

1 ADRIENNA WONG (SBN 282026)

awong@aclusocal.org

2 STEPHANIE PADILLA (SBN 321568)

spadilla@aclusocal.org

3 JORDAN WELLS (SBN 326491)

jwells@aclusocal.org

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

1313 West Eighth Street

5 Los Angeles, California 90017

6 Telephone: (213) 977-9500

Facsimile: (213) 977-5299

7
8 *Counsel for Proposed Intervenors ACLU of Southern California
and Faith In the Valley*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, EX REL. ROB BONTA,
15 ATTORNEY GENERAL OF THE STATE OF
16 CALIFORNIA,

Plaintiff,

17 ACLU OF SOUTHERN CALIFORNIA,

[Proposed] Intervenor,

18 FAITH IN THE VALLEY,

[Proposed] Intervenor,

19
20 v.

21 CITY OF BAKERSFIELD and THE
22 BAKERSFIELD POLICE DEPARTMENT,

Defendants.

Case No. BCV-21-101928 (NFT)

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO INTERVENE**

Date: October 21, 2021

Time: 8:30 a.m.

Dept: 12

Commissioner Linda S. Etienne

Action Filed: August 23, 2021

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Proposed Intervenors ACLU OF SOUTHERN CALIFORNIA
3 (ACLU or ACLU SoCal) and FAITH IN THE VALLEY (collectively, Proposed Intervenors), by and
4 through their counsel of record, hereby move this Court for an order granting them leave to intervene as
5 Parties joining Plaintiff in the Stipulated Judgment pursuant to Cal. Code Civ. Proc. § 387(b)(1), and to
6 file their proposed complaint in intervention, attached hereto as Exhibit A, in the above-captioned
7 action.

8 This motion is based on Cal. Code Civ. Proc. § 387(c)(“[a] nonparty shall petition the court for
9 leave to intervene by noticed motion or ex parte application”); the attached memorandum of points and
10 authorities; the declarations of Peter Bibring and Josth Stenner, filed herewith; the proposed complaint
11 in intervention, and all the other papers, documents, or exhibits on file or to be filed in this action; and
12 the argument to be made at the hearing on this motion.

13 This motion for intervention rests on the following grounds, which are further explained in the
14 accompanying memorandum of points and authorities:

15 1. The Court retained jurisdiction for the purpose of enforcing the Stipulated Judgment in
16 this action;

17 2. Proposed Intervenors have direct and immediate interests in the subject of this action and
18 in the Stipulated Judgment; intervention is timely and will not enlarge the issues in the litigation; and the
19 reasons for intervention outweigh any opposition by the parties presently in the action, such that
20 intervention should be granted pursuant to Cal. Code Civ. Proc. § 387(d)(2); and

21 3. Proposed Intervenors have interests relating to the subject of this action that the Plaintiff
22 and Defendants in this case do not represent, and the disposition of this action—namely, determinations
23 made concerning the implementation of the Stipulated Judgment—may impair or impede Proposed
24 Intervenors’ ability to protect those interests, such that Proposed Intervenors are entitled to intervene as
25 of right pursuant to Cal. Code Civ. Proc. § 387(d)(1)(B).

1 Dated: September 28, 2021

2 Respectfully submitted,

3 AMERICAN CIVIL LIBERTIES UNION
4 OF SOUTHERN CALIFORNIA

5 By: /s/ Stephanie Padilla
6 STEPHANIE PADILLA (SBN 321568)
7 ADRIENNA WONG (SBN 282026)
8 JORDAN WELLS (SBN 326491)
9 ACLU FOUNDATION OF
10 SOUTHERN CALIFORNIA
11 1313 West Eighth Street
12 Los Angeles, California 90017
13 Telephone: (213) 977-9500
14 Facsimile: (213) 977-5299
15 *spadilla@aclusocal.org*
16 *awong@aclusocal.org*
17 *jwells@aclusocal.org*

18 *Attorneys for Proposed Intervenors*

Exhibit A

1 ADRIENNA WONG (SBN 282026)

awong@aclusocal.org

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12 Case No. BCV-21-101928 (NFT)

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, EX REL. ROB BONTA,
ATTORNEY GENERAL OF THE STATE OF
15 CALIFORNIA,

Plaintiff,

16 ACLU OF SOUTHERN CALIFORNIA,

Intervenor,

17
18 FAITH IN THE VALLEY,

Intervenor,

19
20 v.

21 CITY OF BAKERSFIELD and THE
22 BAKERSFIELD POLICE DEPARTMENT,

Defendants.

**[PROPOSED] COMPLAINT IN
INTERVENTION**

Date: October 21, 2021

Time: 8:30 a.m.

Dept: 12

Commissioner Linda S. Etienne

Action Filed: August 23, 2021

1 By leave of Court, the ACLU OF SOUTHERN CALIFORNIA (ACLU or ACLU of SoCal) and
2 FAITH IN THE VALLEY (collectively, Intervenors) hereby intervene in this action. Intervenors allege
3 as follows:

4 1. This action concerns Bakersfield residents’ constitutional and statutory rights, and the
5 Bakersfield Police Department’s (BPD) patterns and practices of unlawful conduct violating those
6 rights.

7 2. For years, Intervenors have worked with Bakersfield community members to challenge,
8 document, and change BPD’s unlawful patterns and practices and to support the Bakersfield families
9 hurt by them. In 2016, Intervenor Faith In the Valley, with members of families who had lost loved ones
10 to BPD shootings, reached out to the Attorney General’s Office to call on it to open a civil rights
11 investigation of BPD.

12 3. In December 2016, the Attorney General began its investigation of BPD. After a
13 comprehensive investigation informed by Intervenors’ complaints, on August 23, 2021, the Attorney
14 General’s office filed the Complaint in this action concluding that BPD has engaged in a pattern or
15 practice of conduct that deprives Bakersfield community members of their rights—including using
16 excessive force and engaging in unreasonable stops, searches, arrests, and seizures in violation of the
17 Constitution and laws of the United States and the State of California. Simultaneously, the Attorney
18 General’s office filed a Stipulated Judgment with BPD, which was entered by the Court on August 27,
19 2021.

20 4. Intervenors are organizations with members, staff, and clients who live, work, and raise
21 families in the City of Bakersfield, who have been and are directly impacted by BPD policies and
22 practices. As organizations with members, offices, and staff engaged in policing-related advocacy in the
23 City of Bakersfield, Intervenors have a direct interest in ensuring that this action results in meaningful
24 change that protects, and is informed by input from, the Bakersfield community members they organize
25 with and represent. Intervenors are community stakeholders specifically named in the Stipulated
26 Judgment, and they advocated for the passage, enactment, and implementation of legislation that the
27 Stipulated Judgment specifically requires BPD to implement. In sum, Intervenors have substantial
28 interests in this action.

INTERVENORS

Faith In the Valley

5. Intervenor Faith In the Valley is a multi-faith, non-partisan, non-profit organization with five chapters across the Central Valley, including Kern County, that represents congregations and families including in the City of Bakersfield. Faith In the Valley is a federated member of PICO California, the largest faith-based community organizing network in California.

6. For years, Faith In the Valley has fought against BPD’s abusive and violent practices employed against Bakersfield community members. Since 2015, Faith In the Valley has organized with Bakersfield community members and families impacted by BPD violence to share their stories and demand transparency and accountability measures from BPD and other city officials. Faith In the Valley has organized community meetings attended by hundreds of residents,¹ meetings with BPD officials, marches,² and direct actions to address BPD policies and practices and to advocate for change. Faith In the Valley has also organized community trainings to ensure that Bakersfield residents know their rights when confronted by BPD officers who seek to stop, search, or seize them. Faith In the Valley’s work prompted the newspaper *The Guardian* to investigate and publish a five-part series documenting BPD’s brutal tactics against the Bakersfield community.³

7. In 2016, when then-Bakersfield Police Chief Greg Williamson announced his retirement, Faith In the Valley sought to provide input on the selection of the new Bakersfield Police Chief. Faith In the Valley organized Bakersfield community members to come up with a list of criteria for selection of the new Bakersfield Police Chief, with the hope of paving a way forward for a BPD that was more inclusive of the community, and its demands for reform of BPD’s policies and practices. City officials, however, ignored Faith In the Valley’s presentation of those considerations.

¹ See e.g., Joey Williams, “*Breaking through systems of injustice*, SOJOURNERS,” (Jan. 15, 2016), <https://sojo.net/articles/faith-action/breaking-through-systems-injustice>.

² See e.g., Bakersfield Now, “*Hundreds take part in 4th annual Walk For Justice*,” BAKERSFIELD NOW (Mar. 24, 2018), <https://bakersfieldnow.com/news/local/hundreds-take-part-in-4th-annual-walk-for-justice>.

³ See Jon Swaine & Oliver Laughland, “*The County: the story of America's deadliest police*,” THE GUARDIAN, (Dec. 1, 2015), <https://www.theguardian.com/us-news/2015/dec/01/the-county-kern-county-deadliest-police-killings>.

1 8. In 2016, on the heels of the swearing in of the new Bakersfield Police Chief, and
2 following one of BPD’s deadliest years, BPD killed Francisco Serna, a 73-year-old Latino grandfather
3 with dementia whose crucifix BPD allegedly mistook as a threat; BPD shot him seven times.⁴ Following
4 Mr. Serna’s death, Faith In the Valley called for the California Department of Justice (CA-DOJ) to
5 investigate BPD. Faith In the Valley and community members impacted by BPD violence spoke to the
6 CA-DOJ investigators by telephone to share their concerns and information about BPD’s abuses, as well
7 as the pain of family members who had lost loved ones to BPD violence.⁵

8 9. On December 22, 2016, CA-DOJ launched its investigation of BPD. After the CA-DOJ
9 initiated its investigation of BPD, Faith In the Valley launched a campaign to support that investigation
10 by helping community members document and share their experiences with CA-DOJ.⁶ Faith In the
11 Valley created safe spaces for community members afraid of police retaliation to share their accounts of
12 BPD abuse and violence. Faith In the Valley also successfully advocated for a call-in hotline and
13 produced Know Your Rights cards with the hotline number and disseminated them to community
14 members to report incidents of excessive force to aid CA-DOJ’s investigation.

15 10. Faith In the Valley, through PICO California, was a cosponsor of Assembly Bill 392
16 (Weber) (2019), the California Act to Save Lives, which changed the standard under California law for
17 when officers are authorized to use deadly force. Leading to the passage of AB 392, Faith In the Valley
18 provided educational workshops to inform community members about AB 392 and mobilize them to
19 support. Faith In the Valley mobilized the community to call their local electeds, and conducted a sit-in
20 at California Assemblymember Rudy Salas’ office, urging them to support AB 392. Faith In the Valley
21 played an instrumental role in working with impacted family members to share their stories with state
22 legislature to help pass AB 392.

24 ⁴ See Melissa Chan, “73-year-old man with dementia may have been waving crucifix when cops fatally
25 shot him,” TIME, (Dec. 13, 2016), <https://time.com/4599335/man-dementia-fatally-shot-police-crucifix/>.

26 ⁵ See Josth Stenner, Daulton Jones, Jorge Ramirez, and Joey Williams, “The Bakersfield police may
27 finally reform. But we must hold them to account,” THE GUARDIAN, (Sept. 2, 2021),
<https://www.theguardian.com/commentisfree/2021/sep/02/california-bakersfield-police-reform>.

28 ⁶ See “Faith In the Valley Kern announces support of DOJ’s investigation of BPD, KCSO,” 23ABC
NEWS BAKERSFIELD, (Dec. 22, 2016), <https://www.turnto23.com/news/local-news/faith-in-the-valley-kern-announces-support-of-dojs-investigation-of-bpd-kcso>.

1 11. PICO California was also a cosponsor of Assembly Bill 953 (Weber) (2015), the Racial
2 and Identity Profiling Act (RIPA), which requires law enforcement agencies to “collect perceived
3 demographic and other detailed data regarding pedestrian and traffic stops” and established a Racial and
4 Identity Profiling Advisory Board (RIPA Board) that investigates and analyzes agencies’ racial and
5 identity profiling policies and practices to annually make findings and policy recommendations aimed at
6 eliminating racial and identity profiling. Faith In the Valley organized a civic engagement campaign to
7 assist the passage of AB 953. In September 2015, Faith In the Valley helped mobilize impacted
8 community members to share their stories and participated in an action on the steps of the State Capitol
9 in support of AB 953.

10 12. Since AB 953 passed, Faith In the Valley has advocated for strong data collection and
11 policy recommendations from the RIPA Board. On January 26, 2017, Josth Stenner, a community
12 organizer for Faith In the Valley, spoke at a RIPA Board meeting where he informed the RIPA Board
13 members that Kern County has the deadliest police in the country and spoke about how BPD shot
14 Francisco Serna, a 73-year-old man with dementia, seven times. Mr. Stenner commented that AB 953
15 data needs to be collected not for the benefit of community members, who already know what is going
16 on, but for the Board and others to see the reality of practices like BPD’s so they will create policies that
17 will save lives.⁷

18 13. Faith In the Valley continues to advocate at the local and state level for BPD to change its
19 policies and practices.

20 **ACLU of Southern California**

21 14. ACLU SoCal is a non-profit, non-partisan organization that defends the fundamental
22 rights outlined in the United States Constitution and the Bill of Rights. ACLU SoCal has an office and
23 hundreds of members in the City of Bakersfield.

24 15. As part of its mission, ACLU SoCal and other California affiliates of the ACLU have
25 been involved in a number of cases and legislative campaigns involving police use of force, racial and
26 identity profiling, open and transparent policing, law enforcement accountability, and other substantive

27 _____
28 ⁷ See California Racial and Identity Profiling Advisory Board, Meeting Minutes (Jan. 26, 2017),
<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-board-01262017.pdf>.

1 issues around policing.

2 16. For years, ACLU SoCal has engaged in advocacy directed at BPD in particular. ACLU
3 SoCal staff have marched alongside community members in Bakersfield’s Annual Walk for Justice,
4 which commemorates the lives lost to police violence and calls for change.⁸ Additionally, ACLU SoCal
5 has supported community groups’ demands for BPD to adopt strong policies on its use of body-worn
6 cameras to ensure that the cameras actually serve the purpose of holding officers accountable for
7 misconduct.

8 17. In November 2017, ACLU SoCal released a report on BPD’s patterns and practices of
9 excessive force.⁹ ACLU SoCal compiled the information included in the report through detailed review
10 of public records, court documents, and media reports, among other sources.

11 18. In conjunction with the release of the report, ACLU SoCal sent a letter to then-California
12 Attorney General Xavier Becerra, urging him to use his office’s investigatory powers to compel BPD to
13 take corrective measures to address police abuse.¹⁰

14 19. In August 2021, ACLU SoCal released an updated report documenting BPD’s continued
15 use of unconstitutional patterns and practices.¹¹ ACLU SoCal analyzed publicly available data and
16 recounted stories from individuals directly impacted by BPD excessive force and unreasonable stops,
17 searches, and seizures.

18 20. In 2015, the California legislature enacted AB 953 to curb racial and identity profiling
19 and increase transparency and accountability by requiring law enforcement agencies to collect and
20 report information to the CA-DOJ. The ACLU SoCal played an instrumental role in the legislative
21 process supporting AB 953.

22 ⁸ See *supra* n.2.

23 ⁹ See ACLU of Southern California, *Patterns & Practices of Police Excessive Force in Kern County,*
24 *Findings & Recommendations* (2017),
25 https://www.aclusocal.org/sites/default/files/patterns_practices_police_excessive_force_kern_county_alu-ca_paper.pdf.

26 ¹⁰ See ACLU of Southern California, Letter to Attorney General Xavier Becerra Re: Kern County
27 Sheriff’s Office & Bakersfield Police Department (Nov. 9, 2017),
28 https://www.aclusocal.org/sites/default/files/letter_to_attorney_general_re_kern_county.pdf.

¹¹ See ACLU of Southern California, *Unconstitutional Patterns and Practices in the Bakersfield Police*
Department (2021), <https://www.aclusocal.org/en/publications/unconstitutional-patterns-and-practices-bakersfield-police-department>.

1 21. Since AB 953 passed, ACLU SoCal has continued to advocate for strong implementation
2 of AB 953 by, among other things, providing detailed written comments on implementing regulations
3 proposed and adopted by CA-DOJ, and regularly attending public hearings of the RIPA Board at which
4 it has advocated for a robust analysis of the data collected and meaningful response to that data. The
5 ACLU SoCal has also engaged in advocacy and litigation to put an end to unlawful and discriminatory
6 stops, searches, and seizures, including advocacy directed at, and litigation against, BPD. In 2018, the
7 ACLU SoCal filed a lawsuit against BPD for the unlawful arrest of a Black man, which highlighted
8 BPD’s unconstitutional practices in conducting stops, searches, and seizures.¹²

9 22. In 2019, the California Legislature passed AB 392, which enacted changes to Penal Code
10 § 835a requiring law enforcement agencies to implement a new legal standard for police deadly force.
11 ACLU SoCal supported AB 392 throughout the legislative process, rallied supporters to make over
12 1,200 constituent calls to their elected representatives, hosted know your rights workshops to educate the
13 community about AB 392, and engaged in state-wide advocacy for implementation of AB 392. ACLU
14 SoCal has also engaged in advocacy addressing AB 392 compliance issues in use of force policy
15 language developed by the private company Lexipol, which supplies policy language to BPD, and
16 recently filed a lawsuit against the Pomona Police Department to enforce compliance of AB 392 in that
17 department’s policy and training.¹³

18 **Intervenors’ Interests and Involvement in this Action**

19 23. In December 2016, the Attorney General began a civil investigation of BPD to determine
20 whether BPD had engaged in a pattern or practice of violating the law. The Attorney General’s Office
21 focused on allegations involving police practices and accountability within BPD. The Attorney
22 General’s decision to investigate BPD was informed by complaints by Intervenors and individuals
23 supported by Intervenors.

24 24. For over four years, the Attorney General’s Office investigated BPD. During that time,
25 Intervenors worked to support the investigation by helping community members document and share
26 their experiences; by advocating for a call-in hotline; and by disseminating information to community

27 _____
28 ¹² See *Mitchell v. Jeffries, et al.*, Case No. 1:18-cv-0146-LJO-JLT (E.D. Cal. 2018).

¹³ See *Gente v. City of Pomona*, Case No. 20STCV28895 (L.A. Super. Ct. 2020).

1 members about the hotline and other information about the Attorney General’s investigation and how to
2 report relevant information. ACLU SoCal also compiled, analyzed, and published data documenting
3 BPD’s patterns and practices of unlawful excessive force and unreasonable stop, search, and seizure
4 practices.

5 25. On August 23, 2021, the Attorney General’s Office (Plaintiff) filed a Complaint for
6 Injunctive Relief (Complaint) against Defendants City of Bakersfield and BPD (Defendants), initiating
7 this action. On the same day, Plaintiff and Defendants filed a Stipulation for Entry of Final Judgment
8 and Permanent Injunction attaching a Stipulated Judgment. On August 27, 2021, Judge Thomas S. Clark
9 signed and entered the Stipulated Judgment.

10 26. The Stipulated Judgment requires BPD to make changes to its use of force and
11 investigatory stop, search, and seizure policies, training, guidelines, and strategies. Intervenors have a
12 direct and immediate interest in determinations made about the Stipulated Judgment as organizations in
13 Bakersfield that have strived to change BPD’s patterns and practices of excessive force and
14 unreasonable stops, searches and seizures, and as organizations whose members, mission, and work in
15 Bakersfield have been and will be affected by BPD’s policies and practices.

16 27. The Stipulated Judgment requires BPD to “continue to review and revise its policies and
17 associated training materials, to ensure compliance with the requirements of this Agreement and enacted
18 California law, including Penal Code Section 835a[.]” The changes to the police deadly force standard
19 effected by AB 392 are codified in Penal Code § 835a. The Stipulated Judgment also requires BPD to
20 maintain, “and where necessary review and revise,” its use of force policies to implement several
21 provisions of AB 392. Intervenors, as proponents of AB 392, have a direct and immediate interest in
22 determinations made about the implementation of the Stipulated Judgment terms concerning AB 392.

23 28. The Stipulated Judgment requires BPD to document all stop data required by RIPA; to
24 analyze the stop data it collects under RIPA; to make revisions to its policies and training based on that
25 analysis; to adopt applicable recommendations made by the State of California’s RIPA Board reports; to
26 amend its civilian complaint policies and procedures to incorporate the best practices contained in the
27 RIPA Board reports; and to amend its complaint form to collect the information delineated in the RIPA
28 Board’s 2020 report. Intervenors, as proponents of RIPA, have a direct and immediate interest in

1 determinations made about the implementation of the Stipulated Judgment terms concerning RIPA.

2 29. The Stipulated Judgment requires BPD to put together a community advisory working
3 group or panel and to make a good faith effort to have representatives from various diverse stakeholder
4 groups, including but not limited to Intervenors. The Stipulated Judgment specifically names Intervenors
5 as community stakeholders. The Stipulated Agreement requires BPD to develop a strategic plan to
6 meaningfully engage with community stakeholders and work with its newly formed community
7 advisory panel or working group in developing revised policies. BPD is specifically required to work
8 with the community advisory working group or panel when revising policies that are of particular
9 interest to the community, including, but not limited to, its use of force and bias-free policing policies.
10 The Stipulated Judgment requires BPD to meaningfully engage with community stakeholders in
11 developing revised use of force policies in light of an analysis of use of force incidents. Intervenors have
12 direct and immediate interests in determinations made about BPD’s community engagement strategies
13 and its work with community organizations to revise its policies.

14 **JURISDICTION, VENUE, AND BASIS FOR INTERVENTION**

15 30. The Court has retained jurisdiction over the allegations and subject matter of the
16 Complaint for the purpose of enforcing the Stipulated Judgment. Intervenors seek relief pursuant to the
17 allegations and claims for violations of the United States and California Constitutions already presented
18 in the Complaint and in this action. The Court also has jurisdiction over these claims under the
19 California Constitution, Article VI, section 10 and Code of Civil Procedure §§ 410.10, 525–526a, 1060,
20 and 1062.

21 31. Venue is proper in this County. Code of Civil Procedure §§ 393-395.

22 32. Intervenors join Plaintiff in claiming what is sought in the Complaint and Stipulated
23 Judgment pursuant to Code Civ. Proc. § 387(b)(1).

24 33. Intervenors satisfy the requirements for permissive intervention under Code Civ. Proc.
25 §387(d)(2). Intervenors have direct, immediate, and longstanding interests in the subject matters of this
26 action, i.e., BPD’s unlawful patterns and practices and protecting the rights of Bakersfield residents
27 against violations by BPD. These issues will be directly and immediately affected by determinations
28 made in this action. The reasons for intervention are substantial and outweigh Plaintiff’s and

1 Defendants' interests in litigating this matter on their own terms. The laws at issue in this action—the
2 United States and California constitutional provisions that prohibit excessive force and unreasonable
3 stops, searches, and seizures; AB 392; and AB 953— are designed to protect the public's health and
4 security. Intervenor and their members are direct beneficiaries of these laws, and their rights will be
5 directly affected by determinations made in this action.

6 34. Intervenor have a right to intervene in this action pursuant to Code Civ. Proc.
7 §387(d)(1), because they claim an interest relating to the subject of this action, and disposition of this
8 action may impair or impede their ability to protect that interest. Intervenor have substantial interests in
9 this action that Plaintiff and Defendants do not represent. Intervenor have interests particularized to
10 their members and missions in the City of Bakersfield that Plaintiff and Defendants do not share.
11 Intervenor have interests in how BPD engages with them as community stakeholders to revise its
12 policies and strategies pursuant to the Stipulated Judgment, that Plaintiff and Defendants do not share.
13 Intervenor, as proponents and continuing supporters of AB 392 and AB 953, have interests in the
14 implementation of specific terms of the Stipulated Judgment that require interpretation of that
15 legislation, which are different from any interests held by Plaintiff or Defendants.

16 35. Intervenor have timely followed the proper procedures to seek leave to intervene in this
17 matter.

18 36. Intervention will not enlarge the issues litigated in this action, nor result in any delay,
19 prejudice or inconvenience to Plaintiff or Defendants. Intervenor bring no new claims in addition to the
20 claims that have already been presented in this action, and they seek no relief outside the Stipulated
21 Judgment.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Civil Code Section 52.3)**

25 1. Intervenor incorporate herein by reference the preceding paragraphs of this Complaint in
26 Intervention as though they were fully set forth herein.

27 2. Civil Code section 52.3 prohibits governmental authorities, an agent of a governmental
28 authority, and persons acting on behalf of governmental authorities, from engaging in a pattern or

1 practice of conduct by law enforcement officers that deprives any person of rights, privileges, or
2 immunities secured or protected by the Constitution or laws of the United States or the Constitution or
3 laws of the State of California.

4 3. Defendants have violated Civil Code section 52.3 by engaging in the actions described in
5 Plaintiff's Complaint and in this Complaint in Intervention.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of the Fourth Amendment to the U.S. Constitution)**

8 4. Intervenors incorporate herein by reference the preceding paragraphs of this Complaint as
9 though they were fully set forth herein.

10 5. The Fourth Amendment to the United States Constitution protects individuals from
11 unreasonable searches and seizures.

12 6. Defendants have violated the Fourth Amendment to the U.S. Constitution by engaging in
13 in the actions described in Plaintiff's Complaint and in this Complaint in Intervention.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of Article I, Section 13 of the California Constitution)**

16 7. Intervenors incorporate herein by reference the preceding paragraphs of this Complaint in
17 Intervention as though they were fully set forth herein.

18 8. The California Constitution guarantees the right to be free from unreasonable searches
19 and seizures. (Cal. Cont. art. I, § 13.)

20 9. Defendants have violated article I, section 13 of the California Constitution by engaging
21 in the conduct described in Plaintiff's Complaint and in this Complaint in Intervention.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of Article I, Section 15 of the California Constitution)**

24 10. Intervenors incorporate herein by reference the preceding paragraphs of this Complaint in
25 Intervention as though they were fully set forth herein.

26 11. The California Constitution guarantees the right to not be deprived of liberty and property
27 without due process of law. (Cal. Cont. art. I, § 15.)

28 12. Defendants have violated article I, section 15 of the California Constitution by engaging

1 in the conduct described in Plaintiff's Complaint and in this Complaint in Intervention.

2 **FIFTH CAUSE OF ACTION**

3 **(Violation of Article I, Section 7 of the California Constitution)**

4 13. Intervenors incorporate herein by reference the preceding paragraphs of this Complaint in
5 Intervention as though they were fully set forth herein.

6 14. The California Constitution guarantees the right to equal protection of the laws. (Cal.
7 Cont. art. I, § 7.)

8 15. Defendants have violated article I, section 7 of the California Constitution by engaging in
9 the conduct described in Plaintiff's Complaint and in this Complaint in Intervention.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Intervenors respectfully request that this Court grant the following relief:

- 12 1. For the Court to exercise continuing jurisdiction over this action, to ensure that
13 Defendants comply with the judgment as set forth in the Stipulated Judgment;
- 14 2. For attorneys' fees and costs; and
- 15 3. For such other and further relief as the Court may deem just and proper.

16
17 Dated: September 28, 2021

Respectfully submitted,

18 AMERICAN CIVIL LIBERTIES UNION
19 OF SOUTHERN CALIFORNIA

20 By: /s/ Stephanie Padilla
21 STEPHANIE PADILLA (SBN 321568)
22 ADRIENNA WONG (SBN 282026)
23 JORDAN WELLS (SBN 326491)
24 ACLU FOUNDATION OF
25 SOUTHERN CALIFORNIA
26 1313 West Eighth Street
27 Los Angeles, California 90017
28 Telephone: (213) 977-9500
Facsimile: (213) 977-5299
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jwells@aclusocal.org

Attorneys for Intervenors

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3 STEPHANIE PADILLA (SBN 321568)
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9 Los Angeles, California 90017
10 Telephone: (213) 977-9500
11 Facsimile: (213) 977-5299

12 *Counsel for Proposed Intervenors ACLU of Southern California*
13 *and Faith in the Valley*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF KERN**

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA, EX REL. ROB BONTA,
18 ATTORNEY GENERAL OF THE STATE OF
19 CALIFORNIA,

20 *Plaintiff,*

21 ACLU OF SOUTHERN CALIFORNIA,
22 *[Proposed] Intervenor,*

23 FAITH IN THE VALLEY,
24 *[Proposed] Intervenor,*

25 v.

26 CITY OF BAKERSFIELD and THE
27 BAKERSFIELD POLICE DEPARTMENT,

28 *Defendants.*

Case No. BCV-21-101928 (NFT)

**MEMORANDUM OF POINTS AND
AUTHORITIES ISO PROPOSED
INTERVENORS' MOTION FOR LEAVE
TO INTERVENE**

Date: October 21, 2021
Dept: 12
Commissioner Linda S. Etienne
Action Filed: August 23, 2021

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1 **INTRODUCTION**

2 In this action, the California Department of Justice (CA-DOJ) simultaneously filed a civil rights
3 complaint against the Bakersfield Police Department (BPD) and a stipulation for final judgment
4 (Stipulated Judgment) because BPD has failed, after decades of documented police abuse against the
5 Bakersfield community, to reform itself. In its complaint, CA-DOJ “conclude[d] that BPD has engaged
6 in a pattern or practice” of “unreasonable force” and “unreasonable stops, searches, arrests and seizures”
7 in violation of the Constitution. This confirms what the American Civil Liberties Union of Southern
8 California (ACLU or ACLU SoCal) and Faith In the Valley (collectively, Proposed Intervenors) have
9 experienced, struggled against, and documented for years.

10 Proposed Intervenors move to intervene based on their interests in ensuring that this action
11 results in meaningful change that is informed by input from the Bakersfield community members they
12 organize with and represent. Proposed Intervenors are organizations in Bakersfield that have worked for
13 years to change BPD’s discriminatory and violent practices, to support community members impacted
14 by these practices, and to advocate for state actions addressing them—including advocacy for protective
15 legislation incorporated by reference in the Stipulated Judgment and calling for the initiation of the CA-
16 DOJ investigation of BPD itself. Thus, their interests will be directly affected by determinations made
17 about the implementation of the Stipulated Judgment in this action. As such, the Court should grant
18 Proposed Intervenors leave to intervene.

19 **FACTUAL BACKGROUND**

20 **I. Proposed Intervenors Work to Safeguard Bakersfield Community Members from**
21 **Police Abuse**

22 For years, BPD has failed to curb the violence and discrimination perpetrated by its officers,
23 disregarding the demands of community organizations and residents who have clamored for change and
24 accountability. Although in 2004, a U.S. Department of Justice investigation of BPD resulted in some
25 changes to the agency’s use of force policies, those changes were quickly undone, (Bibring Decl., Ex. A
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1 at ¶ 9), and Bakersfield community members were left once again to face a law enforcement agency
2 described as “America’s deadliest police.”¹

3 Proposed Intervenor Faith In the Valley has long advocated for measures to address BPD’s
4 patterns and practices of excessive force and racial profiling. Faith In the Valley is a multi-faith, multi-
5 racial grassroots community organization representing congregations and families in the City of
6 Bakersfield. (Stenner Decl. ¶ 2). Since 2015, Faith in the Valley has organized with Bakersfield
7 community members and families impacted by BPD violence to share their stories and demand
8 transparency and accountability from BPD, other city officials, and the state legislature. (*Id.* ¶ 4-9). Faith
9 in the Valley has organized community meetings addressing demands for BPD policing reforms
10 attended by hundreds of local residents. (*Id.* ¶ 4.) It has also organized meetings with BPD officials, as
11 well as marches and actions, to commemorate lives lost to police violence and to press for change. (*Id.*)

12 Proposed Intervenor ACLU of SoCal has worked with Faith in the Valley and other Bakersfield
13 community organizations to coordinate advocacy aimed at protecting the rights and safety of community
14 members from violations by BPD. (Bibring Decl. ¶ 8). ACLU SoCal is a non-profit organization with an
15 office in the City of Bakersfield, whose mission is to defend and preserve civil rights and liberties. (*Id.*
16 ¶¶ 3, 5). In Bakersfield, ACLU SoCal staff have marched alongside community members; brought
17 litigation to challenge discriminatory BPD practices; conducted legislative advocacy for police reforms
18 related to use of force and racially discriminatory stops searches, and seizures; and organized
19 community trainings to ensure that Bakersfield residents know their rights when confronted by BPD
20 officers who seek to stop, search, or seize them. (*Id.* ¶¶ 8, 13-15, 17, 19-20).

21 Despite Proposed Intervenor’s attempts to engage BPD leaders and City Council officials in
22 their efforts to change BPD, their pleas went largely unheard. (Bibring Decl. ¶ 20; Stenner Decl. ¶ 10).
23 Instead, Bakersfield officials disregarded demands and refused to receive input offered by these
24 community organizations. (*Id.*)

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26 _____
27 ¹ See Jon Swaine & Oliver Laughland, “*The County: the story of America's deadliest police,*” THE
28 GUARDIAN, (Dec. 1, 2015), <https://www.theguardian.com/us-news/2015/dec/01/the-county-kern-county-deadliest-police-killings>.

