



July 17, 2017

Via Electronic Mail ([Baltimore.Consent.Decree@usdoj.gov](mailto:Baltimore.Consent.Decree@usdoj.gov))

Puneet Cheema  
United States Department of Justice  
Civil Rights Division, Special Litigation Section  
950 Pennsylvania Ave, NW  
Washington, DC 20530

**Re: Public comment on monitor selection: *U.S. v. Police Department of Baltimore City, et al*, Civil Action No. 1:17-cv-00099-JKB**

Dear Ms. Cheema:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) appreciates the opportunity to provide comments on the more than two dozen applications submitted for the independent monitor position for the consent decree filed in *U.S. v. Police Department of Baltimore City (BPD), et al*. The agreement appropriately states that “it is important to allow for public input at each stage of the Monitor selection process.”<sup>1</sup> Baltimore residents and stakeholders demonstrated their commitment to being involved in this process when over 200 people attended a standing-room-only town hall meeting introducing monitor applicants to the public on July 6, 2017. The town hall was co-hosted by members of the Campaign for Justice, Safety and Jobs, including LDF, and may be viewed at <https://www.facebook.com/LBSBaltimore/>. Given this significant demonstration of public interest, we respectfully request that the U.S. Department of Justice (DOJ), BPD and city officials (the parties) consider adding another public comment period from August 17 – August 25, 2017, which would occur after the parties’ scheduled public meeting with monitor finalists, but before the parties recommend a finalist to the court.

The selection of an independent monitor team that will work with the federal court to ensure all provisions of the consent decree are fully carried out is essential to the success of the agreement. While many elements important to this oversight process have been identified in various dialogues, documents, and submissions to the court, we write to underscore the significance of five criteria that LDF believes are critical to consider in the selection of a monitor. As the parties consider the twenty-six monitor applicants, we urge you to select finalists

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<sup>1</sup> See, Consent Decree, *U.S. v. Police Department of Baltimore City*, Case 1:17-cv-00099-JKB, 164 (D.MD Jan. 12, 2017) (hereinafter *Baltimore Consent Decree*), <https://www.justice.gov/crt/page/file/925046/download>.

who are: 1) diverse; 2) personally or professionally connected to Baltimore; 3) experienced in the key issue areas detailed in the consent decree; 4) independent of local, state and federal governments with no actual or perceived conflicts of interests; and 5) willing to commit several team members to monitoring the consent decree full time.

**I. Monitor finalists should have a diverse team**

To create confidence in the consent decree oversight process, ensure the process reflects the lived experiences of the community, and, therefore, ultimately ensure the best oversight of the complex issues connected to reforming Baltimore’s police practices, the monitor finalist teams should reflect the community they propose to serve. Baltimore is the largest city in the State of Maryland with 2.7 million residents who are 63% Black, 30% White, 4% Latino,<sup>2</sup> 47% male and 53% female.<sup>3</sup> Additionally, the teams should include a balanced number of members with expertise in “policing, civil rights, monitoring, data analysis, project management, and related areas, as well as local experience and expertise with the diverse communities of Baltimore.”<sup>4</sup> Therefore, monitor finalist teams should be diverse as it relates to race, ethnicity, gender, and expertise.

**II. Monitor finalists should have Baltimore connections**

Members of monitor finalist teams should include Baltimore City residents, such as community liaisons as required by paragraph 474 of the consent decree. Community liaisons should be well known and respected in Baltimore communities, and have established working relationships with activists, the business community, and other community stakeholders. These Baltimore connections will assist the monitor team with carrying out many provisions of the consent decree, such as meeting with “community stakeholders on a regular basis to discuss BPD’s progress under the Agreement, to explain the Monitor’s reports, to inform the public about the Agreement implementation process, and to hear community perspectives of police interactions.”<sup>5</sup> If a finalist has no Baltimore connections, then it must demonstrate its commitment to hiring Baltimore residents to serve on the monitoring team.

**III. Monitor finalists should be experienced in key issue areas detailed in the consent decree**

**A. Monitoring**

Certainly, monitor finalists must have experience in overseeing the reform efforts of large institutions and/or governmental agencies. Although most applicants have monitoring experience, it will be important to know how successful these experiences have been by inquiring about the outcomes of the various monitoring assignments each applicant has or continues to hold. The

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<sup>2</sup> See, U.S. Dep’t of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, 12. Aug. 10, 2016, <https://www.justice.gov/opa/file/883366/download>, (hereinafter *Baltimore Investigative Report*).

<sup>3</sup> See, United States Census Bureau Quick Facts Baltimore, Maryland 2016, (last visited July 14, 2017); <https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/BZA110215>.

<sup>4</sup> *Baltimore Consent Decree*, *supra* note 1 at 158.

<sup>5</sup> *Id.* at 179.

parties should consider carefully references from entities the applicants have monitored, as well as from members of the communities directly impacted by applicants' current or previous monitor assignments. This information will provide insight on the applicant's likelihood of success in overseeing the Baltimore consent decree.

