



November 30, 2017

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**RE: U.S. v. City of Baltimore, et al, Case 1:17-cv-00099-JKB
Monitoring plan for consent decree**

Dear Mr. Rosenbaum, Mr. Mygatt, Mr. Davis, and Mr. Thompson:

On behalf of NAACP Legal Defense and Educational Fund, Inc., we write in response to the October 4, 2017 court-ordered appointment of Kenneth Thompson as the independent monitor of the consent decree in the above-captioned case.¹ According to the agreement, within 90 days of assuming duties, the independent monitor will work with the parties to develop a monitoring plan for the first year of the consent decree.² The plan must provide an overview of how the Baltimore Police Department (BPD) will fully and effectively comply with all material requirements in the consent decree over five years, and include specific deadlines and schedules for the upcoming year.

LDF has appreciated the opportunity to comment on the consent decree and the selection of the monitor.³ While there are no provisions in the agreement requiring public input into the development of the monitoring plan, we respectfully urge you to prioritize the

¹ See, Memorandum and Order Appointing Independent Monitor, *U.S. v. Police Department of Baltimore City, et al.*, Oct. 2, 2017, Case 1:17-cv-00099-JKB, <http://www.mdd.uscourts.gov/sites/mdd/files/OrderAppointingMonitor.pdf>

² See, Consent Decree, *U.S. v. Police Department of Baltimore City, et al.*, Consent Decree, ¶ 461, Jan. 12, 2017, <http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree.pdf>.

³ See, NAACP Legal Defense Fund Submits Comments on the Proposed Baltimore Consent Decree, Mar. 7, 2017, <http://www.naacpldf.org/press-release/naacp-legal-defense-fund-submits-comments-proposed-baltimore-consent-decree>; See also, LDF Provides Feedback on Monitor Candidates in Baltimore, July 17, 2017, <http://www.naacpldf.org/press-release/ldf-provides-feedback-monitor-candidates-baltimore>.



provisions of the consent decree detailed below during the first year. We also present questions regarding the implementation of these provisions.

1. Posting of annual budget on the public website of the independent monitor

- Baltimore City officials will pay the monitor a maximum of \$1,475,000 per year to serve as an agent of the federal court and to oversee city officials' compliance with the requirements of the consent decree. The monitor must submit an annual budget to the court for approval, and maintain a public website where the monitor will post the proposed budget and accounting of an actual budget. *See*, Consent Decree ¶¶ 445 and 448.
- Questions:
 - What is the timeline for the submission of the proposed budget to the court for approval, and when will the monitor post it on its public website?

2. Monitoring Plan, Reports, and Communication with Monitor

- The monitor will submit the monitoring plan to the parties for review and approval, and the parties will have 45 days to either approve or propose changes to the plan. The monitoring plan must establish a method of communicating with the public and receiving public input, including quarterly in-person meetings in diverse Baltimore neighborhoods. ¶¶ 461-462.
- The monitor will provide a draft of semi-annual reports to the parties at least 30 days prior to filing the reports with the court, which will allow the parties to comment on the reports. The monitor will also post the final reports, along with comments by the parties and the monitor's response, if any, to its website and will establish an electronic mechanism for receiving public feedback on the reports. ¶ 472.
- The monitor will meet interested community stakeholders on a regular basis to discuss the BPD's progress under the consent decree, to explain the monitor's reports, to inform the public about the consent decree implementation process, and to hear community perspectives of police interactions. The monitor will also designate a member of the team as a community liaison, who will serve as a point of contact to community members. ¶ 474.

- Questions:
 - Will the parties - the Department of Justice (DOJ) and Baltimore City officials - solicit input from the public regarding the content of the monitoring plan before it is finalized?
 - How much time will the public have to provide feedback on the monitor's semi-annual reports that will be posted on a website? We recommend no fewer than 30 days.

3. Community Oversight Task Force

- The Community Oversight Task Force (COTF) will assess civilian oversight of BPD and the civilian complaint process. The COTF will also report publicly on its findings and recommendations within 11 months of the effective date of the consent decree. Baltimore City officials will post the COTF report on its website and provide a 30-day public comment period. COTF will use the public comments to review and revise the report, and then the final report will be posted on the City's website. ¶ 14.
- Questions:
 - Will the parties permit oral and written comments during the 30-day public comment period?
 - What additional support will city officials provide to COTF beyond access to conferences of the National Association for Civilian Oversight of Law Enforcement? Will COTF members participate in site visits to promising civilian oversight offices, for example?