1 **II. Proposed Intervenors Call for the California Department of Justice to Take Action**
2 **Against BPD**

3 After BPD killed Francisco Serna, a 73-year-old Latino grandfather with dementia, in 2016,
4 Faith In the Valley and his loved ones, as well as other families impacted by BPD violence, called on
5 CA-DOJ to open an investigation of BPD. (Stenner Decl. ¶ 5). Faith In the Valley and impacted family
6 members spoke to DOJ investigators by telephone to describe the continued abuses by BPD and share
7 their stories.² Shortly after, then-Attorney General Kamala Harris launched the civil rights investigation
8 into BPD that resulted in this action. (*Id.*).

9 Throughout the investigation period, Faith In the Valley maintained a campaign to encourage
10 community members impacted by BPD’s abuse and violence to share their stories with the CA-DOJ. (*Id.*
11 ¶ 6). Because community members feared retaliation by BPD, Faith In the Valley worked to identify and
12 create safe places where community members could come to share their stories anonymously. (*Id.*).
13 Faith In the Valley also successfully advocated for a call-in hotline to report incidents of excessive force
14 to aid CA-DOJ’s investigation. (*Id.*)

15 In November 2017, ACLU SoCal released a report on BPD’s patterns and practices of police
16 excessive force.³ (Bibring Decl. ¶ 9). In conjunction, ACLU SoCal sent a letter to then-California
17 Attorney General Xavier Becerra, urging him to use his office’s powers to demand that BPD take
18 corrective measures to address the issues identified in the report. (*Id.* ¶ 10). Simultaneously, ACLU
19 SoCal worked to provide information to the Bakersfield community about the CA-DOJ investigation
20 and provided CA-DOJ with information relevant to its investigation. (*Id.* ¶ 12). In August 2021, ACLU
21 SoCal published an update to its November 2017 report on BPD.⁴ (*Id.* ¶ 11). The updated report
22 documented BPD’s continued use of excessive force and racially biased policing, through publicly

23 ² See Josth Stenner, Daulton Jones, Jorge Ramirez & Joey Williams, *The Bakersfield police may finally*
24 *reform. But we must hold them to account*, THE GUARDIAN (Sep. 2, 2021),
<https://www.theguardian.com/commentisfree/2021/sep/02/california-bakersfield-police-reform>.

25 ³ See ACLU of Southern California, *Patterns & Practices of Police Excessive Force in Kern County,*
26 *Findings & Recommendations* (2017),
https://www.aclusocal.org/sites/default/files/patterns_practices_police_excessive_force_kern_county_alu-ca_paper.pdf

27 ⁴ See ACLU of Southern California, *Unconstitutional Patterns and Practices in the Bakersfield Police*
28 *Department* (2021), <https://www.aclusocal.org/en/publications/unconstitutional-patterns-and-practices-bakersfield-police-department>.

1 available data and information provided by Bakersfield community members who have directly
2 experienced BPD abuses. (*Id.*).

3 **III. The Existing Parties File this Action and the Stipulated Judgment**

4 On August 23, 2021, CA-DOJ filed the Complaint in this action and a Stipulated Judgment
5 signed by the Office of the Attorney General and City of Bakersfield representatives. On August 27,
6 2021, the Stipulated Judgment was entered by the Court.

7 The Stipulated Judgment contains 240 paragraphs spanning 65 pages. It includes terms that
8 require BPD to review and revise its use of force policies, training, and guidelines—including to ensure
9 compliance with newly enacted laws that Proposed Intervenors supported and worked to pass (*See*
10 *Bibring Decl.* ¶¶ 14, 17; *Stenner Decl.* ¶¶ 7, 8); to collect and analyze stop data and review and revise its
11 stop, search, and seizure policies and practices accordingly to ensure bias-free policing; and to engage
12 with community stakeholder groups to provide input into these revised policies and procedures. (*See,*
13 *e.g., Stipulated Judgment* at ¶¶ 3, 61, 63, 64, 69-74, 81, 82). The Stipulated Judgment provides for a
14 five-year implementation and compliance period, though the Parties may jointly petition the Court to
15 terminate if they believe that BPD has reached full and effective compliance. (*Stipulated Judgment* at ¶¶
16 239-40).

17 Proposed Intervenors have substantial interests in the Stipulated Judgment terms that require
18 interpretation of AB 392, the California Act to Save Lives, and AB 953, the Racial and Identity Profiling
19 Act—laws they supported and helped pass. (*Bibring Decl.* ¶¶ 14, 17; *Stenner Decl.* ¶¶ 7, 8). As
20 supporters of these relatively new laws, and as organizations with members impacted by the
21 interpretation and implementation of these laws, Proposed Intervenors have a particular interest in
22 ensuring that BPD policies and trainings comprehensively implement those laws under the relevant
23 terms of the Stipulated Judgment.

24 **ARGUMENT**

25 Under Code of Civil Procedure § 387, Proposed Intervenors should be granted leave to
26 intervene. The purpose of intervention is “to promote fairness by involving all parties potentially
27 affected . . . to participate[.]” *See Lincoln Nat’l Life Ins. Co. v. State Bd. of Equalization*, 30 Cal. App.
28

1 4th 1411, 1423 (1994). For that reason, courts liberally construe the statute in favor of intervention. *Id.*
2 (citing *Simpson Redwood Co. v. State of California*, 196 Cal. App. 3d 1192, 1200 (1987)). Because
3 Proposed Intervenor’s interests will be directly affected by how the Stipulated Judgment in this action is
4 interpreted, implemented, and enforced, intervention is proper, and the Court should grant this Motion.

5 **I. PROPOSED INTERVENORS SHOULD BE GRANTED PERMISSIVE INTERVENTION**

6 Proposed Intervenor’s have direct interests in the subject of this action and in the implementation
7 of the Stipulated Judgment. Accordingly, the Court should grant their motion to intervene pursuant to
8 Code of Civil Procedure § 387(d)(2), which provides: “[t]he court may, upon timely application, permit
9 a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation,
10 or in the success of either of the parties, or an interest against both.” The Courts of Appeal have held that
11 it is proper to grant intervention pursuant to Section 387(d)(2) where: (1) the proper procedures have
12 been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention
13 will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any
14 opposition by the parties presently in the action. *See Carlsbad Police Officers Ass’n v. City of Carlsbad*,
15 49 Cal. App. 5th 135, 148 (2020); *Reliance Ins. Co. v. Superior Court*, 84 Cal. App. 4th 383, 386
16 (2000). Each of these factors are satisfied here, for the reasons set forth below.

17 **A. Proposed Intervenor’s Have Timely Applied to Intervene, Following Proper Procedures**

18 This duly noticed application, filed within mere weeks of the Complaint and Stipulated Judgment
19 and at the outset of a five-year implementation and compliance period, is timely. Indeed, there was no
20 litigation in which Proposed Intervenor’s could have properly applied to intervene until the existing
21 parties simultaneously filed the Complaint and Stipulated Judgment. To the extent the parties have
22 agreed to take any specific action to implement the Stipulated Judgment prior to this application, the
23 Court may require Proposed Intervenor’s to abide by those decisions, thus eliminating the risk of any
24 prejudice to either party occasioned by the de minimis delay from the time this case was filed until the
25 time of this application. In short, Proposed Intervenor’s have followed the proper procedures to submit
26 this timely application.

1 **B. Proposed Intervenors Have Direct and Immediate Interests in this Action**

2 As detailed in the statement of facts and supporting declarations accompanying this motion,
3 Proposed Intervenors have direct and immediate interests in this action and in the implementation of the
4 Stipulated Judgment. Proposed Intervenors are organizations with members, staff, and clients who live,
5 work, and raise families in the City of Bakersfield; who have been and are directly impacted by BPD
6 policies and practices; and who will be directly impacted by whether and how those policies and
7 practices change. (Stenner Decl. ¶¶ 2, 4; Bibring Decl. ¶¶ 3-4, 8). Proposed Intervenors called for CA-
8 DOJ to open a civil rights investigation of BPD and to take related legal action in response to how
9 BPD’s patterns and practices of excessive force and discrimination impacted their members and
10 organizations. (Stenner Decl. ¶ 5; Bibring Decl. ¶ 10). And for at least five years, Proposed Intervenors
11 invested substantial time and resources into efforts to educate the Bakersfield community about the CA-
12 DOJ investigation of BPD and to provide CA-DOJ with relevant information about how BPD’s patterns
13 and practices affected community members. (Stenner Decl. ¶ 6; Bibring Decl. ¶¶ 9-12). For all of these
14 reasons, Proposed Intervenors have a direct stake in this action.

15 Proposed Intervenors have particularized interests in specific terms of the Stipulated Judgment.
16 The Stipulated Judgment provides that BPD will develop revised use of force policies, policing
17 strategies, bias-free policing policies, and other policies with input from a community advisory panel or
18 working group. (Stipulated Judgment at ¶ 64). It also provides that BPD should make a “good faith
19 effort to have representatives from various diverse stakeholder groups, including, but not limited to . . .
20 American Civil Liberties Union (ACLU) . . . [and] PICO Bakersfield”⁵ among those it consults to revise
21 its policies, training, and strategies. (*Id.* at ¶ 63). Proposed Intervenors, as Bakersfield community
22 organizations, have a direct and immediate interest in implementation of the terms pertaining to
23 community stakeholder input, especially as the Stipulated Judgment specifically names both Proposed
24 Intervenors as community stakeholders that BPD must make a “good faith effort” to engage in revising
25 its policies and practices. (*See* Stenner Decl. ¶ 10; Bibring Decl. ¶¶ 21).

26 Moreover, Proposed Intervenors have substantial interests in this action because how the

27 _____
28 ⁵ Faith in the Valley is the federated member of PICO California in Bakersfield. (Stenner Decl. ¶ 2).

1 Stipulated Judgment is carried out will affect BPD’s implementation of state legislation Proposed
2 Intervenor worked to pass into law. *See, e.g., Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d 1392,
3 1397 (9th Cir. 1995) (public interest groups that supported an initiative have an interest in litigation
4 concerning that initiative post-enactment that supports intervention); *Washington State Bldg. & Constr.*
5 *Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) (same), *cert. denied*, *Don't Waste*
6 *Washington Legal Defense Foundation v. Washington*, 461 U.S. 913 (1983).⁶ Several provisions of the
7 Stipulated Judgment require BPD to “review and revise its policies and associated training materials, to
8 ensure compliance with” changes to Penal Code § 835a enacted by Assembly Bill (AB) 392. (Stipulated
9 Judgment at ¶¶ 3(c)-(e), (u)-(w), (y)(i)).⁷ Proposed Intervenor were key supporters of AB 392,
10 supporting the bill throughout the legislative process by submitting letters of support, traveling to
11 Sacramento multiple times to participate in legislative hearings and actions, giving testimony, and
12 rallying supporters to make over 1,200 constituent calls to ask their elected representatives to vote in
13 favor of AB 392. (Bibring Decl. ¶ 14; Stenner Decl. ¶ 7). Since AB 392’s enactment, moreover, ACLU
14 SoCal has committed advocacy resources to ensuring proper interpretation and implementation of AB
15 392, including by presenting to law enforcement agencies about amendments to their use of force
16 policies needed to come into compliance with the new law, and by participating in a POST advisory
17 committee on model policies developed in light of AB 392. (Bibring Decl. ¶ 15-16). ACLU SoCal has
18 even sued to enforce compliance of AB 392 in police department policy and training. (*Id.* ¶ 15). In
19 Bakersfield, specifically, ACLU SoCal has submitted public records requests to BPD concerning AB
20 392 training and policy in an effort to monitor the agency’s implementation of the law. (*Id.*).

21 Similarly, the Stipulated Judgment requires BPD to collect stop data as required by AB 953, the
22 Racial and Identity Profiling Act (RIPA), and its implementing regulations, and to analyze that stop data

24 ⁶ In assessing whether to grant a motion to intervene, courts are guided by federal court decisions
25 interpreting Federal Rule 24, given the Rule’s similarity to California’s intervention statute. *Ziani*
26 *Homeowners Assn. v. Brookfield Ziani LLC*, 243 Cal. App. 4th 274, 282 (2015) (“in adopting section
27 387, the Legislature intended it to be interpreted consistently with federal cases interpreting rule 24”);
28 *see also Carlsbad Police Officers Association*, 49 Cal. App. 5th at 151; *Hodge v. Kirkpatrick*
Development, Inc., 130 Cal. App. 4th 540, 555 (2005).

⁷ Penal Code § 835a codifies the new legal standard for police deadly force established by AB 392, and
interpretation and implementation of these provisions directly implicate AB 392.

1 to consider revisions to its policies and practices. (Stipulated Judgment at ¶¶ 72, 74). Proposed
2 Intervenor were also key supporters of RIPA and have advocated for strong implementation of
3 regulations and policy recommendations from the RIPA Advisory Board since the bill was passed into
4 law. (Stenner Decl. ¶¶ 8-9; Bibring Decl. ¶¶ 17-18). Indeed, ACLU SoCal submitted a public records
5 request to BPD’s records officer in December 2020 for BPD stop and search data, specifically seeking
6 the categories of data for which collection is required under RIPA. (Bibring Decl. ¶ 19). To the date of
7 this intervention motion, BPD has failed to produce any data responsive to the request. (*Id.*)
8 Accordingly, Proposed Intervenor, as supporters of AB 392 and RIPA, have a direct interest in how the
9 Stipulated Judgment is implemented and enforced. *See Idaho Farm Bureau Fed.*, 58 F.3d at 1397;
10 *Washington State Bldg. & Constr. Trades Council*, 684 F.2d at 630; *see also Mendoza v. State of*
11 *California*, 149 Cal. App. 4th 1034, 1049 (2007) (permitting a group of individual and organizational
12 entities that supported legislation to intervene in litigation concerning that legislation); *Simac Design,*
13 *Inc. v. Alciati*, 92 Cal. App. 3d 146, 157 (1979) (permitting intervention of association of citizens who
14 campaigned for local growth initiative in action concerning enforcement of that initiative).

15 Proposed Intervenor also have a substantial interest in this action because AB 392, RIPA, and
16 the United States and California Constitutional provisions that this action is based on exist to protect the
17 public from hazards to health and welfare posed by police violence and racial profiling. Proposed
18 Intervenor’s interest in this action is not unlike that of Sierra Club in *People ex rel. Rominger v. Cty. of*
19 *Trinity*, 147 Cal. App. 3d 655 (1983). There, Sierra Club sought intervention in a case concerning an
20 ordinance controlling the use of herbicides and pesticides. Its interest was in ensuring the ordinance
21 would remain in force and have its intended effect. Reversing the trial court’s denial of intervention, the
22 Court of Appeal held that “[w]here a statute exists specifically to protect the public from a hazard to its
23 health and welfare that would allegedly occur without such statute, members of the public have a
24 substantial interest in the protection and benefit provided by such statute.” *Rominger*, 147 Cal. App. 3d
25 at 662-63. That holding applies here, in that the statutory provisions enacted by AB 392, RIPA and the
26 Constitutional provisions invoked by CA-DOJ’s Complaint exist specifically to protect individuals like
27 Proposed Intervenor’s members from harm at the hands of police forces such as BPD, and Proposed
28

1 Intervenor seek intervention to ensure these laws are implemented fully and faithfully in BPD’s
2 policies, guidelines, and training, so that the public receives their benefits and protections. For all of the
3 reasons set forth above, Proposed Intervenor have direct interests in this action and in the Stipulated
4 Judgment’s implementation, which support their intervention.

5 **C. The Intervention Will Not Enlarge the Issues in this Case**

6 Granting this intervention will not enlarge the issues in this case. The Proposed Intervenor seek
7 intervention for purposes of implementation of the Stipulated Judgment—not to add to its substantive
8 terms.⁸ Proposed Intervenor bring no claims in addition to the claims for violations of the United States
9 and California Constitutions already presented in this action and seek no relief outside the Stipulated
10 Judgment. Thus, the Court may grant them leave to intervene pursuant to the jurisdiction it has already
11 retained to enforce the Stipulated Judgment in this case. Proposed Intervenor accept that the “Material
12 Requirements” set out within the Stipulated Judgment govern this case and that the “Full and Effective
13 Compliance” requirement to terminate the monitorship will be measured against those Material
14 Requirements. (Stipulated Judgment at ¶¶ 171-72).

15 **D. The Reasons Supporting Intervention Outweigh Any Opposing Reasons the Existing**
16 **Parties May Offer**

17 Proposed Intervenor’s reasons for intervention outweigh any contrary arguments. This case
18 parallels *Rominger*, in which the court “conclude[d] that the original parties’ interest in litigating this
19 case on their own terms [did] not outweigh the interests” of the applicant in intervening. 147 Cal. App.
20 3d at 665. The court held that the Sierra Club’s interest in intervening to protect the health and well-
21 being of its members, who were direct beneficiaries of the pesticide control ordinances at issue in the
22 litigation, was “compelling enough that they should be permitted to intervene.” *Id.* The court reasoned:

23 “We are not here dealing with two private parties litigating a private matter but rather
24 with two public bodies litigating the fate of [legal provisions] designed to protect the
25 public’s health and security. Any argument that the parties should be permitted to litigate
26 without the ‘interference’ of the very people those [provisions] were designed to protect
27 is an unacceptable assertion of bureaucratic dominion and control to the exclusion of the

28 ⁸ See *supra*, n. 2.

1 citizenry.”

2 *Id.* So too here.

3 Proposed Intervenors’ have a substantial interest in the safety of their Bakersfield community
4 members, the very people the Stipulated Judgment and the state and federal laws referenced therein were
5 intended to protect. Because that interest outweighs any interest the existing parties may have in
6 excluding them from this action, the Court should grant the motion for leave to intervene.

7 **II. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT**

8 As set forth above, this Court should grant Proposed Intervenors leave to intervene pursuant to
9 Code of Civil Procedure § 387(d)(2). If the Court declines to do so, however, it nonetheless should grant
10 Proposed Intervenors intervention as of right pursuant to Code of Civil Procedure § 387(d)(1), which
11 states:

12 The court shall, upon timely application, permit a nonparty to intervene in the action or
13 proceeding if . . . [t]he person seeking intervention claims an interest relating to the property or
14 transaction that is the subject of the action and that person is so situated that the disposition of
15 the action may impair or impede that person’s ability to protect that interest, unless that person’s
16 interest is adequately represented by one or more of the existing parties.

17 Code Civ. Pro. § 387(d)(1). For the reasons already stated, this application is timely, and Proposed
18 Intervenors have substantial interests in the subject of this action and in specific provisions of the
19 Stipulated Agreement. Because, moreover, neither of the existing parties represents Proposed
20 Intervenors’ same interests, and because disposition of this action may impede or impair those interests,
21 Proposed Intervenors must be permitted to intervene as of right. *Id.*

22 **A. Proposed Intervenors Have Interests in the Pending Action That Are Not Represented**
23 **by the Existing Parties**

24 An applicant for mandatory intervention must present only a minimal showing of differentiated
25 interests to demonstrate that the existing parties may not adequately represent its interests. *See Trbovich*
26 *v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (inadequate representation requirement for
27 intervention is satisfied “if the applicant shows that representation of his interest ‘may be’ inadequate;
28 and the burden of making that showing should be treated as minimal”); *Citizens for Balanced Use v.*

1 *Montana Wilderness Ass’n.*, 647 F.3d 893, 900 (9th Cir. 2011) (stressing “that intervention of right does
2 not require an absolute certainty that a party’s interest will be impaired or that existing parties will not
3 adequately represent its interests”); *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 824
4 (9th Cir. 2001).⁹ Courts have specifically recognized that the government’s representation of the public
5 interest may not be “identical to the individual parochial interest[s]” of particular groups, and leave to
6 intervene should be granted as of right when an applicant identifies a more narrow, personal interest in
7 the action. *Citizens for Balanced Use*, 647 F.3d at 900; *see also Kleissler v. United States Forest Serv.*,
8 157 F.3d 964, 972 (3d Cir. 1998) (“[W]hen an agency’s views are necessarily colored by its view of the
9 public welfare rather than the more parochial views of a proposed intervenor whose interest is personal
10 to it, the burden [to demonstrate that intervention is appropriate] is comparatively light”). Because
11 Proposed Intervenors have particularized interests in this action that are not shared by CA-DOJ, they
12 satisfy the “minimal” burden to show that the existing parties in this action do not represent their
13 interests adequately. *Trbovich*, 404 U.S. at 538 n.10.

14 Proposed Intervenors have different and more “parochial” interests than CA-DOJ in how BPD
15 revises its policies, training materials, and practices to ensure compliance with AB 392 and AB 953. The
16 Office of the Attorney General did not mobilize community members to support the legislation that
17 effected the statutory changes at issue as Proposed Intervenors did. (Stenner Decl. ¶¶ 7-8; Bibring Decl.
18 ¶¶ 14, 17). And unlike ACLU SoCal, CA-DOJ has not taken targeted action to address AB 392 non-
19 compliance in police use of force policies proliferated by Lexipol, the private company that provides
20 BPD with its policy language. (Bibring Decl. ¶ 16). As supporters of AB 392, Proposed Intervenors
21 have a specific, demonstrated interest in ensuring that the provisions of the Stipulated Judgment
22 requiring BPD to revise its policies “where necessary” to comply with AB 392 are not undermined by
23 policy language proposed by Lexipol. (*See* Stipulated Judgment at ¶ 3; *see also* Bibring Decl. ¶ 15, Ex.
24

25 ⁹ Because the adequacy of representation prong of the intervention standard under Federal Rule of Civil
26 Procedure 24 is the same under the California Code of Civil Procedure’s mandatory intervention
27 standard, California courts appropriately apply federal case law when considering an application to
28 intervene. *See supra* n.3; *see also Citizens for Balanced Use*, 647 F.3d at 899 (considering language in
Federal Rule 24 identical to wording of Code Civ. Pro. § 387(d)(1) to conclude that intervention of right
simply requires applicant to show that existing parties “may” not adequately represent their interests).

1 A at p. 9 (compiling evidence indicating that BPD took steps to change its use of force policy in
2 response to an investigation and recommendations by the U.S. Department of Justice Civil Rights
3 Division, then adopted Lexipol policies that did not reflect the recommended policy changes BPD
4 purported to adopt)). Similarly, as supporters of AB 392, Proposed Intervenors have a particular interest
5 in ensuring that BPD’s revision of its policies and training to comply with AB 392 is more accurate and
6 comprehensive than the minimal steps outlined by the California Commission on Peace Officer
7 Standards and Training (POST); this interest is distinct from any held by CA-DOJ, especially given that
8 the Attorney General is an *ex officio* member of the POST commission. (*See* Bibring Decl. ¶ 15).

9 Further, neither existing party represents Proposed Intervenors’ “personal” interest in securing
10 meaningful community stakeholder involvement in the revision of BPD’s policies, training, and
11 strategies pursuant to the Stipulated Judgment. *Kleissler*, 157 F.3d at 972; *see also Simpson Redwood*,
12 196 Cal. App. 3d at 1203-04 (reversing trial court’s refusal to allow intervention because “appellant’s
13 own substantial interests probably cannot be adequately served by the State’s sole participation”).
14 Unlike the existing parties, Proposed Intervenors are themselves community organizations in
15 Bakersfield who seek the opportunity to meaningfully consult with BPD as the agency makes changes
16 that will impact their members and work in the Bakersfield community. (Stenner Decl. ¶¶ 2-4 ; Bibring
17 Decl. ¶¶ 3-5, 8). In the past, the City of Bakersfield and BPD have excluded Proposed Intervenors from
18 community spaces or disregarded their outreach for opportunities to provide community input, and they
19 have failed to substantively respond to requests for information about their use of force policies and
20 training and collection of stop data. (Stenner Decl. ¶ 10; Bibring Decl. ¶¶ 19-21). Proposed Intervenors
21 have a personal interest in ensuring that they are not similarly marginalized from the community
22 advisory process contemplated by the Stipulated Judgment. (*Id.*) Although Proposed Intervenors are
23 specifically named as relevant community stakeholders in the Stipulated Judgment, (Stipulated
24 Judgement at ¶ 63), CA-DOJ does not represent them any more than it represents other Bakersfield
25 organizations or other members of the general public.

26 Overall, “the government represents numerous complex and conflicting interests”; CA-DOJ will
27 be representing a broad and diverse “public” to enforce a Stipulated Judgment containing 240
28

1 paragraphs of terms that span over 65 pages. *Kleissler*, 157 F.3d at 974; *see also Utah Ass’n of Counties*
2 *v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001) (reversing denial of public interest group’s motion to
3 intervene and finding that group’s interest would not be adequately represented by government, because
4 “[i]n litigating on behalf of the general public, the government is obligated to consider a broad spectrum
5 of views, many of which may conflict with the particular interest of the would-be intervenor”). And CA-
6 DOJ itself is comprised of numerous divisions with varied functions related to the interpretation of state
7 laws concerning use of force, stop, search, and seizure—such as prosecuting criminal cases and
8 defending state law enforcement in civil matters. It does not strain the imagination to foresee how the
9 narrow, focused interests that Proposed Intervenors have identified here “may become lost in the
10 thicket” of CA-DOJ policies and priorities bearing on this action. *Kleissler*, 157 F.3d at 974; *see also*
11 *Rominger*, 147 Cal. App. 3d at 665 (concluding that the government’s general interest in the protection
12 of its residents was different enough from the Sierra Club’s specific concern for its members’ own
13 health and well-being that the latter should be permitted to intervene). For all of the reasons stated,
14 Proposed Intervenors’ interests in this action are personal and differentiated enough to demonstrate that
15 the existing parties may not adequately represent them.

16 **B. Proposed Intervenors’ Interests May Be Impaired If Intervention Is Not Granted**

17 If a proposed intervenor’s interests “would be substantially affected in a practical sense by the
18 determination made in an action, [it] should, as a general rule, be entitled to intervene.” *Berg*, 268 F.3d
19 at 822. Proposed Intervenors’ interests in preventing BPD discrimination and abuse against their
20 Bakersfield community members will be substantially affected by the disposition of Stipulated Judgment
21 terms addressing BPD’s revision of policies, trainings, and practices related to use of force and
22 investigatory stops, searches, and arrests. (Bibring Decl. ¶¶ 3-4, 8; Stenner Decl. ¶¶ 2-4). Proposed
23 Intervenors’ related interests in securing the full benefits of protective legislation they worked to enact
24 will be practically impaired if the existing parties agree to implement AB 392 and RIPA in incomplete
25 ways or by adopting interpretations of those laws that are insufficiently protective of the rights of people
26 who interact with BPD officers. (Stipulated Judgment at ¶¶ 3, 72, 74).

27 At the end of the day, BPD will have only one revised use of force policy and only one protocol
28

1 for collection of stop data pursuant to RIPA—and those will undoubtedly be created according to the
2 determinations made in this action about the Stipulated Judgment’s terms and the laws it references. The
3 possibility that Proposed Intervenors may sue to modify the terms of the Stipulated Judgment is remote,
4 highlighting the importance of their intervention to ensure proper interpretation and implementation as
5 well as make judicious use of court resources and ensure the interested parties are before this Court.

6 Furthermore, determinations made about the community stakeholder provisions of the Stipulated
7 Judgment will certainly affect Proposed Intervenors’ interests in securing meaningful opportunities to
8 consult with BPD on revisions to the policies and practices that directly impact their members’ personal
9 safety in interactions with BPD officers and their work in the community. (Stipulated Judgment ¶¶ 63-
10 64; Stenner Decl. ¶ 10; Bibring Decl. ¶¶ 20-21). Insofar as Proposed Intervenors may be excluded from
11 or marginalized within the community advisory process based on determinations made in the context of
12 this action, their ability to protect their interests will be impaired if intervention is not granted. (*Id.*)

13 **CONCLUSION**

14 For the foregoing reasons, Proposed Intervenors respectfully request that the Court exercise its
15 discretion to grant them leave to intervene pursuant to California Code of Civil Procedure § 387(d)(2),
16 or in the alternative, grant them mandatory intervention pursuant to California Code of Civil Procedure
17 § 387(d)(1).

18 Dated: September 28, 2021

Respectfully submitted,

19 AMERICAN CIVIL LIBERTIES UNION
20 OF SOUTHERN CALIFORNIA

21 By: /s/ Stephanie Padilla
22 STEPHANIE PADILLA (SBN 321568)
23 ADRIENNA WONG (SBN 282026)
24 JORDAN WELLS (SBN 326491)
25 ACLU FOUNDATION OF
26 SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
Telephone: (213) 977-9500
Facsimile: (213) 977-5299

27 *Attorneys for Proposed Intervenors*

1 ADRIENNA WONG (SBN 282026)
awong@aclusocal.org
2 STEPHANIE PADILLA (SBN 321568)
spadilla@aclusocal.org
3 JORDAN WELLS (SBN 326491)
4 jwells@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
5 1313 West Eighth Street
Los Angeles, California 90017
6 Telephone: (213) 977-9500
7 Facsimile: (213) 977-5299
8 *Counsel for Proposed Intervenors ACLU of Southern California
and Faith In the Valley*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN**

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, EX REL. ROB BONTA,
ATTORNEY GENERAL OF THE STATE OF
15 CALIFORNIA,
16 *Plaintiff,*
17 ACLU OF SOUTHERN CALIFORNIA,
18 *[Proposed] Intervenor,*
19 FAITH IN THE VALLEY,
20 *[Proposed] Intervenor,*
21 v.
22 CITY OF BAKERSFIELD and THE
BAKERSFIELD POLICE DEPARTMENT,
23 *Defendants.*

Case No. BCV-21-101928 (NFT)

**DECLARATION OF PETER BIBRING
ISO PROPOSED INTERVENORS'
MOTION TO INTERVENE**

Date: October 21, 2021
Dept: 12
Commissioner Linda S. Etienne
Action Filed: August 23, 2021

1 **DECLARATION OF PETER BIBRING**

2 I, PETER BIBRING, declare as follows:

3 1. I have personal knowledge of the facts set forth in this declaration and believe them
4 to be true. If called to testify, I could and would testify competently to the facts stated herein.

5 2. I am Senior Counsel at the American Civil Liberties Union of Southern California
6 (“ACLU” or “ACLU SoCal”). Between 2014 and April 2021, I was Director of ACLU SoCal’s
7 Police Practices Project.

8 3. ACLU SoCal is a non-profit corporation organized and existing under the laws of
9 the State of California which has an office in the City of Bakersfield.

10 4. ACLU SoCal has hundreds of members throughout Kern County, including
11 hundreds of members specifically in the City of Bakersfield.

12 5. ACLU SoCal’s mission is to defend and preserve the individual rights and liberties
13 that the Constitution and laws of the United States guarantee everyone in this country. As part of
14 that commitment, ACLU SoCal has fought for decades against police abuse and has worked
15 through litigation, legislation and other advocacy to ensure the constitutional operation of police
16 agencies.

17 6. ACLU SoCal has litigated a wide variety of cases addressing unlawful policing.
18 *See, e.g., Simental v. Ozuna*, Case No. 1:-20-cv-00697 (E.D. Cal. filed May 18, 2020) (unlawful
19 detention and excessive use of force of Latine youth); *Am. C.L. Union Found. v. Superior Ct.*, 3
20 Cal. 5th 1032 (2017) (records of police use of surveillance technology); *Youth Just. Coal. v. City*
21 *of Los Angeles*, 264 F. Supp. 3d 1057 (C.D. Cal. 2017) (unconstitutional police use of gang
22 injunctions); *Winston v. City of Los Angeles*, Case No. BS 169474 (L.A. Sup. Ct. filed Apr. 24,
23 2014) (public access to police records); *Vasquez v. Rackauckas*, 734 F.3d 1025 (9th Cir. 2013)
24 (unconstitutional police use of gang injunctions); *K.L. v. Glendale*, No. CV-1108484 (C.D. Cal.
25 filed Oct. 17, 2011) (racial profiling and unlawful detention and interrogation of Latine students in
26 school); *Gordon v. Moreno Valley*, 687 F. Supp. 2d 930 (C.D. Cal. 2009) (racial profiling and
27 unlawful searches of Black-owned barbershops); *Nee v. County of Los Angeles*, Case No. 11-cv-
28 0889 (C.D. Cal. filed Oct. 27, 2011) (challenging policy of detaining and questioning people

1 engaged in First-Amendment-Protected photography); *Fitzgerald v. City of Los Angeles*, 485 F.
2 Supp. 2d 1137 (C.D. Cal. 2007) (unlawful searches and detentions of unhoused individuals).

3 7. In addition, ACLU SoCal has previously intervened in consent decrees over police
4 agencies. In *United States v. Los Angeles*, ACLU SoCal represented community intervenors in a
5 federal consent decree brought by the United States Department of Justice and imposed on the Los
6 Angeles Police Department, and helped ensure that the Department met benchmarks on racial
7 profiling and gang enforcement before the decree was lifted. 2001 U.S. Dist. LEXIS 26968 (C.D.
8 Cal. Jan. 4, 2001) (federal consent decree over Los Angeles Police Department, where ACLU
9 SoCal represented community intervenors).

