

Case No. _____

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE CITY OF PORTLAND,

Petitioner,

v.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON,**

Respondent

and

**UNITED STATES OF AMERICA,
PORTLAND POLICE ASSOCIATION, and
ALBINA MINISTERIAL ALLIANCE COALITION
FOR JUSTICE AND POLICE REFORM,**

Respondents-Real Parties in Interest.

**From the United States District Court
For the District of Oregon, Portland Division,
The Hon. Michael H. Simon
Case No. 3:12-cv-02265-SI**

**PETITION FOR WRIT OF MANDAMUS, FOR A STAY OF
PROCEEDINGS AND FOR REASSIGNMENT ON REMAND**

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PRAYER FOR RELIEF

The City of Portland invokes the supervisory authority of this Court under 28 U.S.C. § 1651(a), FRAP 21, and Ninth Circuit Rule 21-2, and prays for a writ of mandamus directing the United States District Court for the District of Oregon:

- (a) to withdraw its Order setting a further Status Conference in *United States of America v. City of Portland*, United States District Court (Oregon) No. 3:12-cv-02265-SI (ER-300);
- (b) to schedule or hold no more than one Status Conference in any calendar year, unless either the United States of America or the City of Portland invokes the breach provisions of their Settlement Agreement, and then only to the extent provided in the Settlement Agreement, and without testimony or comment on the record from members of the public; or, in the alternative
- (c) to vacate its Amended Order Entering Settlement Agreement, Conditionally Dismissing Litigation, And Setting First Annual Status Conference, and to enter an Order Entering the Settlement Agreement and Conditionally Dismissing Litigation, without providing for or scheduling any further status conferences; and

(d) to take such other measures as, in the judgment of this Court, will secure to the City of Portland the benefit of its bargain in the Settlement Agreement and in settlement of the prior appeal in this matter, in *United States of America v. City of Portland*, Ninth Circuit No. 14-35903.

In order to allow this Court to consider the City's petition, the City further moves for an Order staying the District Court's Order setting an interim status conference for Tuesday, January 31, 2017 (ER-300).

Finally, the City moves the Court, in its supervisory capacity, to direct the reassignment of this matter to a different District Judge on remand.

1. ISSUES PRESENTED

This case involves a Settlement Agreement entered into between the United States of America and the City of Portland, Oregon, to resolve a claim made by the United States under 42 USC § 14141, and denied by the City of Portland, that the City, through its Portland Police Bureau, has a policy or practice of depriving persons suffering from mental illness, or perceived to be suffering from mental illness, of their federally protected Constitutional rights by subjecting such persons to excessive force.

The issue is whether the District Court has abused its authority or committed legal error by exceeding the limited scope of its jurisdiction to

enforce the Settlement Agreement at the request of one or the other of the parties, has entangled itself inappropriately in the operation of a municipal police department, and has deprived the City of Portland of the benefit of its bargain with the United States.

2. STATEMENT OF THE FACTS

In 2010, Aaron Campbell, an unarmed black man experiencing a mental health crisis, was shot and killed by a Portland Police Bureau (PPB) officer.¹ In the aftermath of that tragedy, Portland's then-Mayor Sam Adams and then-Police Commissioner Dan Saltzman invited the United States Department of Justice (DOJ) to investigate the PPB and make recommendations for improvement of its policies and procedures. DOJ conducted a lengthy review of police use of force in Portland, and issued a report asserting that PPB had a policy or practice of unconstitutionally using excessive force on people who either were or were perceived to be mentally ill. The City of Portland denied, and continues to deny, that any such policy or practice existed or exists. But the

¹ The City subsequently settled a civil rights action brought on behalf of Mr. Campbell's estate, *Estate of Aaron Campbell v. Ronald Frashour, et al.*, United States District Court (Oregon) No. 3:10-cv-01358-MO. The City also attempted, unsuccessfully, to fire the officer who shot Mr. Campbell. The City was held to have committed an unfair labor practice when it refused to implement an arbitrator's award directing the officer's reinstatement. *Portland Police Association v. City of Portland*, 275 Or. App. 700, 365 P.3d 1123 (2015).

City also was and is committed to improving both the performance and the perceived legitimacy of its Police Bureau. Desiring an outcome beneficial to all, and most importantly to the community PPB serves, the City embarked on extended negotiations with DOJ to agree on improvements that the City could implement to improve the interactions between the police and people with mental illness, to enhance transparency, and to build trust and legitimacy with the community.

The United States and the City of Portland reached a Settlement Agreement, after protracted negotiations, without the need for the United States to commence an action in court. The City agreed to make improvements in its police policies and practices, and to enhance public oversight, transparency and accountability for incidents involving use of force by Portland police. The *quid pro quo* for the City's agreement was the agreement of the United States that the agreement would be effectuated and implemented by the parties, without the active involvement of the District Court. To that end, the parties agreed that the agreement would take the form of a Settlement Agreement, rather than a consent decree, that there would be no court-appointed monitor, and that the District Court would be involved only to the extent that either of the parties invoked the provisions of the Settlement Agreement dealing with breach (Settlement Agreement, ¶¶ 181-186).

The City's insistence that these results be achieved through a Settlement Agreement between the City and the United States, rather than by a consent decree entered by the Court, was intentional. An essential feature of the Settlement Agreement, from the City's point of view, was that the parties themselves would be responsible for its progress and enforcement. The DOJ agreed to this structure, so long as it could file, and then conditionally dismiss, a federal court action in order to ensure that the District Court would retain jurisdiction to enforce the Agreement under the specific circumstances set forth at paragraphs 181 through 186 of the Settlement Agreement. Short of invocation of that process by DOJ, however, the Settlement Agreement never was intended to involve the active, independent participation by the Court in its monitoring or implementation. As agreed by the parties, DOJ filed the action and moved to enter the Settlement Agreement and to dismiss the case.

Since the action was filed, the District Court has taken an escalating series of steps to enlarge the proceedings, to insinuate itself into and take control of the implementation of the Settlement Agreement, and, thus, fundamentally to alter the bargain struck by the parties. Before entering the Settlement Agreement, the District Court conducted a fairness hearing, allowed the Portland Police Association (the union representing the sworn, non-supervisory, officers of the Portland Police Bureau) to intervene as a party, and

granted “enhanced amicus” status to the Albina Ministerial Alliance Coalition for Justice and Police Reform.

Following the fairness hearing, the District Court initially proposed to stay, rather than dismiss the action, to retain jurisdiction to enforce “any provision” of the Settlement Agreement, and to require periodic evidentiary hearings to assess the City’s compliance and to address the District Court’s concerns. The United States, the City and PPA conferred and proposed an alternative Order, which would have dismissed the action, while allowing the parties access to the District Court to enforce the Settlement Agreement and the Memorandum of Understanding between the City and PPA, would have clarified the termination and enforcement provisions of the Agreements, and would have created a mechanism for the person charged with assessing compliance with the Settlement Agreement (known as the “COCL,” an acronym for Compliance Officer and Community Liaison) to have provided information to the District Court.

The District Court rejected the parties’ proposed order, and entered its own Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Settlement-Compliance Hearing. (ER-78). That Order was the subject of the City’s appeal in *United States of America v. City of Portland*, Ninth Circuit No. 14-35903. On appeal, in mediation with

the assistance of Circuit Mediator Lisa Jaye and the Honorable Edward Leavy, Senior Circuit Judge, the parties negotiated an alternative Order, which provided only for annual status conferences to receive reports from the parties (including the intervenor and the “enhanced amicus”) and the COCL and the Community Oversight Advisory Board (another entity created pursuant to the Settlement Agreement). The City then dismissed its appeal, and, on remand, the District Court ultimately entered an Amended Order substantially similar to the one the parties had negotiated. (ER-83).

The first annual status conference, held on September 14, 2015, largely stayed within the bounds negotiated by the parties. However, the second annual status conference, held on October 25, 2016, and the District Court’s post-conference Order (ER-300), were a departure. The parties expected that the second status conference would be conducted in accordance with the Amended Order, as the First Annual Status Conference had been. Specifically, the parties expected that the Court would hear from the United States, the City, a member of the COAB and the COCL on “the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end and to respond to the Court’s questions on these issues;” would hear from “the United States, the City and the PPA. . . to describe to the Court the status of the MOA;” and

would hear from “the United States, the City and the AMA . . . to describe to the Court the status of the CA and to respond to any questions by the Court....” Amended Order, ER-83.

