context
12 and current ethical standards is mission critical. Such training should be
13 mandatory for all officers, including non-sworn personnel, and should be a
14 significant component of promotional exams and field training.

15 The underlying goal here is to transform OPD's culture by promoting
16 transparency and fairness in discipline procedures. By thoroughly examining and
17 addressing these concerns, OPD can ensure that instances of policy violations are
18 met, not with officers evading consequences through policy loopholes, but with
19 appropriate disciplinary actions that dispel any perceptions of leniency. The OPD
20 should not be distrustful of oversight – whether by the Monitor or the Commission –
21 and any corresponding discipline. Culture change is more difficult to achieve when
22 accountability is seen as punitive. Only when accountability and discipline are
23 viewed as restorative (providing recompense to the injured community after which
24 the offender is offered a second chance) will sworn officers welcome transparency
25 and a collective desire to improve behavior.

26 The enhancement of discipline policies and the discipline matrix is not about
27 punitive measures, but rather upholding the highest standards of conduct and
28 sending a clear message that officers will be held accountable for misconduct.

1 Structural disciplinary changes, rather than mere appeals to morality and ethics,
2 will ensure that officers modify their behavior. This approach fosters a culture of
3 accountability where commanding officers feel empowered to administer
4 appropriate discipline, and all members of OPD understand the importance of
5 adhering to policies and ethical guidelines. As discipline is consistently and fairly
6 applied, it acts as a deterrent against future policy violations. By eliminating
7 ambiguity and ensuring that consequences align with the severity of the
8 misconduct, OPD can pave the way for a culture defined by responsibility and
9 integrity.

10 The OPD should conduct department-wide training to all staff, sworn and
11 non-sworn, on every high-profile scandal and major failure since the NSA began.
12 This training should include the historical facts, the violations of policy, the ethical
13 problems underlying those violations, and the changes to policy and practice that
14 have resulted from officer misconduct.

15 Trainers should be:

- 16 • Qualified, credentialed, non-credentialed, and/or have lived experience with
17 the Department and/or from the community to teach the subject matter;
- 18 • Reputable with a demonstrated track record;
- 19 • Free of conflicts of interest;
- 20 • Intergenerationally representative;
- 21 • Gender representative; and
- 22 • Racially-inclusive.

23 While this list is non-exhaustive, the following non-OPD source experts are
24 qualified to develop an integrated and comprehensive training curriculum:

- 25 • Jennifer Eberhardt: author of previous studies and reports on the OPD and
26 Co-Director of the Stanford SPARQ program.
- 27 • Keith Ellison, Minnesota Attorney General and author of **BREAK THE WHEEL:
28 ENDING THE CYCLE OF POLICE VIOLENCE.**

- 1 • Jim Chanin and John Burris, Plaintiffs' Attorneys in the *Delphine Allen v.*
- 2 *Oakland* case.
- 3 • Ali Winston and Darwin BondGraham, authors of THE RIDERS COME OUT AT
- 4 NIGHT.
- 5 • Darlene Flynn, Executive Director of the Race and Equity Department in the
- 6 City of
- 7 Oakland.
- 8 • Department of Violence Prevention and Community-Based Violence
- 9 Interrupters.
- 10 • Kevin Grant, Department of Violence Prevention Coordinator.
- 11 • Reygan Cunningham, Co-Director at The California Partnership for Safe
- 12 Communities,
- 13 former City of Oakland Ceasefire Project Manager.
- 14 • Pastor Michael McBride, Live Free USA.
- 15 • Family Violence Law Center.
- 16 • Reimagining Public Safety Task Force Report recommendation #32 - MOR
- 17 and
- 18 Discipline Matrix both need to undergo a comprehensive update.
- 19 • Contact person: Christina Petersen (christina.r.petersen@hotmail.com), OPD
- 20 Organization and Culture, Accountability/Discipline WG.
- 21 • Equal Justice Society.
- 22 • Asian Law Caucus.
- 23 • El Centro Legal.

24 The Oakland community is a critical partner that the OPD must consider at
25 every point in training development. Community-designed and implemented
26 training modules, specifically focused on impressing upon incoming recruits the
27 need to reshape the department's culture, will ensure that the trainings are
28

1 effective. To secure community engagement, OPD should implement some of these
2 courses out in the community where direct policing occurs.