10 8. In particular, ACLU SoCal has consistently worked in Bakersfield against abuses
11 carried out by the Bakersfield Police Department (“BPD”). ACLU SoCal staff have marched
12 alongside community members in Bakersfield’s Walk for Justice, which commemorated the lives
13 lost to BPD violence and called for change. ACLU SoCal staff continue to work collaboratively
14 with local coalitions and community organizations in Bakersfield to coordinate advocacy directed
15 at BPD and organize community trainings to ensure that Bakersfield residents know their rights
16 when confronted by BPD officers who seek to stop, search, or seize them. ACLU SoCal staff
17 have helped Bakersfield families who have lost loved ones to BPD shootings submit California
18 Public Records Act requests for records relating to the incidents in which BPD officers killed their
19 family members. ACLU SoCal staff have volunteered as legal observers in the past year to
20 safeguard and document unlawful or unjustified interference by BPD during protests following the
21 death of George Floyd, and most recently during a Bakersfield City Council meeting where Faith
22 In the Valley, as part of the of People’s Budget Bakersfield, advocated for divestment from BPD.
23 Additionally, in November 2020, ACLU SoCal staff wrote a letter to the CA-DOJ detailing its
24 concerns regarding BPD officers violating the First Amendment by its unlawful treatment of
25 Black Lives Matter protestors based on the political messages they were conveying.

26 9. In November 2017, ACLU SoCal released a report on BPD’s patterns and practices
27 of police excessive force. ACLU SoCal compiled the information included in the report through
28

1 detailed review of public records, court documents, and media reports, among other sources. A
2 true and correct copy of that report is attached hereto as Exhibit A.

3 10. In conjunction with the release of the report, ACLU SoCal sent a letter to then-
4 California Attorney General Xavier Becerra, urging him to use his office's investigatory powers to
5 access documents not available to ACLU SoCal in order to examine individual uses of force by
6 BPD officers, and to demand that BPD take corrective measures to address police abuse. A true
7 and correct copy of that letter is attached hereto as Exhibit B.

8 11. In August 2021, ACLU SoCal published an update to its November 2017 report on
9 BPD. The updated report documented BPD's continued use of unconstitutional practices,
10 including excessive force and racially biased policing, through publicly available data and
11 information provided by Bakersfield community members who have directly experienced BPD
12 abuses. A true and correct copy of that updated report is attached hereto as Exhibit C.

13 12. Since 2017, ACLU SoCal has maintained a police abuse intake system specifically
14 to document and respond to reports of abuse at the hands of Kern County law enforcement,
15 including BPD. ACLU SoCal has also invested staff time and office resources into efforts to
16 educate the Bakersfield community about the CA-DOJ investigation of BPD and ways to provide
17 CA-DOJ with information relevant to that investigation.

18 13. ACLU SoCal staff have represented individual Bakersfield community members in
19 litigation to challenge BPD's stop, search, and seizure policies and practices. *See Mitchell v.*
20 *Jeffries*, Case No. 1:18-cv-0146-LJO-JLT (E.D. Cal. 2018).

21 14. ACLU SoCal, acting with other ACLU affiliates in California as the ACLU of
22 California, has sponsored legislation to establish limits on police use of deadly force and to
23 address racial and identity profiling. Through the ACLU of California, ACLU SoCal was a
24 cosponsor of Assembly Bill 392 (Weber) (2019), which changed the standard under California law
25 for when officers are authorized to use deadly force. ACLU SoCal was a key supporter of AB
26 392, supporting the bill throughout the legislative process by submitting letters of support,
27 traveling to Sacramento multiple times to participate in legislative hearings and actions, giving
28

1 testimony, and rallying supporters to make over 1,200 constituent calls to ask their elected
2 representatives to vote in favor of AB 392.

3 15. Since AB 392's enactment, ACLU SoCal has worked in numerous ways to ensure
4 proper interpretation and implementation of AB 392. ACLU SoCal staff reviewed use of force
5 policies and issued recommendations to police and sheriff's departments across the state about
6 changes to implement AB 392, and worked with community organizations to advocate for
7 changes. ACLU SoCal has even sued to enforce compliance of AB 392 in police department
8 policy and training. *See Gente v. City of Pomona*, Case No. 20STCV28895 (L.A. Super. Ct.
9 2020). Additionally, ACLU SoCal has given presentations to multiple district attorney's offices
10 on criminal standards under the new law. I worked as a project advisor to the Commission on
11 Peace Officer Standards and Training ("POST") on Use of Force Standards and Guidelines, issued
12 to implement changes in California's use of force law.¹ In Bakersfield specifically, ACLU SoCal
13 has worked to monitor BPD's compliance with AB 392 by submitting public records requests
14 seeking records reflecting whether and how the agency has incorporated the changed law into its
15 policy and training. A true and correct copy of a public records request ACLU SoCal submitted to
16 BPD seeking records related to its implementation of AB 392 is attached hereto as Exhibit D.

17 16. ACLU SoCal has also engaged in advocacy addressing AB 392 compliance issues
18 in use of force policy language developed by the private company Lexipol. On June 15, 2021,
19 ACLU SoCal sent Lexipol a letter concerning its use of force policy template. That letter
20 specifically references BPD's use of force police. A true and correct copy of the letter is attached
21 hereto as Exhibit E.

22 17. ACLU SoCal, through the ACLU of California, was also one of the cosponsors of
23 Assembly Bill 953 (Weber) (2015), the Racial and Identity Profiling Act of 2015, which requires
24 law enforcement agencies to "collect perceived demographic and other detailed data regarding
25 pedestrian and traffic stops" and established a Racial and Identity Profiling Advisory Board
26

27 ¹ See *POST Use of Force Standards and Guidelines*, California Commission on Peace Officer
28 Standards and Training (2020) available at
https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf.

1 (RIPA) that investigates and analyzes agencies' racial and identity profiling policies and practices
2 to annually make findings and policy recommendations aimed at eliminating racial and identity
3 profiling. ACLU SoCal devoted significant staffing and other resources to conducting lobbying
4 and communications on the bill.

5 18. Since AB 953 passed, ACLU SoCal has continued to advocate for strong
6 implementation of the bill. ACLU SoCal provided multiple rounds of detailed, written comments
7 on implementing regulations proposed and adopted by the CA-DOJ. ACLU SoCal Staff have
8 regularly attended public hearings of the RIPA Board, at which they have advocated for robust
9 analysis of the data collected and meaningful response to that data. ACLU SoCal has also done
10 work with local agencies to implement the requirements of AB 953, and it has used the data
11 collected in that process for other police-related advocacy. Our current Director of Police
12 Practices, Melanie Ochoa, was appointed on the RIPA Board by former Attorney General Xavier
13 Becerra and currently serves as a member.

14 19. After BPD announced that it would begin collecting stop data according to the
15 categories required under AB 953, ACLU SoCal staff submitted a request for the stop data on
16 December 23, 2020; to date, ACLU SoCal has yet to receive responsive documents. A true and
17 correct copy of a public records requests that ACLU SoCal sent BPD seeking the relevant AB 953
18 stop data is attached hereto as Exhibit F.

19 20. As part of its advocacy addressing BPD policies and practices, ACLU SoCal staff
20 participated in a community policing panel with BPD. After ACLU SoCal staff presented data
21 about BPD citations and arrest practices at a meeting of this body, they were told ACLU SoCal
22 was no longer welcome in that space.

23 21. ACLU SoCal has an interest in the community stakeholder provisions of the
24 Stipulated Judgment as the disposition of those provisions will practically impact the manner and
25 degree to which ACLU SoCal is able to consult with BPD on changes to the policies, practices,
26 and strategies that impact ACLU SoCal members, staff, and work. After the California
27 Department of Justice entered into a stipulated judgment with the Kern County Sheriff's Office,
28 ACLU SoCal attempted to join the community advisory panel created pursuant to that stipulated

1 judgment but was told that the panel was closed to new groups. Since then, ACLU SoCal staff
2 have communicated their interest in joining the policy committee of the community advisory
3 panel. The chair of the panel informed ACLU SoCal staff that membership is on an individual
4 basis and ACLU SoCal cannot join that space as an organization, though individual staff may
5 apply. Since then, ACLU SoCal has not, as an organization, been invited to any of the ongoing
6 policy committee meetings and has not otherwise had an opportunity to review any KCSO policies
7 currently under revision pursuant to the stipulated judgment in that case.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11
12 Executed on this 24th day of September 2021, at Los Angeles, California.

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15 
16 PETER BIBRING

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Exhibit A



PATTERNS & PRACTICES OF POLICE EXCESSIVE FORCE IN KERN COUNTY

FINDINGS & RECOMMENDATIONS

November 2017

I. Introduction

For many years, residents of Kern County have expressed concerns about excessive force and serious misconduct by the officers of the Kern County Sheriff's Office ("KCSO") and Bakersfield Police Department ("BPD"). In response to community concerns and to public reports about a number of police killings of unarmed individuals in Kern County, the ACLU of California ("ACLU CA") conducted a two-year investigation into excessive force by KCSO and BPD. This paper summarizes the findings of that investigation.

Our findings show that both KCSO and BPD have engaged in patterns and practices that violate civil rights. KCSO and BPD officers have engaged in patterns of excessive force—including shooting and beating to death unarmed individuals and deploying canines to attack and injure—as well as a practice of filing intimidating or retaliatory criminal charges against individuals they subject to excessive force. Deficient oversight and accountability structures have allowed law enforcement misconduct to go unchecked and in some cases escalate. Changes to KCSO and BPD policies, training, and institutional structures are therefore required to ensure that officers carry out their duties lawfully, ethically, and safely – consistent with the Constitution and respect for the sanctity of life.

II. Methodology

The ACLU CA's investigation in Kern County has from its inception been guided by the concerns, information, and personal experiences shared with us by various members of the community. To arrive at the findings in this letter, ACLU CA staff additionally reviewed state data on deaths in custody and arrest-related deaths; court records; coroner's reports; media reports; records of the Kern County District Attorney's office; data maintained by KCSO and BPD about officer-involved shootings, canine use of force, and obstruction charges; and the agencies' policies and training materials.

Throughout this process, our limited right to access law enforcement records under state law has constrained our ability to investigate excessive force in Kern County. For example, state law precluded ACLU CA from reviewing records relating to officer disciplinary proceedings. Although KCSO and BPD have been cooperative and responsive to our public records requests

in many respects, a wide range of documents related to individual uses of force are exempt from disclosure as “investigatory files” under the Public Records Act, and the County was unable to provide all the documents we requested in time for their analysis to be included in this paper. Additionally, Kern County Superior Court demanded prohibitively high fees for copies of court records and even on-site review of court files, so we were able to examine only a sample of case files pertinent to our investigation. Consequently, our findings cannot be taken as a comprehensive accounting of all evidence of excessive force by KCSO or BPD. Nevertheless, the information we were able to obtain from public records corroborates the anecdotal evidence we gathered from affected community members and supports the findings set forth below.

III. Findings

A. Officer-Involved Shootings

The data we compiled from publicly available sources show that both KCSO and BPD are outliers with respect to the number of people that their officers shoot and kill. KCSO deputies have shot and killed 10 people since 2013, far more than other Sheriff’s departments in counties with equivalent population sizes.¹ In the same amount of time, BPD officers shot and killed at least 19 people, making it one of the deadliest police departments in the country.² Comparing only police departments in cities with crime rates equivalent to or higher than Bakersfield’s, BPD’s rate of police killings in recent years is among the top five highest in the country, and the second highest in California.³ In 2015, Bakersfield Police Department was responsible for *the highest rate of police homicides per capita* among the country’s 60 largest police departments.⁴

In addition to being numerous, BPD and KCSO shootings also follow patterns that raise serious constitutional concerns. Over a quarter of BPD’s deadly shootings since 2009 killed someone unarmed, and an additional 3 involved someone armed only with a knife.⁵ Similarly, the vast majority of KCSO shootings have involved someone unarmed or armed only with a knife.⁶ A significant percentage of people shot and killed were initially contacted by law enforcement because they exhibited signs of mental illness or disability.⁷ On several occasions, BPD officers shot someone fleeing in a car or on foot.⁸ These patterns are in tension with established Fourth

¹ For example, in the same timeframe, Ventura County Sheriff’s deputies were responsible for 4 shooting deaths, and San Mateo County deputies shot and killed one person. *See* Appendix I.

² BPD officers were additionally responsible for 4 non-lethal shootings during this time. According to our data, BPD officers have shot at least 45 people since 2009. *See* Appendix III.

³ *See* Appendix II.

⁴ Mapping Police Violence Project, *2015 Police Violence Report*, <https://mappingpoliceviolence.org/2015/>.

⁵ *See* Appendix III; *see also Lopez v. City of Bakersfield*, No. 1:13-cv-01725-LJO-JLT (E.D. Cal. filed Dec. 8, 2014).

⁶ *See* Appendix III (roughly 75% of KCSO fatal shootings involved someone unarmed or armed only with a knife); *see also D.G. v. County of Kern*, No. 1:15-cv-00760-JAM-JLT (E.D. Cal. filed May 14, 2015) (alleging that officers shot David Garcia after he had already dropped the knife he previously carried and was running away).

⁷ *See* Appendix III (Jesse Soliz (BPD, 2013), Michael Dozer (BPD, 2014), Francisco Serna (BPD, 2016), Rodolfo Medrano (KCSO, 2011), Christian Chavez (KCSO, 2012), Bethany Lytle (KCSO, 2013), David Garcia (KCSO, 2015)).

⁸ *See* Appendix III (Abel Gurolla (BPD, 2013), Vincent Yzaguirre (BPD, 2010), Traevon Avila (BPD, 2010)); *see also D.G. v. County of Kern*.

Amendment law and policing principles, which justify the use of deadly force only to prevent imminent death or serious injury to officers or others.⁹

The disparate impact of BPD's shootings on communities of color is also troubling. Sixty-five percent of the people shot and killed by BPD officers since 2013 were Latino, though Latinos comprise only 45% of the city's total population.¹⁰ Of the 6 cases we identified where BPD officers shot someone unarmed, 4 of the people shot were Latino, and another was black. These patterns also raise serious legal concerns. All people, regardless of race or ethnicity, are entitled under the Constitution to the equal protection of their law enforcement officers, and police violence that disparately impacts racial minorities may violate state and federal anti-discrimination laws.

B. Canine Attacks

Both KCSO and BPD use canines in ways that are life-threatening, hazardous for public safety, and at odds with national standards and practices as well as constitutional law. In the last decade, 5 people have died after being attacked by KCSO canines, 3 between 2011 and 2013 alone.¹¹ Many other people have been seriously injured because KCSO or BPD canines unjustifiably attacked them.¹² Even non-lethal canine attacks can cause excruciating pain, involve multiple bites, and result in permanent injury.¹³ After a KCSO canine mauled a 60-year old woman inside her home while she was sleeping, a medical report stated that her "mutilated right ear" was "questionably salvageable," and she faced the potential loss of her hearing.¹⁴

The factual circumstances surrounding the canine attacks we found in the public record establish four troubling realities about KCSO and BPD practices:

⁹ *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tennessee v. Garner*, 471 U.S. 1 (1985); National Consensus Policy on Use of Force (Jan. 2017) ("National Consensus Policy"); see also Police Executive Research Forum, Use of Force: Taking Policing to a Higher Standard (Jan. 29, 2016) ("PERF Principles"), 1 ("Departments should adopt policies that hold themselves to a higher standard than the legal requirements of *Graham v. Connor*.");

¹⁰ See U.S. Census Bureau, Community Facts: Bakersfield (last visited Oct. 24, 2017), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; Appendix III.

¹¹ See Appendix III (Christopher McDaniel (2014), Ronnie Ledesma (2013), David Sal Silva (2013), Rory McKenzie (2009), Ray Robles (2006)).

¹² See, e.g., Victoria Youngblood (KCSO, 2012), Erin Casey (KCSO, 2013), Austin Attebery (BPD, 2014), Ruben Lopez (KCSO, 2014), Justin Gutierrez (KCSO, 2012), Tatyana Hargrove (BPD, 2017). We were unable to review canine use of reports completed by KCSO and BPD handlers, so this list of people injured by canine attacks is based only on media reports and court filings, and is therefore incomplete. In conversations with community members, we heard additional troubling anecdotes about injuries resulting from canine use of force.

¹³ *Lopez v. Kern County Sheriff's Dep't*, No. 116CV00095DADJLT, 2016 WL 5930418, *3 (E.D. Cal. Oct. 11, 2016) (describing painful experience of being attacked by BPD canine while handcuffed); *id.* (reporting nine bites); *People v. Michael Brucker*, No. BM 8902701A (Kern Super. Ct. Feb. 15, 2017) (documenting serious injuries inflicted by canine "from head to . . . ankle, some of which required stitches"); see also Los Angeles Sheriff's Dep't, 34th Semiannual Report of Special Counsel (Aug. 2014) ("LASD Report") ("While canine bites have not been classified by the courts as lethal force, they come close to it in the permanent injury and disfigurement they can cause.").

¹⁴ Jason Kotowski, *Sheriff's estranged wife mauled by Bakersfield police dog in her bed*, Bakersfield Californian (Apr. 13, 2012), <http://bakersfieldnow.com/news/local/sheriffs-estranged-wife-mauled-by-bakersfield-police-k-9/>.

First, KCSO and BPD officers deploy canines not only to locate suspects at large or in hiding, but to intimidate and injure people already in their presence—including people who are unarmed. A KCSO deputy had already located David Sal Silva, who was not armed, fleeing or even mobile, when he initiated the canine attack.¹⁵ According to Tatyana Hargrove, a BPD officer used canine force to intimidate her into relinquishing her constitutional rights; when she asked if he had a warrant after he demanded her backpack, he pointed to the canine at his side to threaten her, and ultimately instructed it to attack her.¹⁶ Court records document similar incidents.¹⁷

Second, KCSO and BPD officers do not deploy canines to avoid using greater force. Instead, they escalate canine attacks with beatings, Tasers, baton strikes, and gunshots. For example, leading up to David Sal Silva's death, KCSO deputies released a canine to bite him, then struck him across the head with their batons in response to his attempt to stop the canine attack, which by that point had continued for several minutes. Cell-phone video of the canine attack and beating leading to Ronnie Ledesma's death documents a similar course of action by KCSO officers.¹⁸ Court records suggest that these are not isolated incidents – that as a matter of custom and practice, officers use people's evasive or defensive actions in reaction to being bitten by dogs as the justification for additional force.¹⁹

Third, KCSO and BPD canine handlers simply do not have adequate control over the animals they train to attack and injure. Canines from both departments have repeatedly mauled members of the public without specifically being instructed to do so by their handlers.²⁰

Finally, the impact of KCSO and BPD's canine deployments appears to fall disproportionately on people of color. With only one exception, every person killed in an incident involving KCSO canines was black or Hispanic. This is particularly troubling in the

¹⁵ See *Timeline surrounding David Sal Silva's death*, Bakersfield Californian (Jun. 1, 2013), http://www.bakersfield.com/news/timeline-surrounding-david-sal-silva-s-death/article_fb01ef0a-d5e0-5376-9293-052a90a4f24e.html. The same is true of Ronnie Ledesma.

¹⁶ See Veronica Rocha, "Bakersfield woman, mistaken for male suspect, files excessive force claim against police," L.A. Times (Aug. 30, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-teen-mistaken-male-files-claim-bakersfield-20170830-story.html>.

¹⁷ *People v. Ray*, No. F070436, 2016 WL 4621046, *2 (Cal. Ct. App. Sept. 6, 2016) (describing BPD officers' threat to release canine if Ray moved, in response to Ray's verbal protest against being frisked and handcuffed); *People v. Garcia*, No. F072447, 2016 WL 6747296, *1 (Cal. Ct. App. Nov. 15, 2016) (describing use of canine to arrest suspect who was located and visible).

¹⁸ See Order Granting in Part & Denying in Part Defendants' Motion for Summary Judgment at 5-6, *Ledesma v. Kern County*, No. 1:14-cv-01634-DAD-JLT (E.D. Cal. Nov. 10, 2016) ("*Ledesma Order*") ("After [the canine] began biting Ledesma's leg, Ledesma started to kick and swing his arms, placing his hands near [the dog's] head and mouth in an attempt to pry [it] off him. . . . Upon witnessing Ledesma grab [the dog], [KCSO deputy] DeLaGarza struck Ledesma with her collapsible baton three times on his arm and leg . . . [then] twice more. . . ."); see also Ronnie Ledesma Jr. Arrest – cell phone video (uploaded by Kern County Sheriff Aug. 30, 2013), <https://www.youtube.com/watch?v=XI8akTUy-E0>.

¹⁹ See, e.g., *People v. Daniels*, No. F068304, 2016 WL 3999777, *3 (Cal. Ct. App. Jul. 26, 2016) (describing BPD officers' use of pepper spray and physical force in response to defendants' defensive blows reacting to dog attack).

²⁰ Erin Casey (KCSO, 2013), Austin Attebery (BPD, 2014), Ruben Lopez (BPD, 2014). See also Lopez, 2016 WL 5930418 at *3 (accidental canine attack while victim was handcuffed).

context of this country’s legacy of using canine violence against communities of color as a tool of oppression.²¹

BPD is deliberately indifferent to the risks to life and public safety posed by its canine program. In 2004, the federal Department of Justice (“US-DOJ”) recommended that BPD make several changes to its practices and policies related to canine deployment.²² More than a decade later, BPD has failed to implement US-DOJ’s recommendations in several ways:

- US-DOJ recommended that BPD “develop appropriate safeguards” to ensure that its canine units operate in conformance with a “find and bark” methodology.²³ The “find and bark” methodology trains canines to bark, rather than bite upon locating a subject. US-DOJ noted that the “find and bark” policy is better practice “because it prevents canines from biting subjects in situations in which such force is not necessary.”²⁴ BPD’s canine policy does not require officers to adhere to the “find and bark” methodology.²⁵ Although the department requires canine handlers to undergo training on the equivalent “bark and hold” philosophy, court records indicate that they do not implement that philosophy in practice: as a matter of custom, and as instructed by their handlers, BPD canines find and then bite.²⁶
- US-DOJ specifically recommended that BPD amend its policy to require supervisory approval prior to the deployment of a canine unit, noting that BPD exercised inadequate oversight of canine handlers.²⁷ BPD’s current policy does not implement that recommendation. Instead, canine-handling officers retain the discretion to release canines for apprehension and control; BPD policy expressly makes determinations about the appropriateness of canine deployments the responsibility of the canine handler. Thus, BPD appears to have returned to a less-protective policy after revising its canine policy in 2005 to comport with US-DOJ’s recommendations.²⁸

²¹ See, e.g., Charlton Yingling & Tyler Parry, *The Canine Terror*, Jacobin (May 19, 2016), <https://www.jacobinmag.com/2016/05/dogs-bloodhounds-slavery-police-brutality-racism/>.

²² U.S. Dep’t of Justice, Civil Rights Division, Letter re: Investigation of the City of Bakersfield Police Department (Apr. 12, 2004) (“US-DOJ Letter”).

²³ *Id.* at 9; cf. Consent Decree between the U.S. Dep’t of Justice and Prince George’s County, Md. & the Prince George’s County Police Dep’t (Jan. 22, 2004) (“PG County Consent Decree”) ¶¶ 30-32 (requiring department to implement “guard and bark” policy by mandating that canine handlers give a “revere” command requiring canines to hold suspects at bay and bark rather than bite).

²⁴ *Id.*

²⁵ Bakersfield Police Department, Policy 318 (May 19, 2017).

²⁶ *Orduno v. Spearman*, No. 1:16-CV-01180-EPG-HC, 2017 WL 1349488, *2 (E.D. Cal. Apr. 6, 2017) (describing BPD canine acting according to “find and bite” methodology); *People v. Deleon*, No. F070806, 2017 WL 1326322, *2 (Cal. Ct. App. Apr. 11, 2017); *People v. Gomez*, No. F070785, 2016 WL 7384100, *3 (Cal. Ct. App. Dec. 21, 2016) (suspect located in a tree and dragged down to the ground by BPD canine); *Brucker*, No. BM890270A (documenting BPD officer’s commands to canine to find, bite, and drag suspect towards him).

²⁷ US-DOJ Letter at 9; cf. PG County Consent Decree ¶ 35 (requiring supervisory approval for canine deployment).

²⁸ Bakersfield Police Department, Policy 318.6.1 (May 19, 2017). See Bakersfield Police Memorandum, “Actions Related to DOJ T.A. Letter” (“BPD Actions Letter”) (Mar. 23, 2005) (on file with ACLU and BPD) ¶ 24 (“We have revised policy which now requires notification of a supervisor when a canine team is on scene, unless exigent circumstances prevent notification. It also states that prior to releasing a canine for the purpose of

- US-DOJ recommended that BPD limit canine deployments to searches for serious felons and cases where a subject is armed or has potential to use force to cause harm to an officer or others.²⁹ But BPD’s policy authorizes canine attacks against individuals committing or threatening to commit “serious offenses,” without limiting “serious offenses” to felonies or otherwise defining that term.³⁰ BPD policy authorizes the use of canines to “apprehend” such persons – not just search for them. Moreover, BPD policy authorizes the use of canines to apprehend people even when they are unarmed and there is no reason to believe that they pose a threat to officers or others. Pursuant to BPD policy, officers may—and, as described above, actually do—deploy canines to bite suspects who are merely resisting or even threatening to resist arrest, as well as suspects in concealed locations.
- US-DOJ recommended that BPD policy prohibit the use of canines against unarmed people under the influence of drugs and/or alcohol or persons with mental illnesses.³¹ BPD’s canine policy includes no such prohibition.
- US-DOJ recommended that BPD track canine apprehensions in order to properly calculate bite ratios. The documents that BPD provided us in response to a public records request for documentation of bite ratios, however, appear to only reflect the ratio of deployments to bites, not apprehensions to bites. Accordingly, they are insufficient to establish bite ratios or help BPD leadership confirm that canines are functioning under a “find and bark” methodology, since deployments may include use of canines simply to sniff for drugs and other functions unrelated to locating suspects. It is therefore unclear whether BPD is adequately monitoring how often canines are biting people when they are deployed to “find and bark.”³²

location/apprehending a suspect, a supervisor’s approval will be obtained unless exigent circumstances prevent such [approval]).

²⁹ US-DOJ Letter at 9-10; *cf.* LASD Report (recommending that department allow dogs to be released on fleeing suspects “only when an objectively reasonable officer would conclude that it is necessary and the officer had probable cause to believe that the suspect has committed a felony involving the infliction or threatened infliction of serious physical injury or death; and the escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or to another person unless the suspect is apprehended without delay; and the officer has given a verbal warning to the suspect, if time, safety, and circumstances permit”).

³⁰ Bakersfield Police Department, Policy 318.6 (May 19, 2017); *cf.* U.S. Dep’t of Justice, Preliminary Technical Assistance Recommendations to Improve the Cincinnati Division of Police (Oct. 23, 2001), <https://www.justice.gov/crt/preliminary-technical-assistance-recommendations-improve-cincinnati-division-police> (“Cincinnati TA Letter”) (finding policy that authorized use of canines to arrest those who commit a felony or “serious misdemeanor” insufficiently limiting, and recommending that “canine deployment for purposes of apprehending a person” be limited to (1) searches for serious felons and (2) cases where a subject is armed and poses a threat of harm to the officer or others). As with policy requiring supervisory approval for canine deployment, BPD appears to have adopted US-DOJ’s recommended change, then reverted to its prior defective policy. BPD Actions Letter ¶ 25 (“Revised policy contains language that states that canine deployment should be limited to searches for serious felons and cases where a subject is armed”) (emphasis added).

³¹ US-DOJ Letter at 10.

³² *Cf.* Cincinnati TA Letter (remarking on department’s failure to properly monitor and calculate ratios, because department tracked canine bites and dispatches, not canine apprehensions, and clarifying that “[b]ite ratios are properly defined as the number of apprehensions accomplished by means of a dog bite divided by the *total number of apprehensions*”) (emphasis added).

Although US-DOJ's recommendations were only addressed to BPD, they bring into sharp relief KCSO's problematic canine policies and practices. Specifically:

- ³³ As a matter of official policy, KCSO's use of canines is not limited to "find and bark." Rather, KCSO's policy encourages officers to use canines for attack and control purposes, stating: "In addition to their ability to search and locate suspect(s), Sheriff's canines also possess the capability and training to physically seize suspect(s) who are violent and resisting."³³ KCSO policy expressly gives officers broad authority to use canine attacks "to overcome resistance."³⁴
- ³⁵ As described above, KCSO has used canines to attack unarmed people under the influence of drugs or alcohol or experiencing mental health crisis. Like BPD, it does not have a policy prohibiting such use.
- ³⁶ As described above, KCSO has used canines to attack people not suspected of any serious crime, who posed no imminent threat of serious harm to officers or others; such attacks are unreasonable and impermissible under the Constitution.³⁵ KCSO's policy encourages this unlawful practice. It categorically classifies canine attacks as "less than lethal force" without further elaboration, even though courts have recognized that some uses of canine force may rise to the level of "deadly force."³⁶ Moreover, the policy does not limit the use of canines to situations involving serious crime or violence, but rather encourages handlers to deploy canines against "prowlers,"³⁷ for warrant service, for crowd control, and against any resisting suspect.³⁸
- ³⁹ Like BPD, KCSO gives its handlers great discretion to release canines for apprehension and control. Its canine policy does not require supervisory approval for canine deployments. Rather, it states: "Sheriff's Canine Handlers alone will make the decision to deploy their canines."³⁹ The unchecked string of deadly attacks and accidental maulings by KCSO canines in recent years demonstrates that KCSO does not exercise sufficient supervision over canine handlers.

C. Excessive Force

³³ Kern County Sheriff's Office Metropolitan Patrol Division Operational Manual ("KCSO Op. Manual"), No. K9-300 (Apr. 18, 2013).

³⁴ *Id.*, No. K9-500.

³⁵ *See Smith v. Hemet*, 394 F.3d 689, 704 (9th Cir. 2005).

³⁶ *Id.* at 707 (citing *Robinette v. Barnes*, 854 F.2d 909, 913 (6th Cir.1988)).

³⁷ "Prowling" is a misdemeanor offense. Cal. Penal Code § 647(h); *see also Sandoval v. Las Vegas Met. Police Dep't*, 756 F.3d 1154, 1163 (9th Cir. 2014) (distinguishing lawful search justified by suspected burglary from unlawful search based on suspicion of prowling).

³⁸ KCSO Op. Manual, Nos. K9-300, K9-500. *But see* US-DOJ Letter at 10 n.18 (use of canines for crowd control "places citizens at unreasonable risk of harm").

³⁹ *Id.*

Excessive force by BPD and KCSO officers has not been limited to shootings or canine attacks. It has also taken the form of sometimes-deadly beatings—including use of impact weapons like batons—pepper spray, chokeholds, and tasing, followed by life-endangering restraints.⁴⁰ Before Tatyana Hargrove became the victim of the canine attack described above, a BPD officer first punched her in the face and threw her to the ground. And after a Kern County Sheriff’s deputy ordered his dog to attack David Sal Silva, several KCSO officers repeatedly kicked and beat him with their batons across the head and body, then hogtied him, resulting in his death. Tatyana and David did not present a threat to the safety of officers or others when officers began striking them; both individuals were unarmed. Their stories illustrate how BPD and KCSO have failed to ensure that officers use only reasonable and proportional force, as required by the Constitution.⁴¹

Since 2009, at least 9 people have died after being beaten or tased by KCSO deputies.⁴² At least 3 people have died after BPD officers beat or tased them.⁴³ In many of these cases, the use of batons and Tasers was combined with the use of canine attacks and pepper spray or other use of force. *In every case, the person killed was unarmed.*

Just as the impact of BPD and KCSO’s use of firearms and canines has landed disproportionately on people of color and people with disabilities, so has the impact of BPD and KCSO’s use of other force and restraints. The majority of people who died following KCSO beatings or tasings, and all of the people killed by BPD beatings and tasings, were identified as Hispanic. Several individuals were struggling with mental illness.

KCSO and BPD officers have used severe force against individuals who were not suspected of any serious crime, but were simply intoxicated or reported to be acting strangely.⁴⁴ For example, KCSO officers repeatedly struck Ronnie Ledesma with their fists, feet, and batons and instructed a canine to bite him twice, resulting in multiple bite wounds—even though he was suspected only of being intoxicated in public, was unarmed, and did not hit the officers or try to flee the scene.⁴⁵ When KCSO deputies responded to delusional phone calls that Jose Lucero placed

⁴⁰ Because there is more publicly available information about use of force that leads to a death in custody, our analysis primarily focuses on deadly incidents. But we received many indications—through conversations with community members, news media reports, and court records—that KCSO and BPD also engage in patterns and practices of nonlethal but nevertheless illegal excessive force. *See, e.g., Gonzalez-Chavez v. City of Bakersfield et al*, No. 1:12-cv-02053 (E.D. Cal. Feb. 13, 2017) (jury verdict finding excessive force in case where plaintiff alleged BPD officer approached him while he was sitting in his friend’s car; forcefully removed him from said car; hit him with weapons and punches about the arms, leg, face, and body; and tased him without cause).

⁴¹ Officers in Kern County are responsible for far more serious uses of force than counties of similar size. In 2016, officers in Ventura County reported 15 incidents of serious use of force and San Mateo County officers reported 7, while Kern County officers reported 36 incidents. Thirty incidents of serious force took place in the city of Bakersfield alone. Cal. Dep’t of Justice, Use of Force Reporting Incident Report (2016).

⁴² *See* Appendix III (Michael LeMon (2015), Juan Fidel Castro (2015), Robert Moore (2014), David Silva (2013), Ronnie Ledesma (2013), Michael Mesa (2009), Rory McKenzie (2009), Garrett Farn (2008), Ray Robles (2006)).

⁴³ *Id.* (Jose Vilorio (2016), Rodolfo Lepe (2009), Cecil Valenzuela (2007)).