4. Community Engagement

- BPD will establish and engage community members through advisory councils such as a Youth Advisory Council and LGBT Advisory Council. It will also establish in each district, twice a year, a community outreach program and a public information program about the consent decree. BPD will prepare a publicly available report of its community policing efforts broken down by district. The monitor will conduct a community survey on an annual basis. ¶¶ 20-23.
- Question:
 - What, if any, role will the Baltimore Community Mediation Center (BCMC) play in monitoring the progress made by BPD in its community outreach efforts?

- Will BPD develop district plans for the community outreach and public information programs? Will BPD publicize the plans and solicit feedback from residents?
- How will the monitor engage members of the community in the development and distribution of the survey? Is the monitor willing to contract with a local organization to develop and/or distribute the survey?
- What, if any, role will BCMC play in the development and distribution of the survey?

5. Voluntary Contacts between BPD Officers and the Public

- Within one year of the effective date of the consent decree, BPD will provide training to all sworn officers that explains the value of proactive, community-oriented policing, and teaches officers skills and techniques for effective voluntary contacts with the goal of building rapport with Baltimore residents. ¶ 33.
- Questions:
 - What is the timeline and process for developing this training, including the individuals, entities or groups BPD will engage to assist in the development of the training?
 - What entity will provide the training?
 - How will BPD evaluate its training for effectiveness?

6. Involuntary Investigatory Stops and Detention

- BPD will prohibit pretextual pedestrian and traffic stops, including stops made for loitering and misdemeanor trespass. ¶ 43.
- Question:
 - What systems will BPD put in place to ensure that this prohibition on pretextual stops is followed?

7. Arrests

- BPD will require officers to seek permission from a permanent rank supervisor prior to effectuating an arrest for certain offenses such as disorderly conduct and failure to obey an officer. BPD is also required to enforce its policy instructing officers that, for quality of life offenses, the appropriate response is the least intrusive one under the circumstances as reasonably understood by the officer at the time. Additionally, BPD will

require a permanent rank supervisor to approve or disapprove an officer's request to make an arrest for quality of life offenses, and will ensure that any arrest is based on the existence of probable cause and BPD policy. ¶¶ 61, 62 and 63.

- Question:
 - What systems will BPD put in place to ensure that these practices are carried out by officers?

8. Stops, Searches and Arrests Training

- All officers will receive training on stops, searches, and arrests of no fewer than 16 hours within one year of the effective date of the consent decree. ¶ 67.
- Questions:
 - What entity will provide the training?
 - How will BPD evaluate its training for effectiveness?

9. Supervisory Review of Stops, Searches, and Arrests

- BPD will provide training and conduct audits of supervisory reviews of investigatory stops or detentions, searches, and arrests. ¶ 73.
- Questions:
 - What entity will provide the training?
 - How will BPD evaluate its training for effectiveness?

10. Stop, Search, and Arrest Data Collection and Review

- BPD will modify or develop a written or electronic report to collect data on all investigatory stops and searches, whether they result in an arrest or issuance of a summons or citation, which will be integrated into BPD's early intervention system. ¶ 83.
- Question:
 - Will BPD publicly report these data?

11. Impartial Policing

- BPD will ensure that officers document the demographics of all persons who are subjects of investigatory stops and detentions, vehicle stops, frisks, searches, seizures, arrests, and civilian complaints. The department will

ensure that its policies prohibit discrimination based on race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability. BPD's training on police actions, including stops, frisks, searches, arrests, and use of force, will include training on how to take these actions in a non-discriminatory manner. It will provide fair and impartial policing training to all officers. It will ensure its training curriculum includes appropriate modality or combination of modalities (scenario-based, classroom, academy, etc.) and training assessment tools. BPD will allow members of the community and community-based organizations to participate in these trainings by leading or co-facilitating. It will target communities that are knowledgeable of issues in Baltimore, including representatives knowledgeable on issues of race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, and disability. BPD will consider discriminatory policing or other bias based on protected characteristics by officers or officer candidates in evaluating officer performance and making hiring and promotion decisions. ¶¶ 88-92 and 94-95.

- Questions:
 - What, if any, outside entity will BPD engage to develop these policies?
 - Will BPD publicly report stop, frisks, detention, arrests and civilian complaint data?
 - What entity will provide the fair and impartial policing training and how will BPD evaluate it for effectiveness?
 - What process will BPD use to select community participants for these trainings?
 - What system will BPD use to collect data about officers' discriminatory or biased policing?

12. Responding to and Interacting with People with Behavioral Health Disabilities or In Crisis

- BPD will provide specialized training in responding to individuals in crisis to certain officers, and the training will be at least 40 hours. BPD will also provide eight hours of annual in-service, crisis-intervention training to all officers, and 16 hours of training to recruits in the police academy. Dispatchers and their supervisors will receive some crisis-intervention training. Within 180 days of the effective date of the consent decree, BPD will designate an officer at the rank of Sergeant or above to act as a Crisis Intervention Coordinator to better facilitate communication between BPD and members of the behavioral health provider community and to increase the



effectiveness of BPD's crisis intervention program. ¶¶ 106, 107, 112-113, and 115.