To the City’s surprise, in addition to the anticipated reports from the parties, amicus, the COAB member and the COCL, the District Court invited all members of the public in attendance to speak, including an invitation by name to a party adverse to the City in another case recently before the District Court. The result was a series of commentaries from a collection of individuals (many of whom routinely disrupt City Council and COAB meetings) which included ad hominem attacks on the City’s elected officials and volunteers and racist and sexist comments directed toward the City’s lawyers. Rather than insist that members of the public be respectful and courteous, see Canon 3.A(3) of the Code of Conduct for United States Judges, the District Court simply thanked the persons who made the disparaging comments. See, e.g., Transcript at ER-249-252:²

² In its post-conference Order, ER-300, the District Court did acknowledge that “the Court understands and appreciates the concerns expressed by the City regarding the content and tenor or tone of several of the comments voiced during the Second Annual Status Conference by some of the *amici curiae*. The Court will appropriately address these issues in open Court.”

MR. DAVIS: * * * * * There is this Orwellian language change, like Judith Prosper,³ who used to work for former Haitian Dictator Aristide.

* * * * * I think you should go back to Haiti and go join the dictatorship again or some other dictatorship because your dictatorship in Hales administration isn't working out.

* * * * *

THE COURT: Mr. Davis. Thank you, sir. I appreciate that.

During the status conference, the District Court made numerous suggestions, essentially inviting the United States to invoke the Settlement Agreement's breach provisions. See ER-116-17, 142, 152, 192-93, 217, 226. In particular, the District Court appeared to be inviting the United States to give it a "hammer," ER-192-193:

THE COURT: * * * * * Under the settlement agreement, I don't have a hammer yet. Under the settlement agreement, I do not have a hammer until the U. S. Department of Justice files a motion to enforce the settlement agreement, after going through the notice provision and the mediation provision.

* * * * * That filing a motion with me is the legal equivalent of handing me the hammer. I will exercise my authority with that hammer, in my opinion, judiciously, fairly, appropriately, and consistent with the Rule of Law. But I don't have a hammer until it is handed to me, consistent with the settlement agreement.

³ Judith Prosper is a lawyer in the City Attorney's Office, a native of New York, and of Afro-Haitian descent. At one point in her career, Ms. Prosper was employed by the Government of Haiti.

Although the District Court called these “status conferences,” they are really nothing of the sort: they are public proceedings, held on the record in open court, at which the District Court has invited any person who wishes to do so to provide “comments” to the court as an “*amicus curiae*.”⁴ The latest such conference, held on October 25, 2016, lasted over six hours, went well into the evening —and featured presentations from 27 different people. (See ER-95, 106, 119, 130, 156, 170, 175, 180, 191, 196, 213, 216, 226, 230, 235, 238, 240, 243, 247, 248, 252, 254, 258, 260, 266, 269, 270).

Half of those 27 people were the District Court’s “*amici curiae*”—many of whom were the same people who routinely disrupt City meetings and engaged in the same sort of *ad hominem* attacks against the parties at the “status conference.” Typical of the type of “input” these people provide is the statement of Joe Walsh, ER-236:

MR. WALSH: Now, I draw a difference between “activist” and “advocates.” I think activists throw rocks. I am an activist. There are advocates. And you’ve heard from them today. They advocate for something special—police accountability.

⁴ As is explained below, the first reference to individual members of the public as *amici curiae* was **after** the October 25, 2016 proceeding, in the Order setting the “interim status conference” for January 31, 2017. ER-300

Us activists are involved in everything. We just see the injustice, and we go after it.⁵

Following the October 25, 2016, status conference, the District Court issued an Order, ER-300, which set an additional “interim status conference to be held on Tuesday, January 31, 2017.” In response to the City’s objection to participation in the hearings by members of the public (i.e., testimony or comment from other than the United States, the City, COAB, COCL, PPA and AMAC), the District Court, in its Order, said, “the Court has the inherent authority to hear comments at a status conference from any *amicus curiae* that the Court considers appropriate.”

⁵ Mr. Walsh was the adverse party in another action against the City decided by the Court, whom the Court invited to speak. ER-174, 215, 235-238. In that other action, *Walsh v. Enge, Hales and City of Portland*, United States District Court (Oregon), Case No. 3:15-cv-01666-SI, Mr. Walsh challenged a 60-day exclusion from Portland City Council meetings, issued because he had disrupted a July 8, 2015 City Council meeting as well as at least 4 prior City Council meetings in the preceding 16 months. Opinion and Order, Case 3:15-cv-01666-SI, Document 29, filed 12/31/2015, at p. 2. The Opinion and Order is included as an Addendum (Add-1), along with the Excerpts of Record served and filed with this Petition. The District Court held there that “no matter how many meetings of a city council a person disrupts, he or she does not forfeit or lose the future ability to exercise constitutional rights and may not be prospectively barred from attending future meetings.” *Id.* The Court entered a permanent injunction to that effect, *id.* p. 28. Since that time, Mr. Walsh and others continue to routinely disrupt Portland City Council meetings.

3. REASONS THE WRIT SHOULD ISSUE

The Court should issue the writ because the District Court has exceeded its jurisdiction to enforce the settlement agreement, has excessively inserted itself into the management of a municipal police department, has fundamentally and unilaterally altered the Settlement Agreement entered into by the parties, and has deprived the City of the benefit of its bargain with the United States.

In *Bauman v. United States District Court*, 557 F.2d 650 (9th Cir.1977), this Court established five guidelines to determine whether mandamus is appropriate in a given case:

- 1) whether the petitioner has no other means such as an appeal, to obtain the desired relief;
- 2) whether the petitioner will be damaged or prejudiced in any way not correctable on appeal;
- 3) whether the district court order is clearly erroneous as a matter of law;
- 4) whether the district court's order is an oft repeated error or manifests a persistent disregard of the federal rules;
- 5) whether the district court's order raises new and important problems or issues of first impression.

Satisfaction of all five factors is not required. *See Valley Broadcasting Co. v. United States District Court*, 798 F.2d 1289, 1292 n. 3 (9th Cir.1986). The factors serve as guidelines, a point of departure for the Court's analysis of the propriety of mandamus relief. *See In re Cement Antitrust Litigation*, 688 F.2d 1297, 1301 (9th Cir.1982).

Here, the City invokes the supervisory authority of this Court, and the third *Bauman* factor requires only the showing of an ordinary error, and not clear error. *Calderon v. United States Dist. Court*, 134 F.3d 981, 984 (9th Cir. 1998), *abrogated on other grounds as recognized by Jackson v. Roe*, 425 F.3d 654 (9th Cir. 2005). The question of the appropriate involvement of the District Court in effectuating the terms of a settlement agreement presents a “question[] of law of major importance to the administration of district courts.” *Arizona v. United States Dist. Court (In re Cement Antitrust Litig.)*, 688 F.2d 1297, 1307 (9th Cir. 1982).

The District Court has only limited, ancillary jurisdiction to enforce the Settlement Agreement, because the underlying action has been dismissed. Enforcement of a settlement agreement “is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). Where, as here, “the terms of the settlement [have] been made part of

the order of dismissal, . . . a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would exist.” *Id.* at 381.

A “party seeking enforcement of the settlement agreement must allege a violation of the settlement agreement in order to establish ancillary jurisdiction.” *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1017 (9th Cir. 2007). Here, notwithstanding apparent invitations from the District Court to do so, the United States has not asserted that the City is in breach of the Settlement Agreement, nor has the United States invoked the remedies provisions of the Settlement Agreement. The District Court is without jurisdiction to conduct ongoing proceedings regarding the parties’ progress in effectuating their settlement.

The United States Supreme Court has cautioned that “recognition of the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the states’ criminal laws in the absence of irreparable injury which is both great and immediate.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983). Further, “federal courts must recognize ‘[t]he special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.’” *Id.* quoting *Stefanelli v. Minard*, 342 U.S. 117,

120 (1951). Principles of federalism sharply limit the District Court's authority to supervise the functioning of the City of Portland's police department. *Rizzo v. Goode*, 423 U.S. 362, 380 (1976). The District Court's unilateral enlargement of its role in effectuating the settlement between the United States and the City of Portland, beyond the limits established in the parties' Settlement Agreement, contravenes this firmly established law.

The District Court did not have jurisdiction to schedule additional status conferences under the "catchall" provision in the Amended Order (Docket Entry 99), that directs that "this civil action be placed on the Court's inactive docket, other than for the annual status conferences referenced in this Order or otherwise as may be directed by the Court, and subject to recall to the active docket should the United States move to enforce the Settlement Agreement." In agreeing to that provision, the parties did not intend to give the District Court the authority to schedule more than one Annual Status Conference per year. Certainly, it cannot be read as authorizing the District Court to further enlarge the number of participants in the process. Rather, that language was intended to give some flexibility, in the event a conference needed to be scheduled, or there was some reason, other than to hold a status conference, that the District Court would have to take some action while the case remained closed.

