

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

No. CIV. 14-1025 JB\SMV

Defendant,

vs.

THE ALBUQUERQUE POLICE  
OFFICERS' ASSOCIATION,

Intervenor.

**JOINT MOTION FOR ENTRY OF STIPULATED ORDER  
ESTABLISHING AN EXTERNAL FORCE INVESTIGATION TEAM**

Plaintiff United States of America and Defendant City of Albuquerque (the Parties), with the concurrence of Independent Monitor James D. Ginger, jointly move the Court to approve and enter the proposed Stipulated Order Establishing an External Force Investigation Team which is attached hereto as Exhibit A. The proposed Stipulated Order would require the City to establish, on a temporary basis, an External Force Investigation Team (EFIT) to assist the Albuquerque Police Department (APD) in conducting investigations of Level 2 and Level 3 uses of force by APD officers, while also assisting APD with improving the quality of its force investigations. The proposed Order also requires the City to improve its internal affairs process, increase the number of internal affairs force investigators, and provide additional training to those investigators. The Parties intend these measures to ensure high-quality, timely investigations of Level 2 and Level 3 uses of force and to address investigative deficiencies in APD's force investigations, as identified in the Independent Monitor's Twelfth Report (IMR-12), Doc. 652.

## I. BACKGROUND

The United States filed this action on November 12, 2014, seeking to remedy a pattern or practice of excessive force by APD officers. Doc. 1. On November 14, 2014, the Parties agreed to a Court-Approved Settlement Agreement (CASA), requiring the City to implement comprehensive reforms at APD to address deficiencies in the areas of use of force, crisis intervention, deployment of specialized units, supervision, management, misconduct investigations, and data collection and analysis. *See* Doc. 9-1. This Court approved the CASA in June 2015. Doc. 134.

Over the past six years, the Independent Monitor and his team have conducted more than a dozen onsite and virtual inspections and other visits to APD, provided extensive technical assistance, and filed more than a dozen Monitor's Compliance Reports, documenting the City's efforts to achieve compliance with the provisions of the CASA. *See, e.g.*, Independent Monitor's Reports (IMRs) at Doc. 183 (IMR-3, July 1, 2016); Doc. 223 (IMR-4, November 1, 2016); Doc. 274 (IMR-5, May 2, 2017); Doc. 313 (IMR-6, November 1, 2017); Doc. 416 (IMR-8, November 2, 2018); Doc. 444 (IMR-9, May 1, 2019); Doc. 493 (IMR-10, November 1, 2019); Doc. 578 (IMR-11, May 4, 2020); and Doc. 652 (IMR-12, November 2, 2020).

In his most recent report, the Independent Monitor raised serious concerns about the quality of APD's force investigations and the lack of accountability for officers who violated APD policies during the course of incidents in which they used force. *See* IMR-12, Doc. 652. According to the Independent Monitor, excessive force and the lack of accountability for it have been persistent problems at APD that have outlasted a number of previous efforts to address them. Twice APD has revised its entire suite of use of force policies. Twice APD has revamped its entire training program on the use of force and provided that training to all APD officers. In

the last round of policy and training changes to improve APD's systems for managing the use of force, APD created a system for force investigations that divides force into three levels. To briefly summarize those levels, Level 1 is force that does not result in injury or complaint of injury; Level 2 is force that does result in injury or complaint of injury; and Level 3 is force that results in serious injury, hospitalization, or death. *See* Doc. 465-1 at 19-20, ¶ 48 (providing complete definitions for Level 1, 2, and 3 uses of force). Level 1 uses of force are reviewed by officers' supervisors. Level 2 and Level 3 uses of force are investigated by the Internal Affairs Force Division (IAFD),<sup>1</sup> a centralized unit of specialized force investigators.

The Parties' intention in centralizing investigations of the most serious force incidents in IAFD was to ensure high-quality investigations, consistency in APD's application of its use of force policy, and direct oversight of force investigations by APD's executive staff. The Parties expected these changes to result in positive, measurable improvements in the quality of force investigations and the reliability of systems for holding officers accountable for misconduct committed during force incidents. But these improvements have not occurred as quickly as intended or to the level required by the CASA.

To improve the functioning of the Internal Affairs Division, the Parties agree that the City will seek additional resources to ensure that force investigations are adequate and timely, and to bring APD's systems for investigating force into compliance with the CASA.

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<sup>1</sup> APD's force investigations are handled by Internal Affairs Force Division. Misconduct investigations not related to the use of force are handled by Internal Affairs Professional Standards Division. Each is overseen by a commander. APD is likely to combine the two divisions into one, overseen by a single commander. The new internal affairs division will consist of two sections, one for force investigations and the other for non-force misconduct investigations. In anticipation of the reorganization, the Parties will refer in this Motion and in the Stipulated Order to the Internal Affairs Division.

