

Michael R. Bromwich
202 429 8167
mbromwich@steptoe.com

Steptoe

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

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BY EMAIL

Honorable Vanita Gupta
Associate Attorney General
U.S. Department of Justice
950 Pennsylvania, NW
Washington, DC 20530

Honorable Kristen Clarke
Assistant Attorney General
Civil Rights Division

Steven Rosenbaum
Chief, Special Litigation Section
Civil Rights Division

Re: Department of Justice Pattern-or-Practice Investigation of City of Phoenix

Dear Ms. Gupta, Ms. Clarke, and Mr. Rosenbaum:

As you know, on August 5, 2021, Attorney General Garland announced that the Civil Rights Division was launching a pattern-or-practice investigation of the City of Phoenix (the City) and the Phoenix Police Department (PPD), pursuant to 34 U.S.C. § 12601. That section authorizes the United States Department of Justice (DOJ) to conduct such investigations to determine whether a city and its police department are “engag[ing] in a pattern or practice of conduct by law enforcement officers...that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States.”¹ As you well know, if the DOJ makes such a finding, it is authorized to file a civil lawsuit seeking remedies designed to “eliminate the pattern or practice.”² Over the almost 30 years that the statutory authority has

¹ 34 U.S.C. § 12601(a).

² 34 U.S.C. § 12601 (b)

existed, the Civil Rights Division has conducted scores of pattern-or-practice investigations. In the vast majority of cases, the matters have been resolved without resort to litigation.³

The DOJ's Phoenix investigation was announced several months after similar pattern-or-practice investigations were announced for Minneapolis, Minnesota (April 21, 2021), and Louisville, Kentucky (April 26, 2021). Minneapolis was the site of the murder of George Floyd on May 25, 2020, by officers of the Minneapolis Police Department. Louisville was the site of the fatal shooting of Breonna Taylor by officers of the Louisville Metro Police Department. The deaths of Mr. Floyd and Ms. Taylor spurred protests throughout the country and undoubtedly served to some extent as the predicates for the DOJ pattern-or-practice investigations of those cities and those police departments. No similar event triggered the Phoenix investigation. Despite repeated requests by City of Phoenix representatives and members of the Phoenix community for the DOJ to provide the factual predicates for the investigation, no meaningful response has been provided. This lack of transparency has caused substantial frustration and growing resistance to the prospect of federal oversight among Phoenix residents and their elected representatives.

After 29 months, the DOJ's investigation appears to be winding down, but with no specific information on when it will conclude. Unfortunately, one constant of the investigation has been a lack of transparency by the DOJ. The DOJ investigative team has declined to meaningfully share its observations, impressions, concerns, or tentative conclusions with the City of Phoenix, PPD, or their counsel despite numerous requests, and has rejected a specific request for a mid-investigation briefing. In addition, the DOJ has also stated, on two separate occasions, that it will not share a draft of its findings report prior to its public release, most recently in a letter from Assistant Attorney General Clarke in late November.⁴ As a result, the City of Phoenix will not have a meaningful ability to respond to the report in a timely way, nor to demonstrate that ongoing reforms within the City and the PPD have the potential to effectively address and remediate any historical weaknesses and deficiencies that may be identified in the DOJ findings report.

Over the last 16 months, under Interim Chief (IC) Michael G. Sullivan, those reforms have touched virtually every aspect of the operations implicated by the DOJ investigation. Lacking the opportunity to respond to the DOJ's report before it is made public, we have prepared a detailed report, submitted along with this letter. That report describes the various policies, programs, training, and other initiatives that have been developed and implemented in PPD under IC Sullivan, with the full support of the City, as well as those that pre-dated IC Sullivan's arrival. These changes demonstrate a powerful commitment to reform, a commitment that warrants a different approach from the DOJ than has been the case over the past dozen years.

³ U.S. Dept. of Justice Civil Rights Division, *The Civil Rights Division's Pattern and Practice Reform Work: 1994 – Present* (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>.

⁴ Letter from Assistant Attorney General Kristen Clarke to Michael R. Bromwich, November 29, 2023.

During that time period, the DOJ has insisted on negotiating a consent decree with the city and police department under investigation in every case in which it has found a pattern or practice of Constitutional and/or statutory violations. It has not varied the solutions according to the size, history, or culture of the individual city and law enforcement agency; in other words, the DOJ has developed a one-size-fits-all approach to police reform. Indeed, in its recent investigations of Minneapolis and Louisville, the DOJ demanded that those cities commit to negotiating a consent decree even before the DOJ's findings had been shared with the respective cities and their police departments.

Although consent decrees may be the appropriate remedy in some cases, the track record of the Civil Rights Division's pattern-or-practice consent decrees over the past decade strongly suggests the need to explore alternatives if the ultimate goal is—as it should be—efficient, effective, and durable law enforcement reforms. As the accompanying report describes in detail, there are currently 11 police law enforcement agency pattern-or-practice consent decrees still in force in which the DOJ is a party.⁵ Those consent decrees have been in place for periods ranging from seven to fifteen years in duration, with an average duration of more than ten years. A review of the most recent court proceedings and monitoring reports in those jurisdictions demonstrates that most are not even approaching termination through compliance with the decree requirements. Whatever their virtues, consent decrees are lengthy, complicated, and expensive. They require actors not normally a part of the process of governing the operations of law enforcement agencies: the DOJ, a monitoring team, and a federal judge. Those additional actors slow the process of implementing reform and make the arc and speed of reform implementation dependent on: (i) the vagaries of a monitoring team, which has its own incentives, and (ii) a federal judge frequently selected at random who may have no expertise in local law enforcement. That structure may make sense for other cities. Given the reforms already developed and being implemented by PPD, which are described in substantial detail in the accompanying report, it does not make sense for Phoenix.

In the past, DOJ has used other means to resolve its pattern-or-practice investigations, including memoranda of agreement, which generally involve a monitor but not a judge, and technical assistance letters, which generally require neither. Technical assistance letters were widely used during the period 2001 to 2012, with approximately 20 different cities of various sizes. They appear to have been abruptly discontinued without any public explanation, even though it is an option that should be available to a city and police department that have demonstrated the willingness and ability to identify their weaknesses and work to address them.

Based on the circumstances in Phoenix, including the commitment to change and reform reflected in the accompanying report, we request that the Department of Justice commit to negotiating in good faith a technical assistance letter with the City of Phoenix and the Phoenix

⁵ In late 2015, the DOJ launched a pattern-or-practice investigation of the City of Chicago and the Chicago Police Department, which resulted in a findings report issued by DOJ in January 2017. However, the DOJ bowed out of the matter in the spring of 2017. A consent decree was subsequently negotiated with the city and its police department by the Illinois State Attorney General's Office based largely on the DOJ's investigation. Although that consent decree is similar to those in which the DOJ is a party, it is not included in this discussion as a consent decree involving the DOJ.

Police Department, with assurances sufficient to reassure the DOJ that the City and PPD will continue with the reforms they are in the process of implementing.

We look forward to discussing the matters addressed in this letter and the accompanying report once we have had the opportunity to review and analyze the DOJ's findings report.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bromwich". The signature is fluid and cursive, with the first name "Michael" and last name "Bromwich" clearly legible.

Michael R. Bromwich