To interpret that provision as broadly as the District Court is applying it would make a nullity of the entire agreement of the parties in resolving the prior appeal in this case.

Moreover, the parties could not, by agreement, confer jurisdiction on the District Court that it did not already have. In the absence of a claim of breach and a motion to enforce the Settlement Agreement, the District Court simply lacks jurisdiction to hold conferences or hearings in a dismissed case. *Alvarado v. Table Mountain Rancheria*, 509 F.3d at 1017.

“The court’s power to approve or reject a settlement does not permit it to modify the terms of a negotiated settlement” or to “rewrite agreements reached by the parties.” *Jeff D. v. Andrus*, 899 F.2d 753, 758 (9th Cir. 1989). Yet that is precisely what the District Court has done here, by enlarging the parties, by scheduling hearings and conferences other than as agreed by the parties, and by unilaterally, retroactively and without prior notice, recognizing as *amici curiae* all of the individuals the District Court improperly permitted to provide comment at the second annual status conference.

For these reasons, the District Court has committed error, and the third *Bauman* factor is present.

As to the first and second *Bauman* factors, the City of Portland has suffered harm, in that it has been deprived of the benefit of its bargain with the

United States, and in the overreaching by the District Court into the management of the City's Police Bureau. No appeal is available under 28 U.S.C. § 1291, because the Order setting the additional status conference is not a "final decision," nor under 28 U.S.C. § 1292, because the Order is not an interlocutory order relating to an injunction, relating to a receiver, or relating to admiralty. Moreover, the City's concern is not only with the particular Order entered by the District Court, but with the District Court's pattern of escalating and enlarging the proceeding to involve itself excessively in the effectuation of the Settlement Agreement. Even if an appeal from the discrete Order were available, it could not correct the damage or harm the City already has suffered and that, absent action by this Court, it will suffer in the future.

The fourth and fifth *Bauman* factors also are present, because the District Court has manifested a persistent disregard of the limitations of its own role under the Settlement Agreement, and under the principles of federalism—including the limited jurisdiction of the federal courts and the reticence with which they should inject themselves into the management of local police departments—and because the appropriate scope of the authority of District Courts in the implementation of settlement agreements is an important question of law. *See Portillo v. United States Dist. Court*, 15 F.3d 819, 822 (9th Cir.

1994) (observing that presentence urine testing raised an issue of first impression and that routine testing “will constitute an oft-repeated error”).

4. THIS COURT SHOULD STAY THE JANUARY 31, 2017 HEARING

Because of the seriousness of the issue presented, in order to allow this Court to consider fully the City’s petition, this Court should stay further proceedings in the District Court, including the District Court’s Order setting an interim status conference for Tuesday, January 31, 2017 (Docket Entry 140). *Portillo v. U.S. District Court*, 15 F.3d 819, 821 (“we stayed the district court’s order pending resolution of the petition for a writ of mandamus”); *Mortgages, Inc. v. United States District Court*, 934 F.2d 209, 211 (9th Cir. 1991) (“We granted the stay and ordered a response to the petition” for writ of mandamus); *Armster v. U.S. District Court*, 792 F.2d 1423, 1431 (9th Cir. 1986) (This Court issued a stay pending disposition of the petition for writ of mandamus); *Campbell v. United States District Court*, 501 F.2d 196, 200 (9th Cir. 1974) (Panel granted stay included in petition for writ of mandamus).

5. THE CASE SHOULD BE REASSIGNED

This Court will order a case reassigned to a different district judge, under its supervisory powers, in unusual circumstances, “such as when the district court has exhibited personal bias or when reassignment is advisable to maintain

the appearance of justice.’” *U.S. v. Estate of Hage*, 810 F.3d 712, 722 (9th Cir. 2016). In determining whether to order reassignment, this Court looks “to three factors: (1) whether the original judge could ‘reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected,’ (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would ‘entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.’” *Nozzi v. Housing Authority of City of Los Angeles*, 806 F.3d 1178 (9th Cir. 2015), quoting *Krechman v. County of Riverside*, 723 F.3d 1104, 1111-12 (9th Cir. 2013).

This case demonstrates the presence of the two factors militating for reassignment, and the absence of the one militating against it. The District Court’s course of proceedings indicates that the judge currently assigned the matter would have “substantial difficulty” in limiting his involvement in the effectuation of the parties’ settlement agreement. Reassignment is necessary to preserve the appearance of fairness, because a reasonable person in the City’s position might legitimately question whether the City is getting fair treatment in this matter. Reassignment will not involve waste or duplication, because, in the absence of invocation of the breach provisions of the Settlement

Agreement, there is nothing that the District Court will be required to do on remand.

Given the history of this case, the interests of justice would be served best by reassignment to a different district judge on remand.

6. CONCLUSION

The District Court has committed error, which has damaged the City of Portland in a manner that cannot be repaired in the course of an appeal. The District Court has exceeded its jurisdiction, has excessively inserted itself into the management of a municipal police department, has fundamentally and unilaterally altered the Settlement Agreement entered into by the parties, and has deprived the City of the benefit of its bargain with the United States.

This Court should correct course by issuing a writ of mandamus to require the District Court to restore the parties to the position for which they bargained, namely to enter the settlement agreement without further involvement by the District Court absent the invocation of the breach provisions of the Settlement Agreement. Although the City questions the jurisdiction of the District Court to hold them, in order to resolve its prior appeal of that issue, the City agreed to participate in one annual status conference and remains willing to do so, so long as it is limited to reports from

the United States, the City, the COCL, the COAB, the PPA and the AMAC,
and does not involve public testimony or public comment.

Respectfully submitted,

/s/ Tracy Reeve

Tracy Reeve, OSB #891123
City Attorney
Of Attorneys for Petitioner
City of Portland

STATEMENT OF RELATED CASES

The City of Portland is aware of no other related cases in this Court.

DATED: December 9, 2016.

Respectfully submitted,

/s/ Tracy Reeve

Tracy Reeve, OSB #891123

City Attorney

Of Attorneys for Petitioner

City of Portland

CERTIFICATE OF FILING AND SERVICE

I certify that on December 9, 2016, I filed the original PETITION FOR WRIT OF MANDAMUS with the Clerk of the United States Court of Appeals at this address:

OFFICE OF THE CLERK
JAMES R. BROWNING COURTHOUSE
UNITED STATES COURT OF APPEALS
P.O. BOX 193939
SAN FRANCISCO, CA 94119

by electronically filing in the Appellate CaseManagement/Electronic Case Files (CM/ECF) system on said day.

I further certify that on December 9, 2016, I served a true and correct copy of the foregoing PETITION FOR WRIT OF MANDAMUS on:

HONORABLE MICHAEL H. SIMON
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by mailing in a sealed envelope, with postage paid and deposited with the U.S. Postal Service in Portland, Oregon to the last known address of said judge and attorneys on said day.

/s/ Tracy Reeve

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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**PETITIONER CITY OF PORTLAND'S
EXCERPTS OF RECORD AND ADDENDUM
VOLUME I**

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INDEX OF EXCERPTS OF RECORD

**Settlement Agreement Pursuant to
F.R.C.P. 41(a)(2)**

(Oregon USDC Docket No. 4.1, December 17, 2012)..... ER-1

**Order Entering Settlement Agreement, Conditionally
Dismissing Litigation, and Setting First Annual
Settlement-Compliance Hearing**

(Oregon USDC Docket No. 86, August 28, 2014)..... ER-78

**Amended Order Entering Settlement Agreement,
Conditionally Dismissing Litigation, and Setting
First Annual Status Hearing**

(Oregon USDC Docket No. 99, July 30, 2015)..... ER-83

Transcript of Proceedings

October 25, 2016 Status Conference

Dennis W. Apodaca, Official Court Reporter

(Certified on November 5, 2016)..... ER-89

Defendant City of Portland's

Post Status Conference Memorandum

(Oregon USDC Docket No. 138, November 3, 2016)..... ER-287

Declaration of Tracy Reeve

(Oregon USDC Docket No. 139, November 3, 2016)..... ER-296

Exhibit A to Declaration of Tracy Reeve

Mayor, City Council and City Auditor Letter to Judge Simon

November 3, 2016

(Oregon USDC Docket No. 139.1, November 3, 2016) ER-298

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

Plaintiff,

v.