⁴⁴ BPD’s own reported data suggest that a significant number of use of force incidents involve only minor, non-violent offenses. For example, in 2015, only about 20% of use of force incidents involved a crime against a person, domestic violence, or a weapon. The percentage of incidents involving a charge of being intoxicated in public or Welfare & Institutions Code § 5150 was roughly the same. Bakersfield Police Department, Internal Affairs Division, Year End Report 2015 (on file with ACLU CAI).

⁴⁵ *See generally* Order Granting in Part & Denying in Part Defendants’ Motion for Summary Judgment, *Ledesma v. Kern County*, No. 1:14-cv-01634-DAD-JLT (E.D. Cal. Nov. 10, 2016); *see also* Memorandum Decision and Order

during a mental health episode, they beat him with their batons, used pepper spray on him, and struck him with their Tasers roughly 25 times,⁴⁶ even though it is well-established that using a Taser against someone multiple times is potentially lethal and should be avoided.⁴⁷ When BPD officers responded to a call from Rodolfo Lepe's sister expressing concern that he was acting strangely, several of them attempted to extract him from the closet where he was hiding by hitting and kicking him and shooting him with multiple Tasers.⁴⁸ Lepe died from the resulting asphyxia and blunt force trauma.⁴⁹

BPD and KCSO's inadequate use of force policies contribute to the custom and practice of excessive force in their respective departments. In 2004, US-DOJ observed that BPD's use of force policy was deficient and risked encouraging unreasonable force. Although BPD has since changed its use of force policy, its current policy still fails to take into account US-DOJ's critiques and recommendations in several important respects:⁵⁰

- US-DOJ found that BPD's use of force policy did not adequately limit officers' use of force to cases in which it is required to make a lawful arrest or protect an officer or third-party from an immediate safety threat. It stated that the policy's authorization of force "to gain and maintain compliance with the law," was too ambiguous, and could lead officers to believe they were justified in using force in situations in which it was not reasonable.⁵¹ BPD's current use of force policy authorizes officers to use force "in carrying out their duties" and "to accomplish a legitimate law enforcement purpose,"

Granting in Part & Denying in Part Defendants' Motions for Summary Judgment at 6-7, *Garlick et al. v. County of Kern et al.*, No. 1:13-cv-01051-LJO-JLT (Mar. 8, 2016) (reflecting agreement between parties that Sal Silva was not suspected of any crime other than being drunk in public)

⁴⁶ Opinion, *Lucero v. County of Kern*, F066705 (Cal. Ct. App. Sept. 3, 2014).

⁴⁷ U.S. Dep't of Justice, Off. of Community Policing Services & Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* ("PERF Guidelines") (2011) at 13, <http://www.cops.usdoj.gov/files/RIC/Publications/e021111339-PERF-ECWGb.pdf> (noting that "repeated or multiple applications [of Tasers] may increase risk of death," and stressing that "[o]fficers must be trained to understand that repeated applications and continuous cycling of [Tasers] may increase the risk of death or serious injury and should be avoided"). *But see* Kern County Sheriff's Office Policy F0700 (Aug. 1, 2014), Directive A (specifying that deputies are not precluded "from multiple, reasonably necessary applications of the TASER on an individual"); Bakersfield Police Department Policy 309.4.4 (Apr. 24, 2012) (specifying that policy "shall not preclude any officer from deploying multiple, reasonable applications of the TASER on an individual").

⁴⁸ Shooting an individual with multiple Tasers at once is also an inappropriate and potentially deadly tactic. *See* PERF Guidelines ("No more than one officer should activate a CED against a person at a time"). Like the use of multiple deployments, this dangerous practice is sanctioned by KCSO policy and is not prohibited by BPD policy. *See* Kern County Sheriff's Office Policy F0700 (Aug. 1, 2014), Directive A (authorizing the use of two TASERS simultaneously to "increase the likelihood of effective probe placement and instant incapacitation").

⁴⁹ Kern County Sheriff/Coroner Final Report (Jan. 11, 2009) (on file with ACLU CA).

⁵⁰ There is reason to believe that BPD amended or considered amending its Use of Force Policy, like its Canine Policy, in response to US-DOJ's recommendations, only to adopt a policy suffering from previously-corrected defects after BPD signed a contract with the private policy consultant Lexipol. An internal memorandum references various changes to the Use of Force Manual, including the inclusion of a use of force continuum identifying different types of force that may be used in response to varying degrees of resistance. BPD's current use of force policy, which is based on standard Lexipol policy language, does not appear to include a use of force continuum or otherwise reflect policy changes BPD purported to adopt. BPD Actions Letter ¶¶ 1-5; *see also* Letter from BPD Chief W.R. Rector to Shanetta Cutlar, DOJ (Jan. 14, 2008) (reporting that policy changes responsive to DOJ's recommendations were submitted to Lexipol in draft form and would not be operational until March 1, 2008).

⁵¹ US-DOJ Letter at 2.

which is equally ambiguous.⁵²

- US-DOJ recommended that BPD remove from its use of force policy the statement: “It is impossible . . . to instruct officers how to react in each and every situation where the need to use force may occur.” US-DOJ observed that the statement was “problematic and should be removed because it suggests that there are no parameters for an officer to follow when the use of force is necessary.”⁵³ But BPD’s current policy contains an even more problematic statement in its first paragraph: “[T]here is no way to specify the exact amount or type of reasonable force to be applied in *any* situation.”⁵⁴
- US-DOJ observed that BPD’s policy failed to recognize that certain types of force may constitute either deadly or non-deadly force depending on how they are used. Specifically, it noted that a baton strike to the head can be deadly force. BPD’s current policy does not recognize that a baton strike can be deadly force. Moreover, its definition of deadly force is problematic and not based on any valid legal standard. The policy states that force is not “deadly” unless the officer “anticipated and intended” to cause risk of death or serious bodily injury.⁵⁵ But under federal and state law, deadly force is “force that creates a substantial risk of causing death or serious bodily injury.” To meet the constitutional requirement of proportionality, the use of deadly force is legally permissible only to prevent death or serious bodily injury. This legal limitation applies to police use of deadly force whether or not the officer specifically intends to kill or seriously injure. BPD’s policy frees its officers to use life-endangering tactics and weapons, as in the cases described above involving baton strikes and Tasers, outside the legal limitations that apply to deadly force.

US-DOJ’s 2004 comments to BPD highlight the deficiencies of KCSO’s use of force policy. Like BPD, KCSO authorizes force in broad and ambiguous terms, instructing officers that they may use force not only to effect arrests, but also “to overcome resistance.”⁵⁶ And the policy states, in similarly problematic terms, that “there is no way to specify what force is reasonable in advance.” Finally, KCSO policy categorically authorizes the use of batons, “to subdue a person” when necessary “to effect an arrest, prevent escape, or overcome resistance,” without specifically limiting baton strikes to the head to situations involving an imminent threat of death or serious bodily injury to the officer or another. KCSO’s deadly force policy specifically refers only to firearms.⁵⁷

Additionally, there are signs that excessive force is embedded in the culture of both agencies. According to news reports, KCSO deputies have been caught rewarding colleagues for aggressive use of batons with a “baby seal” prize for the best clubbing.⁵⁸ Others have reportedly

⁵² Bakersfield Police Department Policy 300.2-3 (May 19, 2017).

⁵³ US-DOJ Letter at 4.

⁵⁴ Bakersfield Police Department Policy 300.1 (May 19, 2017) (emphasis added).

⁵⁵ Bakersfield Police Department Policy 300.1.1 (May 19, 2017).

⁵⁶ Kern County Sheriff’s Office Policy F0100 (Oct. 27, 2014).

⁵⁷ Kern County Sheriff’s Office Policy F0700 (Nov. 12, 2007).

⁵⁸ See Jon Swaine & Oliver Laughland, *The County: where deputies dole out rough justice*, *The Guardian*, Dec. 4, 2015 (“The County Pt. 2”).

modified their patrol cars with decals declaring “We’ll kick your ass.”⁵⁹ (Canine units reportedly have modified decals proclaiming “We’ll bite your ass”). Officers have testified that they believed the people they subjected to force were “unaffected” and “impervious to pain,” even when video evidence and eyewitness testimony established that the person was screaming in pain and pleading for help.⁶⁰ The strongest indicator of an institutional culture that tolerates excessive force within KCSO and BPD, however, is the absence of consequences for officers who engage in such conduct, detailed below.

D. Failure to Monitor, Train, and Discipline

KCSO and BPD fail to monitor and discipline officers who engage in serious uses of force—or remove them from positions where they may use force when there is reason to believe their actions endanger members of the public. Both agencies have deemed justified nearly every fatal officer-involved shooting and use of force since 2009.⁶¹ Thus, KCSO and BPD institutionally enable the continuation of patterns and practices of excessive force.

Twelve KCSO deputies have been involved in multiple shootings since 2009.⁶² Two of them—Deputies Wesley Kraft and Cody Johnson—shot multiple people within the span of a few months. BPD has employed at least 8 repeat shooters since 2009. BPD officer Timothy Berchtold shot and killed three people in less than two months.⁶³ Two were unarmed, and one was 15 years old. Two of the shootings were justified on seemingly identical (and problematic) grounds—the decedent was alleged to have reversed a vehicle towards Berchtold. Berchtold’s supervisory officers did not relieve him of patrol responsibilities after the first or even the second shooting.⁶⁴

Both agencies allow officers who begin with lower levels of nonetheless excessive force to escalate to deadly shootings. In 2014, KCSO Deputy Robert Reed was involved in a violent incident that led to a federal lawsuit;⁶⁵ a year later, he shot David Garcia. KCSO Deputy Jeffrey Kelly was one of the officers who participated in the deadly beating of David Sal Silva. A year later, Deputy Kelly took part in the shooting that killed Christopher McDaniel. BPD Officer Rick Wimbish deployed his Taser against Ramiro Villegas, who was unarmed, during the incident that led to Villegas’s death, then continued to shoot and kill three other individuals, two of whom were also unarmed.⁶⁶

⁵⁹ *Id.*

⁶⁰ *Ledesma* Order at 8.

⁶¹ Swaine & Laughland, *The County* Pt. 2 (reporting that 49 of 54 fatal shootings in past decade by BPD and KCSO were publicly ruled justified, and 4 others appeared to have been ruled the same).

⁶² All of the fatal use of force incidents referenced below are documented in Appendix III, which compiles details from various sources.

⁶³ Jon Swaine & Oliver Laughland, *The County: the story of America’s deadliest police*, *The Guardian*, Dec. 1, 2015 (“*The County* Pt. 1”).

⁶⁴ US-DOJ recommended that BPD prohibit shooting at moving vehicles in 2004, noting that “the risks presented by officers firing at moving vehicles far outweighs any benefit that could be attained by such action.” US-DOJ Letter at 12.

⁶⁵ *Dora, Jr. v. County of Kern*, No. 1:14-cv-00896-LJ-JLT (E.D. Cal. filed Jun. 11, 2014)

⁶⁶ The third individual that Officer Wimbish shot and killed was carrying a BB gun.

KCSO's failure to rein in its deputies' excessive force has had deadly consequences even when deputies do not draw their firearms. In 2013, Deputy Brandon Geherty participated in the beating of Scotty Byrket that reportedly broke his ribs and fractured his spine.⁶⁷ A year later, Geherty participated in the beating leading to Michael Le Mon's death, during which he and another officer reportedly pepper-sprayed Le Mon, struck him with batons, shocked him with a Taser, and placed him a chokehold. Similarly, Deputy Ryan Greer participated in the group tasing and beating that led to Jose Lucero's death. A few years later, he participated in the beating that killed David Sal Silva.

E. Abuse of Process

KCSO and BPD charging patterns indicate that both agencies' officers are engaged in a practice of using criminal charges to preempt and defend against allegations of excessive force. This is consistent with information reported to us in our conversations with community members.

According to BPD, its officers filed "resisting" charges in 27% of its reported use of force incidents in 2015.⁶⁸ In a sample of 2016 cases we reviewed, over half of "resisting" cases initiated by BPD involved a use of force by officers.⁶⁹ BPD sought "resisting" charges in 543 cases in the first half of 2016 alone.⁷⁰ Where officers' use of force was especially unreasonable, we found evidence of overcharging. After injuring Tatyana Hargrove, for example, BPD officers sought two counts of resisting arrest, one count of willfully interfering with a police K-9, and two counts of assault on a peace officer—charges that were dismissed only after significant community pressure from NAACP-Bakersfield and other groups.⁷¹ In the last three years, BPD officers charged 42 individuals with "assault on a police animal," Cal. Penal Code § 600. In both of the two such cases we identified in our sample of court records, charges followed officers' use of a canine attack to arrest and were based on the defendant's defensive actions as the dog was biting them.⁷²

We were unable to find data reflecting the percentage of use of force incidents in which KCSO filed "resisting" charges. News reports, however, document in detail KCSO deputies' use of

⁶⁷ Swaine & Laughland, *The County Pt. 2*.

⁶⁸ Bakersfield Police Department, Internal Affairs Division, Year End Report 2015 (on file with ACLU CA); *cf.* <https://www.justice.gov/crt/findings-letter-re-use-force-washington-metropolitan-police-department> (expressing concern that "[i]n approximately one-third of the [use of force] incidents in [the] sample, the subject was charged with 'assault on a police officer'").

⁶⁹ Notes of public records on file with ACLU CA. By "resisting" charges, we refer here to charges for alleged violation of Cal. Penal Code § 148(a)(1). Because the Kern County Superior Court charges prohibitively high fees for copies of court records and even on-site review of court files, we were unable to conduct a comprehensive analysis of "resisting" cases or § 600 cases filed, so we reviewed a sample of cases instead.

⁷⁰ BPD charging records, on file with ACLU CA.

⁷¹ Harold Pierce, *Kern County district attorney dismisses charges against Tatyana Hargrove, but says she 'handled encounter very poorly,'* Bakersfield Californian, Aug. 2, 2017, http://www.bakersfield.com/news/breaking/kern-county-district-attorney-dismisses-charges-against-tatyana-hargrove-but/article_1ed61b74-77ac-11e7-a3f5-d7b99e061ed4.html.

⁷² *See also Daniels*, 2016 WL 3999777 at *3 (describing § 600 charge based on reaction to being bitten).

resisting arrest charges to intimidate victims of excessive force.⁷³ We confirmed that in the last 3 years, KCSO officers sought “resisting” charges in 273 cases *without seeking a charge for any other offense*.⁷⁴ KCSO reported 381 assaults on its officers between 2014 and 2016, but over half of those reported incidents resulted in no injury to the officer and did not involve a gun or knife.⁷⁵ KCSO officers have arrested at least 24 individuals pursuant to PC § 600 charges since 2014.⁷⁶ We were able to review the court files for three of those cases, and in each, charges followed the use of a canine attack in the process of arrest and were based on the defendant’s response to being bitten.⁷⁷

IV. Recommendations

As the evidence set forth above shows, both BPD and KCSO maintain a number of patterns and practices that deprive people of their constitutional rights to be free from excessive force and unreasonable search and seizure. To address these patterns and practices, BPD and KCSO must take the following steps.

Correct Use of Force Policies and Training

At a minimum, BPD must revise its use of force policy pursuant to US-DOJ’s 2004 recommendations. KCSO must make equivalent changes to its use of force policy. Specifically, both agencies should change their policies to:

- Limit use of force to cases where it is required to effect a lawful arrest or protect an officer or third party from an immediate safety threat;⁷⁸
- Remove confusing statements that suggest that there are no set parameters that officers should follow to determine whether the use of force is reasonable;⁷⁹
- Specify that baton strikes to the head constitute deadly force, and revise the definition of “deadly force” to clarify that it encompasses *any* force that creates a substantial risk of causing death or serious bodily injury, regardless of whether the officer has a specific intent to kill.⁸⁰

⁷³ Swaine & Laughland, *The County Pt. 2* (“When alleging excessive force against deputies, residents . . . have faced criminal charges themselves, typically for resisting arrest. Donald Cook, a veteran attorney in the region, said KCSO operated an unwritten policy of ‘hurt a man, charge a man’”).

⁷⁴ Records on file with ACLU CA.

⁷⁵ Dep’t of Justice, Criminal Justice Statistics Center, *Law Enforcement Officers Killed or Assaulted Data* (2016).

⁷⁶ Records on file with ACLU CA.

⁷⁷ Notes of review of public records on file with ACLU CA.

⁷⁸ *See, e.g.*, Settlement Agreement, *U.S. v. L.A. County Sheriff’s Dep’t* (C.D. Cal., signed Apr. 28, 2015) (“LASD Settlement Agreement”) ¶ 104 (“LASD agrees to clarify that . . . deputies may not use force against individuals who may be exhibiting resistive behavior, but who are under control and do not pose a threat to the public safety, themselves, or to other deputies.”).

⁷⁹ For BPD, this would require deleting the statement: “There is no way to specify the exact amount or type of reasonable force to be applied in any situation.” For KCSO, this would require deleting the sentence: “There is no way to specify what force is reasonable in advance.”

⁸⁰ *See, e.g.*, LASD Settlement Agreement ¶ 107 (requiring LASD emphasize in policy and training “that a hard strike to the head with any impact weapon, including a baton, is prohibited unless deadly force is justified”); Settlement Agreement, *U.S. v. City of Cleveland* (N.D. Ohio, signed May 26, 2015) (“Cleveland Settlement

These long overdue policy changes, while necessary, are not sufficient to ensure that BPD and KCSO officers use only constitutionally permissible force. To comply with the Constitution and prevailing policing standards, BPD and KCSO must also revise their use of force policies to:

- Clarify that force must be *proportional* to the purpose it is used to serve.⁸¹ Both agencies currently have use of force policies that suggest any force is permissible if applied to effect law enforcement objectives, including “to overcome resistance.” But the use of overly severe force to carry out even legitimate law enforcement aims may be objectively unreasonable, and therefore unconstitutional, if the force is not proportional.
- Clarify that any force must be *necessary*. Model policies authorize officers to use force “only when no reasonably effective alternative appears to exist.”⁸²
- Require officers to take reasonable care to avoid taking actions that precipitate unnecessary, unreasonable, or disproportionate use of force by placing themselves or others in jeopardy, or by not following policy or tactical training.⁸³
- Correct existing practices by explicitly prohibiting the use of retaliatory force – that is, the use of force in excess of what is necessary and reasonable to punish individuals for fleeing, resisting arrest, or disrespecting officers.⁸⁴
- Formally integrate a de-escalation requirement into their use of force policies.⁸⁵

Agreement”) ¶ 46(h) (requiring change in policy to clarify that officers may not use head strikes with hard objects except where lethal force is justified).

⁸¹ See, e.g., LASD Settlement Agreement at Pt. VIII (“Deputies and staff shall endeavor to use only that level of force necessary for the situation.”); *id.* ¶ 104 (requiring LASD to emphasize to deputies that force “must be proportional to the threat or resistance of the subject”); Consent Decree, *U.S. v. Police Dep’t of Baltimore City et al.*, No. 1:17-cv-0099-JKB (Dkt. 2-2) (D. Md. Jan. 12, 2017) (“Baltimore Consent Decree”) ¶ 127 (“BPD will ensure that . . . officers will use only the amount of force necessary”); Consent Decree, *U.S. v. City of Newark* (D.N.J. signed Mar. 30, 2016) (“Newark Consent Decree”) ¶ 218(oo) (“Reasonable force means force that is objectively reasonable under the circumstances and the minimum force necessary to effect an arrest or protect the officer or another person”).

⁸² National Consensus Policy, Pt. II; see also, e.g., LASD Settlement Agreement at Pt. VIII (requiring LASD to ensure that deputies use force “as a last resort”); Baltimore Consent Decree ¶ 124(a).

⁸³ See, e.g., Seattle Police Dep’t Manual, Policy 8.000 (Sept. 2015) (“Officers should take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training.”); New Orleans Police Dep’t Ops. Manual, Chapter 1.3: Use of Force, at 5, 8 (Dec. 2015) (“Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through the use of poor tactical decisions.”); Baltimore Consent Decree ¶ 124(c) (“BPD will ensure that officers . . . use tactics that do not unnecessarily escalate an encounter”); *id.* ¶ 135 (“BPD will prohibit the use of tactics that unnecessarily escalate an encounter and create a need for force”).

⁸⁴ See, e.g., Cleveland Settlement Agreement ¶ 46(g); Baltimore Consent Decree ¶ 134; Newark Consent Decree ¶ 152(i).

⁸⁵ The agencies may refer to the National Consensus Policy on the Use of Force for exemplary policy language on de-escalation. National Consensus Policy, Pt. IV(B); see also, e.g., LASD Settlement Agreement ¶ 103 (“Deputies shall use advisements, warnings, and verbal persuasion, when possible, before resorting to force; and de-escalate force immediately as resistance decreases.”); Cleveland Settlement Agreement § 46(b) (requiring the use of de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force); Baltimore Consent Decree ¶ 124(b) (“BPD will ensure that officers . . . [u]se de-escalation techniques and tactics to minimize the need to use force”); *id.* ¶ 125 (specifically identifying required de-escalation tactics).

Because policy change without adequate training will likely be ineffectual, BPD and KCSO must also require all officers to undergo mandatory training on their revised policies,⁸⁶ as well as de-escalation and crisis intervention trainings that provide adequate guidance on how to identify people with mental illness, disability, impairment, or incapacity, and on how to safely control and resolve tense encounters without needing to resort to force.⁸⁷ The significant number of people shot and killed by BPD and KCSO officers while (a) undergoing mental health crisis, and/or (b) armed only with a knife or other non-firearm weapon indicates an urgent need for improved training to specifically address alternative ways to resolve such encounters.⁸⁸

KCSO and BPD must also amend their Taser policies to address the exceptionally dangerous Taser practices their officers employ. The agencies should remove policy language that gives deputies free rein to use multiple applications of the Taser, and KCSO should specifically prohibit the use of more than one Taser on a person at the same time.⁸⁹ The agencies should replace their defective Taser policies with language drawn from model policies on the use of electronic control weapons.⁹⁰ In addition to changing their policies, both agencies must also re-train any officer authorized to carry or use a Taser.⁹¹

End the Use of Dog Attacks

The longstanding patterns and practices of dog attacks documented above demonstrate that KCSO and BPD are not capable of safely maintaining canine programs that include using dogs to bite people. Immediate discontinuation of KCSO and BPD's canine programs should be required – because the dogs they have specifically trained to attack people pose a serious threat

⁸⁶ See, e.g., Cleveland Settlement Agreement ¶ 146(h) (requiring training to instruct officers that a strike to the head with an impact weapon may result in death).

⁸⁷ See, e.g., LASD Settlement Agreement ¶ 119(d)-(e) (requiring de-escalation and racial bias training); Baltimore Consent Decree ¶ 166(d)-(e) (requiring training on de-escalation tactics and consideration that a subject may be noncompliant due to medical or mental conditions, physical or hearing impairment, language barrier, drug interaction, or emotional crisis"). Some agencies—including KCSO—require 40 hours of crisis intervention training. Given the demonstrated and urgent need for such education within KCSO's and BPD's ranks, all officers in both agencies should be required to undergo at least that amount of training. In response to a public information request regarding both de-escalation and crisis intervention training, KCSO only indicated that its officers started receiving crisis intervention training in 2014. The materials KCSO provided to us indicate that de-escalation is a topic addressed by the crisis intervention training. It is unclear how much de-escalation training KCSO officers receive, if any, outside that context.

⁸⁸ See PERF, Critical Issues in Policing Series: Re-engineering Training on Police Use of Force 4-5 (Aug. 2015), <http://www.policeforum.org/assets/reengineeringtraining1.pdf>.

⁸⁹ See, e.g., Cleveland Settlement Agreement ¶ 61 (prohibiting officers from employing more than three cycles of a Taser against a subject during a single incident); Baltimore Consent Decree ¶ 145 (same); *id.* ¶ 146(h) ("BPD will ensure that officers . . . do not activate more than one [Taser] at a time against a subject"); Consent Decree Regarding the New Orleans Police Dep't, *U.S. v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW (Dkt. 159-1) (E.D. La. filed Jan. 11, 2013) ("New Orleans Consent Decree") ¶¶ 57-58 ("Officers shall not intentionally activate more than one [Taser] at a time against a subject.").

⁹⁰ See, e.g., PERF Guidelines.

⁹¹ See, e.g., Cleveland Settlement Agreement ¶ 84(g) (requiring training on the risks of prolonged or repeated Taser exposure); Baltimore Consent Decree ¶ 166(g) (same, "including the increased risks of [repeated exposure] on persons in crisis or experiencing a behavioral health disability"); New Orleans Consent Decree ¶ 57 (same, including that "exposure for longer than 15 seconds, whether due to multiple applications or continuous cycling, may increase the risk of death or serious injury").

to public safety; because their use of dog attacks for apprehension and control has repeatedly proven to be seriously injurious and even deadly; and because their deployment of dogs rapidly escalates every situation, displacing the opportunity for nonviolent resolution and exacerbating other patterns and practices of excessive force.⁹²

Improve Internal Oversight and Monitoring

Eliminating the patterns and practices of excessive force by KCSO and BPD officers also requires improving the agencies' systems for monitoring and oversight of officers' use of force,

As an initial matter, BPD and KCSO must take steps to ensure that all force is logged and reviewed. In 2008, US-DOJ observed that BPD officers under-reported their use of force. US-DOJ noted that its review of a sample of use of force reports uncovered a number of incidents where force was under-reported (documenting the use of fists, but not the simultaneous deployment of a canine, for example) or not reported at all – resulting in no supervisory assessment of the reasonableness of the officer's use of force.⁹³ Court files we reviewed suggest this may be an ongoing problem for BPD, and that KCSO may also maintain this problematic practice.⁹⁴ Accordingly, both BPD and KCSO must implement policies and protocol requiring supervisors to take an active role to ensure that officers meet reporting requirements,⁹⁵ and—to make sure policies are not routinely ignored—they must impose disciplinary consequences on both supervisors and officers who fail their reporting duties.⁹⁶ An independent monitor should periodically audit use of force records (see below).

BPD and KCSO must also improve the early warning systems they use to detect dangerous patterns of behavior by their officers.⁹⁷ As set forth above, neither agency effectively prevents

⁹²Cf. U.S. Dep't of Justice, Civil Rights Division, Investigation of the New Orleans Police Dep't (Mar. 16, 2011) at vi, 8 (“We found that NOPD’s canines were uncontrollable . . . compelling us to recommend immediate suspension of NOPD’s use of canines to apprehend suspects.”). If the use of canines is permitted, they should be trained and authorized only for detection. Under no circumstances should BPD or KCSO continue to train or authorize dogs to bite.

⁹³ US-DOJ Letter at 2.

⁹⁴ In some court files, we observed that an officer's use of force was described in the underlying crime report but not logged in the field inquiring whether force was used. Notes on file with ACLU CA.

⁹⁵ See, e.g., US-DOJ Letter at 2 (making similar recommendations); Judgment Pursuant to Stipulation, *People v. City of Maywood*, No. BC 416-522 (Dkt. 19) (L.A. Super. Ct. Jul. 21, 2009) (“Maywood Judgment”) ¶¶ 47, 64 (requiring city to retain qualified outside expert to evaluate supervision and management policies and procedures); LASD Settlement Agreement ¶ 117 (making unit commanders responsible for identifying and reporting force trends and taking preventive steps to curb problematic trends); Baltimore Consent Decree ¶¶ 169-210 (requiring systemic reform of supervisory and management system).

⁹⁶ See, e.g., Cleveland Settlement Agreement ¶ 89 (“Officers will be subject to the disciplinary process for material omissions or misrepresentations in their Use of Force Reports”); LASD Settlement Agreement ¶ 116 (“LASD will hold supervisors accountable for not detecting, adequately investigating, or responding to force that is unreasonable or otherwise contrary to LASD policy”); Baltimore Consent Decree ¶ 177 (requiring corrective action where Use of Force Reports are found to include material omissions or inaccuracies, including discipline and review of the entire incident in light of new information); New Orleans Consent Decree ¶ 79 (“use of force reporting policy shall explicitly prohibit the use of conclusory statements without supporting detail, including ‘boilerplate’ . . . language”).

⁹⁷ See, e.g., Judgment (Pursuant to Stipulation), *People v. City of Riverside*, No. 355-410 (Riverside Super. Ct. Mar. 5, 2001) (“Riverside Judgment”), ¶ 62 (requiring enhancement of early warning system); LASD Settlement Agreement ¶¶ 141-144 (same); Baltimore Consent Decree ¶¶ 312-327 (same).

officers who engage in excessive force from doing so repeatedly. Given that there is an established practice in both agencies of officers filing “resisting” and “assault on a police animal” charges against people they subject to force, KCSO and BPD should use their early warning systems to collect data not only on force that officers actually report, but also on the number of cases in which officers file criminal charges alleging resisting, obstruction, or assault against an officer or police animal – and such filings should serve as the basis for intervention alerts.⁹⁸ Additionally, a supervising officer should evaluate each incident in which a person is charged with one of the offenses listed above; agency policy and protocol should require supervisors to initiate disciplinary or remedial measures if their review of the underlying events raises concerns about excessive force or other abuse of authority.⁹⁹

BPD and KCSO must also take steps to ensure that members of the public can reliably access their citizen complaint procedures to report abuse of force.¹⁰⁰ On multiple occasions, community members informed us of incidents where someone attempted to make a complaint against officers but was turned away at the station. KCSO and BPD complaint policies and procedures have allowed such obstruction to go undetected.¹⁰¹ KCSO’s complaint form is not readily accessible online; it must be requested in person or over the phone. KCSO instructs members of the public to file complaints in person at its headquarters or at a substation,¹⁰² which may be intimidating for potential complainants fearing retaliation. KCSO and BPD should provide the public a variety of avenues for submitting complaints, and ensure that officers take and document *all* complaints, in order to guarantee that citizens’ reports of excessive force will be appropriately reviewed.¹⁰³

⁹⁸ See, e.g., Baltimore Consent Decree ¶ 317(d) (requiring upgrade of early warning system to capture, among other data, “all instances in which force is used and a subject is charged with Failure to Obey, Resisting Arrest, Assault on an Officer, Disorderly Conduct, Trespassing, or similar charges” as well as “all instances in which an officer issues three or more Citations during a single encounter”); Newark Consent Decree ¶ 157(g) (requiring early warning system to include “all relevant information, including the results of any investigation or supervisory review related to . . . all arrests for disorderly conduct, resisting arrest, and assaulting a police officer”).

⁹⁹ Consent Decree, *U.S. v. City of Los Angeles*, No. (C.D. Cal. entered June 15, 2001) (“LAPD Consent Decree”) (“Supervisors shall evaluate each incident in which a person is charged with interfering with a police officer (California Penal Code § 148), resisting arrest, or assault on an officer to determine whether it raises any issue or concern regarding training, policy, or tactics.”).

¹⁰⁰ See, e.g., Maywood Judgment ¶¶ 43, 45 (requiring systematic evaluation and audit of complaint procedures and investigations, as well as documentation of all complaints).

¹⁰¹ Until recently, BPD’s complaint policy stated: “When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of department policy or procedure, a complaint need not be taken.” BPD Policy No. 1020.2.3 (adopted Apr. 24, 2012). By allowing officers to make informal, one-sided determinations that complaints were resolved, this policy circumvented the formal procedure required by state law and likely led to under-reporting of complaints. BPD should ensure that officers are not continuing to operate pursuant to the policy in practice.

¹⁰² See Kern County Sheriff’s Office, Internal Affairs, http://www.kernsheriff.org/internal_affairs.aspx (last visited Oct. 30, 2017).

¹⁰³ See, e.g., Cleveland Settlement Agreement ¶¶ 202, 205 (requiring city: (1) to allow civilian complaints to be submitted verbally or in writing, in person, by phone, or online, on behalf of oneself, on behalf of another, or anonymously; (2) to document *all* complaints in writing; and (3) to distribute complaint forms in public libraries, public buildings, and gathering places, as well as in all police vehicles); Baltimore Consent Decree ¶ 336(a)-(i) (requiring the same remedial measures “to ensure broad and easy access” to complaint system, and requiring the establishment of a free, 24-hour hotline for complaints).

Implement Independent Review & Oversight

Currently, BPD and KCSO do not have systems for independent review and oversight. Fatal uses of force and officer-involved shootings are reviewed only by other department members. But BPD and KCSO are not capable of holding their own officers accountable, as demonstrated by the near-uniform exoneration of officers involved in lethal incidents, including in multiple cases involving the deaths of unarmed individuals.

Indeed, US-DOJ found in 2008 that BPD supervisors were not competently reviewing officers' use of force: supervisors reached conclusions regarding the use of force inconsistent with the evidence available, and failed to reconcile contradicting accounts regarding officers' use of force.¹⁰⁴ It appears that KCSO supervisors may be similarly failing their duties; as set forth above, KCSO officers who used excessive force against members of the public have been allowed to do so again or escalate their use of force, indicating that they are not disciplined or affected by any discipline imposed on them. Similarly, the maintenance of defective use of force policies and practices in both agencies over the course of the last decade demonstrates that BPD and KCSO are incapable of overseeing themselves on an institutional level. To effectively address BPD's and KCSO's patterns and practices of excessive force, therefore, independent review of all serious uses of force must be established alongside independent oversight of the agencies' policy-setting functions.