3 The OPD possesses valuable training modules that can be adapted to
4 accommodate a new department-wide educational initiative for all staff. The
5 existing smaller module for police academy recruits, featuring insights from
6 respected figures like Jim Chanin, investigative reporters and authors Ali Winston
7 and Darwin BondGraham, is a solid starting point. Additionally, Project Reset, a
8 four-week course introduced in 2021 and aimed at empowering officers as culture
9 change agents, presents a promising framework.

10 D. Improve Stakeholder Communication and Cooperation.

11 Persistent obstacles exist to securing clear paths of communication and
12 cooperation among key stakeholders to ensure the OPD's smooth transition from
13 the NSA to civilian oversight. For instance, the Commission took the lead in
14 repeatedly reaching out to the NSA parties per the Court's January CMC directive
15 that all stakeholders "meet and discuss whether it is appropriate to end the
16 monitorship at that time to retain its form or to retain the status – maintain the
17 status quo." (CMC Tr. 6:4-7). Although disappointed that its efforts to meet about
18 and discuss this fundamental issue were rebuffed by some and ignored by others,
19 the Commission invited Senior Deputy City Attorney Brigid Martin to attend the
20 July 2, 2024 meeting of the NSA Ad Hoc committee to share the City's position on
21 whether the Department should exit the NSA. Senior Deputy City Attorney Martin
22 joined the meeting but would not disclose the City's position. The Commission Chair
23 has not been successful in scheduling regular meetings to discuss Commission
24 matters, in general, with Mayor Sheng Thao. Only after the newest member of the
25 NSA Ad Hoc committee brokered a meeting with the Mayor on behalf of the NSA Ad
26 Hoc, were Commission Chair Peterson and members of the NSA Ad Hoc able to
27 have their first meeting this calendar year with Mayor Thao.

28

1 Such lack of coordination is evidence of troubling concerns. The failure to
2 collaborate hinders the Commission's ability to effectively monitor and be a partner
3 in guiding the OPD's progress toward the NSA goals. If indispensable stakeholders
4 to the OPD's transition to civilian oversight are unable to coordinate while under
5 the Court's watchful eye, it is unlikely that they will work together productively
6 when the OPD is no longer subject to court oversight. Until all stakeholders are
7 fully committed to cooperating with every partner in the goal of lasting reform, the
8 OPD will not be ready to exit court monitorship.

9 E. Sustain Compliance.

10 The Court inquired whether the OPD is doing what is necessary to ensure
11 that it can permanently sustain NSA compliance once court oversight ends. (CMC
12 Tr. 12: 20-25). The Court's inquiry strikes at the heart of the OPD's desire to
13 maintain compliance beyond a "moment-in-time" snapshot.

14 The NSA is responsible for the greatest improvements in OPD culture to
15 date. However, NSA compliance should not be mere box-checking or passively
16 moving through a specific calendar period. Instead, an enduring compliance
17 requires that the OPD integrate the NSA's 52 Tasks into its cultural identity and
18 practice them *every day*. To date, however, there has not been a defined compliance
19 metric or systemic data measurement to verify sustainability. The Department's
20 sustainability period should include an internal program that requires OPD to
21 remain proactive in fulfilling NSA mandates. The following measures would help to
22 create a culture of accountability and transparency to ensure the NSA reforms are
23 fully implemented and maintained indefinitely.

- 24
- 25 **1. Develop an educational campaign on the NSA and its history at**
26 **all department levels, including the Academies:** Every OPD
27 employee, sworn or not, should know about and understand the NSA.

28 Education and awareness promote accountability that endures.

1 Desired Outcome: Reduction in fear among officers of being chastised for
2 taking actions necessary to shift culture and move OPD towards NSA
3 compliance.

4
5 **2. Address oversight resistance through training, education, and**
6 **discipline:** Oversight resistance is inherent in OPD culture and should
7 be approached with persistent classes, training, education, and discipline.

8 Desired Outcome: Reduction in fear among officers of being chastised for
9 taking actions necessary to shift culture and move OPD towards NSA
10 compliance.

11
12 **3. Analyze public complaints to identify patterns:** Review all public
13 complaints (sustained or not) to identify and address any patterns in
14 alleged misconduct.

15 Desired Outcome: Continued understanding of concurrent community
16 needs, proactively identifying and remediating those issues.

17
18 **4. Assess the effectiveness of disciplinary actions:** Measuring
19 accountability by reviewing cases of administered discipline and their
20 effectiveness.