**SETTLEMENT AGREEMENT
PURSUANT TO FED. R. CIV. P.
41(a)(2)**

CITY OF PORTLAND,

Defendant.

INTRODUCTION

The United States and the City of Portland (“City”) (collectively “the Parties”) recognize that the vast majority of the City’s police officers are honorable law enforcement professionals who risk their physical safety and well-being for the public good. The Parties enter into this Agreement with the goal of ensuring that the Portland Police Bureau (“PPB”) delivers police services to the people of Portland in a manner that effectively supports officer and public safety, and complies with the Constitution and laws of the United States. Specifically, this Agreement is targeted to strengthen initiatives already begun by PPB to ensure that encounters between police and persons with perceived or actual mental illness, or experiencing a mental health crisis, do not result in unnecessary or excessive force.

The Parties recognize there has been an accelerating movement toward a model of police management that relies on both existing and still-developing management and

monitoring tools and systems. This model requires both vision and fiscal commitment, and is necessary to legitimate policing. The United States recognizes that PPB has endeavored to adopt components of modern management despite being a lean organization, and greatly appreciates the City's commitment, in this agreement, to provide PPB the fiscal support necessary to rapidly and fully implement a complete state-of-the-art management and accountability system. The Parties further recognize that the ability of police officers to protect themselves and the community they serve is largely dependent on the quality of the relationship they have with that community. Public and officer safety, constitutional policing, and the community's trust in its police force are, thus, interdependent. The full and sustained implementation of this Agreement is intended to protect the constitutional rights of all members of the community, continuously improve the safety and security of the people of Portland, keep PPB employees safe, and increase public confidence in PPB, all in a cost-effective, timely, and collaborative manner. The United States commends the City for the steps it already has taken to implement measures to effectuate these goals.

To fully achieve these goals, this Agreement requires the City and PPB to further revise or, where needed, adopt new policies, training, supervision, and practices in the following areas: the use of force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement.

This Agreement further requires that the City and PPB put in place more effective systems of oversight and self-correction that will identify and correct problems before

they develop into patterns or practices of unconstitutional conduct and/or erode community trust.

This Agreement further identifies measures, to be met within fixed periods of time, that will assist the Parties and the community in determining whether: (1) the City has changed its procedures and taken the actions listed in this agreement; (2) community trust in PPB has increased; and (3) the improvements will be sustainable.

For these reasons, and noting the general principle that settlements are to be encouraged, particularly settlements between government entities, the Parties agree to implement this Agreement under the following terms and conditions.

I. GENERAL PROVISIONS

1. The United States has filed a complaint in the Federal District Court for the District of Oregon in Portland, Oregon asserting that the City has engaged in a pattern and practice of constitutional violations pursuant to the authority granted to United States Department of Justice (“DOJ”) under 42 U.S.C. § 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law. The City expressly denies that the allegations of the complaint are true.

2. The Parties agree that nothing in this Agreement shall be construed as an admission of wrongdoing by the City or evidence of liability under any federal, state, or municipal law. Upon execution of this Agreement by both Parties, the United States agrees to conditionally dismiss the complaint it filed with prejudice, subject to the Court retaining jurisdiction to enforce the Agreement, followed by final dismissal with prejudice upon performance of this Agreement.

3. This Agreement shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. If, in the course of interpreting this Agreement, there is an ambiguity that cannot be resolved by the Parties or in mediation, evidence including the Parties' course of dealing and parol evidence may be used.

4. This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing the operations of PPB or any aspect thereof, the City agrees to ensure these functions and entities are consistent with the terms of this Agreement and shall incorporate the terms of this Agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency.

5. This Agreement is enforceable only by the Parties. No person or entity is, or is intended to be, a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. The Parties agree to defend the terms of this Agreement should they be challenged in this or any other forum.

6. This Agreement is not intended to impair or expand the right of any person or organization seeking relief against the City, PPB, or any officer or employee thereof, for their conduct or the conduct of PPB officers; accordingly, it does not alter

legal standards governing any such claims by third parties, including those arising from city, state, or federal law. This Agreement does not expand, nor will it be construed to expand access to any City, PPB, or DOJ document, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and PPB. All federal and state laws governing the confidentiality or public access to such documents are unaffected by the terms of this Agreement.

7. The City shall be responsible for providing necessary support and resources to enable PPB to fulfill its obligations under this Agreement. The improvements outlined in this Agreement will require the dedication of additional funds and personnel.

8. The purpose of this Agreement is to ensure that the City and PPB, by and through their officials, agents, employees, and successors, undertake the actions required by the Agreement, which in turn will resolve the concerns expressed by the United States in its complaint. The United States greatly appreciates the effort and expertise the current PPB leadership team has contributed to the investigation, agreement, and ongoing reform processes. The United States feels that continuity of management and effort is essential for timely compliance with the terms of this Agreement.

II. DEFINITIONS

Unless otherwise noted, the following terms and definitions shall apply to this Agreement:

9. “Chief” means the Chief of Police of the Portland Police Bureau or his or her authorized designee.

10. “City” means the City of Portland, including its agents, officers, and employees in their official capacity.

11. “C-I-Team” stands for Crisis Intervention Team.

12. “C-I-Training” stands for Crisis Intervention Training, which is training on how to respond to persons in behavioral or mental health crisis, including persons under the influence of drugs or alcohol. Officers who receive such training are “C-I-Trained.”

13. “City Auditor” is the City Auditor, whose duties regarding independent police oversight are governed by Portland City Code Chapter 3.21.

14. “COCL” refers to the Compliance Officer Community Liaison, discussed in detail in Section X.

15. “Complainant” means any person, including a PPB officer or employee, who makes a complaint against PPB or a sworn officer.

16. “Complaint” means any complaint made to the City by a member of the public, a PPB officer, or a civilian PPB employee of alleged misconduct by a sworn PPB employee.

17. Computer-Assisted Dispatch (“CAD”) is a computerized method of dispatching police officers on a service call. It can also be used to send messages to the dispatcher and store and retrieve data (i.e., radio logs, field interviews, schedules, etc.). PPB Manual 612.00.

18. “CRC” is the Citizen Review Committee, whose duties are governed by Portland City Code Section 3.21.080.

19. “Critical firearm discharge” means each discharge of a firearm by a PPB officer. This term includes discharges at persons where no one is struck. This term is not intended to include discharges at the range or in training or negligent discharges not intended as an application of force, which are still subject to administrative investigation.

20. “Day” means a calendar day.

21. “Demographic category” means to the extent such information is currently collected by PPB, age, race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, source of income, or gender identity.

22. “Discipline” means a personnel action for violation of an established law, regulation, rule, or PPB policy, including written reprimand, suspension, demotion, or dismissal.

23. “DOJ” refers jointly to the Civil Rights Division of the United States Department of Justice and the United States Attorney’s Office for the District of Oregon.

24. “ECW” means Electronic Control Weapon, a weapon, including Tasers, designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and overrides the subject’s voluntary motor responses.

25. “ECW application” means the contact and delivery of electrical impulse to a subject with an ECW.

26. “Effective Date” means the date this Agreement is entered by the Court.

27. “EIS” means the Employee Information System as provided in PPB Manual 345.00.

28. “Ensure” means that the City and PPB are using objectively good faith efforts to achieve the outcome desired.

29. “Exigent circumstances” means circumstances in which a reasonable person would believe that imminent and serious bodily harm to a person or persons is about to occur.

30. “Firearm” is any instrument capable of discharging ammunition as defined in PPB Manual 1020.00.

31. “Force” means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include the ordinary handcuffing of an individual who does not resist.

32. “IA” means the Internal Affairs unit of PPB’s Professional Standards Division (“PSD”).

33. “Implement” or “implementation” means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice through the regular use of audit tools.

34. “Including” means “including, but not limited to.”

35. “Inspector” is a command position in the PSD responsible for reviewing all uses of force and making recommendations regarding improvements to systems of accountability in relation to force management.

36. “IPR” means the Independent Police Review Division, an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against sworn PPB members for alleged misconduct, and recommend appropriate changes of PPB policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency,

efficiency, and justice in the provision of community policing services, governed by Portland City Code Chapter 3.21.

37. “Less-lethal” force means a force application that is not intended or expected to cause death or serious injury and that is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less-lethal force can result in death or serious injury.

38. “Lethal force” means any use of force likely to cause death or serious physical injury, including the use of a firearm, carotid neck hold, or strike to the head, neck, or throat with a hard object.

39. “Line Investigation” or “Directive 940.00 Investigation” means the use of force investigation conducted pursuant to PPB Directive 940.00.