An independent monitor should be appointed to oversee the agencies' immediate reform efforts, along with a civilian taskforce comprised of a diverse panel of individuals from community organizations, faith groups, student or youth groups, and academic institutions with demonstrated interest in addressing the patterns and practices set forth herein.¹⁰⁵ The monitor's duties should specifically include audits of use of force and complaint records.¹⁰⁶ The monitor and civilian taskforce should share the goal of establishing permanent structures for independent use of force review and agency oversight. To enable public oversight of KCSO and BPD, the monitor and taskforce—and the independent oversight institutions that eventually succeed them—should regularly conduct public hearings and publish detailed reports on the progress of reforms, contemplated changes to policies or training, and data about officers' actual use of force in the community.¹⁰⁷ These efforts should be designed both to inform the public and to solicit feedback from community members directly affected by the conduct of KCSO and BPD officers.

¹⁰⁴ US-DOJ Letter at 2.

¹⁰⁵ See, e.g. Maywood Judgment ¶ 68 (requiring retention of AG consultant/monitor); Riverside Judgment ¶¶ 71-72 (same); Baltimore Consent Decree ¶¶ 10-13 (requiring establishment of and funding for Community "Oversight Task Force"); Memo. of Understanding Between the U.S. & the City of Seattle (Jul. 27, 2012) ("Seattle MOU") ¶ 3 (requiring establishment of Community Police Commission representative of the many and diverse communities in Seattle, including members from faith communities, minority ethnic and community organizations, and student or youth organizations, to oversee implementation of MOU); Cleveland Settlement Agreement ¶¶ 15-22 (requiring establishment of a "Community Police Commission" selected by panel with representatives from faith groups, civil rights advocates, the business community, organizations, representing communities of color, youth, academics, and individuals with expertise in the challenges facing people with mental illness or the homeless); Newark Consent Decree ¶ 13 (requiring establishment and funding of a civilian oversight entity).

¹⁰⁶ See, e.g., LASD Settlement Agreement ¶¶ 149-167; Newark Consent Decree ¶ 173 ("Compliance reviews and Audits"); *id.* ¶ 174 ("Outcome Assessments"); Seattle Monitoring Plan for the First Year (Mar. 5, 2013), p. 8.

¹⁰⁷ See, e.g., Maywood Judgment ¶ 64 (requiring annual report); Cleveland Settlement Agreement ¶ 17 (requiring public meetings to discuss Monitor's reports, implementation of reforms, and changes to police policies, practices, and training); LASD Settlement Agreement ¶ 171 (requiring public report every six months detailing agency's

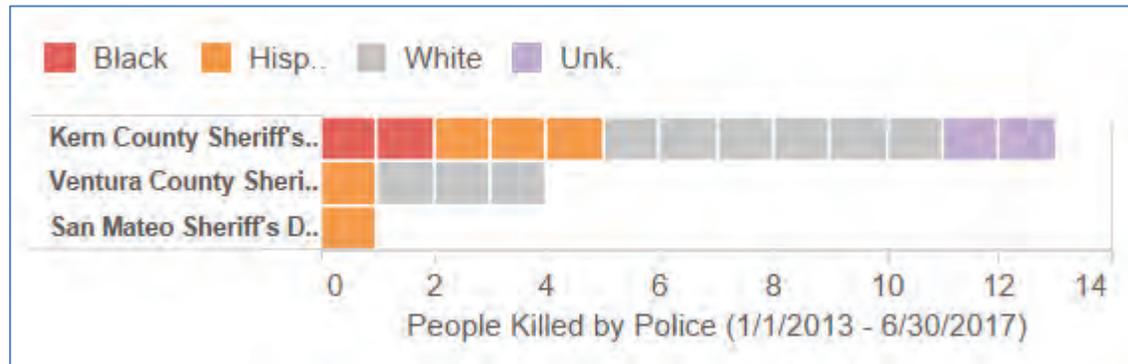
V. Conclusion

As set forth above, both KCSO and BPD maintain patterns and practices of excessive force. The history of BPD policy reform shows that eliminating such patterns and practices will require more than adopting standardized policy language.¹⁰⁸ It will require a concerted effort to re-train and re-orient both line and supervisory officers towards a culture that emphasizes the consistent use of tactical alternatives to force and consequences for the use of unreasonable, unnecessary, or disproportionate force. Most importantly, it will require structural change: the establishment of rigorous and independent oversight institutions to ensure that KCSO and BPD remain accountable and responsive to the communities they serve.

progress in implementing reforms); Seattle MOU ¶ 7 (requiring Community Police Commission to hold public meetings at regular intervals to discuss Monitor's reports and receiving community feedback on progress or compliance with required reforms).

¹⁰⁸ *See supra*, note 50.

APPENDIX I



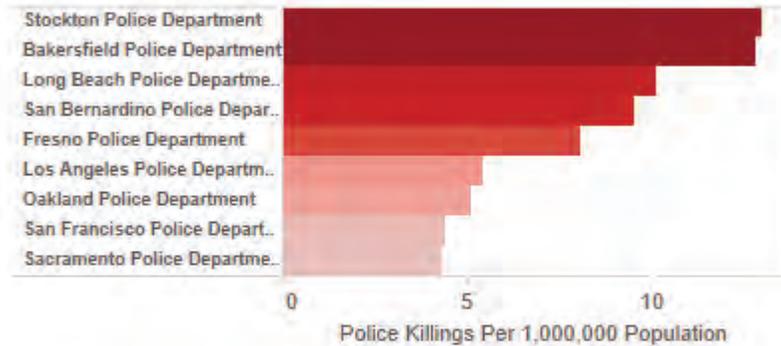
APPENDIX II

Rate of Police Killings per Population Data from Jan, 2013 through Jun, 2017

Filter by State
California

Filter by Police Department
All

Filter by City Violent Crime Rate
4.5 to 21

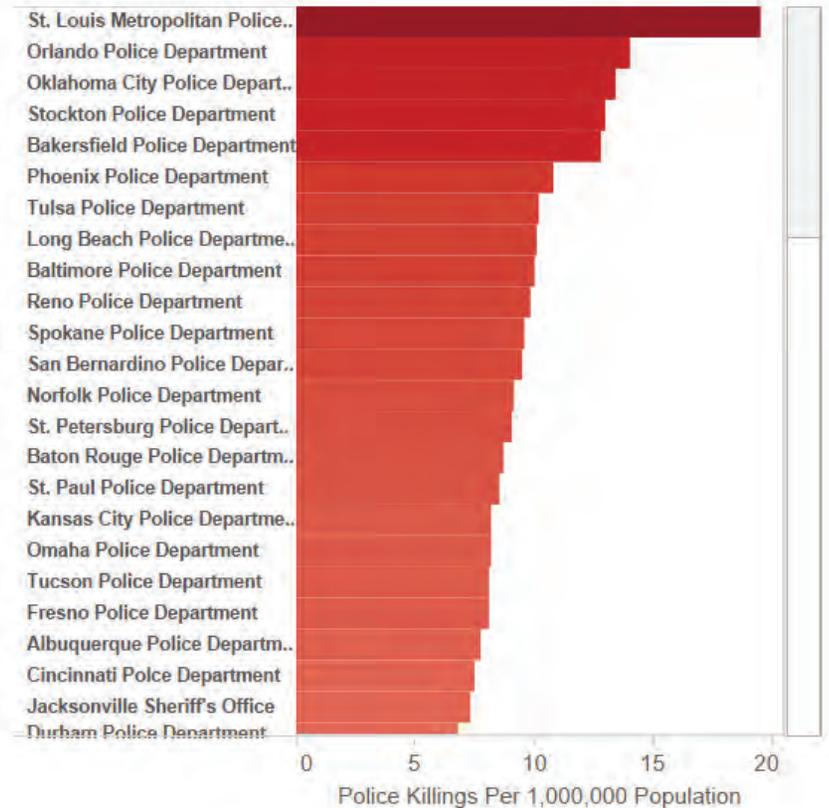


Rate of Police Killings per Population Data from Jan, 2013 through Jun, 2017

Filter by State
All

Filter by Police Department
All

Filter by City Violent Crime Rate
4.5 to 21



APPENDIX III

LAST NAME	FIRST NAME	YEAR	MONTH	DAY	AGENCY	FATAL	ARMED	RACE / ETHNICITY	FORCE USED	OFFICER HISTORY	NOTES ON CIRCUMSTANCES	SOURCE OF INFO
JUNIOR	OSCAR	2017	6	8	BPD	Y	Y	HISPANIC	Shot			WaPo
LANDA	ROGELIO VIDAL	2017	4	4	BPD	Y	N	HISPANIC	Shot			WaPo; MPV
GARCIA	ANTONIO ARTURO PEREZ	2017	1	24	BPD	Y	Y	HISPANIC	Shot			WaPo; MPV
SERNA	FRANCISCO	2016	12	12	BPD	Y	N	HISPANIC	Shot		Elderly man with dementia.	Guardian; WaPo; MPV; News [1]
VILORIA	JOSE	2016	10	2	BPD	Y	N	HISPANIC	Carotid hold, blunt force			Guardian; MPV
VILLARREAL	FRANCISCO	2016	8	18	BPD	Y	Y	HISPANIC	Shot		Shot while fleeing in a car.	Guardian; WaPo; MPV
LONG	JAMIE CLARK	2016	2	22	BPD	Y	KNIFE	WHITE	Shot			Guardian; WaPo; MPV
FITE	JERIAL	2015	12	4	BPD	N	Y	HISPANIC	Shot			News [3]
CELIO	HUGO FERNANDO	2015	11	29	BPD	Y	Y	HISPANIC	Shot			Guardian; WaPo; MPV
ALDERMAN	JASON	2015	8	22	BPD	Y	N	WHITE	Shot	Repeat Shooter (Rick Wimbish)	Officer claimed to mistake carjack for gun.	Guardian; WaPo; MPV; News (2)
HERNANDEZ	DANIEL	2015	7	7	BPD	Y	Y	HISPANIC	Shot			Guardian; WaPo; MPV
ALEXANDER	JEFF	2015	3	18	BPD	Y	KNIFE	WHITE	Shot			Guardian; WaPo; MPV
BURDGE	ROBERT P.	2015	3	19	BPD	Y	Y	WHITE	Shot			Guardian; WaPo; MPV
HERNANDEZ	ADRIAN	2015	3	27	BPD	Y	BB GUN	HISPANIC	Shot	Repeat Shooter (Rick Wimbish)		Guardian; WaPo; MPV
VILLEGAS	RAMIRO	2014	11	13	BPD	Y	N	HISPANIC	Shot	Repeat Shooter (Rick Wimbish)		CADDOJ DIC; OIS PRA; MPV
PORTILLO	RODOLFO	2014	11	15	BPD	N	Y	HISPANIC	Shot	Repeat Shooter (Robert Pair)		OIS PRA
DOZER	MICHAEL	2014	8	6	BPD	Y	N	BLACK	Shot	Repeat Shooter; Misconduct (Aaron Stringer)	Signs of mental illness.	CADDOJ DIC; OIS PRA; MPV
VILLANUEVA	MIGUEL	2014	3	14	BPD	N	Y	HISPANIC	Shot			OIS PRA
SINGH	JASPAL	2013	12	29	BPD	Y	Y	ASIAN INDIAN	Shot		Possible mental health crisis.	CADDOJ DIC; OIS PRA; MPV
MILES	ERIC	2013	12	14	BPD	N	N	HISPANIC	Shot		Shot during vehicle chase.	OIS PRA
ZARATE	MARIA	2013	10	1	BPD	Y	AIRSOFT GUN	HISPANIC	Shot		Responding to report of mental illness.	CADDOJ DIC; MPV; News (4)
RAMIREZ	JORGE	2013	9	16	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Rick Wimbish); Repeat Shooter (Jess Beagley)		CADDOJ DIC; MPV; Guardian
HARGER	JUSTIN	2013	9	16	BPD	Y	Y	WHITE	Shot	Repeat Shooter (Rick Wimbish); Repeat Shooter (Jess Beagley)		CADDOJ DIC; OIS PRA; MPV
GURROLA	ABEL	2013	1	1	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Isaac Aleman)	Shot during foot pursuit.	CADDOJ DIC; OIS PRA; MPV; News (5)
LOPEZ	JONATHAN	2012	10	30	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Deron Miller)	Facts disputed re: whether Lopez was armed.	OIS PRA
FIAD	EDWARD	2012	5	12	BPD	Y	Y	WHITE	Shot	Repeat Shooter (Deron Miller)	Police responding to keep the peace request, encountered Fiad seated holding gun.	CADDOJ DIC; OIS PRA
CHAVEZ	VICTOR FLORENTINO	2011	5	21	BPD	N	N	HISPANIC	Shot		Was holding a phone.	OIS PRA
PEREZ	ADRIAN	2011	5	9	BPD	Y	Y	HISPANIC	Shot			CADDOJ DIC; OIS PRA; Coroner Report
ROSAS	DAVID SEBASTIAN	2010	11	28	BPD	N	Y	HISPANIC	Shot			OIS PRA
GARCIA	FABIAN RODRIGUEZ	2010	10	3	BPD	N	Y	HISPANIC	Shot			CADDOJ DIC; OIS PRA; Coroner Report
COCKREN	LONNIE	2010	9	24	BPD	Y	Y	WHITE	Shot	Repeat Shooter (William Caughell)		CADDOJ DIC; OIS PRA; Coroner Report
DANIELS	GARRY (Gary Ray)	2010	8	4	BPD	Y	KNIFE	BLACK	Shot			CADDOJ DIC; OIS PRA; Coroner Report
AVILA	TRAYVON	2010	7	9	BPD	Y	N	BLACK	Shot	Repeat Shooter (Timothy Berchtold)	Shot in car. Stopped for vehicle code violation, backed into empty police car. 15 years old.	CADDOJ DIC; OIS PRA; Coroner Report
MILLER	ALFRED	2010	6	8	BPD	Y	N	BLACK	Recorded as "natural"		Died in KCSO jail after encounter with BPD - details unclear - told witnesses he had been beaten. Had multiple rib fractures, mid sternal fractures, lacerated right ventricle which Coroner attributed to CPR attempts. Other bruising deemed "superficial."	CADDOJ DIC; Coroner Report
YZAGUIRRE	VINCENT	2010	5	14	BPD	Y	N	HISPANIC	Shot	Repeat Shooter (Timothy Berchtold)	Shot in car.	CADDOJ DIC; OIS PRA; Coroner Report
SOLIZ	JOHN (JESSE) III	2010	5	23	BPD	Y	Y	HISPANIC	Shot	Repeat Shooter (Timothy Berchtold)	Responding to family call expressing concern that Soliz was expressing suicidal thoughts.	CADDOJ DIC; OIS PRA; Coroner Report
MOHAMED	SADDAM BANUELOS	2010	4	28	BPD	N	Y	BLACK	Shot	Repeat Shooter (Jess Beagley)		OIS PRA
UNKNOWN	UNKNOWN	2010	3	25	BPD	N	Y	UNKNOWN	Shot			OIS PRA
UNKNOWN	UNKNOWN	2010	2	20	BPD	N	Y	UNKNOWN	Shot			OIS PRA
AMAYA	FERNANDO MARIANO	2010	1	29	BPD	N	Y	HISPANIC	Shot			OIS PRA
HOGG	DARRIN	2009	12	18	BPD	Y	Y	BLACK	Shot	Repeat Shooter (Robert Pair)		OIS PRA; Coroner Report
BARRAZA	MARCOS	2009	10	7	BPD	N	N	HISPANIC	Shot		Shot on motorcycle.	OIS PRA
UNKNOWN	UNKNOWN	2009	9	20	BPD	N	Y	UNKNOWN	Shot	Repeat Shooter (Isaac Aleman); Repeat Shooter; Misconduct (Aaron Stringer)	Responding to call of "suspicious men in hoodies"	OIS PRA
BARTON	DENNIS	2009	9	16	BPD	N	N	UNKNOWN	Shot		Shot during vehicle pursuit.	OIS PRA
SLEGGERS	HUBERT JOHN	2009	3	17	BPD	N	N	UNKNOWN	Shot		Shot during vehicle pursuit.	OIS PRA
UNKNOWN	UNKNOWN	2009	3	15	BPD	N	KNIFE	UNKNOWN	Shot			OIS PRA
CASTILLO	ONCIMO	2009	3	1	BPD	Y	AIRSOFT GUN	HISPANIC	Shot			CADDOJ DIC; OIS PRA
BIRCHFIELD	SPENCER	2009	3	14	BPD	Y	Y	WHITE	Shot			CADDOJ DIC; OIS PRA; Coroner Report
LEPE	RODOLFO	2009	1	11	BPD	Y	N	HISPANIC	Taser, Chokehold, Blunt force	Repeat Shooter (Jess Beagley)	Signs of mental illness.	CADDOJ DIC; Coroner Report; Guardian
PEYAN-LEAL	JOSE	2009	1	4	BPD	N	Y	HISPANIC	Shot		Shot while fleeing on foot.	CADDOJ DIC; OIS PRA; Coroner Report
BELDEN	DOUGLAS	2009	3	15	BPD	N	KNIFE	UNKNOWN	Shot		Teenager with mental disability.	News (6)
ANDERSON	LEON	2008	12	9	BPD	Y	Y	BLACK	Shot	Repeat Shooter (William Caughell)		News (7)
VALENZUELA	CECIL	2007	5	24	BPD	Y	N	HISPANIC	Taser			Guardian
CASTRO	JUAN FIDEL	2015	12	8	KCSO	Y	N	HISPANIC	Hands-on force		Died in KCSO custody	Coroner Report
ASHLEY	BENJAMIN	2015	8	15	KCSO	Y	KNIFE	BLACK	Shot	Repeat Shooter (James Perry); Repeat Shooter; Repeat Force; Misconduct (William Starr)		CADDOJ DIC; Guardian; WAPQ; MPV
UNKNOWN	UNKNOWN	2015	8	1	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Michael Booker); Repeat Shooter (Conrado Curiel); Repeat Shooter (Gabriel Romo); Repeat Shooter; Repeat Force; Misconduct (William Starr)		OIS PRA
UNKNOWN	UNKNOWN	2015	8	3	KCSO	N	N	UNKNOWN	Shot			OIS PRA
UNKNOWN	UNKNOWN	2015	7	24	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Daniel Willis)		OIS PRA
UNKNOWN	UNKNOWN	2015	7	28	KCSO	N	N	UNKNOWN	Shot			OIS PRA
LE MON	MICHAEL EARL	2015	4	28	KCSO	Y	N	WHITE	Baton, Taser, Pepper spray, Control hold	Repeat Force (Brandon Geherty)		Guardian; MPV
GARCIA	DAVID	2015	1	26	KCSO	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Robert Reed)	Signs of mental illness. Police responded to welfare check.	OIS PRA; Guardian; WAPQ; MPV; Court Records
RODRIGUEZ	MARIA	2014	8	3	KCSO	Y	N	HISPANIC	Shot	Misconduct (Dwayne Perkins)	Signs of mental illness. Carrying a fake gun.	MPV; News (11)
JOHNSON	GREGORY	2014	6	15	KCSO	Y	KNIFE	UNKNOWN	Shot	Repeat Shooter (James Perry)	Resident at an elder care facility.	MPV; News (10)
CURTIS	HENRY	2014	5	24	KCSO	Y	KNIFE	WHITE	Shot			MPV; News (9)
MCDANIEL	CHRISTOPHER	2014	3	26	KCSO	Y	Y	WHITE	Shot; K9	Repeat Force (Jeffrey Kelly)	Shot following vehicle chase.	MPV; News (8)
MOORE	ROBERT (JAMES)	2014	2	12	KCSO	Y	N	WHITE	Baton, feet, fists, pepper spray			CADDOJ DIC; Guardian
LYTLE	BETHANY	2013	12	29	KCSO	Y	KNIFE	WHITE	Shot		Shot by police responding to report of mental health crisis.	MPV; News (12)
CORDOVA	STEVEN	2013	11	10	KCSO	N	Y	UNKNOWN	Shot	Repeat Shooter; Misconduct (Derrick Penney); Misconduct (Logan August)	Responding to call reporting suicidal man.	OIS PRA
MUNOZ	SERGIO	2013	10	25	KCSO	Y	Y	HISPANIC	Shot			CADDOJ DIC; MPV
LEDESMA	RONNIE	2013	8	27	KCSO	Y	N	HISPANIC	Baton, K9, Control hold	Misconduct (Dwayne Perkins)	Killed by police responding to report of man under the influence of drugs or alcohol.	CADDOJ DIC; MPV; Guardian
UNKNOWN	UNKNOWN	2013	6	23	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Cody Johnson)	No details reported in incident review log or press release	OIS PRA
SILVA	DAVID	2013	5	8	KCSO	Y	N	HISPANIC	Baton, K9, Taser, Hands-on force	Repeat Force (Jeffrey Kelly); Repeat Force (Doug Sword); Repeat Force (Ryan Greer)		CADDOJ DIC; MPV; Guardian; Court Records
BLACKBURN	CALEB	2013	5	16	KCSO	Y	N	WHITE	Shot, Taser		Signs of mental illness.	OIS PRA; MPV
RAINES	DARREN	2013	4	18	KCSO	Y	Y	UNKNOWN	Shot	Repeat Shooter (Cody Johnson); Repeat Force (Doug Sword)	Shot inside home during stand-off with police, possibly mental health crisis.	MPV; OIS PRA
GARCIA	JOSE	2013	3	9	KCSO	N	Y	HISPANIC	Shot	Repeat Shooter (Cody Johnson)	Shot during foot pursuit.	OIS PRA
RIVERA	ADOLFO	2013	1	3	KCSO	N	N	HISPANIC	Shot	Repeat Shooter (Robert Reed)	Shot during vehicle pursuit.	OIS PRA
AGUILAR	ANDRES	2012	11	15	KCSO	Y	Y	HISPANIC	Shot	Repeat Shooter (Michael Booker); Repeat Shooter (Conrado Curiel); Repeat Shooter (Patrick McNeal); Repeat Shooter (Gabriel Romo); Repeat Shooter; Misconduct (Derrick Penney)		CADDOJ DIC
BAILEY	JARED	2012	3	7	KCSO	N	Y	UNKNOWN	Shot			
SUMANTE	FERNANDO	2012	2	25	KCSO	N	Y	HISPANIC	Shot			OIS PRA
CHAVEZ	CHRISTIAN	2012	1	23	KCSO	Y	KNIFE	HISPANIC	Shot		Responding to 911 call for assistance with person expressing suicidal thoughts.	CADDOJ DIC; OIS PRA
UNKNOWN	UNKNOWN	2012	1	3	KCSO	N	N	WHITE	Shot		Shooting at moving vehicle	OIS PRA
UNKNOWN	UNKNOWN	2011	9	10	KCSO	N	N	UNKNOWN	Shot	Repeat Shooter (Wesley Kraft)		OIS PRA

TURNER	DAVID	2011	7	10	KCSD	Y	N	BLACK	Shot	Repeat Shooter (Wesley Kraft)	Shot during police investigation into report of minors trying to buy alcohol. Turner was with his son, carrying only beer.	CADOJ DIC, Coroner Report
HORTTOR	ADAM	2011	6	1	KCSD	Y	N	WHITE	Shot, Taser, hands-on force	Repeat Shooter (Daniel Willis)	Reportedly beaten severely by officers on 5/31/11. Known to struggle with mental illness.	CADOJ DIC, Coroner Report
MENDEZ	JOSE	2011	5	6	KCSD	Y	N	HISPANIC	Shot; K9	Repeat Shooter (Jason Colbert)	Shot while carrying metal rod.	CADOJ DIC, Coroner Report
MEDRANO	RODOLFO	2011	5	29	KCSD	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Patrick McNeal)	Shot during welfare check responding to suicidal comments, while in a wheelchair (amputee).	CADOJ DIC, Coroner Report
LUCERO	JOSE	2010	12	18	KCSD	Y	N	HISPANIC	Taser, Baton, Pepper spray, Hands-on force	Repeat Force (Ryan Greer)		Guardian; Court Records
JONES	JOHN PAUL	2010	11	13	KCSD	N	N	WHITE	Shot		Shot at moving vehicle (quad).	OIS PRA
LESLEY	JESSICA	2010	9	3	KCSD	N	N	WHITE	Shot; K9		Shot during vehicle pursuit, then arrested with canine.	OIS PRA
MORALES	CARLOS	2010	9	8	KCSD	N	Y	HISPANIC	Shot	Repeat Shooter (Michael Booker); Repeat Shooter; Repeat Force; Misconduct (William Starr)		OIS PRA
RIVERA	ADOLFO	2010	3	9	KCSD	N		HISPANIC	Shot	Repeat Shooter (Patrick McNeal)		OIS PRA
GODDMAN	LUKE	2009	10	17	KCSD	N	Y		Shot			OIS PRA
MCKENZIE	RORY	2009	7	2	KCSD	Y	N	BLACK	Taser, K9			CADOJ DIC, Guardian, Coroner Report
NAMMAULEG	BRUCE	2009	6	13	KCSD	Y	KNIFE	HISPANIC	Shot	Repeat Shooter (Jason Colbert)		CADOJ DIC, OIS PRA, Coroner Report
UNKNOWN	UNKNOWN	2009	4	29	KCSD	N			Shot			OIS PRA
MESA	MICHAEL	2009	1	20	KCSD	Y	N	HISPANIC	Taser, Baton, Control hold, Pepper spray			CADOJ DIC, Guardian, Coroner Report
FARN	GARRETT	2008	2	19	KCSD	Y	N	WHITE	Taser		Signs of mental illness or impairment	Guardian
ROBLES	RAY	2006	1	21	KCSD	Y	N	HISPANIC	Baton, K9, Blunt force, Prone positioning	Repeat Shooter; Misconduct; Repeat Force (William Starr)		Guardian

ABBREVIATIONS

WaPo: "Fatal Force," The Washington Post (2015-2017), <http://wapo.st/polic-shootings> (database of fatal police shootings)

MPV: Mapping Police Violence database, <https://mappingpoliceviolence.org/>

Guardian: "The Counted," The Guardian, <https://www.theguardian.com/us-news/series/counted-us-police-killings>

CADOJ DIC: data about deaths in custody reported to the California Department of Justice, available at <https://openjustice.doj.ca.gov/data>

OIS PRA: information about officer-involved shootings obtained through public records requests submitted by ACLU SoCal to BPD and KCSD, or from public statements issued by BPD or KCSD

Coroner Reports: reports of the Kern County Sheriff/Coroner, Coroners Section, obtained by ACLU SoCal in response to a public records act request

Court Records: records in civil court filings obtained from PACER

Repeat Shooter: officer involved in more than one shooting

Repeat Force: officer involved in more than one serious use of force

Misconduct: officer has engaged in reported misconduct (see, e.g., Peter Holley "Cop once hailed as a hero now accused of ticking a dead mans toes," (Apr. 13, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/13/cop-once-hailed-as-a-hero-now-accused-of-ticking-a-dead-mans-toes/>;

Lois Henry, "Another Kern County Sheriff's official under investigation in connection with disgraced deputies," Bakersfield Californian (June 12, 2017), http://www.bakersfield.com/news/another-kern-county-sheriff-s-official-under-investigation-in-connection/article_448d9e66-2f88-5c3b-a7b5-e836a3cb33af.html.)

NEWS

[1] Matt Hamilton & Veronica Rocha, "Family demands federal investigation after Bakersfield police kill 73-year old man," L.A. Times (Dec. 14, 2016), <http://www.latimes.com/local/lanow/la-me-ln-serna-dementia-federal-investigation-bakersfield-20161214-story.html>.

[2] Jose Gaspar, "Attorney calls shooting of suspect 'execution,'" Bakersfield Now (Jan. 5, 2016), <http://bakersfieldnow.com/news/local/bakersfield-police-release-video-of-officer-involved-shooting>

[3] Cris Ornelas, "Bakersfield Police release new information in weekend officer involved shooting," Kern Golden Empire (last visited Nov. 1, 2017), <http://www.kerngoldempire.com/news/bakersfield-police-release-new-information-in-weekend-officer-involved-shooting/290556865>

[4] "Woman shot by police was pointing airsoft pistol at officers," Bakersfield Californian (Oct. 2, 2013), http://www.bakersfield.com/archives/woman-shot-by-police-was-pointing-airsoft-pistol-at-officers/article_b71c011b-86bf-5d9f-84b8-6bea1d23f141.html

[5] Rachel Cook, "Family grieves as police investigate shooting by officer," Bakersfield Californian (Jan. 2, 2013), http://www.bakersfield.com/news/family-grieves-as-police-investigate-shooting-by-officer/article_d6a52384-e77b-592c-891b-f69df149c83.html

[6] "Teen said to be mentally disabled shot by police," 23 ABC News Bakersfield (Mar. 17, 2009), <http://www.turnto23.com/news/teen-said-t>

[7] James Geluso, "Family of man killed in shootout with police files claim," Bakersfield Californian (Aug. 7, 2008), http://www.bakersfield.com/news/family-of-man-killed-in-shootout-with-police-files-claim/article_a476893a-d3e6-5dc3-a1cb-1b37b889724b.html

[8] Jose Gaspar, "Oildale officer-involved shooting leaves 1 dead," Bakersfield Now (March 26, 2014), <http://bakersfieldnow.com/news/local/oildale-officer-involved-shooting-leaves-1-dead>

[9] "Deputy who shot and killed man cleared of wrongdoing," Bakersfield Californian (Jun. 10, 2014), http://www.bakersfield.com/news/deputy-who-shot-and-killed-man-cleared-of-wrongdoing/article_1d365cf1-c65f-540f-a343-55f23e3f5d24.html

[10] Matt Martz, "Knife-Wielding Elderly Man is Shot, Killed by Police," Crime Voice (June 17, 2014), <http://www.crimevoice.com/2014/06/17/knife-wielding-elderly-man-is-shot-killed-by-police/>

[11] "Woman With Replica Gun Killed by Deputies," Officer.com (August 5, 2014), <https://www.officer.com/on-the-street/news/11611198/calif-deputies-kill-woman-with-replica-gun>

[12] "Taft woman shot and killed by authorities," Bakersfield Now (Dec. 29, 2013), <http://bakersfieldnow.com/news/local/taft-woman-shot-and-killed-by-authorities>

**Patterns & Practices of Police Excessive Force in Kern County:
Findings & Recommendations**

November 2017

By: Adrienna Wong, Peter Bibring

Special thanks to Julie Ly and Catherine Wagner Calderaro

ACLU

AMERICAN CIVIL LIBERTIES UNION

California

The ACLU of California is a collaboration of the three affiliates in the state: the ACLU of Northern California, the ACLU of Southern California and the ACLU of San Diego & Imperial Counties.

Exhibit B



November 9, 2017

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Kern County Sheriff's Office & Bakersfield Police Department

Dear Attorney General Becerra,

In December 2016, the Office of the Attorney General opened civil rights investigations into the Kern County Sheriff's Office (KCSO) and the Bakersfield Police Department (BPD) and invited anyone with relevant information concerning either agency to contact the Civil Rights Enforcement Section. The ACLU of California has been investigating police excessive force in Kern County for more than a year, and we submit the enclosed report summarizing our initial findings and recommendations for changes and for the scope of your investigation.

Our findings show that both KCSO and BPD have engaged in patterns and practices that violate civil rights. KCSO and BPD officers have engaged in patterns of excessive force—including shooting and beating to death unarmed individuals and deploying canines to attack and injure—as well as a practice of filing intimidating or retaliatory criminal charges against individuals they subject to excessive force. Deficient oversight and accountability structures have allowed law enforcement misconduct to go unchecked and in some cases escalate. We urge your office to thoroughly investigate these patterns and practices, and to take all necessary action within your power to ensure they do not continue.

The sources and data we cite in our report cannot be taken as a comprehensive accounting of all evidence of excessive force by KCSO and BPD. The ACLU of California has consistently been constrained by legal limitations on the public's right to access records related to police use of force and discipline. We therefore urge the Office of the Attorney General to use its statutory authority to conduct a more complete examination of KCSO and BPD practices than we were able to carry out.

Specifically, we urge the Office of the Attorney General to closely review records reporting or reviewing shootings and other individual uses of force by KCSO and BPD officers. In particular, we encourage your office to examine records of KCSO and BPD's non-lethal uses of force. Because there is more publicly available information about use of force that leads to a death in custody, our report focuses on deadly incidents. But we received many indications—through conversations with community members, news media reports, and court records¹—that KCSO

¹ See, e.g., *Gonzalez-Chavez v. City of Bakersfield et al*, No. 1:12-cv-02053 (E.D. Cal. Feb. 13, 2017) (jury verdict finding excessive force in case where plaintiff alleged BPD officer approached him while he was sitting in his friend's car; forcefully removed him from said car; hit him with weapons and punches about the arms, leg, face, and

and BPD officers also engage in patterns and practices of nonlethal but nevertheless illegal excessive force, which, if unchecked, can escalate to cause deadly consequences, as documented in our report. In particular, we urge your office to obtain and review canine use of force reports from both agencies as needed to conduct a comprehensive review of their canine deployments. The list of people injured by canine attacks that we have assembled is based only on media reports and court filings, and is therefore incomplete. In conversations with community members, we heard additional troubling anecdotes about injuries resulting from canine use of force.