- Questions:
 - What, if any, outside entity will BPD engage to develop this training?
 - What, if any, outside entity will provide crisis-intervention training?
 - How will BPD measure the effectiveness of the training?
 - What is the status of the selection of the Crisis Intervention Coordinator, and what qualifications will BPD seek?

13. Use of Force

- BPD will require all officers to use verbal persuasion and warnings and tactical de-escalation techniques, such as creating distance and slowing down the pace of an incident, before using force. ¶ 125.
- BPD will provide use-of-force training to all new officers as part of its professional development and training academy curriculum, and is required to provide all officers with annual use-of-force in-service training. It will require the reporting of use-of-force incidents that fall in level 1, level 2, or level 3 categories as detailed in paragraph 140 of the consent decree. BPD will ensure that officers notify a permanent-rank supervisor immediately, or following a use of reportable force. It will also ensure officers accurately, thoroughly, and timely report their uses of reportable force. ¶¶ 167-171.
- BPD will collect and maintain all data and records needed to accurately assess its use-of-force practices, and provide broad public access to this information as permitted by law. It will annually analyze the prior year's force data to identify trends, correct deficiencies revealed by the analysis, and document its findings in a public report. ¶¶ 211 and 217.
- Questions:
 - What, if any, outside entity will BPD engage to develop this training?
 - What entity will provide the de-escalation and use-of-force training for new and existing officers?
 - How will BPD measure the effectiveness of the training?
 - What is the timeline for the development and release of BPD's use-of-force report?

14. Interactions with Youth

- City officials will conduct a comprehensive assessment of the city’s efforts to decrease youth involvement with the juvenile and criminal justice systems and obstacles. The assessment will include community organizations with expertise and/or insight into issues affecting youth, academics, and youth advocates. City officials will issue a report publicizing the results of its assessment and making recommendations to improve their supports for youth and city diversion programs. BPD will assess its current policies and training relating to youth and revise its policies and training as necessary to ensure that BPD provides officers with guidance on developmentally appropriate responses to, and interactions with youth. BPD will provide sufficient initial and ongoing training for officers on interacting with youth to its existing and incoming officers. ¶¶ 219-221.
- Questions:
 - What, if any, outside support will BPD receive to assist with conducting the assessment of efforts to decrease young people’s involvement in the justice systems?
 - What, if any, outside support will BPD receive to develop and conduct training on appropriate interactions with youth?

15. First Amendment Protections

- BPD will review and revise its policies, procedures, and trainings associated with First Amendment protected activity. It will ensure that BPD policy and training make clear what conduct constitutes “interference,” and that officers do not unlawfully interfere with lawful protests and assemblies. BPD will also ensure that its personnel permit members of the public to peacefully photograph or record police officers performing their law enforcement duties in public, so long as the individuals who are photographing or recording police activity do not threaten the officer’s safety or the safety of others; do not compromise legitimate police actions and/or rescue efforts; and do not physically interfere with the performance of the officer’s duties. Additionally, BPD will require officers to document any instance in which they order a member of the public to stop recording police activity that occurs in public, and will ensure that officers do not search, seize, or otherwise coerce production of recorded sounds, images, or videos without obtaining a warrant. ¶¶ 244, 245, 247, 248, 249, and 251.
- BPD will ensure that officers obtain supervisory approval within two hours when urgent circumstances have required the warrantless seizure of a recording device or recording. At a minimum, a supervisor must be present to

approve arrests for obstructing or hindering law enforcement while recording police activity, or for refusal to obey a dispersal order while engaged in public protest prior to arrestees being transported to a holding facility. ¶¶ 253-254.

- BPD will conduct annual assessments of its practices related to First Amendment protected activity. As part of the assessment process, BPD will identify deficiencies and opportunities for improvement; implement any appropriate corrective action or improvement measures; and document measures taken. ¶¶ 255-256.
- Questions:
 - What, if any, outside support will BPD receive to develop and conduct this assessment?
 - How will BPD engage the public during the assessment process?

16. Sexual Assault Investigations, Supervision, and Internal Oversight

- BPD shall provide initial and on-going annual training to all BPD detectives in the Sex Offense, Family Crimes, and Child Abuse Units about its policies and practices applicable to law enforcement response to sexual assault. ¶ 259.
- BPD will establish and implement measures to ensure supervision and internal oversight of sexual assault investigations. BPD will also continue to enhance its data collection, analysis, and reporting. To this end, BPD must share the collected and analyzed data with the public, its community, law enforcement partners and the Sexual Assault Response Team. ¶¶ 262, 264, and 265.
- Questions:
 - What, if any, outside entity will assist in developing and providing sexual offense, family crimes and child abuse initial training?
 - How will BPD measure the effectiveness of the training?