40. “Mental Health Crisis” means an incident in which someone with an actual or perceived mental illness is experiencing intense feelings of personal distress (e.g., anxiety, depression, anger, fear, panic, hopelessness), obvious changes in functioning (e.g., neglect of personal hygiene, unusual behavior) and/or catastrophic life events (e.g., disruptions in personal relationships, support systems or living arrangements; loss of autonomy or parental rights; victimization or natural disasters), which may, but not necessarily, result in an upward trajectory of intensity culminating in thoughts or acts that are dangerous to self and/or others.

41. “Mental Illness” is a medical condition that disrupts an individual’s thinking, perception, mood, and/or ability to relate to others such that daily functioning and coping with the ordinary demands of life are diminished. Mental illness includes, but is not limited to, serious mental illnesses such as major depression, schizophrenia, bipolar

disorder, obsessive compulsive disorder (“OCD”), panic disorder, posttraumatic stress disorder (“PTSD”), and borderline personality disorder. Mental illness includes individuals with dual diagnosis of mental illness and another condition, such as drug and/or alcohol addiction.

42. “Misconduct” means conduct by a sworn officer that violates PPB regulations or orders, or other standards of conduct required of City employees.

43. “Misconduct complaint” means any allegation of improper conduct by a sworn officer, whether the complaint alleges corruption or other criminal misconduct; a violation of law; or a violation of PPB policy, procedure, regulations, orders, or other standards of conduct required of City employees including, but not limited to, the improper use of force. This definition is not intended to create a right of appeal to the CRC for lethal force or in-custody death cases.

44. “Mobile Crisis Prevention Team” (formerly Mobile Crisis Unit) means the team of a PPB patrol officer and mental health case worker who are specifically detailed to conduct outreach and response to persons with known mental illness or experiencing an actual or perceived mental health crisis, with the goal of intervening with individuals before a crisis exists and to link the individual with community mental health services.

45. “Non-disciplinary corrective action” refers to action other than discipline taken by a PPB supervisor to enable or encourage an officer to improve his or her performance.

46. “Passive resistance” means non-compliance with officer commands that is non-violent and does not pose an immediate threat to the officer or the public.

47. “Personnel” means PPB officers and employees.

48. “Police officer” or “officer” means any law enforcement agent employed by or volunteering for PPB, including supervisors, reserve officers, and cadets.

49. Police Review Board (“PRB”) is an advisory body to the Chief governed by Portland City Code § 3.20.140. The PRB makes recommendations as to findings and proposed officer discipline to the Chief.

50. “Policies and procedures” means regulations or directives, regardless of the name, describing the duties, functions, and obligations of PPB officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.

51. “PPB Manual” refers to PPB’s Policy and Procedure Manual, revised January 2009, and includes the most current edition and supplements thereto.

52. “PPB unit” or “unit” means any designated organization of officers within PPB, including precincts and specialized units.

53. Portland Police Data System (“PPDS”) is PPB’s records management system that integrates officers’ access to other agency systems such as LEDS, NCIC/III, DMV, DA-Crimes, ESWIS and OJIN. *See, e.g.*, PPB Manual 1226.00.

54. “Precinct” refers to one of the service areas of PPB, which together cover the entire geographic area of the City of Portland. Each precinct is led by a precinct commander.

55. “Probable cause” means that there is a substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.

56. “PSD” means the Professional Standards Division, the PPB unit charged with, among other tasks, conducting or overseeing all internal and administrative investigations of PPB officers, agents, and employees arising from complaints, whose current duties are governed by PPB Manual 330.00.

57. “Qualified Mental Health Professional” means an individual who has, at a minimum, a masters-level education and training in psychiatry, psychology, counseling, social work, or psychiatric nursing, and is currently licensed by the State of Oregon to deliver those mental health services he or she has undertaken to provide.

58. “Serious Use of Force” means: (1) all uses of force by a PPB officer that reasonably appear to create or do create a substantial risk of death, serious disfigurement, disability, or impairment of the functioning of any body part or organ; (2) all critical firearm discharges by a PPB officer; (3) all uses of force by a PPB officer resulting in a significant injury, including a broken bone, an injury requiring hospitalization, or an injury deemed to be serious by an officer’s supervisor; (4) all head, neck, and throat strikes with an object or carotid neck holds; (5) force used upon juveniles known or reasonably assumed to be under 15 and females known or reasonably assumed to be pregnant; (6) all uses of force by a PPB officer resulting in a loss of consciousness; (7) more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, regardless of whether the applications are by the same or different officers, and regardless of whether the ECW application is longer than 15 seconds, whether continuous or consecutive; (8) any strike, blow, kick, ECW application, or similar use of force against a handcuffed, otherwise

restrained, under control, or in custody subject with or without injury; and (9) any use of force referred by an officer's supervisor to IA that IA deems serious.

59. "Shall" means a mandatory duty.

60. "Supervisor" means a sworn PPB employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers.

61. "Supported by evidence" means the standard of proof applied in CRC appeals pursuant to Portland City Code Section 3.21.160. A finding regarding a complaint is "supported by the evidence" when a reasonable person could make the finding regarding a complaint in light of the evidence, whether or not the reviewing body agrees with the finding. The CRC decides whether the recommended finding is supported by the evidence using a reasonable person standard, that is, the CRC decides whether City decision makers could have reached the conclusion they reached based on the evidence developed by the investigation.

62. "Training" means any adult-learning methods that incorporate role-playing scenarios and interactive exercises that instruct officers about how to exercise their discretion at an administrative level, as well as traditional lecture formats. Training also includes testing and/or writings that indicate that the officer comprehends the material taught.

63. "Use of Force" means any physical coercion used to effect, influence, or persuade an individual to comply with an order from an officer, above unresisted handcuffing, including actively pointing a firearm at a person.

64. “Use of force that could result in criminal charges” means that use of force that a reasonable and trained supervisor could conclude would result in criminal charges due to the apparent circumstances, such as: (a) the level of force used as compared to the offense committed or resistance encountered; (b) material discrepancies between the force actually used and the use of force as described by the officer; or (c) the nature of the injuries.

65. “Welfare Check” means a response by PPB to a call for service that is unrelated to an allegation of criminal conduct, but is instead to determine whether a person requires assistance for a medical or mental health crisis.

III. USE OF FORCE

PPB shall revise its existing use of force policy and force reporting requirements to ensure that all force, particularly force involving persons with actual or perceived mental illness: (a) is used only in accordance with the Constitution and laws of the United States; (b) is no greater than necessary to accomplish a lawful objective; (c) is properly documented, reported, and accounted for; and (d) is properly investigated, reviewed, evaluated, and, if necessary, remedied. PPB shall attempt to avoid or minimize the use of force against individuals in perceived behavioral or mental health crisis, or those with mental illness and direct such individuals to the appropriate services where possible. In addition, PPB shall ensure that officers use non-force and verbal techniques to effect compliance with police orders whenever feasible, especially in the course of conducting welfare checks or effecting arrests for minor offenses or for persons whom officers have reason to believe are experiencing a mental health crisis; de-escalate the use of force at the earliest possible moment; only resort to those use of force weapons,

including less-lethal weapons, as necessary; and refrain from the use of force against individuals who are already under control by officers, or who may express verbal discontent with officers but do not otherwise pose a threat to officers or others, or impede a valid law enforcement function. To achieve these outcomes, PPB shall implement the requirements set out below.

A. Use of Force Policy

66. PPB shall maintain the following principles in its existing use of force policies:

- a. PPB shall use only the force reasonably necessary under the totality of circumstances to lawfully perform its duties and to resolve confrontations effectively and safely; and
- b. PPB expects officers to develop and display, over the course of their practice of law enforcement, the skills and abilities that allow them to regularly resolve confrontations without resorting to force or the least amount of appropriate force.

67. PPB shall add to its use of force policy and procedures the following use of force principles:

- a. Officers shall use disengagement and de-escalation techniques, when possible, and/or call in specialized units when practical, in order to reduce the need for force and increase officer and civilian safety;
- b. In determining whether to use force, officers will take into account all information, when feasible, including behavior, reports, and

known history as conveyed to or learned by the officer by any means, indicating that a person has, or is perceived to have, mental illness;

- c. The use of force shall be de-escalated as resistance decreases and the amount of force used, including the number of officers who use force, shall de-escalate to a level reasonably calculated to maintain control with the least amount of appropriate force; and
- d. Objectively unreasonable uses of force shall result in corrective action and/or discipline, up to and including termination.