## II. DISCUSSION

In late October 2020, after reviewing the draft of IMR-12, the Parties initiated a series of negotiations that have resulted in the proposed Stipulated Order. The goals of the Order are: to make immediate improvements in the quality and timeliness of investigations of Level 2 and Level 3 uses of force; to ensure that APD can hold officers accountable when they violate APD policies during force incidents; and to make significant, durable improvements in APD's systems for investigating Level 2 and Level 3 uses of force. The Order accomplishes these goals by enlisting an outside team—the External Force Investigation Team (EFIT)—and by requiring the City to implement new force investigations systems, dedicate additional personnel to investigating force, and provide those personnel with better training on how to investigate force.

EFIT, an entity made up of outside investigators that will be funded by the City and run by an outside Administrator, will guide, direct, and, if necessary, take over investigations of Level 2 and Level 3 uses of force. Exhibit A at 2, ¶ 1. The outside investigators who will make up EFIT will be required to have experience and expertise in conducting force investigations. *Id.* at 2, ¶ 4. By working directly with APD's investigators, EFIT investigators will be able to ensure that each investigation is conducted with integrity and within investigatory deadlines. When those force investigations are complete, APD's command and executive staff will review their findings and hold officers accountable for force that violates APD policy. *Id.* at 9, ¶ 27.

EFIT will also provide day-to-day, on-the-job instruction to APD investigators and supervisors and assess the work of APD investigators and supervisors at each step of the investigation process. Exhibit A at 7, ¶ 22. APD and EFIT will use these assessments to conduct quarterly evaluations of APD investigators and supervisors to determine whether individual investigators and supervisors have become proficient at force investigations. *Id.* at

13-14, ¶ 34. Once APD investigators and supervisors have demonstrated their proficiency, they may take on the full responsibility of investigating Level 2 and Level 3 uses of force, without the involvement of EFIT. *Id.* at 14, ¶ 35. EFIT will become unnecessary, and the Parties will move to terminate this Order, when enough APD investigators and supervisors have demonstrated their proficiency that APD is able to conduct high-quality, timely investigations of all Level 2 and Level 3 uses of force on its own. *Id.* at 15, ¶ 39.

In the first months following the entry of the Stipulated Order, the Order requires the City to make three key improvements, in addition to establishing EFIT, to bring its force investigations into compliance with the CASA and to maintain compliance after EFIT is gone. First, within two months of the entry of the Order, the Order requires the City to submit to the United States and the Independent Monitor a proposal for redesigning its internal affairs investigation process. Exhibit A at 5, ¶ 14. After the Parties and Monitor have agreed on the proposal, the City will receive guidance and technical assistance from the Independent Monitor to implement the proposal. *Id.* The Parties expect that the redesigned process will result in changes to APD's policies that are long overdue. Second, the Order requires the City to increase the number of force investigators at APD, a commitment of resources that is necessary to ensure that APD can investigate all force incidents in a timely manner. *Id.* at 4, ¶ 12. The Parties anticipate that staffing will increase over time and may fluctuate as EFIT and APD determine whether individual force investigators have the relevant investigative skills. Third, the Order requires APD to develop new training for force investigators within three months of the entry of the Order. *Id.* at 12-13, ¶ 33. These improvements are necessary to ensure that APD can make positive and durable changes to its force investigations.

As a way to consolidate and track all of the initiatives required by the Stipulated Order, the Order requires the City to develop and file with the Court, within five months of the entry of the Order, a remedial action plan that “will identify concrete actions that the City and EFIT will take to improve the quality and timeliness of investigations of Level 2 and Level 3 uses of force.” Exhibit A at 10-11, ¶ 31. After filing the plan, the City will report to the Court quarterly on its progress in implementing the plan, including metrics that will indicate whether APD is making progress toward regaining full responsibility for conducting investigations of Level 2 and Level 3 uses of force. *Id.* at 11, ¶ 32.<sup>2</sup>

### III. CONCLUSION

The attached Stipulated Order will address deficiencies in APD’s investigations of Level 2 and Level 3 uses of force. Improving these investigations is necessary to ensure that APD identifies and holds officers accountable for uses of force that do not comply with APD policy or the CASA. The Parties anticipate the changes required by the Order will lead to APD reaching compliance with the relevant paragraphs of the CASA.

For the reasons stated above, the Parties respectfully move the Court to enter the proposed Stipulated Order as an Order of the Court.

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<sup>2</sup> The proposed Stipulated Order does not conflict with the Collective Bargaining Agreement between the City and the Albuquerque Police Officers’ Association. In fact, Paragraph 16 of the Order states, “Nothing in this order requires the City to violate the Labor Management Relations Ordinance or any collective bargaining agreement.” Exhibit A at 5, ¶ 16.

Respectfully submitted this 5<sup>th</sup> day of February 2021,

Plaintiff UNITED STATES OF AMERICA

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/s/ Elizabeth M. Martinez 02/05/2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2021, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel and the Independent Monitor to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Elizabeth M. Martinez 02/05/2021  
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