### **B. Biased Policing**

Given the extensive findings in the DOJ report of biased-policing practices by BPD, monitor finalists must have experience in addressing discriminatory policing based on race, ethnicity, sex, age and disability, as required by the consent decree.<sup>6</sup> We urge the parties to request and consider carefully any documents demonstrating how monitor finalists successfully addressed biased policing practices during previous monitoring engagements.

### **C. Civil Rights**

The consent decree includes several provisions that require the BPD to engage in policing practices that meet the requirements of the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, which protect individuals' rights to free speech, to assembly, and to be free from unreasonable searches and seizures, and excessive use of force.<sup>7</sup> Any monitor finalists must be knowledgeable and experienced in identifying and addressing violations of individuals' civil rights. Constitutional policing requires law enforcement officers to communicate respectfully with community members, inform community members of their rights during encounters with law enforcement, and remain neutral and transparent in their decision making.<sup>8</sup>

### **D. Data analysis**

Additionally, monitor finalists must have experience in data analysis, as they will be required to assess data BPD collects on stops, searches, arrests and use of force data. Finalists must be able to identify trends, disaggregate data by demographics including race and gender, and advise BPD and city officials on how to address these trends (e.g., training or corrective actions).

### **E. School Police**

During its investigation of BPD, DOJ found that BPD used the Baltimore School Police Force (BSPF) as auxiliary police by giving BSPF the authority to patrol city streets through a Memorandum of Understanding (MOU). Yet, BPD provided little or no oversight of the BSPF activities conducted under the MOU, including stops, arrests, and use of force.<sup>9</sup> The consent decree requires BPD to assess its relationship with BSPF, identify areas for improvement, and make appropriate changes.<sup>10</sup>

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<sup>6</sup> *Id.* at 11-93.

<sup>7</sup> *Id.*

<sup>8</sup> See, President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, 10. Washington, DC: Office of Community Oriented Policing Services, May 2015, available at [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>9</sup> *Baltimore Investigative Report*, *supra* note 2 at 154-55.

<sup>10</sup> *Baltimore Consent Decree*, *supra* note 1 at 150.

Therefore, monitor finalists must be knowledgeable about the different roles that BSPF and BPD occupy, and offer advice to BPD and city officials on how to effectively request and analyze relevant data and policies from relevant agencies, (e.g., Baltimore City Board of School Commissioners), which will be needed to conduct the required assessment. Additionally, monitor finalists must be capable of adequately assessing the MOU between BPD and BSPF and identifying effective reforms.

#### **F. Proposed Interview Questions for Monitor Finalists**

Given decades of mistrust between Baltimore residents and the BPD that resulted from systemic unlawful policing practices, it is important that monitor finalist teams with current and/or former law enforcement officers, prosecutors, or judges, do not have a history of the same. The parties should ask monitor teams with current or former law enforcement officers to provide detailed information about any criminal prosecutions and civil lawsuits against or involving the law enforcement team members, including the resolution of the matters, and any disciplinary matters against or involving them.

Monitor finalists including current or former prosecutors should provide information on experience prosecuting law enforcement officers, including outcomes. Additionally, the parties should request from monitor finalist teams with current or former judges' information on any judicial opinions those team members have authored involving law enforcement officers acting in their official capacities.

The fact that monitor team members have been sued, disciplined or written opinions that are favorable or unfavorable to law enforcement is important information for the parties to discover prior to the selection of the independent monitor.

#### **IV. Monitor finalists should be independent of local, state and federal governments with no actual or perceived conflicts of interests**

The Request for Applications for the Baltimore consent decree monitor position asked applicants to identify conflicts of interests. About a dozen applicants detailed conflicts—actual or perceived. The Parties must consider these conflicts carefully and determine whether members of the monitor finalist teams will be able to be impartial. Ideally, team members should have no actual or perceived conflicts of interests. Nonetheless, monitor team members who have served in local, state or federal governmental positions should be carefully questioned about their past engagements and demonstrate their ability to be impartial if selected to serve as a monitor.

#### **V. Monitor finalists should commit to assigning several team members to serve full time**

BPD has approximately 2,851 sworn members<sup>11</sup> and the consent decree has identified sixteen areas of reform. Ensuring that BPD and city officials are carrying out each provision detailed in the 227-page agreement, and the inclusion of community input throughout the

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<sup>11</sup> *Sworn Personnel*, Baltimore Police Department, <https://www.baltimorepolice.org/> (last visited July 14, 2017)

monitoring process will require full-time commitment from several monitor team members. To this end, the finalists should be willing to assign several members of the team to work on the consent decree on a full-time basis.

## **VI. Conclusion**

The selection of an effective, independent monitor team is of the utmost importance for ensuring the proper implementation of the Baltimore consent decree. It will be one of the most important decisions that the parties in this case, the community, and the federal court will make. We hope that the criteria and questions outlined above will guide stakeholders' decision-making processes.

Thank you for considering these comments.

Sincerely yours,



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