1. Electronic Control Weapons

68. PPB shall revise PPB Directive 1051.00 regarding Taser, Less-Lethal Weapon System to include the following principles:
- a. Prohibition against the use of ECWs for pain compliance against those suffering from mental illness or emotional crisis except in exigent circumstances, and then only to avoid the use of a higher level of force;
 - b. Unless it would present a danger to the officer or others, that officers shall issue a verbal warning, or attempt to utilize hand signals where there is a language barrier or the subject is hearing impaired, prior to deploying their ECW;
 - c. Officers shall follow protocols developed by PPB in conjunction with medical professionals on their responsibilities following ECW use;

- d. Only one ECW at a time may be used on a subject, intentionally, except where lethal force would be permitted;
- e. After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary, including waiting for a reasonable amount of time to allow the subject to comply with the warning. Officers shall describe and explain the reasonableness of each ECW cycle in their use of force reports;
- f. Officers shall make every reasonable effort to attempt handcuffing during and between each ECW cycle. Officers should avoid deployments of more than three ECW cycles unless exigent circumstances warrant use;
- g. ECWs shall not be used on handcuffed or otherwise restrained persons, unless doing so is necessary to prevent them from causing serious physical injury to themselves or others, or if lesser attempts of control have been ineffective and/or to avoid greater application of use of force; and
- h. Officers receive annual ECW in service training including proficiency and policy changes, if any.

2. Use of Force Reporting Policy and Use of Force Report

69. PPB shall revise its policies related to use of force reporting, as necessary, to require that:

- a. All PPB officers that use force, including supervisory officers, draft timely use of force reports that include sufficient information to facilitate a thorough review of the incident in question by supervisory officers; and
- b. All officers involved or witnesses to a use of force provide a full and candid account to supervisors.

3. Use of Force Supervisory Investigations and Reports

70. PPB shall continue enforcement of Directive 940.00, which requires supervisors who receive notification of a force event to respond to the scene, conduct an administrative review and investigation of the use of force, document their findings in an After Action Report and forward their report through the chain of command. PPB shall revise Directive 940.00 to further require that supervisory officers:

- a. Complete After Action Reports within 72 hours of the force event;
- b. Immediately notify his or her shift supervisor and PSD regarding all officer's Serious Use of Force, any Use of Force against persons who have actual or perceived mental illness, or any suspected misconduct. Where the supervisor suspects possible criminal conduct, the supervisor shall notify the PPB Detective Division. Where there is no misconduct, supervisors also shall determine whether additional training or counseling is warranted. PPB shall then provide such counseling or training consistent with this Agreement;

- c. Where necessary, ensure that the subject receives medical attention from an appropriate medical provider; and
- d. Interview officers individually and not in groups.

71. PPB shall maintain adequate patrol supervision staffing, which at a minimum, means that PPB and the City shall maintain its current sergeant staffing level, including the September 2012 addition of 15 sergeants.

72. PPB shall develop a supervisor investigation checklist to ensure that supervisors carry out these force investigation responsibilities. PPB shall review and revise the adequacy of this checklist regularly, at least annually.

73. PPB shall revise its policies concerning chain of command reviews of After Action Reports, as necessary, to require that:

- a. EIS tracks all Directive 940.00 comments, findings and corrections;
 - b. All supervisors in the chain of command are subject to and receive corrective action or discipline for the accuracy and completeness of After Action Reports completed by supervisors under their command;
 - c. All supervisors in the chain of command are accountable for inadequate reports and analysis;
 - d. A supervisor receives the appropriate corrective action, including training, demotion, and/or removal from a supervisory position when he or she repeatedly conducts deficient investigations.
- Where a shift commander, or precinct commander, repeatedly

- permits deficient investigations, the shift commander, or precinct commander, receives the appropriate corrective action, including training, demotion, and/or removal from a supervisory position;
- e. When, after investigation, a use of force is found to be out of policy, PPB shall take appropriate corrective action consistent with the Accountability provisions of this Agreement;
 - f. Where the use of force indicates policy, training, tactical, or equipment concerns, the immediate supervisor shall notify the Inspector and the Chief, who shall ensure that PPB timely conducts necessary training and that PPB timely resolves policy, tactical, or equipment concerns; and
 - g. The Chief or designee, as well as PSD, has discretion to re-assign a use of force investigation to the Detective Division or any PPB supervisor.

B. Compliance Audits Related to Use of Force

74. In consultation with the COCL, the Inspector, as part of PPB's quarterly review of force, will audit force reports and Directive 940.00 Investigation Reports to ensure that:

- a. With respect to use of force generally:
 - i. reports describe the mental health information available to officers and the role of that information in their decision making;
 - ii. officers do not use force against people who engage in passive resistance that does not impede a lawful objective;

- iii. when resistance decreases, officers de-escalate to a level reasonably calculated to maintain control with the least amount of appropriate force;
 - iv. officers call in specialty units in accordance with procedure;
 - v. officers routinely procure medical care at the earliest available opportunity when a subject is injured during a force event; and
 - vi. officers consistently choose options reasonably calculated to establish or maintain control with the least amount of appropriate force.
- b. With respect to ECW usages:
- i. ECW deployment data and Directive 940.00 reports are consistent, as determined by random and directed audits. Discrepancies within the audit should be appropriately investigated and addressed;
 - ii. officers evaluate the reasonableness and need for each ECW cycle and justify each cycle; when this standard is not met, this agreement requires supervisor correction;
 - iii. officers are universally diligent in attempting to use hands-on control when practical during ECW cycles rather than waiting for compliance; and
 - iv. officers do not attempt to use ECW to achieve pain compliance against subjects who are unable to respond rationally unless doing

so is reasonably calculated to prevent the use of a higher level of force.

- c. With respect to use of force reporting, the reports:
 - i. are completed as soon as possible after the force incident occurs, but no later than the timeframes required in policy;
 - ii. include a detailed description of the unique characteristics of the event, using common everyday language, sufficient to allow supervisors to accurately evaluate the quality of the officer's decision making and performance;
 - iii. include a decision point description of the force decision making;
 - iv. include a detailed description of the force used, to include descriptive information regarding the use of any weapon;
 - v. include a description of any apparent injury to the suspect, any complaint of injury, or the absence of injury (including information regarding any medical aid or on-scene medical evaluation provided);
 - vi. include the reason for the initial police presence;
 - vii. include a description of the level of resistance encountered by each officer that led to each separate use of force and, if applicable, injury;
 - viii. include a description of why de-escalation techniques were not used or whether they were effective;

- ix. include whether the individual was known by the officer to be mentally ill or in mental health crisis;
- x. include a general description of force an officer observes another officer apply; and
- xi. demonstrate that officers consistently make diligent efforts to document witness observations and explain when circumstances prevent them from identifying witnesses or obtaining contact information. Reports will include all available identifying information for anyone who refuses to provide a statement.

75. In consultation with the COCL, the Inspector shall audit force reports and Directive 940.00 investigations to determine whether supervisors consistently:

- a. Complete a Supervisor's After Action Report within 72 hours of notification;
- b. Review all use of force reports to ensure they include the information required by this Agreement and PPB policy;
- c. Evaluate the weight of the evidence;
- d. Use a "decision-point" approach to analyze each use of force;
- e. Determine whether the officer's actions appear consistent with PPB policy, this Agreement, and best practices;
- f. Determine whether there was legal justification for the original stop and/or detention;

- g. Assess the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options;
- h. Determine whether additional training or counseling is warranted;
- i. Implement corrective action whenever there are material omissions or inaccuracies in the officers' use of force report, and for failing to report a use of force, whether applied or observed;
- j. Document any non-disciplinary corrective action to remedy training deficiencies, policy deficiencies, or poor tactical decisions in EIS;
- k. Notify PSD and the shift supervisor of every incident involving an officer's Serious Use of Force, and any Use of Force that could appear to a reasonable supervisor to constitute misconduct; and
- l. Notify the Detective Division and shift supervisor of every force incident in which it could reasonably appear to a supervisor that an officer engaged in criminal conduct.

76. In consultation with the COCL, the Inspector shall conduct a quarterly analysis of force data and supervisors' Directive 940.00 reports designed to:

- a. Determine if significant trends exist;
- b. Determine if there is variation in force practice away from PPB policy in any unit;
- c. Determine if any officer, PPB unit, or group of officers is using force differently or at a different rate than others, determine the

reason for any difference and correct or duplicate elsewhere, as appropriate;

- d. Identify and correct deficiencies revealed by the analysis; and
- e. Document the Inspector's findings in an annual public report.