17. Technology – Early Intervention System and Body-worn Cameras

- Within the first year of the effective date of the consent decree, BPD will complete a comprehensive study of BPD’s technology called the resource study. BPD will develop a resource plan for adopting the technology necessary to satisfy the material requirements of the consent decree. BPD will ensure that its policy on body-worn cameras addresses the use of cameras, retention of videos, access and privacy issues, the use of recordings as evidence in force

and complaint reviews, and the use of recordings for other criminal justice purposes. ¶¶ 268, 269 and 271.

- BPD will upgrade its early intervention system so that it provides information to supervisors about potentially problematic behavior among officers and facilitates the delivery of interventions to address the behavior. ¶ 313.
- Question:
 - What, if any, outside support will BPD receive to assist with developing and conducting this resource study and plan?
 - How will BPD engage the public during the development of the resource plan?
 - What is the timeline for upgrading BPD's early intervention system?

18. Supervision

- BPD will post any new or revised policy that relates to the material requirements of the consent decree on its website and provide the public and its officers an opportunity to comment within a 30-day period. In consultation with the monitor, the City, DOJ, and BPD will create a plan for renovating and updating training facilities in a cost-effective and reasonable manner to accomplish the training requirements of the consent decree. BPD will develop a written training plan for comprehensive in-service and supplemental training for officers and for enhancing BPD's field training with a revised Field Training Officer program. BPD will actively seek out and retain qualified instructors from outside BPD to supplement the skills of its in-house training staff and adjunct instructors. As appropriate, BPD will incorporate experts, community-based instructors, and guest speakers, including mental health service providers and consumers, judges, prosecutors, crime victims, academics in the field of criminal justice, community resource providers, and community members, including youth, to participate in relevant courses. ¶¶ 285, 292, 294, and 297.
- Questions:
 - How will BPD allow the public and its officers to comment on any new or revised policy?
 - How will BPD engage the public during the creation of the plan for renovating officer training facilities?
 - How will BPD engage the public during the development of the written training plan for the Field Training Officer program?

- What process will BPD use to select qualified instructors?

19. Disciplinary hearings

- Two civilian voting members will participate and vote in each disciplinary hearing conducted by BPD, if permitted by law. Disciplinary hearings will also be audio recorded in their entirety. ¶¶ 380-381.
- Questions:
 - Will Baltimore City officials provide the public access to the audio recordings from disciplinary hearings?
 - Will city officials advocate for the passage of state or local laws allowing civilian to serve as voting members of disciplinary hearings conducted by BPD?

20. Coordination with Baltimore City School Police Force

- BPD will conduct an initial assessment to evaluate how the Baltimore City School Police Force (BSPF) has used BPD's authorization to exercise law enforcement powers throughout the City pursuant to a memorandum of understanding (MOU). Based on the assessment, BPD will determine areas for improvement in its coordination with BSPF and will implement the improvements to the extent they are in BPD's control. BPD will propose policies and protocols governing the proper investigation of civilian complaints involving BSPF officers exercising law enforcement powers pursuant to the MOU to BSPF and seek agreement from BSPF on those policies and protocols. ¶¶ 417-418.
- Questions:
 - What, if any, outside entity will work with BPD on developing and conducting the assessment of BPD's use of BSPF as auxiliary officers?
 - How will BPD engage the public in this assessment?
 - Will BPD publicly report the determined areas for improvement in its coordination with BSPF?
 - What role will the Baltimore City School Board play in this process?

Conclusion

This historic consent decree holds the promise of transforming the BPD into an agency of sworn officers and civilians who serve and protect communities, without regard to race, ethnicity, gender, age, and socio-economic status, and consistent with the U.S. Constitution, state and federal laws, and departmental policies. It is critical that the



parties and the monitor ensure that each and every requirement in the consent decree is carried out and that the implementation process is transparent.

Thank you for considering our recommendations for the impending monitoring plan. We welcome the opportunity to discuss further our suggestions during a meeting. Please feel free to contact Monique Dixon at 202-682-1300 to schedule a mutually convenient time to meet.

Sincerely yours,

A handwritten signature in blue ink that reads "Todd A. Cox". The signature is fluid and cursive, with a long, sweeping underline.

Todd A. Cox
Director of Policy

Monique L. Dixon
Deputy Director of Policy &
Senior Counsel