21 Desired Outcome: Attention to trends and patterns around whether and
22 how disciplinary actions shift culture, deter misconduct, and model
23 accountability.

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25 **5. Establish an annual public assessment of police disciplinary**
26 **actions.**

27 Desired Outcome: Continued understanding of concurrent community
28 needs, proactively identifying and remediating those issues.

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6. Ensure a fully supported Office of Inspector General: A fully staffed and supported Police Commission Office of the Inspector General equipped to take over NSA monitoring responsibilities.

Desired Outcome: Places power structures within the City and moves toward civilian oversight.

7. Reduce Civil Monetary Awards Due to Police Misconduct: Set a goal to reduce civil monetary awards to settle or pay civil judgements due to police misconduct – an estimated \$57 million from 2001 to 2011 and \$35 million from January 2011 to December 2021.

Desired Outcome: Budget realignment; a metric that demonstrates a culture shift.

8. Establish a Sustainability Period with Robust Metrics

Gathering: An 18-month sustainability period (with quarterly CMC evaluations to include all stakeholders) will allow evaluation of OPD misconduct during two successive summers – the time period with the most citizen-police interaction.

Desired Outcome: Establishing data that can reveal whether a shift in culture has occurred.

9. Restructure Monitor Fee During the Sustainability Period:

Allow the Monitor to actively participate in the sustainability effort at a lower fee rate.

Desired Outcome: Places power structures within the City and moves closer to civilian oversight.

1 10. **Work Collaboratively with Stakeholders:** Ensure all entities'
2 essential perspectives are taken into account.

3 Desired Outcome: A shared vision of the problem(s) and solution(s).
4

5 **III. Conclusion**

6 In January 2024, the Court requested NSA stakeholders evaluate the current
7 and future role of federal court oversight in Oakland. After much consideration, the
8 Commission developed a statement guided by three overarching questions:

- 9
- 10 1. Is it appropriate to end the monitorship, change its form, or maintain
11 the status quo?
 - 12 2. Has the OPD achieved NSA task compliance for a sustained period of
13 time?
 - 14 3. Has the OPD demonstrated the ability and desire to systematically
15 and structurally make the culture changes necessary to hold itself
16 accountable?
17

18

19 Having grappled with these questions, we offer the following:

- 20 • The need for a clear and defined assessment metric;
- 21 • The need for an ascertainable period of sustainability;
- 22 • The need for a fully seated Police Commission, IG and CPRA, all
23 supported by a
24 complete staff;
- 25 • The need to fill the Inspector General position;
- 26 • The need to address continued and troubling misconduct
27 investigations; and
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- The need to assess the acclimation of the new chief of police.

For these reasons, this body recommends that the OPD enter a new and restructured 18-month sustainability period with the intent of documented, measurable cultural change. The Commission recommend maintaining the NSA until there is a sustainable change from within the rank and file of the Department.

It is our hope that with the strong civilian oversight of the Police Commission, this new period will result in permanent culture change that establishes transparency and that promotes truthfulness and accountability without fear or favor.

Respectfully Submitted,

Marsha Carpenter Peterson
Chair, Oakland Police Commission
Chair, NSA Ad Hoc Committee

NSA Ad Hoc Members:
Commissioner Regina Jackson
Commissioner Angela Jackson-Castain
José Dorado (former OPC Commissioner)
Karely Ordaz (former OPC Commissioner)
Mariano Contreras
Nikki Dinh
Deacon Reginald Lyles
Walter Riley
Rev. Dr. Jacqueline Thompson

THE OPOA’S STATEMENT

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2 Since the last Case Management Conference, Intervenor Oakland Police
3 Officers Association (“OPOA”) has had ongoing and regular communications with
4 members of the Oakland Police Department command staff, including Chief
5 Mitchell regarding various operational matters which impact outstanding NSA
6 related tasks. Those communications continue to be productive and directed toward
7 assisting the Police Department achieve full compliance with the NSA. In addition,
8 the OPOA has engaged in meet and confer on various policies as part of an effort to
9 bring best practices to the Oakland Police Department.

10 The Police Department and OPOA members continue to confront the
11 challenges associated with sworn staff reductions and the significant number of
12 calls for service. The OPOA continues to work collaboratively to ensure proper
13 staffing and advance the mission of the Police Department.