77. In consultation with the COCL, the Inspector shall audit the adequacy of chain of command reviews of After Action Reports using the following performance standards to ensure that all supervisors in the chain of command:

- a. Review Directive 940.00 findings using a preponderance of the evidence standard;
- b. Review Directive 940.00 reports to ensure completeness and order additional investigation, when necessary;
- c. Modify findings as appropriate and document modifications;
- d. Order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings and counsel the investigator;
- e. Document any training deficiencies, policy deficiencies, or poor tactical decisions, ensure a supervisor discusses poor tactical decisions with the officer and ensure the discussion is documented in EIS;
- f. Suspend an investigation immediately and notify the branch Assistant Chief, the Director of PSD, and the Detectives Division whenever the investigating supervisor, shift commander or Division

commander finds evidence of apparent criminal conduct by a PPB officer; and

- g. Reports a matter to PSD for review and investigation whenever an investigating supervisor, shift commander or precinct commander finds evidence of apparent misconduct by a PPB officer or employee.

IV. TRAINING

78. All aspects of PPB training shall reflect and instill agency expectations that officers are committed to the constitutional rights of the individuals who have or are perceived to have mental illness whom they encounter, and employ strategies to build community partnerships to effectively increase public trust and safety. To achieve these outcomes, PPB shall implement the requirements below.

79. The Training Division shall review and update PPB's training plan annually. To inform these revisions, the Training Division shall conduct a needs assessment and modify this assessment annually, taking into consideration: (a) trends in hazards officers are encountering in performing their duties; (b) analysis of officer safety issues; (c) misconduct complaints; (d) problematic uses of force; (e) input from members at all levels of PPB; (f) input from the community; (g) concerns reflected in court decisions; (h) research reflecting best practices; (i) the latest in law enforcement trends; (j) individual precinct needs; and (k) any changes to Oregon or federal law or PPB policy.

80. Within 180 days of the Effective Date, PPB shall develop and implement a process that provides for the collection, analysis, and review of data regarding the

effectiveness of training for the purpose of improving future instruction, course quality, and curriculum. These evaluations shall measure and document student satisfaction with the training received; student learning as a result of training; and the extent to which program graduates are applying the knowledge and skills acquired in training to their jobs. This audit shall be reported to the Training Division Manager and shall include student evaluations of the program and the instructor.

81. PPB shall ensure that the Training Division is electronically tracking, maintaining, and reporting complete and accurate records of current curricula, lesson plans, training delivered, attendance records, and other training materials in a central, commonly-accessible, and organized file system. Each officer's immediate supervisor shall review the database for the officers under his/her command at least semi-annually.

82. PPB shall report training delivered and received semi-annually to the Assistant Chief of Operations and, during the pendency of this Agreement, to DOJ.

83. PPB shall institute guidelines to govern its selection of officers that serve as trainers and shall ensure that those officers do not have a history of using excessive force. The trainer selection guidelines shall prohibit the selection of officers who have been subject to disciplinary action based upon the use of force or mistreatment of people with mental illness within the three (3) preceding years, or twice in the preceding five (5) years, and will take into account if a civil judgment has been rendered against the City in the last five (5) years based on the officer's use of force.

84. All training that PPB provides shall conform to PPB's current policies at the time of training. PPB shall train all officers on the Agreement's requirements during the next in-service training scheduled.

- a. With respect to patrol officers, PPB shall:
 - i. increase the use of role-playing scenarios and interactive exercises that illustrate proper use of force decision making, specifically including interactions with people who have or are perceived to have mental illness, including training officers on the importance and impact of ethical decision making and peer intervention;
 - ii. emphasize the use of integrated de-escalation techniques, when appropriate, that encourage officers to make arrests without using force;
 - iii. continue to provide training regarding an officer's duty to procure medical care whenever a subject is injured during a force event, and enhance and revise training as necessary to ensure that PPB's training in this regard is proactive and responsive to deficiencies identified by the Inspector, if any;
 - iv. continue to train on proactive problem solving and to utilize, when appropriate, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, requesting specialized units, including CIT officers and mental health professionals, or delaying arrest;
 - v. describe situations in which a force event could lead to potential civil or criminal liability; and
 - vi. continue to train officers to avoid using profanity, prohibit using derogatory/demeaning labels, and also avoiding terms not currently

appropriate for person-center communication, such as the term “mentals,” in all work-related settings and communications, as well as when interacting with the public.

- b. With respect to supervisors, provide additional training on how to:
 - i. conduct use of force investigations, including the supervisory investigatory responsibilities identified in **Section III.A.3**;
 - ii. evaluate officer performance as part of PPB’s annual performance evaluation system; and
 - iii. foster positive career development and impose appropriate disciplinary sanctions and non-disciplinary corrective action.

85. In consultation with the COCL, the Inspector shall audit the training program using the following performance standards to ensure that PPB does the following:

- a. Conducts a comprehensive needs assessment annually;
- b. Creates a Training Strategic Plan annually;
- c. Within 180 days of the Effective Date, develops and implements a process for evaluation of the effectiveness of training;
- d. Maintains accurate records of Training delivered, including substance and attendance;
- e. Makes Training Records accessible to the Director of Services, Assistant Chief of Operations, and DOJ;
- f. Trains Officers, Supervisors, and Commanders on areas specific to their responsibilities; and

- g. Ensures that sworn PPB members are provided a copy of all PPB directives and policies issued pursuant to this Agreement, and sign a statement acknowledging that they have received, read, and had an opportunity to ask questions about the directives and/or policies, within 30 days of the release of the policy.

86. In consultation with the COCL, the Inspector shall gather and present data and analysis on a quarterly basis regarding patterns and trends in officers' uses of force to the Chief, the PPB Training Division, and to the Training Advisory Council. The Training Division and Training Advisory Council shall make written recommendations to the Chief regarding proposed changes in policy, training, and/or evaluations based on the data presented. The Inspector shall also, in coordination with the COCL and PSD, identify problematic use of force patterns and training deficiencies. The Chief's Office shall assess all use of force patterns identified by the Training Division and/or Training Advisory Council and timely implement necessary remedial training to address deficiencies so identified.

87. Training Advisory Council meetings will be open to the public unless the matter under discussion is confidential or raises public safety concerns, as determined by the Chief.

V. COMMUNITY-BASED MENTAL HEALTH SERVICES

88. The absence of a comprehensive community mental health infrastructure often shifts to law enforcement agencies throughout Oregon the burden of being first responders to individuals in mental health crisis. Under a separate agreement, the United States is working with State of Oregon officials in a constructive, collaborative manner to

address the gaps in state mental health infrastructure. The state-wide implementation of an improved, effective community-based mental health infrastructure should benefit law enforcement agencies across the State, as well as people with mental illness. The United States acknowledges that this Agreement only legally binds the City to take action. Nonetheless, in addition to the City, the United States expects the City's partners to help remedy the lack of community-based addiction and mental health services to Medicaid clients and uninsured area residents. The City's partners in the provision of community-based addiction and mental health services include: the State of Oregon Health Authority, area Community Care Organizations ("CCOs"), Multnomah County, local hospitals, health insurance providers, commercial health providers, and existing Non-Governmental Organizations ("NGOs") such as community-based mental health providers, and other stakeholders.

89. The United States expects that the local CCOs will establish, by mid-2013, one or more drop-off center(s) for first responders and public walk-in centers for individuals with addictions and/or behavioral health service needs. All such drop off/walk in centers should focus care plans on appropriate discharge and community-based treatment options, including assertive community treatment teams, rather than unnecessary hospitalization.

90. The CCOs will immediately create addictions and mental health-focused subcommittee(s), which will include representatives from PPB's Addictions and Behavioral Health Unit ("ABHU"), the ABHU Advisory Board, Portland Fire and Rescue, Bureau of Emergency Communications ("BOEC") and other City staff. These

committees will pursue immediate and long-term improvements to the behavioral health care system. Initial improvements include:

- a. Increased sharing of information, subject to lawful disclosure, between agencies and organizations including BOEC, Multnomah County, and health care providers to create an information exchange among first responders and providers to better serve those suffering from mental illness;
- b. Creation of rapid-access clinics so those in crisis have access to timely medication management appointments;
- c. Enhancing access to primary care providers to shift low-to-moderate acuity patients to primary care programs creating more capacity for acute patients in existing outpatient crisis mental health systems;
- d. Expanding the options and available capacity for BOEC Operators to appropriately divert calls to qualified civilian mental health providers as first responders;
- e. Addressing issues of unmet needs identified by Safer PDX and its community partners;
- f. Expanding and strengthening networks of Peer-Mediated services to:
 - i. develop a referral guide delineating these services and locations and assist with accessing information;

- ii. better educate the community of the viability of these services as alternative first engagement sites/programs for those having difficulty engaging with “professional driven” services;
- iii. expand peer services connected to peer supports in the community for inpatient psychiatric units (including Emergency Departments) and in the community;
- iv. add peer guides to work alongside Emergency Department guides for those patients with behavioral health issues entering the Emergency Department; and
- v. evaluate opportunities to expand use of peers to coordinate with PPB ABHU (as described herein) and function as a link with impacted individuals; and
- g. pursue tele-psychiatry (a provision of mental health care by video conferencing) as a way for first responders to take advantage of existing IT infrastructure to provide direct care or provider-evaluation supporting the provision of appropriate services to an individual in crisis.