Additionally, we encourage the Office of the Attorney General to review court files for recent cases involving “resisting” or “assault on police” charges initiated by KCSO and BPD officers pursuant to Cal. Penal Code §§ 69, 148(a)(1), and 600. Because the Kern County Superior Court charges prohibitively high fees for copies of court records and even on-site review of court files, we were unable to conduct a comprehensive analysis of recent cases; we reviewed a sample of cases instead. Based on our review of this sample, the data we cite in our report, and conversations we have had with Kern County residents and advocates, we believe that a thorough review of court filings will reveal more information about the agencies’ practice of improperly using criminal charges to preempt and defend against allegations of excessive force.

Finally, our investigation was limited in scope to issues of excessive force and customs and practices that enable excessive force. We encourage the Office of the Attorney General to address all other patterns and practices of misconduct within KCSO or BPD as part of its investigation.²

As you know, the Attorney General has the legal authority under California law to bring civil actions in the name of the people against law enforcement agencies that engage in patterns or practices that deprive people of their rights, and to obtain equitable and declaratory relief to eliminate such unlawful patterns or practices. Our findings establish that both KCSO and BPD maintain a number of patterns and practices that deprive people of their constitutional rights to be free from excessive force. Accordingly, we call on your office to demand that KCSO and BPD correct their patterns and practices of abuse by taking specific steps outlined in our enclosed report.³ If the agencies do not formally consent to adopting the suggested reforms, we urge the Attorney General to exercise its power to bring a court action for equitable relief against them.

body; and tased him without cause); Jon Swaine & Oliver Laughland, “The County: where deputies dole out rough justice,” *The Guardian* (Dec. 4, 2015).

² In particular, we urge the Attorney General’s Office to investigate reports that KCSO and BPD have engaged in patterns and practices of sexual harassment and sexual assault. *See* Oliver Laughland & Jon Swaine, “The County: sexual assault and the price of silence,” *The Guardian* (Dec. 8, 2015). Additionally, court records we reviewed suggested patterns of unlawful search and seizure, including stopping people pretextually and/or without adequate cause, and arresting people for violation of Cal. Penal Code § 148(a)(1) for lawfully asserting their constitutional rights.

³ The remedial measures we suggest in our report should be viewed as a floor, rather than a ceiling. Certainly, the Attorney General’s complete investigation may uncover need for further systemic reforms.

Thank you for your attention to this important matter. We hope that the information we provide to you with this letter is useful for your investigation. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Adrienna Wong', with a long horizontal flourish extending to the right.

Adrienna Wong, Staff Attorney, ACLU of Southern California

A handwritten signature in blue ink, appearing to read 'Peter Bibring', with a long horizontal flourish extending to the right.

Peter Bibring, Director of Police Practices, ACLU of California

cc: Angela Sierra, Senior Assistant Attorney General, Civil Rights Enforcement Section.
Nancy Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section
Ronald H. Lee, Deputy Attorney General, Civil Rights Enforcement Section

Exhibit C

**UNCONSTITUTIONAL
PATTERNS & PRACTICES**
in the BAKERSFIELD POLICE DEPARTMENT

I. Introduction

In 2017, the ACLU of Southern California published a report documenting patterns and practices of excessive force by the Bakersfield Police Department (BPD)—including shooting and beating to death unarmed individuals and deploying canines to attack and injure—as well as filing intimidating or retaliatory criminal charges against individuals subjected to excessive force.¹ Unfortunately, over the past four years, BPD has maintained these same troubling practices, even as it has been under investigation by the California Department of Justice (DOJ) for civil rights violations.

This is an update to our [2017 report](#). Based on use of force data from collected by the Department of Justice and other publicly available information, we find:

- BPD continues to use canines to attack and seriously injure members of the public, including many unarmed people, at rates similar to when the California DOJ first launched its civil rights investigation, and disproportionately against Black and Latine² people and people with mental illnesses.
- BPD remains one of the deadliest police departments in the state and country, shooting unarmed individuals and people with mental illness or impairment with alarming frequency, and killing Black and Latine people in the vast majority of deadly force cases.
- BPD continues to regularly use severe excessive force of other forms—including impact weapons (such as batons), pepper spray, chokeholds, and tasers—even against unarmed people, and primarily against Black and Latine people and people with disabilities, resulting in broken bones and other serious injuries requiring hospitalization.
- BPD’s use of force policy continues to fall below minimum standards and fails to comply with the law.
- BPD continues to use criminal charges (most commonly “resisting arrest”) as a mechanism to preempt and defend against allegations of excessive force or racial profiling.
- BPD continues to allow officers who engage in serious uses of force or other civil rights violations to continue injuring or even killing community members.

Additionally, based on an investigation stemming from our *Mitchell v. Jeffries* litigation, we find that BPD maintains a policy and custom of racially discriminatory and unconstitutional pretextual stops.

II. Findings

A. The Bakersfield Police Department Continues to Use Excessive Force

BPD has failed to curb the violence perpetrated by its officers, disregarding both policy recommendations made by the United States Department of Justice in 2004 and the demands of community members³ who have been clamoring for change and accountability for years.⁴ As described below, BPD officers continue to use canine attacks, deadly force, and other brutal force against community members—unlawfully and disproportionately against Black, Latine, and disabled community members. Further, BPD fails to hold officers accountable for excessive force, instead enabling them to file criminal charges to cover their misconduct and allowing the same officers to injure or kill community members repeatedly.

I. Canine Attacks

BPD continues to use canines to attack members of the public with results that are life-threatening and hazardous for public safety, at rates similar to when the California DOJ first launched its civil rights investigation.⁵ BPD canines have injured many individuals in the past four years; some have sustained lacerations and/or broken bones.⁶ BPD continues to use canine attacks not to avoid other use of force, but in addition to tasers, baton strikes, and gunshots.⁷ Although in 2019 BPD reported only one canine attack resulting in serious injury, 2020 saw a steep increase with BPD reporting nine canine attacks resulting in serious injury.⁸ In 2020, 89% of canine attacks involved a Black or Latine individual.⁹ Additionally, 67% were unarmed and 56% were exhibiting signs of mental illness or impairment.¹⁰ In 2019, BPD deployed a canine on an unarmed individual exhibiting signs of mental illness, resulting in lacerations on their head and upper body, in addition to using a control hold on the individual.¹¹ In 2020, BPD deployed a canine on an unarmed individual exhibiting signs of impairment, resulting in lacerations on their arms, hands, and front legs.¹²

Publicly available data confirms that many of the troubling patterns related to BPD's use of canine attacks described in our 2017 report have continued.¹³ First, BPD continues to deploy canine attacks against people who are unarmed or only armed with a knife at alarming rates. Of those who sustained serious bodily injury from a canine attack between 2018 to 2020 collectively, 81% were unarmed or only armed with a knife.¹⁴ Second, BPD's canine deployment continues to disproportionately impact Black and Latine individuals, as well as those with mental illness. For example, 89% of those who sustained serious bodily injury in 2020 were Black and Latine, 56% were exhibiting signs of mental illness or impairment, and all sustained lacerations or cuts.¹⁵ This disproportionate impact of canine attacks on Black, Indigenous, and people of color (BIPOC) individuals is particularly troubling in light of the fraught and racist history of how police have weaponized dogs as a tool of violent oppression against Black communities.¹⁶

II. Officer-Involved Shootings

Too little has changed since 2015, when reporting by the Guardian cast a spotlight on BPD as one of the deadliest police departments in the country.¹⁷ Regrettably, BPD remains an outlier as to the number of its officer-involved shootings compared to similar law enforcement agencies.¹⁸ Comparing BPD to police departments in cities with similar crime rates or higher, BPD's rate of police killings is ninth in the country, and second highest in California.¹⁹

BPD shootings continue to demonstrate long-standing patterns that raise serious constitutional concerns. *First*, BPD continues to shoot individuals who are unarmed, or armed only with a knife.²⁰ In 2019, BPD shot and critically injured an unarmed Latine individual who was exhibiting signs of mental illness.²¹ In 2020, at least 50% of individuals shot by BPD were unarmed or armed only with a knife.²² On November 30, 2020, BPD shot an unarmed individual who was sitting in his parked truck making suicidal statements.²³

Second, BPD shoots individuals exhibiting signs of mental illness or impairment at alarming rates.²⁴ Of the 13 BPD shootings between 2018 and 2020, at least 69% involved an individual exhibiting signs of mental illness.²⁵ In 2020, at least 43% of BPD's shootings occurred even after a 911 dispatcher informed BPD that the individual had a mental disability or impairment.²⁶ For example, on October 13, 2020, BPD was notified by a 911 dispatcher that Jose Marcos Ramirez was schizophrenic. After a foot pursuit, Ramirez, who was armed only with a knife, made suicidal statements. Rather than employing de-escalation tactics, BPD officers fatally shot Ramirez within seconds.

Similarly, in 2020, at least 43% of BPD's shootings involved individuals who made suicidal statements.²⁷ For example, on August 17, 2020, BPD was notified by a 911 dispatcher that Everardo Gonzalez Santanca was "under [the] influence of H&S" and armed only with a knife.²⁸ When BPD made contact, officers drew their weapons and escalated the situation. Although Mr. Santanca had his hands raised above his head and was yelling suicidal statements in Spanish, BPD officers fatally shot him within seconds.²⁹

Leading up to these shootings, BPD officers failed to attempt to create distance, use non-lethal methods, or use any other methods of de-escalation. Kern Behavioral Health director Bill Walker has stated that officers who are dealing with an individual exhibiting mental health issues are supposed to call the Kern Behavioral Health Mobile Unit. Instead of instructing officers to call on outside clinical experts, however, BPD maintains that all of its officers can and should individually respond to psychiatric and emotional crises.³⁰ As noted in our 2017 report, these patterns are in tension with established Fourth Amendment law and policing principles, which justify the use of deadly force only to prevent imminent death or serious injury to officers or others.³¹ They are at even greater odds with California's "necessary" standard for deadly force enacted by Assembly Bill 392 in 2019, as well as AB 392's clear statement that officers may not use deadly force against people based on the threat they may pose to themselves.

Third, BPD's officer-involved shootings disproportionately impact BIPOC communities. Analysis by The Bakersfield Californian ("The Californian") of BPD records, obtained through public records requests, found that "[o]f the 68 people involved in officer-involved shootings over the last decade [i.e., 2009-2019], 81% have been people of color."³² The Californian found that Black individuals in Bakersfield are four times more likely than white individuals to be shot by BPD, while Latine individuals are twice as likely.³³ Eighty-three percent of BPD shootings resulting in serious bodily injury or death that the agency reported to California DOJ between 2018 to 2020 involved a Black or Latine individual.³⁴

III. Other Forms of Excessive Force

BPD continues to use various other forms of excessive force—including impact weapons (such as batons), pepper spray, chokeholds, tasing, and life-endangering restraints.³⁵ In 2018, every person subjected to severe force by BPD officers were unarmed or armed with only a knife.³⁶ In these severe force incidents, BPD employed a variety of force tactics: batons (31% of incidents), tasers (31% of incidents), control holds (54% of incidents), and canines (51% of incidents).³⁷ In 2020, 75% of individuals subjected to severe force by BPD were unarmed.³⁸

The data also show that BPD's excessive force disproportionately impacts Latine and Black individuals and people with disabilities. In 2018, 54% of individuals subjected to severe force by BPD were Black and Latine, and 38% were experiencing signs of mental illness or drug impairment.³⁹ The data reflects that in 2019, BPD employed the same unconstitutional practices. Disturbingly, every single severe use of force reported by BPD for that year involved individuals exhibiting signs of mental illness or impairment.⁴⁰ Ninety percent were Black and Latine, and 70% were unarmed.⁴¹ In one incident, for example, BPD physically assaulted, tased, and used a carotid hold on an unarmed Black individual who was exhibiting signs of mental illness and rendered him unconscious.⁴² 2020 saw similar unconstitutional practices by BPD. Eighty-three percent were Black and Latine, and 75% were unarmed.⁴³

Between 2018 to 2020, 46% of individuals sustained bone fractures after BPD employed severe force against them.⁴⁴ A 2021 report by KQED found that, between 2016 to 2019, BPD broke one or more bones in one-third of incidents after employing severe force.⁴⁵ Additionally, KQED found that “[u]sing batons, officers broke bones in 26 people; once, an officer broke the baton.”⁴⁶ In a 2019 incident, BPD fractured the bones and rendered an unarmed Latine individual unconscious who was exhibiting signs of mental illness after striking him with a taser, beating him with a baton, and employing a control hold and carotid hold.⁴⁷

BPD frequently uses force in response to minor public safety issues. Nearly half of force incidents arise from BPD pursuing low-level misdemeanor crimes or alleged nuisance behavior, or from officers responding to behavioral health crises.⁴⁸ For example, in 2018, 25% of individuals subjected to force by BPD officers were charged solely with resisting arrest; 13% were charged with being under the influence; 14% were charged with property crimes; and 2% were arrested pursuant to Welfare and Institutions Code § 5150.⁴⁹ In 2019, BPD reported similar patterns.⁵⁰

Of the force incidents reported by BPD in its Annual Report, about 55% of individuals sustained injuries,⁵¹ and 44% required hospitalization.⁵² However, BPD reported only a small fraction of these incidents to URSUS as having resulted in serious bodily injury or death.⁵³

IV. Use of Force Policy

In 2004, the US-DOJ made several recommendations to BPD because its use of force policy was deficient and risked encouraging unlawful force.⁵⁴ However, as initially noted in our 2017 report, BPD failed to incorporate many of the US-DOJ's recommendations – and still refuses to incorporate them.⁵⁵

- First, US-DOJ noted that BPD's use of force policy does not adequately limit officers' use of force to cases in which it is required to make a lawful arrest or protect an officer or third-party from an immediate safety threat.⁵⁶ Key portions of BPD's current use of force policy remain unchanged since our 2017 report, in which we noted that the policy too-broadly authorizes officers to use force "in carrying out their duties" and "to accomplish a legitimate law enforcement purpose," rather than limiting force to when it is necessary and proportional to serve the limited aims recommended by the US-DOJ.⁵⁷
- Second, US-DOJ recommended that BPD remove from its use of force policy the statement "[i]t is impossible ... to instruct officers how to react in each and every situation where the need to use force may occur," noting that it was problematic and suggested that there are no parameters for an officer to follow when the use of force is necessary.⁵⁸ Although we observed in our 2017 report that BPD's use of force policy contained a similar problematic statement – "there is no way to specify the exact amount or type of reasonable force to be applied in any situation" – the statement nevertheless remains in the policy and has not been changed.⁵⁹
- Third, US-DOJ observed that BPD's policy failed to recognize that certain types of force may constitute either deadly or non-deadly force depending on how they are used—i.e., noting that baton strikes to the head, for example, can be deadly.⁶⁰ However, BPD's current policy still fails to note that a baton strike can be deadly.

Additionally, BPD's use of force policy fails to accurately reflect the current legal standard for deadly force under California law for several reasons:

- **The policy does not adequately distinguish the standards that apply to deadly and non-deadly force.** BPD's use of force policy holds itself out as providing guidelines only on the "reasonable use of force" (300.1). Indeed, the policy states that its guidelines on the "reasonable application of force" apply to "all policies on the potential use of force," without distinguishing deadly force (300.1). No part of the "Purpose and Scope" section of the policy indicates in any way to officers that there is a standard that governs their use of force other than the "reasonableness" standard. This overarching emphasis on "reasonable force" without differentiating between deadly and non-deadly force continues through the entire policy. *See* Section 300.3 (encouraging officers to use improvised force devices and methods, so long as they are "objectively reasonable" without appropriately limiting use of improvised deadly force); Section 300.3.1 (stating that an officer may use "objectively reasonable force" to effect an arrest, to prevent escape, or to overcome resistance without clarifying, as the law does, that a different standard applies to the use of deadly force to arrest, prevent escape, or overcome resistance); Section 300.3.4 (stating that "officers may use

reasonable force to lawfully seize evidence and to prevent the destruction of evidence” without specifying that officers may not use deadly force for such purposes).⁶¹

- **The policy fails to adequately communicate the new law on deadly force enacted by AB 392 in its section on “Deadly Force Applications.”** BPD’s deadly force policy omits the key guiding principle that peace officers may use “deadly force only when necessary in defense of human life.” Penal Code § 835a(a)(2); POST Guidelines at 30. The policy also contorts the language of Penal Code § 835a(a)(2), obscuring how officers should determine whether deadly force is necessary. The law states: “[i]n determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”⁶² Penal Code § 835a(a)(2) (emphasis added). Thus, the law makes clear that deadly force is “necessary” only when there are no “other available resources and techniques” that would be “reasonably safe and feasible to an objectively reasonable officer.” In contrast, BPD’s policy states: “If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force” (300.4). By omitting the phrase “[i]n determining whether deadly force is necessary,” the policy removes guidance the law includes to instruct officers how to apply the “necessary” standard. Penal Code § 835a(a)(2). The policy does not otherwise define when force is “necessary.” Moreover, by switching the order of the clauses in Penal Code § 835a(a)(2), the policy changes the provision’s meaning – suggesting that in some circumstances, officers need not evaluate whether deadly force is necessary after all. Additionally, BPD’s policy contorts language from Penal Code § 835a(a)(2) that provides: “A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, *that such force is necessary for either of the following reasons....*” In contrast, BPD’s policy states that deadly force is justified “when the officer reasonably believes it is necessary in the following circumstances: (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person. (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” (300.4). In this way also, BPD’s policy obscures the fact that the law permits officers to use deadly force only when such force is *necessary for the specified purposes to defend human life*—not whenever a threat may be perceived.⁶³
- **The policy fails to clearly instruct officers on definition of “retreat.”** Penal Code § 835a(d) states that although an officer need not “retreat” from efforts to arrest by reason of the resistance of the person being arrested, “‘retreat’ does not mean tactical repositioning or other de-escalation tactics,” which the law may indeed require officers to use instead of force. The policy includes this statutory language in one section, but in a separate section, states: “nothing in this policy requires an officer to find the best way to handle a situation or use the least amount of force possible in any situation, to retreat, or be exposed to possible physical injury before applying reasonable

force” without specifying that an officer may still be required by law to tactically reposition or use other de-escalation tactics before using deadly force pursuant to the “necessary” standard.

- **The policy fails to include a clear de-escalation requirement, as mandated by law.** Pursuant to SB 230, police department use of force policies must include a requirement that “officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.” This requirement is consistent with AB 392’s requirement that officers use alternative resources and techniques instead of deadly force whenever feasible. It is also consistent with AB 392’s clarification that although an officer need not “retreat” from efforts to arrest by reason of the resistance of the person being arrested, “‘retreat’ does not mean tactical repositioning or other de-escalation tactics,” which the law may indeed require officers to use instead of force. Penal Code § 835a(d)).

BPD’s policy contorts and buries this de-escalation requirement in hedging language. It states: “[W]hen reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force. (Gov’t Code § 7286(b)(1)). This language dilutes the clear requirement set forth in Government Code § 7286(b)(1); it must be replaced with language that directly quotes the statute.

- **The policy fails to include a clear duty to intercede, as mandated by law.** BPD’s policy weakens the duty to intercede to prevent excessive force that SB 230 requires, through the addition of extraneous hedging language. The policy states that officers should intercede to prevent excessive force by other officers “when in a position to do so.” This vague phrase is not in Government Code § 7286(b)(8), though the Policy cites that provision, nor in the related POST Guidelines, and it should be deleted to accurately reflect the statute. *See* POST Guidelines at 20.

V. Abuse of Process to Pursue “Cover Charges” for Excessive Forces

BPD continues to use criminal charges (most commonly “resisting arrest”) as a mechanism to preempt and defend against allegations of excessive force or racial profiling.⁶⁴ BPD arrested more than 94% of individuals following a use of force incident in both 2018 and 2019.⁶⁵ BPD’s officers filed a “resisting” charge as the sole charge in 25% and 21% of the charges filed related to its reported use of force incidents in 2018 and 2019 respectively.⁶⁶ These figures do not account for the additional “resisting” charges filed by BPD in conjunction with other charges.⁶⁷

VI. Failure to Monitor, Train, and Discipline

BPD continues to fail to monitor and discipline officers engaged in serious uses of force or other civil rights violations. Our 2017 report noted that BPD employed at least 8 repeat shooters since 2009.⁶⁸ BPD has continued to employ officers who have been involved in dubious shootings, serious uses of force, or other civil rights violations in the years since we published our report. BPD Detective Jeffrey Martin, for example, was involved in a 2014 shooting, and last year took part in the shooting of Everardo Gonzalez Santanca—an individual with a drug impairment who was making suicidal statements and had his hands raised when officers shot him. Additionally, BPD Officer Brendan Thebeau shot two people in two years, including Jose Reyes, the passenger of a vehicle that was subjected to a traffic stop for an unspecified vehicle-code violation, and who was shot by Thebeau while fleeing on foot.⁶⁹

BPD officers who have been involved in shootings have also violated the civil rights of community members, sometimes leading to federal lawsuits. In 2016, BPD Officer John Bishop was involved in the shooting of Hugo Fernando Celio. A year later, Bishop conducted a pretextual traffic stop and unlawfully detained a Black passenger for exercising his Constitutional right to not identify himself or provide information because he was not a suspect of a crime—leading to a lawsuit filed by our office on Robert Mitchell’s behalf. Similarly, former BPD Senior Officer Charles Sherman took part in the 2007 shooting of Jesus German Sarabia—firing 15 shots while Mr. Sarabia lay on his back underneath a camper shell on the floor;⁷⁰ collectively, Sherman and ten other officers fired 104 shots.⁷¹ Nevertheless, BPD promoted Sherman to Sergeant. Sherman was subsequently involved in the 2017 unlawful arrest of Robert Mitchell, and subject to a federal lawsuit filed by our office. Despite the disturbing use of severe force against BIPOC and disabled community members, BPD continues to defend its use of force as “judicious and skilled.”⁷² In BPD’s defense, Sergeant Lynn Martinez told KQED “We can’t do our job without use of force. Sometimes police officers will have to hurt people to protect themselves and others.”⁷³ BPD’s unwillingness to incorporate alternatives to police, and the City of Bakersfield’s failure to re-allocate funding to services housed outside of the BPD, continue to foment the lack of accountability and discipline by BPD which predictably enables officers to continue perpetuating unconstitutional patterns and practices.

III. BPD Maintains a Policy and Custom of Racially Discriminatory and Unconstitutional Pretextual Stops

BPD policy and custom encourage officers to conduct racially discriminatory stops, under the guise of traffic and other petty code enforcement, in ways that violate community members' constitutional rights. BPD directives instruct officers to engage in "proactive patrols" and "preventative patrols": patrols to aggressively conduct pretextual traffic stops for the purpose of gathering information and carrying out searches unrelated to the purported legal basis for the stop. BPD's Special Enforcement Unit (i.e., its gang unit), prominently employs "proactive patrols" in which SEU officers are "constantly on the lookout and screening cars"⁷⁴ while engaging in such patrols in targeted neighborhoods where more Black and brown residents live.⁷⁵ This practice perpetuates profiling based on officers' subjective perceptions of possible gang affiliation based on racial and identity characteristics.⁷⁶ As a result of the correspondingly increased police presence, communities of color are over-policed relative to people that live in other neighborhoods in Bakersfield. It also heightens the risk of police violence in those same communities: BPD reported that at least 9% of traffic stops in 2018 resulted in force, and 2019 saw at least a 3% increase.⁷⁷ BPD must put an end to racial profiling, pretext stops, and consent searches. This is not impossible, and in fact a 2003 settlement required the California Highway Patrol (CHP) to do the same.⁷⁸

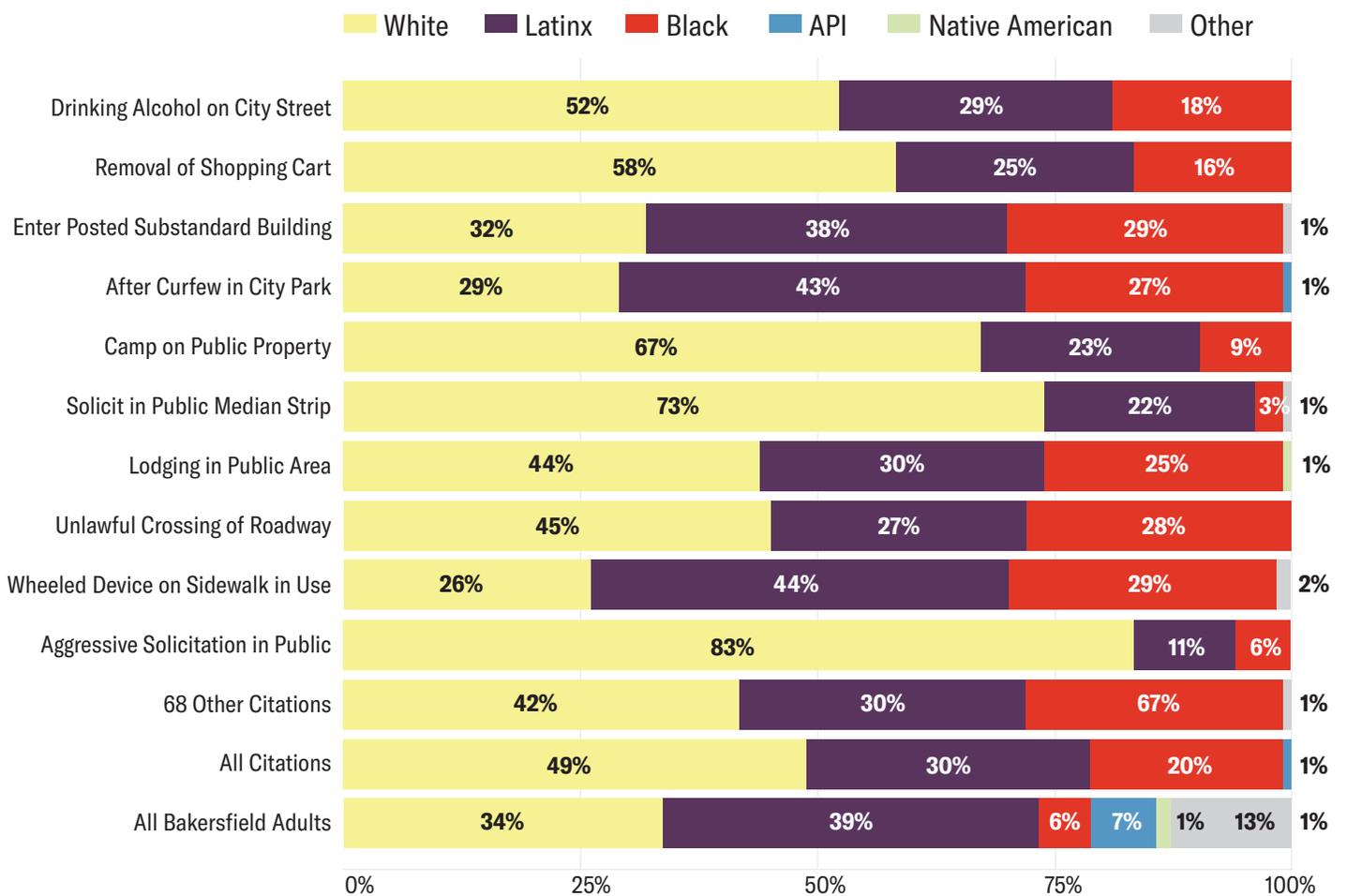
Compounding this problematic policy, BPD training fails to adequately instruct officers on the legal limitations of their authority to prolong stops for unrelated investigations. BPD training materials, for example, inaccurately instruct officers that they may detain passengers for questioning following a traffic stop of a vehicle, without clearly defining the limited scope of officers' authority with respect to such detentions. The resulting investigations unconstitutionally prolong stops, violating the rights of pedestrians, drivers, and passengers. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1612, 14-16 (2015) (holding police stop exceeding time necessary to handle matter for which stop was made violates Fourth Amendment); *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019) (holding that "[a] demand for a passenger's identification is not part of the mission of a traffic stop" so extension of a stop to seek a passenger's identity "violate[s] the Fourth Amendment unless supported by independent reasonable suspicion"); *United States v. Evans*, 786 F.3d 779, 786-87 (9th Cir. 2015) (holding that prolonging traffic stop to investigate "ordinary criminal wrongdoing" or to inquire into motorist's criminal history violates Fourth Amendment).

Stop data confirms the impact of BPD's discriminatory stop practices on Black community members in Bakersfield. Data obtained by the Stanford Open Policing Project shows that BPD officers stop Black drivers at higher rates than white drivers.⁷⁹ Additionally, one of the most common citations BPD officers issue is for jaywalking in downtown Bakersfield, and they have issued 28% of those citations to Black people—even though only 6% of the city's population is Black.⁸⁰ Black adults in Bakersfield are twice as likely to receive infraction citations from BPD officers as white adults,⁸¹ and they receive a disproportionate number of infraction citations relative to their population—20% of all non-traffic infraction citations.⁸² Nineteen percent of the infractions issued by BPD were for "Drinking Alcohol on City Street"; Black adult community members received 18% of infraction citations issued for this violation.⁸³ BPD's racialized criminalization also disproportionately impacts Black houseless community members, who are stopped and arrested at higher rates for code violations directly related to poverty (e.g., sleeping in a public place, public nuisance).⁸⁴

IV. Conclusion

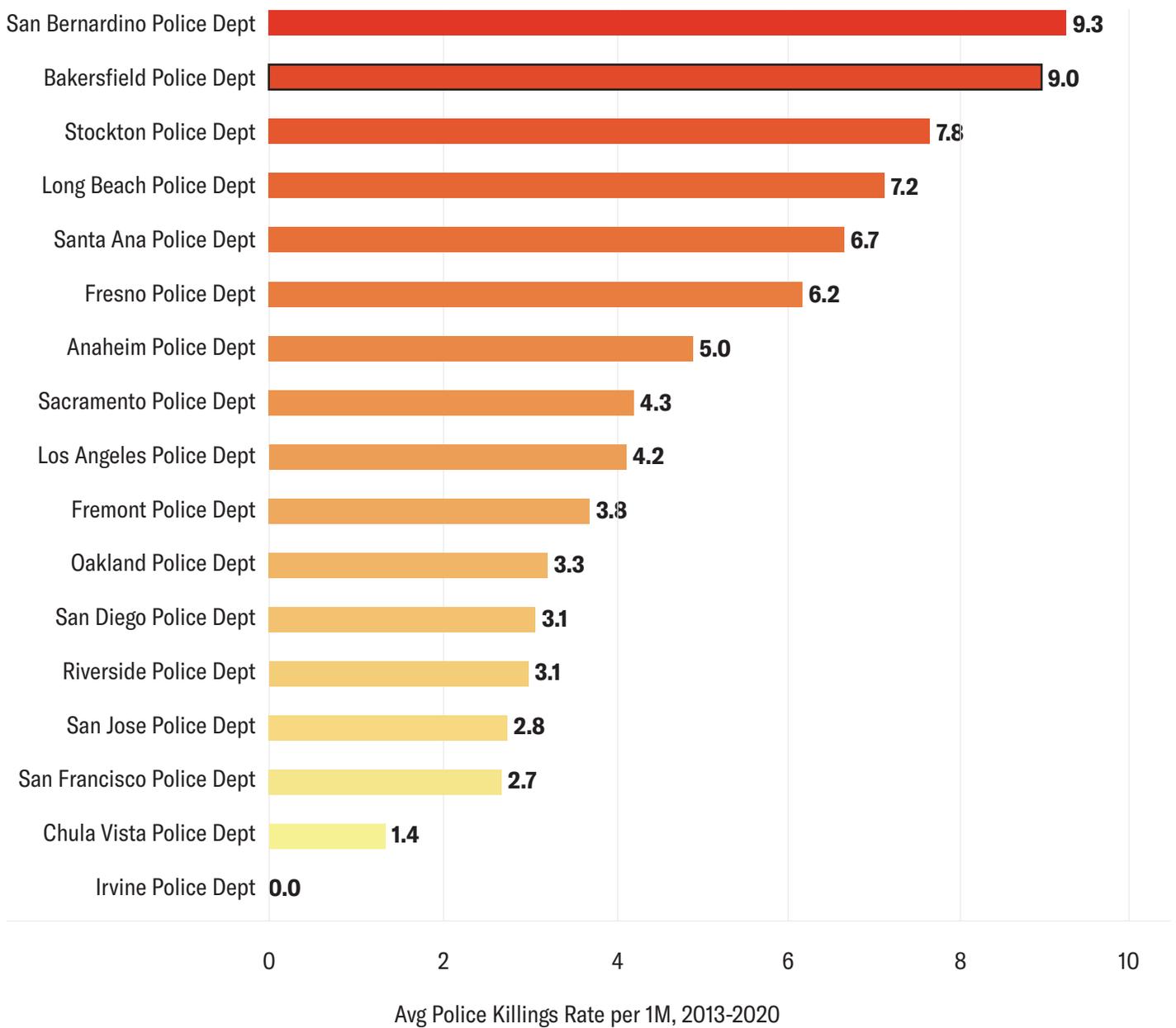
As described above, BPD continues to perpetuate patterns and practices that violate the civil rights of community members, particularly Black, Latine, and disabled community members. The City Council, Mayor, and leadership of the Bakersfield Police Department share collective responsibility to ensure that these unlawful practices and harms to the community end now, so that the lives, dignity, and civil rights of Bakersfield community members are safeguarded.