14 The OPOA continues to be available to all parties, including the Court, to
15 assist in moving forward and achieving full compliance with the NSA.
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EXHIBIT A

**OAKLAND POLICE DEPARTMENT
NSA TASK COMPLIANCE RESPONSIBILITY CHART
AUGUST 28, 2024**

Task	Task Name	Compliance Accountability
1	IAD Staffing & Resources	Acting Captain Gordon Dorham
2	Timeliness Standards & Compliance w/IAD Investigations	Acting Captain Gordon Dorham
3	IAD Integrity Tests	Acting Captain Gordon Dorham
4	Complaint Control System for IAD	Acting Captain Gordon Dorham
5	Complaint Procedures for IAD	Acting Captain Gordon Dorham
6	Refusal to Accept or Refer Citizen Complaints	Acting Captain Gordon Dorham
7	Methods for Receiving Citizen Complaints	Acting Captain Gordon Dorham
8	Classification of Citizen Complaint	Acting Captain Gordon Dorham
9	Contact of Citizen Complaint	Acting Captain Gordon Dorham
10	IAD Manual	Acting Captain Gordon Dorham
11	Summary of Citizen Complaints Provided to OPD Personnel	Acting Captain Gordon Dorham
12	Disclosure of Possible Investigator Bias	Acting Captain Gordon Dorham
13	Documentation of Pitchess Responses	Acting Captain Gordon Dorham
14	Investigation of Allegations on MOR Violations	Acting Captain Gordon Dorham
15	Reviewing Findings & Disciplinary Responses	Acting Captain Gordon Dorham
16	Support IAD Process-Supervisor/Managerial Accountability	Acting Captain Gordon Dorham
17	Audit, Review, and Evaluation of IAD Functions	Acting Captain Gordon Dorham
18	Arrest Approval and Report Review	DC Casey Johnson
19	Unity of Command	DD Kiona Suttle
20	Span of Control for Supervisors	DC Casey Johnson
21	Members, Employees & Supervisors Performance Reviews	DD Kiona Suttle
22	Management Level Liaison	DC Frederick Shavies
23	Command Staff Rotation	DD Kiona Suttle
24	Use of Force Reporting Policy	AC James Beere/ DC Anthony Tedesco
25	Use of Force Investigation and Report Responsibilities	DC Anthony Tedesco
26	Force Review Board	DC Angelica Mendoza
27	OC Log and Check-out Procedures	DC Frederick Shavies
28	Use of Force – Investigation of Criminal Misconduct	DC Frederick Shavies
29	IAD Investigation Priority	Acting Captain Gordon Dorham
30	Executive Force Review Board	DC Angelica Mendoza
31	Officer-Involved Shooting Investigation	DC Frederick Shavies

32	Use of Camcorders	Not Applicable
33	Reporting Procedures for Misconduct	Acting Captain Gordon Dorham
34	Vehicle Stops, Field Investigation and Detentions	DC Casey Johnson
35	Use of Force Witness Identification	DC Anthony Tedesco
36	Transporting Detainees and Citizens	DC Anthony Tedesco
37	Internal Investigations Retaliation Against Witnesses	Acting Captain Gordon Dorham
38	Citizens Signing Statements	DC Anthony Tedesco
39	Personnel Arrested, Sued, or Served	Acting Captain Gordon Dorham
40	PAS Purpose	DC Angelica Mendoza
41	Use of PAS	DC Angelica Mendoza
42	Field Training Program	DC Angelica Mendoza
43	Academy Training Program	DC Angelica Mendoza
44	Personnel Practices	DD Kiona Suttle
45	Consistency of Discipline	Chief Floyd Mitchell/ AC James Beere
46	Promotional Consideration Review	DD Kiona Suttle
47	Community Policing	DC Anthony Tedesco
48	Departmental Annual Management Reports	AC James Beere
49	Monitor Selection/Compensation	Chief Floyd Mitchell
50	Compliance Unit Liaison Policy	Chief Floyd Mitchell/ AC James Beere
51	Compliance Audits and Integrity Tests	Chief Floyd Mitchell/ AC James Beere
Compliance Director (CD) 1 12/12/12 Order	Resolve/Reduce incidents that may involve unjustified force, OIS, pointing of firearms	DC Anthony Tedesco
CD2 12/12/12 Order	Resolve/Reduce incidents that may involve racial profiling and bias-based policing	DC Casey Johnson
CD3 12/12/12 Order	Resolve/Reduce Citizen Complaints	Acting Captain Gordon Dorham
CD4 12/12/12 Order	Resolve/Reduce high speed pursuits	DC Angelica Mendoza