PRA6b Bakersfield Police Department: Top 10 Citation Types by Race (%) (2017-2019)



Source: Bakersfield Police Department, Citation Register (2017-2019), U.S. Census Bureau, 2014-2018 American Community Survey 5-year estimates

Rate of Police Killings per Population (All States) Data from Jan, 2013 through Dec, 2020



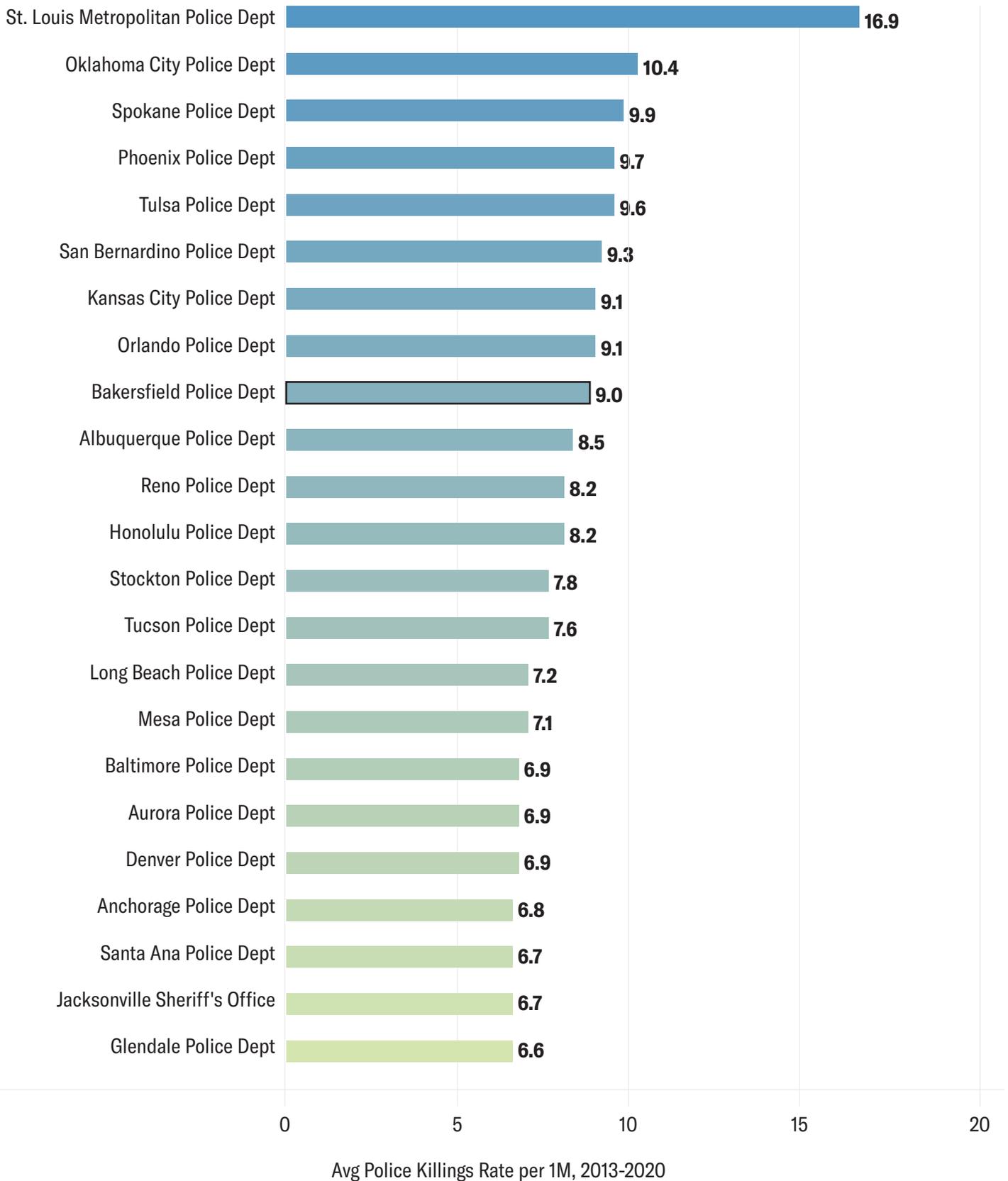
Black Population: **26,238**
 Black People Killed by Police Department: **3**
 Average Annual Rate of Killings of Black People by Police: **14.3**

White Population: **125,841**
 White People Killed by Police Department: **17**
 Average Annual Rate of Killings of White People by Police: **5.0**

Latinx Population: **186,151**
 Latinx People Killed by Police Department: **17**
 Average Annual Rate of Killings of Latinx People by Police: **11.4**

Black People were killed at 2.9x the Rate of White People
Latinx People were killed at 2.3x the Rate of White People

Rate of Police Killings per Population (All States) Data from Jan, 2013 through Dec, 2020



Last Name	First Name	Date	LEA	Fatal	Armed	Race/ Ethnicity	Force Used	Officer History	Mental Illness/ Impairment	Notes on Circumstances	Source of Info
Lake	Ryan	3/18/20	BPD	N	Paintball Gun		Shot, K9		911 stated Lake is developmentally disabled.	Responding to welfare check and keep the peace request. BPD was informed that Ryan may be asleep in residence. BPD encountered Ryan with paintball gun.	News [1]
Vidal	Javier	4/12/20	BPD KCSO CHP	Y	Y	H	Shot				WaPo
Gonzalez Santaca	Everardo	8/17/20	BPD	Y	Knife	H	Shot	Repeat Shooter (Jeffrey Martin)	- Signs of mental illness. - Expressing suicidal thoughts - 311 dispatcher noted Santaca was under the influence H&S		WaPo; News [2]
Ramirez	Jose Marcos	10/13/20	BPD	Y	Knife	H	Shot, Impact Projectile	Repeat Shooter (Randy Petris)	- 911 notes Ramirez was schizophrenic. - Expressed suicidal thoughts.	Shot while fleeing on foot.	WaPo; News [3]
Chagoya	Alejandro	11/10/20	BPD	N	Y		Shot	Repeat Force (Brent Thomas) Repeat Force (Keith Schlecht)		Shot during foot pursuit.	News [4]
Meraz	Eliceo	11/30/20	BPD	N	Flashlight or Phone Charger Pack ^[5]		Shot		- Possible mental health crisis. - Expressed suicidal thoughts.	911 noted individual was circling area in truck, with no intent to flee. Sitting in parked truck, and BPD officer almost immediately fires multiple rounds.	News [6]
Unk	Unk	12/18/20	BPD	Y	Y		Shot, Impact Projectile	Repeat Shooter (Robert Pair) ^[7]	Responding to 911 call for assistance with person expressing suicidal thoughts.	Shot during foot pursuit.	WaPo; News [8]

ABBREVIATIONS

- **LEA:** Law Enforcement Agency
- **Unk:** Unknown
- **WaPo:** “Fatal Force,” The Washington Post (2015-2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (database of fatal police shootings)
- **MPV:** Mapping Police Violence, <https://mappingpoliceviolence.org/>
- **Repeat Shooter:** officer involved in more than one shooting
- **Repeat Force:** officer involved in more than one serious use of force

NEWS

- [1] The Bakersfield Californian, *Suspect taken into custody Wednesday night following SWAT standoff, officer firing weapon*, The Bakersfield Californian, (Mar. 19, 2020), https://www.bakersfield.com/news/suspect-taken-into-custody-wednesday-night-following-swat-standoff-officer-firing-weapon/article_24807cc2-69f3-11ea-a685-2b67a2b4d522.html.
- [2] Veronica Morley, *Review Board: BPD officers within departmental policy in fatal Aug. shooting*, 23ABC News Bakersfield, (Jan. 11, 2021), <https://www.turnto23.com/news/crime/review-board-bpd-officer-within-departmental-policy-in-fatal-aug-shooting>.
- [3] 23 ABC News Bakersfield, *BPD releases bodycam footage leading up to a fatal officer involved shooting*, 23 ABC News Bakersfield, (Oct. 27, 2020), <https://www.turnto23.com/news/local-news/bpd-releases-bodycam-footage-leading-up-to-a-fatal-officer-involved-shooting>.
- [4] The Bakersfield Californian, *BPD releases summary, video from police shooting*, The Bakersfield Californian, (Dec. 10, 2020), https://www.bakersfield.com/news/bpd-releases-summary-video-from-police-shooting/article_5bc71c2c-3b35-11eb-a751-cf6f783f7823.html.
- [5] Initially BPD reported that they mistook a flashlight for a firearm. About a month later, BPD retracted this statement and said the item in question was actually a dark colored phone charging pack that the officers believed to be a firearm.
- [6] The Bakersfield Californian, *BPD: Man shot by police on Truxtun Avenue was unarmed*, The Bakersfield Californian, (Dec. 3, 2020), https://www.bakersfield.com/news/bpd-man-shot-by-police-on-truxtun-avenue-was-unarmed/article_baada43e-35c9-11eb-874c-cffbabee2e7b.html (noting a flashlight); The Bakersfield Californian, *Police release footage from Nov. 30 officer-involved shooting on Truxtun Avenue*, The Bakersfield Californian, (Dec. 29, 2020), https://www.bakersfield.com/news/police-release-footage-from-nov-30-officer-involved-shooting-on-truxtun-avenue/article_0e2b039e-4a11-11eb-9f8e-1f97d94ea1db.html (noting dark colored phone charging pack).
- [7] In our 2017 Report we noted that Pair was involved in at least two other officer-involved shootings, in 2009 and 2014. See ACLU, *2017 report*, Appendix III. Pair was also involved in the 2007 fatal shooting of Frank Rogers Ramos, whose son told the 911 dispatcher that his dad was “off his medication.” Ramos was holding a toy gun. Ramos was holding a toy gun. See Jason Kotowski, *Pair cleared in killing of man who held toy gun*, The Bakersfield Californian, (Oct. 13, 2007), https://www.bakersfield.com/archives/pair-cleared-in-killing-of-man-who-held-toy-gun/article_cb66e866-6919-531b-9cfd-0775613eb585.html.
- [8] Jose Franco, Eytan Wallace, *Update: Suspect dead, 1 officer listed as stable at hospital following shooting in Southwest Bakersfield*, KGET, (Dec. 18, 2020), <https://www.kget.com/news/homicide-news/heavy-police-presence-in-southwest-bakersfield/>.

Endnotes

- ¹ ACLU of Southern California, *Patterns & Practices of Police Excessive Force in Kern County, Findings & Recommendations* (2017) [hereinafter “2017 report”], https://www.aclusocal.org/sites/default/files/patterns_practices_police_excessive_force_kern_county_aclu-ca_paper.pdf.
- ² This letter uses the gender-neutral term Latine interchangeably with Latina/o and Hispanic.
- ³ See, e.g., 23ABC News Bakersfield, *Faith in the Valley Kern announces support of DOJ’S investigation of BPD, KCSO*, Dec. 22, 2016, 23ABC NEWS BAKERSFIELD, <https://www.turnto23.com/news/local-news/faith-in-the-valley-kern-announces-support-of-doj-s-investigation-of-bpd-kcso>; The Bakersfield Californian, *Attorney General will investigate BPD, Sheriff’s Office*, Dec. 22, 2016, THE BAKERSFIELD CALIFORNIAN, https://www.bakersfield.com/news/attorney-general-will-investigate-bpd-sheriffs-office/article_5ef47b8b-62d9-536e-b3e4-2464704b060b.html; Faith in the Valley Kern, *Hundreds Take Part in 4th Annual Walk For Justice in Bakersfield*, FAITH IN THE VALLEY KERN BLOG (Mar. 28, 2018), <https://faithinthevalley.org/hundreds-take-part-in-4th-annual-walk-for-justice-in-bakersfield/>.
- ⁴ See, e.g., Stacey Shepard, *Police reforms have been long-sought locally*, THE BAKERSFIELD CALIFORNIAN, (June 28, 2020), https://www.bakersfield.com/news/police-reforms-have-been-long-sought-locally/article_46fdaa26-b67a-11ea-bd46-67e0d4a79c5f.html; Criminal Justice Reform Coalition, *Opinion, Community Voices: Steps towards effective, safe, economic policing*, THE BAKERSFIELD CALIFORNIAN, (June 30, 2020), https://www.bakersfield.com/opinion/community-voices-steps-toward-effective-safe-economic-policing/article_e5b79a46-b747-11ea-aa5f-cfae0ddb34f.html; Sam Morgen, *Families of those killed by Bakersfield police officers fight to change century-old deadly force law*, THE BAKERSFIELD CALIFORNIAN, (May 11, 2019), https://www.bakersfield.com/news/families-of-those-killed-by-bakersfield-police-officers-fight-to-change-century-old-deadly-force/article_c768c5a8-7371-11e9-a517-3bdb46efb340.html.
- ⁵ BPD’s data reports show canines are deployed in about 1-2% of all force incidents. See Bakersfield Police Department, Internal Affairs Division, Year End Report 2016 [hereinafter BPD Report 2016], available at <https://content.civicplus.com/api/assets/2654c4dd-ca24-481c-bacd-3266a03421be?cache=1800>; Bakersfield Police Department, Internal Affairs Division, Year End Report 2017 [hereinafter BPD Report 2017], available at <https://content.civicplus.com/api/assets/6323328b-16ff-4caf-8ed9-83e07af6f9d3?cache=1800>; Bakersfield Police Department, Internal Affairs Division, Year End Report 2018 [hereinafter BPD Report 2018], available at <https://content.civicplus.com/api/assets/53dc30ec-8e03-4c38-9543-5093504dfae0?cache=1800>; Bakersfield Police Department, Internal Affairs Division, Year End Report 2019 [hereinafter BPD Report 2019] (on file with ACLU); BPD has not released its Year End Report for 2020.
- ⁶ See Cal. Dep’t of Justice, *Use of Force Reporting Incident Report* (2018) [hereinafter *2018 URSUS Report*]; Cal. Dep’t of Justice, *Use of Force Reporting Incident Report* (2019), [hereinafter *2019 URSUS Report*]; Cal. Dep’t of Justice, *Use of Force Reporting Incident Report* (2020), [hereinafter *2020 URSUS Report*]. The URSUS data provides a glimpse of the severe force used by BPD, but fails to paint the whole picture due to missing or limited information, such as: how much time elapsed while BPD held an individual in a carotid hold, how many times an individual was struck by a baton or a taser, etc. Nevertheless, the limited information provided by the URSUS data raises serious concerns about BPD’s use of force.
- ⁷ See ACLU of SoCal, *2017 report* at 4.
- ⁸ See Cal. Dep’t of Justice, *2020 URSUS Report*.
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ See Cal. Dep’t of Justice, *2019 URSUS Report*.
- ¹² See Cal. Dep’t of Justice, *2020 URSUS Report*.
- ¹³ *Id.* See also ACLU of SoCal, *2017 report* at 4-5.
- ¹⁴ See Cal. Dep’t of Justice, *2018 URSUS Report*; Cal. Dep’t of Justice, *2019 URSUS Report*; Cal. Dep’t of Justice, *2020 URSUS Report*.
- ¹⁵ See Cal. Dep’t of Justice, *2020 URSUS Report*.
- ¹⁶ See Shontel Stewart, *Man’s Best Friend? How Dogs Have Been Used to Oppress African Americans*, MICH. JOURNAL OF RACE AND LAW, Vol. 25 (2020). See also Tyler D. Parry, *Police still use attack dogs against Black Americans*, THE WASHINGTON POST, (Sept. 2, 2020), <https://www.washingtonpost.com/outlook/2020/09/02/police-still-use-attack-dogs-against-black-americans/>.
- ¹⁷ See Jon Swaine & Oliver Laughland, *The County: the story of America’s deadliest police*, THE GUARDIAN (Dec. 1, 2015), <https://www.theguardian.com/us-news/2015/dec/01/the-county-kern-county-deadliest-police-killings>. See also ACLU of SoCal, *2017 report* at 2-3.

- ¹⁸ By our count BPD was involved in 7 officer-involved shootings in 2020, more than double those of the past two years combined. In comparison, Long Beach Police Department was involved in 4 officer-involved shootings in 2020. See <http://www.longbeach.gov/press-release-archive/?cid=6697>. BPD, however, only reported 6 officer-involved shootings in 2020 to the CA-DOJ likely omitting the officer-involved shooting of Javier Vidal, where other law enforcement agencies were involved (i.e., Kern County Sheriff's Office and California Highway Patrol).
- ¹⁹ See Appendix II.
- ²⁰ See, e.g., ACLU of SoCal, 2017 report at 2 (“Over a quarter of BPD’s deadly shootings since 2009 killed someone unarmed, and an additional 3 involved someone armed only with only a knife.”).
- ²¹ See Cal. Dep’t of Justice, 2019 URSUS Report.
- ²² See Appendix III. This is generated from media articles reporting whether an individual was armed or unarmed. This was also cross-referenced with the information BPD reported to CA-DOJ. See Cal. Dep’t of Justice, 2020 URSUS Report.
- ²³ *Id.*
- ²⁴ Notably, BPD heavily edits videos of officer-involved shootings, raising concerns that they are self-serving and do not depict the full picture. For example, the video released related to the officer-involved shooting of Ryan Lake, after a 911 dispatcher informed BPD that he had a mental illness and was not taking his medications, does not depict BPD’s release of the canine used against Lake. See Bakersfield Police Department, *Officer Involved Shooting Community Bulletin – Veneto Street Shooting March 18, 2020*, YOUTUBE (Apr. 1, 2020), https://www.youtube.com/watch?v=b_91g-la660&feature=youtu.be.
- ²⁵ See Cal. Dep’t of Justice, 2018 URSUS Report; Cal. Dep’t of Justice, 2019 URSUS Report; Cal. Dep’t of Justice, 2020 URSUS Report. See also Appendix III.
- ²⁶ See Appendix III (Ryan Lake, developmentally disabled adult noted by 911); (Everardo Gonzalez Santanca, H&S under the influence noted by 911); (Jose Marcos Ramirez, schizophrenic noted by 911); (Unknown 12/18/2020, expressing suicidal thoughts noted by 911).
- ²⁷ See Appendix III. (Everardo Gonzalez Santanca); (Jose Marcos Ramirez); (Eliceo Meraz); (Unknown 12/18/2020).
- ²⁸ See Bakersfield Police Department, *Officer Involved Shooting Community Bulletin – Brundage Lane & P Street August 17, 2020*, YOUTUBE (Aug. 28, 2020), <https://www.youtube.com/watch?v=dG5EjkslvFO>.
- ²⁹ *Id.*
- ³⁰ 23ABC News Bakersfield, *BPD releases bodycam footage leading up to a fatal officer involved shooting*, 23ABC NEWS BAKERSFIELD, (Oct. 27, 2020), <https://www.turnto23.com/news/local-news/bpd-releases-bodycam-footage-leading-up-to-a-fatal-officer-involved-shooting> (quoting Sgt. Robert Pair). In our 2017 report, we noted that Pair has been involved in multiple officer-involved shootings.
- ³¹ See, e.g., ACLU of SoCal, 2017 report at 2-3.
- ³² Sam Morgen, *Vast majority of officer-involved shootings in Bakersfield involve people of color*, THE BAKERSFIELD CALIFORNIAN, (May 20, 2019), https://www.bakersfield.com/news/vast-majority-of-officer-involved-shootings-in-bakersfield-involve-people-of-color/article_2b69ae68-78e6-11e9-814e-a713bec67841.html.
- ³³ *Id.*
- ³⁴ See Cal. Dep’t of Justice, 2018 URSUS Report; Cal. Dep’t of Justice, 2019 URSUS Report; Cal. Dep’t of Justice, 2020 URSUS Report. As noted above, this section includes the officer-involved shooting of Javier Vidal given BPD’s involvement. However, it is not reflected in this data point.
- ³⁵ See ACLU of SoCal, 2017 report at 8. BPD’s reported data shows that its officers engage in far more severe use of force than much larger departments covering more populous areas, like Stockton Police Department which only reported 3 incidents of severe force in 2019 compared to the 14 BPD reported. See Cal. Dep’t of Justice, 2019 URSUS Report.
- ³⁶ See Cal. Dep’t of Justice, 2018 URSUS Report.
- ³⁷ *Id.*
- ³⁸ See Cal. Dep’t of Justice, 2020 URSUS Report.
- ³⁹ See Cal. Dep’t of Justice, 2018 URSUS Report.
- ⁴⁰ See Cal. Dep’t of Justice, 2019 URSUS Report.

- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ See Cal. Dep't of Justice, *2020 URSUS Report*.
- ⁴⁴ See Cal. Dep't of Justice, *2018 URSUS Report*; Cal. Dep't of Justice, *2019 URSUS Report*.
- ⁴⁵ See Lisa Pickoof-White, et al., *Bakersfield Police Broke 31 People's Bones in Four Years. No Officer Has Been Disciplined for It*, KQED, June 16, 2021, <https://www.kqed.org/news/11878013/bakersfield-police-broke-31-peoples-bones-in-four-years-no-officer-has-been-disciplined-for-it>.
- ⁴⁶ *Id.*
- ⁴⁷ See Cal. Dep't of Justice, *2018 and 2019 URSUS Report*.
- ⁴⁸ See BPD Reports 2018-2019. See also, Mapping Police Violence, Bakersfield Police Department Scorecard, <https://policescorecard.org/ca/police-department/bakersfield> (finding that between 2013 to 2019 BPD made 124,369 arrests where 63% of all arrests made were for low level offenses. Additionally, BPD was found to use more force per arrest than 86% of other similar-sized departments).
- ⁴⁹ See BPD Report 2018. See also Lisa Pickoof-White, et al., *Bakersfield Police Broke 31 People's Bones in Four Years. No Officer Has Been Disciplined for It*, KQED, June 16, 2021, <https://www.kqed.org/news/11878013/bakersfield-police-broke-31-peoples-bones-in-four-years-no-officer-has-been-disciplined-for-it> (finding that of the 31 cases involving broken bones between 2016 to 2019, people had their "charges dismissed, or never faced charges at all.").
- ⁵⁰ See BPD Report 2019.
- ⁵¹ See BPD Reports 2018-19.
- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ See ACLU of SoCal, *2017 report* at 9-10.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.* See also BPD Policy 300.2.3, Use of Force.
- ⁵⁸ *Id.*
- ⁵⁹ *Id.* See also BPD Policy 300.1, Use of Force.
- ⁶⁰ See ACLU of SoCal, *2017 report* at 9-10.
- ⁶¹ A simple and straightforward way to address the discrepancy between the "reasonableness" standard that the Policy privileges at the expense of legal accuracy and the stricter "necessary" standard required by AB 392 is to adopt a "minimal force necessary" standard for all force, as other police departments have done. This approach will avoid putting officers in the conceptually difficult position of having to juggle both the straightforward necessary standard and the complex multifactor balancing test that informs the reasonableness inquiry. Another option is to restructure the policy into two clearly demarcated sections: one addressing non-deadly force, and one addressing deadly force—and to ensure that any general policy statements applying to both sections do not refer to "reasonableness."
- ⁶² The POST Guidelines similarly provide that agency policies "shall advise officers that, in determining whether deadly force is necessary, they shall evaluate each situation in light of the particular circumstances of each case, and they must use other reasonably available resources and techniques if an objectively reasonable officer would consider it safe and feasible to do so." POST Guidelines at 16.
- ⁶³ The solution to all of these problems is simple: the policy should directly quote the applicable law.
- ⁶⁴ See ACLU of SoCal, *2017 report* at 12.
- ⁶⁵ See BPD Reports 2018-19.
- ⁶⁶ See ACLU of SoCal, *2017 report* at 9-10.
- ⁶⁷ In 2018, BPD reported 559 use of force incidents, for which there were 948 total charges. In 230 incidents—or 41% of all incidents—"resisting" was the only charge. In the remaining 59% of incidents, resisting charges were likely combined with other charges. Similarly, in 2019, there were 596 total incidents, 1038 charges, 214 of which solely involved a resisting charge (36%); the remaining 64% likely involve a combination of charges.

- ⁶⁸ See ACLU of SoCal, *2017 report* at 11. See also Appendix III.
- ⁶⁹ Jose Reyes (June 15, 2018), Javier Vidal (April 13, 2020).
- ⁷⁰ Jesus German Sarabia (information about the officer-involved shooting was obtained through a public records request submitted by the ACLU to BPD). See also Jason Kotowski, Lawmen cleared in incident, *THE BAKERSFIELD CALIFORNIAN*, (Sep. 8, 2007), https://www.bakersfield.com/news/lawmen-cleared-in-incident/article_b8d5376e-9bfe-59d3-b8b7-3c9e79bf489b.html.
- ⁷¹ Even after the officers collectively fired over 100 shots, a BPD canine handler released a canine resulting in Mr. Sarabia sustaining 132 wounds—including dog bites, cuts, contusions, and bullets (records on file with the ACLU).
- ⁷² See Lisa Pickoof-White, et al., *Bakersfield Police Broke 31 People’s Bones in Four Years. No Officer Has Been Disciplined for It*, KQED, June 16, 2021, <https://www.kqed.org/news/11878013/bakersfield-police-broke-31-peoples-bones-in-four-years-no-officer-has-been-disciplined-for-it>.
- ⁷³ *Id.*
- ⁷⁴ Jessica Harrington, *Take a ride along with Bakersfield Department’s gang unit*, 23ABC NEWS BAKERSFIELD, (May 9, 2018), <https://www.turnto23.com/news/local-news/23abc-exclusive-take-a-ride-along-with-bakersfield-police-departments-gang-unit>.
- ⁷⁵ The Stanford Open Policing Project’s map of traffic stops in Bakersfield depicts disproportionate enforcement of Black and brown individuals in “gang areas.” See Stanford Open Policing Project, *City Traffic Stops – Bakersfield*, <https://openpolicing.stanford.edu/explore/> and https://www.bakersfield.com/map-gang-areas-in-bakersfield/pdf_eb3dc5a6-e2cb-11e7-8441-53afe7785ab0.html.
- ⁷⁶ See, e.g., Marie Pryor, Kim Shayo Buchanan, and Phillip Atiba Goff, *Risky Situations: Sources of Racial Disparity in Police Behavior*, ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE, Vol. 16, 2020, at 346–47, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-101518-042633>, (Gang investigators rely on “their assumptions about race, neighborhood, clothing . . . which can give rise to unwarranted suspicion of community members who live in neighborhoods where gangs operate.” Although 11% to 27% of gang members are estimated to be White, “powerful racial stereotype associates gang membership with Latinx and especially Black boys and young men.”).
- ⁷⁷ See BPD Reports 2018-19.
- ⁷⁸ See *Rodriguez v. CHP*, No-C-99-2085-JF-EAI (2003), https://www.aclunc.org/sites/default/files/asset_upload_file219_6239.pdf.
- ⁷⁹ See E. Pierson, C. Simoiu, J. Overgoor, S. Corbett-Davies, D. Jenson, A. Shoemaker, V. Ramachandran, P. Barghouty, C. Phillips, R. Shroff, and S. Goel, *A large-scale analysis of racial disparities in police stops across the United States*, *Nature Human Behaviour*, Vol. 4, 2020, <https://openpolicing.stanford.edu/data/>.
- ⁸⁰ See LCCR-SF, *Cited for Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public*, LAWYERS COMMITTEE FOR CIVIL RIGHTS OF SAN FRANCISCO, (2020), https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf.
- ⁸¹ *Id.* at 20-21. See Appendix I.
- ⁸² *Id.*
- ⁸³ *Id.*
- ⁸⁴ See Dupuy, D., Lee, E., Tso M., and Lytle Hernández, K., *Policing the Houseless: Bakersfield, California*, THE MILLION DOLLAR HOODS PROJECT, (2020), <https://ucla.app.box.com/s/wrcx7fozjon0bhlzjdy44dnkqa7ls416>.

Exhibit D



April 23, 2021

Chief Greg Terry
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

Via Online Request Form

RE: Request for Public Records regarding California Assembly Bill 392

To Records Administrator:

Pursuant to the California Public Records Act, California Government Code sections 6250 *et seq.*, I write on behalf of the American Civil Liberties Union of Southern California to request all records¹ relating to California Assembly Bill 392 (AB 392), including, but not limited to:

1. Any model policy, policy guide, bulletin, memo, training slides, or other material concerning AB 392, including any materials hosted on external websites that are accessible to, retained, or used by your agency;
2. Any records of attendance at any training or presentation, whether online or in-person, concerning AB 392;
3. Any correspondence concerning AB 392, including, but not limited to, emails to or from Lexipol, Force Science Institute, the California Peace Officers' Association, the California Police Chiefs Association, the Peace Officers Research Association of California, or the Commission on Peace Officer Standards and Training.

I seek copies of all records in your office's possession, regardless of who created them. Please provide all records in your agency's possession up until the date that this request was received.

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. If you determine that some but not all the information is exempt from disclosure and that you intend to withhold it, we ask that you redact it for the time being and make the remaining responsive records available as requested. Pursuant to § 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Gov't Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

Please send any documents in electronic format to spadilla@aclusocal.org. Otherwise, please mail your response to:

Stephanie Padilla
ACLU of Southern California
1313 W. Eighth Street
Los Angeles, CA 90017

Because this request is on a matter of public concern, and the ACLU of Southern California is a nonprofit public interest organization, we request a fee waiver. *See North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144 (1994). We also request that documents be provided in electronic format if possible. Doing so would eliminate the need to copy the materials and provides another basis for our requested fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than \$50.

Please note that as of January 1, 2020, California Senate Bill 978 (SB 978) requires each local law enforcement agency to conspicuously post their current standards, policies, practices, operating procedures, and education/training materials on their website that would otherwise be available to the public via a request, such as this one, pursuant to the California Public Records Act. As such, we urge your department to comply with the law and make all records subject to SB 978 readily available on your website as soon as possible.

Please, if you have any questions or concerns, feel free to contact me via email at spadilla@aclusocal.org or by phone at (661) 426-7868. Thank you for your prompt attention to this matter.

Best Regards,

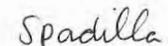

Stephanie Padilla
Staff Attorney, ACLU of Southern California

Exhibit E



June 15, 2021
 VIA EMAIL

Chuck Corbin, CEO
ccorbin@lexipol.com
 Michael Davis, Chairman
mdavis@lexipol.com
 Lexipol, LLC
 2415 Campus Drive, Ste. 250
 Irvine, CA 92612

Re: Lexipol Use of Force Policy & AB 392

Mr. Corbin and Mr. Davis,

We, the undersigned organizations, were among the supporters of AB 392, the California Act to Save Lives, throughout the legislative process, and as such have both an intimate familiarity with the law and a strong interest in ensuring that California law enforcement agencies give AB 392 its full effect. Some of us have already corresponded with some of your client cities regarding earlier versions of Lexipol's Use of Force Policy, and have set forth the changes we understand AB 392 to make, which we will not repeat here.

We have reviewed the use of force policies from various agencies¹ that use Lexipol to gain an understanding of Lexipol's latest Use of Force Policy template, Lexipol Policy 300 ("the Policy"), and believe that in a number of important ways, it continues to fail to comply with both AB 392 and applicable POST guidelines. We have been informed that Lexipol has represented, in various contexts, that the signatories to this letter approve of the Policy language. These representations are false. We categorically have not, and do not currently, approve of the Policy..

As set forth below, the Policy still does not clearly reflect the critical change to a "necessary" standard for deadly force enacted by AB 392, for several reasons: (1) it fails to distinguish the standards for deadly and non-deadly force; (2) it contorts and omits key language from AB 392 pertaining to application of the "necessary" standard; and (3) it omits key guiding principles on the use of force that AB 392 codified. The Policy therefore fails to ensure that officers will have an accurate understanding of the revised law that governs their use of force, particularly in the context of the confusing and legally inaccurate guidance on AB 392 that Lexipol previously distributed to clients in California.

AB 392 was passed by the California Legislature to reduce police use of deadly force and save lives. Empirical studies show that officers at agencies with stricter use of force policies kill fewer people and law enforcement in those agencies are also less likely to be killed or seriously injured themselves.² Lexipol's communications to subscribing law enforcement agencies that the legal changes in AB 392 are negligible and Lexipol's published use of force policies have undermined the implementation of the new law and therefore the core purpose of saving lives. We urge Lexipol to address the following flaws in the Policy immediately, by making the changes we outline below.

I. The Policy Should Distinguish Standards for Deadly and Non-Deadly Force, Or Adopt A "Minimum Necessary" Force Standard

Lexipol's Policy continues to confuse the standards that apply to deadly and non-deadly force by repeatedly describing the standard for all use of force as "reasonable force" throughout the entire policy. Examples include the following:

- The Policy still holds itself out in its first sentence as "provid[ing] guidelines on the *reasonable* use of force." Indeed, the Policy states that its guidelines on the "*reasonable* application of force" apply to *all* policies on the potential use of force, without distinguishing deadly force. No part of the "Purpose and Scope" section of the Policy indicates in any way to officers that there is a standard that governs their use of force other than the "reasonableness" standard.
- Under the general header "Policy," the Policy states that officers "when warranted, may use *reasonable* force in carrying out their duties," without specifying that deadly force

¹ Bakersfield Police Department (5/12/2021), Chico Police Department (1/25/2021), Corona Police Department (6/02/2021), Fontana Police Department (01/20/2021), Gardena Police Department (3/16/2021), Glendale Police Department (1/7/2021), Monrovia Police Department (5/27/2021), National City Police Department (1/13/2021), San Luis Obispo Police Department (4/12/2021), Santa Barbara Sheriff's Department (1/25/2021), Torrance Police Department (4/29/2021), Ventura County Sheriff's Department (5/3/2021), Whitter Police Department (5/17/2021).

² See Campaign Zero, *Police Use of Force Policy Analysis* (Sept. 2016), available at <https://www.joincampaignzero.org/reports>.

must be *necessary* in defense of human life to be legally justified. Similarly, in the same section, the Policy states that “[v]esting [peace officers] with the authority to use *reasonable* force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests,” without clarifying that officers only have the authority to use deadly force when it is necessary in defense of human life.

- The Policy sets out a “reasonableness” standard under the general header “Use of Force,” which again does not distinguish between deadly and non-deadly force. In that section, the Policy encourages officers to use improvised force devices and methods, so long as they are “objectively reasonable” and “utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose”; the Policy fails to instruct officers that improvised force that creates a substantial risk of causing death or serious bodily injury may only be used if consistent with the stricter legal standard for deadly force.³
- The section of the Policy under the header “Use of Force” also uses the phrase “reasonably appears necessary” two to three times, citing to Penal Code § 835a.⁴ That phrase does not appear in Penal Code § 835a at all, and in the context of the repeated conflation of the necessary and reasonable standards in other parts of the policy, the phrase is confusing at best.
- The section of the Policy on “Use of Force to Effect An Arrest” states that an officer may use “reasonable force” to effect an arrest, to prevent escape, or to overcome resistance, and that an officer shall not be “deemed the aggressor or lose his/her right to self-defense by the use of reasonable force” for those purposes. The Policy does not qualify these statements by clarifying, as the law does, that a different standard applies to the use of deadly force to arrest, prevent escape, or overcome resistance. *See* Penal Code § 835a(d) (specifying that force must be “in compliance with subdivision[] . . . (c)” for the provision on not being “deemed the aggressor or los[ing] [the] right to self-defense” to apply); *id.* § 835a(c) (setting out a “necessary” standard for deadly force to “apprehend a fleeing person” “notwithstanding subdivision (b),” which articulates an “objectively reasonable” standard).
- Similarly, the section of the Policy addressing “Use of Force to Seize Evidence” states that “in general, [peace officers] may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence.” The Policy does not clarify that officers may not use force that “creates a substantial risk of causing death or serious bodily injury” for such purposes.

There are two ways the policy could address this issue. First, it could clearly state that under California law, has separate standards for deadly and nondeadly force: nondeadly force is governed by an “objectively reasonable force” standard for use to effect arrest, prevent escape, or overcome resistance, under Penal Code § 835a(b); while deadly force is governed by a different standard allowing its use only when “necessary” to defend human life, under Penal Code § 835(c). An alternative simple and straightforward way to address the discrepancy between the “reasonableness” standard that the Policy privileges at the expense of legal accuracy and the

³ Bakersfield Police Department use of force policy encourages officers to use improvised force devices and methods so long as they are “reasonable,” rather than when they are “objectively reasonable” as in multiple other policies we reviewed.

⁴ Bakersfield Police Department use of force policy does not cite Penal Code § 835a in section 300.3.

stricter “necessary” standard required by AB 392 would be to adopt a “minimal force necessary” standard for all force, as other police departments have done.⁵ This approach would be faithful to the higher standard of AB 392, while avoiding the need for officers to juggle both the straightforward necessary standard and the complex multifactor balancing test that informs the reasonableness inquiry.⁶

II. Inaccurate Instruction on the “Necessary” Standard for Deadly Force

In several ways, the Policy section on “Deadly Force Applications” fails to adequately communicate the new law on deadly force enacted by AB 392 or to provide accurate guidelines for the application of deadly force consistent with the Use of Force Standards and Guidelines published by the Commission on Peace Officer Standards and Training (“POST”).⁷

The Policy omits the key guiding principle that peace officers may use “deadly force only when necessary in defense of human life.” Penal Code § 835a(a)(2); POST Guidelines at 30. Of the thirteen Lexipol subscriber policies updated between January and June we reviewed, only the San Luis Obispo Police Department includes this key guiding principle. Due to the advocacy by community-based organizations in San Luis Obispo, the police department’s use of force policy includes this principle in the “Purpose and Scope” section and in the definition of “Necessary,” but not in the substantive policy section on Deadly Force. To fully implement AB 392, Lexipol must add this provision to the master template Policy for California.

The Policy also contorts the language of AB 392, obscuring how officers should determine whether deadly force is necessary. AB 392 states: “*In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.*” Penal Code § 835a(a)(2) (emphasis added). Thus, the law makes clear that deadly force is “necessary” only when there are no “other available resources and techniques” that would be “reasonably safe and feasible to an objectively reasonable officer.” *Id.*

⁵See, e.g., San Francisco Police Department, General Order 5.01, III.B (“Officers must strive to use the minimal amount of force necessary”); *id.*, II. B (defining “minimal force” as “[t]he lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others”); Seattle Police Department Manual, 8.050 (instructing officers that they may only use force when necessary, and defining “Necessary” as when “no reasonably effective alternative to the use of force appeared to exist”); National Consensus Policy on Use of Force (2017), https://www.theiacp.org/sites/default/files/2018-08/National_Consensus_Policy_On_Use_Of_Force.pdf (“Officers shall use force only when no reasonably effective alternative appears to exist” and “only the minimal amount of force necessary to control the situation shall be used”); see also California Department of Justice, Sacramento Police Department Report and Recommendations (2019), 19 (recommending that Sacramento improve on its use of force policy, which required officers to “use only that amount of force necessary,” by defining necessity, e.g. as “when no reasonably effective alternative to the use of force” exists).

⁶ Another option is to restructure the policy into two clearly demarcated sections: one addressing non-deadly force, and one addressing deadly force—and to ensure that any general policy statements applying to both sections do not refer to “reasonableness.”

⁷ Commission on Peace Officer Standards and Training, POST Use of Force Standards and Guidelines (2020), available at https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf (hereinafter, “POST Guidelines”).

Consistent with this law, the POST Guidelines provide that agency policies “shall advise officers that, *in determining whether deadly force is necessary*, they shall evaluate each situation in light of the particular circumstances of each case, and they must use other reasonably available resources and techniques if an objectively reasonable officer would consider it safe and feasible to do so.” POST Guidelines at 16.

In comparison, the Policy states: “If an objectively reasonable [peace officer] would consider it safe and feasible to do so under the totality of the circumstances, [peace officers] shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force” (300.4).⁸ By omitting the phrase “In determining whether deadly force is necessary,” the Policy removes guidance the law includes to instruct officers how to apply the “necessary” standard. Penal Code § 835a(a)(2). The Policy does not otherwise define when force is “necessary.” Moreover, by switching the order of the clauses in Penal Code § 835a(a)(2), the Policy changes the provision’s meaning – suggesting that in some circumstances, officers need not evaluate whether deadly force is necessary after all.

Additionally, the Policy changes language from Penal Code § 835a(a)(2) that provides: “A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, *that such force is necessary for either of the following reasons....*” In comparison, the Policy states that deadly force is justified “when the [peace officer] reasonably believes it is necessary in the following circumstances: (a) An [peace officer] may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the [peace officer] or another person. (b) An [peace officer] may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the [peace officer] reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” (300.4).⁹ In this way also, the Policy obscures the fact that the law permits officers to use deadly force only when such force is *necessary for the specified purposes to defend human life*—not merely whenever a threat may be perceived.

The solution to all of these problems is simple: The Policy should directly quote the applicable law, instead of rewriting statutory language in a way that weakens its requirements. The section on “Deadly Force Applications” should begin with the following paragraph:

Officers may use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case,

⁸ The Glendale Police Department use of force policy published on January 7, 2021 deviates from this language in 300.4. The Glendale PD Policy states “If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers *are expected to* evaluate and use other reasonably available resources and techniques when determining whether to use deadly force.” This deviation even further waters down the statutory language. *See* Penal Code § 835a(a)(2).

⁹ The Glendale Police Department use of force policy published on January 7, 2021 appears to deviate from all other Lexipol policies we reviewed, in that it states “necessary for either of the following reasons” consistent with the AB 392 statutory language. The Lexipol master policy template for California must similarly be revised to adhere to the statute.

and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. (Penal Code § 835a(a)(2)).

The paragraph that begins, “The use of deadly force is only justified when the [peace officer] reasonably believes it is necessary in the following circumstances,” should also be replaced with the statutory language, to read:

The use of deadly force is only justified when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code § 835a(d)).¹⁰

III. Missing Guiding Principles

The Policy omits key guiding principles set out in AB 392. To fully implement AB 392, Lexipol must add to the Policy the following guiding principles on use of force that the bill codified into state law:

- “[T]he authority to use physical force . . . is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life”¹¹;
- “[E]very person has a right to be free from excessive use of force by officers acting under color of law”; and
- “[T]he decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.”

Penal Code § 835a(a).

¹⁰ Cf. CALCRIM 507 (2020); POST Guidelines at 17.

¹¹ The Santa Barbara Sheriff’s Department use of force policy published 1/25/2021 includes this principle. It states “the use of force is a serious responsibility that must be exercised judiciously and with respect for human rights and dignity, and for the sanctity of every human life (Penal Code § 835a).” (300.2). No other Lexipol policy we reviewed includes this principle.

Lexipol can do this by replacing the three paragraphs currently included under the “Policy” header, which have no basis in law, with the statutory language quoted above.

Similarly, the Policy should replace the second paragraph of the section under the header “Use of Force,” which addresses how force is judged from the perspective of a reasonable officer, with the relevant provision of AB 392:

- “[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Penal Code § 835a(a)(4)).

IV. Other Legal Compliance Issues

At the same time as the legislature changed the legal standards for peace officers’ use of deadly force with AB 392, it enacted requirements for agencies’ use of force policies in SB 230. Pursuant to SB 230, police department use of force policies must include a requirement that “officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.” This requirement is consistent with AB 392’s requirement that officers use alternative resources and techniques instead of deadly force whenever feasible. It is also consistent with AB 392’s clarification that although an officer need not “retreat” from efforts to arrest by reason of the resistance of the person being arrested, “‘retreat’ does not mean tactical repositioning or other deescalation tactics,” which the law may indeed require officers to use instead of force. Penal Code § 835a(d).

The Policy buries this de-escalation requirement in hedging language. It states:

“[W]hen reasonable, [peace officers] should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force. (Government Code § 7286(b)(1)).

This language dilutes the clear requirement set forth in Government Code § 7286(b)(1); it must be replaced with language that directly quotes the statute:

“Officers shall utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force whenever feasible and before applying force. (Government Code § 7286(b)(1)).”¹²

Similarly, the Policy weakens the clear duty to intercede that SB 230 requires by adding hedging language. The Policy states that officers should intercede to prevent excessive force by other

¹² See also POST guidelines at 12 (“An agency’s policy shall require that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.”).

officers “when in a position to do so.” This vague phrase is not in Government Code § 7286(b)(8), though the Policy cites that provision, nor in the related POST Guidelines, and it should be deleted to accurately reflect the statute. *See* POST Guidelines at 20 (“Officers should recognize and act upon the duty to intercede if they witness another officer applying unnecessary or excessive force.”).

Finally, the Policy cites Government Code § 7286 to justify the statement, “While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.”¹³ But this statement does not appear in the cited Government Code. Moreover, by suggesting that there is “no way to specify” the amount of force that an officer may apply, it undermines the entire principle of legal standards and rules set forth in the Policy that are actually required by statute. Accordingly, this statement should be deleted from the Policy.

As set forth above, Lexipol’s Policy as currently written obscures in a number of ways key legal elements of AB 392, and with the result that it falls short of complying with California law and POST guidelines on use of force, and places subscribing agencies at risk of liability. We urge you to describe the actions that Lexipol will take to promptly come into full compliance with AB 392. If you would like to discuss any part of this letter, please contact ACLU of Southern California attorneys Peter Bibring (pbibring@aclusocal.org) or Adrienna Wong (awong@aclusocal.org). Thank you for your consideration of this important matter. We look forward to your response.

Sincerely,

ACLU of Southern California
Alliance For Boys and Men of Color
Anti Police-Terror Project
Bend the Arc: Jewish Action - California
California Families United for Justice
California S.T.O.P. Coalition
Clergy & Laity United for Economic Justice (CLUE)
Communities United for Restorative Youth Justice (CURYJ)
Council on American-Islamic Relations - California
Housing is a Human Right OC (HHROC)
Justice for Hector Hernandez! Coalition
League of Women Voters of California
OC Emergency Response Coalition (OCERC)
OC Justice Initiative
Orange County Equality Coalition
Pacifica Social Justice

¹³ Bakersfield Police Department use of force policy does not cite to Government Code § 7286 to justify the statement. Bakersfield’s policy is unique among the policies we reviewed in this respect.

Pasadenans Organizing for Progress (POP!)
People's Budget Orange County Coalition
People's Homeless Task Force Orange County
PolicyLink
The Santa Monica Coalition for Police Reform
United Domestic Workers, AFSCME Local 3930
Women For: Orange County
Yalla Indivisible
Youth Justice Coalition

cc: Lara Healey, Executive Assistant to CEO
lhealey@lexipol.com

Exhibit F



December 23, 2020

Records Officer
Bakersfield Police Department
1601 Truxtun Avenue
Bakersfield, CA 93301

Via request form linked at bakersfieldcity.us/gov/depts/police/records/default.htm

To the Records Officer:

Pursuant to the California Public Records Act, California Government Code sections 6250 *et seq.*, I submit this request on behalf of the American Civil Liberties Union Foundation of Southern California. Bakersfield Police Department has previously stated it would begin by January 2020 to collect data related to BPD stops and searches, and that the categories of data collection would at a minimum cover all categories for which collection is required under the 2015 Racial and Identity Profiling Act (RIPA), even though RIPA's data collection requirement has not yet gone into effect for departments of BPD's size. We write to request all such data, whether or not it has been transmitted to the California Department of Justice. We request that you use a cutoff date that is no earlier than December 31, 2020.

If you determine that some but not all the information is exempt from disclosure and that you intend to withhold it, we ask that you redact it for the time being and make the remaining responsive records available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

Because this request is on a matter of public concern, and the ACLU of Southern California is a nonprofit public interest organization, we request a fee waiver. *See North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144 (1994). We also request that documents be provided in electronic format if possible. Doing so would eliminate the need to copy the materials and provides another basis for our requested fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than \$50.

According to the California Public Records Act (California Government Code § 6253(c)), a response is required within 10 days.

EXECUTIVE DIRECTOR Hector O. Villagra

CHAIR Marla Stone **VICE CHAIRS** Sherry Frumkin and Frank Broccolo

CHAIRS EMERITI Shari Leinwand Stephen Rohde Danny Goldberg Allan K. Jonas* Burt Lancaster* Irving Lichtenstein, MD* Jarl Mohn Laurie Ostrow* Stanley K. Sheinbaum*

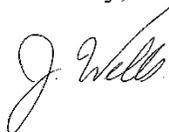
*deceased

Please send electronic records via email or paper copies to the address below:

Jordan Wells
1313 W. Eighth St.
Los Angeles, CA 90017
jwells@aclusocal.org

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "J. Wells".

Jordan Wells
Staff Attorney

1 ADRIENNA WONG (SBN 282026)

2 *awong@aclusocal.org*

3 STEPHANIE PADILLA (SBN 321568)

4 *spadilla@aclusocal.org*

5 JORDAN WELLS (SBN 326491)

6 *jwells@aclusocal.org*

7 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

8 1313 West Eighth Street

9 Los Angeles, California 90017

10 Telephone: (213) 977-9500

11 Facsimile: (213) 977-5299

12
13 *Counsel for Proposed Intervenors ACLU of Southern California*
14 *and Faith in the Valley*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

Case No. BCV-21-101928 (NFT)

THE PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. ROB BONTA,
ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA,

Plaintiff,

ACLU OF SOUTHERN CALIFORNIA,

[Proposed] Intervenor,

FAITH IN THE VALLEY,

[Proposed] Intervenor,

v.

CITY OF BAKERSFIELD and THE
BAKERSFIELD POLICE DEPARTMENT,

Defendants.

**DECLARATION OF JOSTH STENNER
ISO INTERVENORS' MOTION TO
INTERVENE**

Date: October 21, 2021

Dept: 12

Judge: Linda S. Etienne

Action Filed: August 23, 2021

1 **DECLARATION OF JOSTH STENNER**

2 I, JOSTH STENNER, declare as follows:

3 1. I have personal knowledge of the facts set forth in this declaration and I believe
4 them to be true. If called to testify, I could and would testify competently to the facts stated
5 herein.

6 2. I am a Community Organizer with Faith In the Valley (“FIV”). Faith in the Valley
7 is a multi-faith, multi-racial grassroots community organization with five chapters across the
8 Central Valley, including Kern County. Faith In the Valley represents congregations and families
9 across Kern County, including in the City of Bakersfield. Faith In the Valley is a federated
10 member of PICO California, the largest faith-based community organizing network in California.

11 3. Faith In the Valley’s mission is to unlock the power of people to put faith into
12 action in the public square, to advance a movement for racial justice so that all people in the
13 Central Valley can have safe and healthy lives. As part of the national Live Free campaign, Faith
14 In the Valley works to end racial profiling and the criminalization of Black and Brown young
15 people.

16 4. In service of its mission, Faith In the Valley has fought for years against abuses by
17 the Bakersfield Police Department (BPD). Since 2015, Faith In the Valley has organized with
18 Bakersfield community members and families impacted by BPD violence to share their stories and
19 demand transparency and accountability measures from BPD and other city officials. Faith In the
20 Valley has organized community meetings attended by hundreds of residents, meetings with BPD
21 officials, marches, and direct actions to address BPD policies and practices and to advocate for
22 change. Faith In the Valley has also organized community trainings to ensure that Bakersfield
23 residents know their rights when confronted by BPD officers who seek to stop, search, or seize
24 them. Faith In the Valley’s work prompted the newspaper *The Guardian* to investigate and publish
25 a five-part series documenting BPD’s brutal tactics against the Bakersfield community.¹ Faith In
26 the Valley continues to work with Bakersfield community members to challenge BPD policies and

27 _____
28 ¹ Jon Swaine & Oliver Laughland, “The County: the story of America's deadliest police,” *The Guardian* (Dec. 1, 2015), <https://www.theguardian.com/us-news/2015/dec/01/the-county-kern-county-deadliest-police-killings>.

1 practices and to advocate for city funding to be allocated to resources that better keep our
2 communities safe.

3 5. After BPD killed Francisco Serna, a 73-year-old Latino grandfather with dementia,
4 in 2016, Faith In the Valley called for the California Department of Justice (CA-DOJ) to
5 investigate BPD. Faith In the Valley and community members impacted by BPD violence spoke to
6 CA-DOJ investigators by telephone to share their concerns and information about BPD’s abuses,
7 as well as the pain of family members who had lost loved ones to BPD violence. On December 22,
8 2016, CA-DOJ launched its investigation of BPD. I recently recounted these events in an op-ed for
9 *The Guardian* published on September 2, 2021. A true and correct copy of the op-ed I co-wrote is
10 attached hereto as Exhibit A.

11 6. After CA-DOJ initiated its investigations of BPD, Faith In the Valley launched a
12 campaign to support that investigation by helping community members document and share their
13 experiences with CA-DOJ. Faith In the Valley created safe spaces for community members afraid
14 of police retaliation to share their accounts of BPD abuse and violence. Faith In the Valley also
15 successfully advocated for a call-in hotline to report incidents of excessive force to aid CA-DOJ’s
16 investigation. Faith In the Valley produced Know Your Rights cards with the call-in hotline
17 number and disseminated them to community members to share their experiences with CA-DOJ.

18 7. Faith In the Valley, through PICO California, was a cosponsor of Assembly Bill
19 392 (Weber) (2019), which changed the standard under California law for when officers are
20 authorized to use deadly force. Faith In the Valley organized a civic engagement campaign to
21 assist the passage of AB 392. Faith In the Valley, among other things, held forums to educate the
22 community about AB 392, mobilized the community to call their local electeds and urge them to
23 support AB 392, and conducted a sit-in at California Assemblymember Rudy Salas’ office urging
24 him to support AB 392. Faith In the Valley traveled with local families impacted by police
25 violence to provide testimony in support of AB 392.

26 8. PICO California was also a cosponsor of Assembly Bill 953 (Weber) (2015), which
27 requires law enforcement agencies to “collect perceived demographic and other detailed data
28

1 regarding pedestrian and traffic stops” and established a Racial and Identity Profiling Advisory
2 Board (RIPA) that investigates and analyzes agencies’ racial and identity profiling policies and
3 practices to annually make findings and policy recommendations aimed at eliminating racial and
4 identity profiling. Faith In the Valley organized a civic engagement campaign to assist the passage
5 of AB 953. In September 2015, Faith In the Valley traveled to participate in a direct action at the
6 State Capitol to show support for AB 953.

7 9. Since AB 953 passed, Faith In the Valley has advocated for strong data collection
8 and policy recommendations from the RIPA Advisory Board. On January 26, 2017, I spoke at a
9 RIPA Board meeting on behalf of Faith In the Valley. I informed the RIPA Board members that
10 Kern County has the deadliest police in the country and spoke about how BPD shot Francisco
11 Serna, a 73-year-old man with dementia, seven times. I commented that RIPA data needs to be
12 collected not for the benefit of community members, who already know what is going on, but for
13 the Board and others to see the reality of practices like BPD’s so they will create policies that will
14 save lives.

15 10. Faith In the Valley is directly interested in the community stakeholder provisions
16 of the Stipulated Judgment because the disposition of those provisions will impact whether and
17 how Faith In the Valley is able to provide input on changes to BPD policies, practices, and
18 strategies that will impact Faith In the Valley’s mission and Bakersfield community members.
19 When Faith In the Valley has attempted to provide community input on BPD matters in the past,
20 City officials have disregarded our efforts. For example, when BPD was considering the selection
21 of a new Bakersfield Police Chief, Faith In the Valley and community members sought to provide
22 input with the hope that BPD would be more inclusive of the community, and receptive to its
23 demands for reform of its policies and practices. To that end, Faith In the Valley organized
24 Bakersfield community members to come up with a list of criteria for selection of a new
25 Bakersfield Police Chief, but City officials ignored our presentation of those considerations. After
26 the new BPD Chief was selected, without consultation with Faith In the Valley, he stated that he
27 would not speak to us for 6 months in light of the CA-DOJ investigation. Subsequently, when
28

1 Faith In the Valley has reached out to suggest changes to BPD policies and practices, BPD
2 officials have declined to engage in those conversations pointing to the then-ongoing CA-DOJ
3 investigation.

4
5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7
8 Executed on this 23rd day of September 2021, at Bakersfield, California.

9
10
11 *Josth Stenner*
12 Josth Stenner (Sep 23, 2021 18:21 PDT)
13 JOSTH STENNER

Exhibit A

[Contribute](#) →

200

[News](#) [Opinion](#) [Sport](#) [Culture](#) [Lifestyle](#)**Opinion**

The Bakersfield police may finally reform. But we must hold them to account

Josth Stenner, Daulton Jones, Jorge Ramirez and Joey Williams

Thu 2 Sep 2021 06.21 EDT



When we first reached out to the [California](#) department of justice (DoJ) over five years ago, Francisco Serna, a 73-year-old man with dementia, had just been killed by

W

Bakersfield police officer Reagan Selman, capping one of the most violent years our city had ever seen.

In a small Faith in the Valley Kern office, above Dagny's coffee shop, leaders affected by the brutality of our local police force huddled over a conference call telephone for an emotional and exasperated call to the department of justice. Having whittled away all local officials even willing to meet with them, family members who lost loved ones to Bakersfield police department (BPD) violence shared their pain with department of justice officials, hopeful for a day when they would actually be heard.

We commend the department of justice's investigation of the BPD and its resulting [consent decree](#) and findings, which document, among other systemic problems, the excessive force and racial profiling that we and community members have long described. Implementation of the decree now [rests largely](#) in the hands of the police department, however. While we look forward to what changes the future holds for our community, our work has taught us that change will come as a result of the community working united towards a common goal - not through reliance on the goodwill of our city officials.

Over four years ago, a [five-part investigation](#) by the Guardian asked the question, "Who do you call when the police kill your loved one?" In the years since, we have found only one answer: each other. For us, true accountability is the police admitting what they did and reallocating money from their budget to provide services such as mental health support, counseling and community-based violence intervention.

Faith in the Valley Kern - accompanied by family members of people we lost to the brutality of the BPD, and backed up by hundreds of community members and organizations like the ACLU of Southern California and People's Budget Bako - reached out to the Department of Justice as a last resort. Several [reports](#) have been written casting a [spotlight](#) on the many unconstitutional patterns and practices employed by the BPD that disproportionately harm Black, Indigenous, Asian and Pacific Islander, and Latino communities and individuals with mental illness. Unfortunately, none of these reports prompted the BPD or city of Bakersfield officials to enact meaningful change.

Over the years, successive Bakersfield chiefs of police have seen the problems facing the community at the hands of police yet failed to take responsibility or accountability for the hurt that the police department has wrought. That remains the case today. The stipulated judgement states that the BPD continues to "deny each and every allegation" made by the department of justice. And at Monday's press conference on

the consent decree, the Bakersfield police chief, Greg Terry, stated that the settlement terms merely reflected “improvements that the police department has already made or was already in the process of making on its own”. However, if it were actually true that our police were blameless, then Monday’s press conference would have merely been a formality marking the end of a four-year-long pattern and practice investigation. But it was not, despite the rhetoric from Terry.

The path to this settlement decree is an affirmation that when our local institutions are failing us, we, the community, must find other ways of intervening. We don’t have to, and we will not take no for an answer. For us, that other way of intervening has been the California department of justice investigation.

The DoJ’s action brings the promise of real change within our police department. For that, we, residents of the city of Bakersfield, thank the office of the attorney general. But whether that promise becomes reality depends in large part on the implementation of this consent decree, which we will be closely monitoring.

Given that our work with the community was instrumental in bringing us to this historic moment in Bakersfield, we believe that organizations such as Faith in the Valley Kern, People’s Budget Bako and affected family members that made this moment possible should be given priority to work with the Bakersfield settlement monitor to effectuate changes. Our community members need a space to hold the work of implementation that is independent from BPD’s control, as well as resources with teeth to oversee and enforce the policies at play within BPD, including the policies that must be revised under the terms of the decree.

“ We must recall that when the police kill your loved one, the family lives on and the trauma remains

Additionally, we believe that in order to start the work of building real community trust, the city of Bakersfield must make an actual good-faith effort to listen, change, and account for and to those they have harmed. That means city leaders must make an ongoing commitment to divest from policing and incarcerating Bakersfieldians, when they would be better served by funding other crime reducing

strategies, such as supportive services.

The families that have suffered at the hands of the BPD and risked themselves to share their stories with the DoJ are the real heroes of this work, and of this city. We must recall that when the police kill your loved one, the family lives on and the trauma remains. While we know this DoJ consent decree will not bring loved ones back to life, if implemented correctly with meaningful involvement of impacted families and the community, it can save lives.

May we continue to organize, fight, then organize and fight some more, and hold law enforcement accountable until we create new systems of community protection in lieu of policing. May we divert funds to our communities of color that have been targeted, so they have the full life their Creator intended. And let us recall Amos 5:24: "Let justice roll down as waters, and righteousness as a mighty stream."

Josth Stenner is a community organizer with Faith in the Valley, Kern

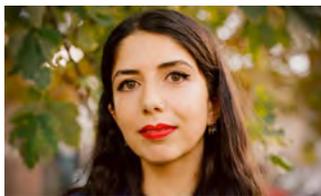
Daulton Jones is a community organizer and co-lead of People's Budget Bakersfield

Jorge Ramirez is an activist and one of the founders of the Justice Families in Bakersfield

Joey Williams is a community organizer in Kern and works for the California Native Vote project

The Guardian Masterclasses

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How to write and pitch a feature: An interactive journalism workshop

Book your place



How to be a critic: A journalism masterclass with Rachel Aroesti

Book your place



The foundations of making connections: a practical workshop with Jean Smith



Win more (How to turn leads into c
Book your pl:

opinion



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|| Guess what the three Democrats blocking lower medication prices have in common?

🕒 8h ago



|| Is this the beginning of the end for Jair Bolsonaro?

🕒 9h ago

1 ADRIENNA WONG (SBN 282026)

awong@aclusocal.org

2 STEPHANIE PADILLA (SBN 321568)

spadilla@aclusocal.org

3 JORDAN WELLS (SBN 326491)

jwells@aclusocal.org

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

1313 West Eighth Street

5 Los Angeles, California 90017

6 Telephone: (213) 977-9500

Facsimile: (213) 977-5299

7
8 *Counsel for Proposed Intervenors ACLU of Southern California
and Faith In the Valley*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12 Case No. BCV-21-101928 (NFT)

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, EX REL. ROB BONTA,
ATTORNEY GENERAL OF THE STATE OF
15 CALIFORNIA,

Plaintiff,

16 ACLU OF SOUTHERN CALIFORNIA,

17 *[Proposed] Intervenor,*

18 FAITH IN THE VALLEY,

19 *[Proposed] Intervenor,*

20
21 v.

22 CITY OF BAKERSFIELD and THE
BAKERSFIELD POLICE DEPARTMENT,

23 *Defendants.*

**[PROPOSED] ORDER GRANTING
LEAVE TO FILE COMPLAINT IN
INTERVENTION**

Date: October 21, 2021

Time: 8:30 a.m.

Dept: 12

Commissioner Linda S. Etienne

Action Filed: August 23, 2021

1 **ORDER**

2 After a full consideration of the papers filed concerning Proposed Intervenors' Motion for Leave
3 to Intervene, and good cause appearing:

4
5 IT IS HEREBY ORDERED THAT:

6 1. The Motion for Leave to Intervene is GRANTED, and Proposed Intervenors are granted
7 leave to intervene as Parties joining Plaintiff in this matter;

8 2. The Complaint in Intervention filed as Exhibit A to the Motion for Leave to Intervene is
9 deemed filed as of the date of the signing of this order.

10
11 Date: _____

_____ Commissioner Linda S. Etienne

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Facsimile: (213) 977-5299

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12
13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, EX REL. ROB BONTA,
15 ATTORNEY GENERAL OF THE STATE OF
16 CALIFORNIA,

Plaintiff,

17 ACLU OF SOUTHERN CALIFORNIA,

[Proposed] Intervenor,

18 FAITH IN THE VALLEY,

[Proposed] Intervenor,

19
20 v.

21 CITY OF BAKERSFIELD and THE
22 BAKERSFIELD POLICE DEPARTMENT,

Defendants.

Case No. BCV-21-101928 (NFT)

PROOF OF SERVICE

Date: October 21, 2021

Time: 8:30 a.m.

Dept: 12

Commissioner Linda S. Etienne

Action Filed: August 23, 2021

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
3 not a party to the within action. My business address is 1313 West Eighth Street, Los Angeles,
4 California 90017.

5 On September 28, 2021, I served copies of the foregoing documents:

6 **NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE**

7 **MEMORANDUM OF POINTS AND AUTHORITIES ISO PROPOSED**
8 **INTERVENORS’ MOTION FOR LEAVE TO INTERVENE**

9 **DECLARATION OF PETER BIBRING ISO**
10 **INTERVENORS’ MOTION TO INTERVENE**

11 **DECLARATION OF JOSTH STENNER ISO**
12 **INTERVENORS’ MOTION TO INTERVENE**

13 **[PROPOSED] ORDER GRANTING LEAVE**
14 **TO FILE COMPLAINT IN INTERVENTION**

15 on the interested parties listed below via PERSONAL SERVICE by hand at the following addresses:

16 **ROB BONTA**
17 Attorney General of California
18 *AGelectronicservice@doj.ca.gov*
19 **MICHAEL L. NEWMAN**
20 Senior Assistant Attorney General
21 *michael.Newman@doj.ca.gov*
22 **NANCY A. BENINATI**
23 Supervising Deputy Attorney General
24 *nancy.Beninati@doj.ca.gov*
25 **MARISOL LEÓN**
26 *marisol.leon@doj.ca.gov*
27 **TANYA KOSHY**
28 *tanya.Koshy@doj.ca.gov*
JOSHUA PIOVIA-SCOTT
joshua.pioviascott@doj.ca.gov
KENDAL L. MICKLETHWAITE
Kendal.Micklethwaite@doj.ca.gov
ANTHONY V. SEFERIAN
anthony.seferian@doj.ca.gov
Office of the Attorney General
300 South Spring Street

Los Angeles, California 90013
Telephone: (213) 269-6048
*[Attorney for Plaintiff, The
People of the State of California]*

VIRGINIA GENNARO
City Attorney, City of Bakersfield
1600 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301
Telephone: (661) 326-3721
E-mail *vgennaro@bakersfieldcity.us*
*[Attorney for Defendant, The City of
Bakersfield]*

GREG TERRY
Chief of Police
1601 Truxtun Avenue, Headquarters
Bakersfield, CA 93301-5109 Telephone:
(661) 327-7111
E-mail: *gterry@Bakersfieldpd.us*
*[Defendant Bakersfield Police
Department]*

1 And also by ELECTRONIC MAIL:

2 I caused the foregoing document(s) to be transmitted to the addressees listed above, and to the
3 best of my knowledge, the transmission was complete and without error in that I did not receive an
4 electronic notification to the contrary.

5 I declare under penalty of perjury under the laws of the State of California that the above is true
6 and correct.

7
8
9 Executed on September 28, 2021 at Los Angeles, California.

10 

11 Crista Minneci
12 ACLU Foundation of Southern California
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