VI. CRISIS INTERVENTION

The City acknowledges that the community of consumers of mental health services, and their families and advocates, have an interest in interactions between PPB and people experiencing mental health symptoms or crises. The PPB will add new capacity and expertise to deal with persons perceived or actually suffering from mental illness, or experiencing a mental health crisis as required by this Agreement. Despite the

critical gaps in the state and local mental health system, the City and PPB must be equipped to interact with people in mental health crisis without resorting to unnecessary or excessive force.

A. Addictions and Behavioral Health Unit and Advisory Committee

91. In order to facilitate PPB's successful interactions with mental health consumers and improve public safety, within 60 days of the Effective Date, PPB shall develop an Addictions and Behavioral Health Unit ("ABHU") within the PPB. PPB shall assign command-level personnel of at least the rank of Lieutenant to manage the ABHU. ABHU shall oversee and coordinate PPB's Crisis Intervention Team ("C-I Team"), Mobile Crisis Prevention Team ("MCPT"), and Service Coordination Team ("SCT"), as set forth in this Agreement.

92. ABHU will manage the sharing and utilization of data that is subject to lawful disclosure between PPB and Multnomah County, or its successor. PPB will use such data to decrease law enforcement interactions or mitigate the potential uses of force in law enforcement interactions with consumers of mental health services.

93. ABHU shall track outcome data generated through the C-I Team, MCPT, and SCT, to: (a) develop new response strategies for repeat calls for service; (b) identify training needs; identify and propose solutions to systemic issues that impede PPB's ability to provide an appropriate response to a behavioral crisis event; and (c) identify officers' performance warranting commendation or correction.

94. Within 90 days of the Effective Date, PPB shall also establish an ABHU Advisory Committee. The ABHU Advisory Committee shall include representation from: PPB command leadership, CIT, MCPT, and SCT; BOEC; civilian leadership of

the City government; and shall seek to include representation from: the Multnomah County's Sheriff's Office; Oregon State Department of Health and Human Services; advocacy groups for consumers of mental health services; mental health service providers; coordinated care organizations; and persons with lived experience with mental health services.

95. The ABHU Advisory Committee shall provide guidance to assist the City and PPB in the development and expansion of C-I Team, MCPT, SCT, BOEC Crisis Triage, and utilization of community-based mental health services. The ABHU Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with persons who may be mentally ill or experiencing a mental health crisis, with the goal of de-escalating the potential for violent encounters. The ABHU Advisory Committee shall report its recommendations to the ABHU Lieutenant, PPB Compliance Coordinator, COCL (as described herein), and the BOEC User Board.

96. Within 240 days of the Effective Date of this Agreement, the ABHU Advisory Committee will provide status reports on the implementation of the ABHU and BOEC Crisis Triage, and identify recommendations for improvement, if necessary. PPB will utilize the ABHU Advisory Committee's recommendations in determining appropriate changes to systems, policies, and staffing.

B. Continuation of C-I Program

97. PPB provides C-I Training to all its officers. C-I is a core competency skill for all sworn police officers in the City. PPB shall continue to train all officers on C-I.

98. PPB agrees to continue to require a minimum of 40 hours of C-I training to all officers before officers are permitted to assume any independent patrol or call-response duties. Additionally, PPB shall include C-I refresher training for all officers as an integral part of PPB's on-going annual officer training. PPB's Training Division, in consultation with ABHU Advisory Committee, shall determine the subjects and scope of initial and refresher C-I training for all officers.

C. Establishing "Memphis Model" Crisis Intervention Team

99. Within 120 days of the Effective Date, PPB shall establish a Memphis Model Crisis Intervention team ("C-I Team").

100. PPB's C-I Team shall be comprised of officers who volunteer for assignment to the C-I Team. The number of C-I Team members will be driven by the demand for C-I Team services, with an initial goal of 60-80 volunteer, qualified officers.

101. No officers may participate in C-I Team if they have been subject to disciplinary action based upon use of force or mistreatment of people with mental illness within the three years preceding the start of C-I Team service, or during C-I Team service. PPB, with the advice of the ABHU Advisory Committee, shall define criteria for qualification, selection, and ongoing participation of officers in the C-I Team.

102. PPB shall specially train each C-I Team member before such member may be utilized for C-I Team operations. PPB, with the advice of the ABHU Advisory Committee, shall develop such training for C-I Team members consistent with the Memphis Model.

103. C-I Team members will retain their normal duties until dispatched for use as a C-I Team. BOEC or PPB may dispatch C-I Team members to the scene of a crisis event.

104. PPB will highlight the work of the C-I Team to increase awareness of the effectiveness of its work.

105. For each crisis event to which a C-I Team is dispatched, the C-I Team member shall gather data that ABHU shall utilize to track and report data on public safety system interactions with individuals with perceived or actual mental illness or who are in crisis. These data shall include:

- a. Date, time, and location of the incident;
- b. Subject's name, age, gender, and address;
- c. Whether the subject was armed, and the type of weapon;
- d. Whether the subject is a U.S. military veteran;
- e. Complainant's name and address;
- f. Name and DPSST number of the officer on the scene;
- g. Whether a supervisor responded to the scene;
- h. Techniques or equipment used;
- i. Any injuries to officers, subject, or others;
- j. Disposition;
- k. Whether a mental health professional responded to the scene;
- l. Whether a mental health professional contacted the subject as a result of the call; and

- m. A brief narrative of the event (if not included in any other document).

D. Mobile Crisis Prevention Team

106. PPB currently has an MCPT comprised of a two-person team, one sworn officer and one contractor who is a qualified mental health professional. Within 120 days of the Effective Date, City shall expand MCPT to provide one MCPT car per PPB precinct.

107. Each MCPT car shall be staffed by one sworn PPB officer and one qualified mental health professional. MCPT shall be the fulltime assignment of each such officer.

108. No officers may participate in MCPT if they have been subject to disciplinary action based upon use of force or mistreatment of people with mental illness within the three years preceding the start of MCPT service, or during MCPT service. PPB, with the advice of the ABHU Advisory Committee, shall define criteria for qualification, selection, and ongoing participation of officers in the MCPT.

109. PPB shall specially train each MCPT member before such member may be utilized for MCPT operations. PPB, with the advice of the ABHU Advisory Committee, shall develop such training for MCPT members.

110. MCPT shall utilize C-I Team data to proactively address mental health service, in part, by connecting service recipients with service providers.

111. Within 180 days of the Effective Date, PPB, with the advice of the ABHU Advisory Committee, shall develop policies and procedures for the transfer of custody or voluntary referral of individuals between PPB, receiving facilities, and local mental

health and social service agencies. These policies and procedures shall clearly describe the roles and responsibilities of these entities and of MCPT officers in the process.

E. Service Coordination Team

112. The Service Coordination Team (“SCT”), or its successor, shall serve to facilitate the provision of services to individuals who interact with PPB that also have a criminal record, addictions, and highly acute mental or physical health service needs.

F. BOEC

113. Within 120 days of the Effective Date, BOEC and PPB, with the advice of the ABHU Advisory Committee, shall complete policies and procedures to triage calls related to mental health issues, including changes to protocols for assigning calls to Multnomah County Crisis Call Center, and adding new or revised policies and protocols to assign calls to the PPB ABHU or directly to NGOs or community-based mental health professionals.

114. Within 180 days of the Effective Date, the City will complete training of all BOEC Dispatchers in Crisis Triage. The City, with the advice of the ABHU Advisory Committee, shall develop ongoing training for BOEC Dispatchers.

115. Within 180 days of the Effective Date, the City shall ensure Crisis Triage is fully operational to include the implementation of the policies and procedures developed pursuant to the above paragraph and operation by trained staff.

VII. EMPLOYEE INFORMATION SYSTEM

116. PPB has an existing Employee Information System (“EIS”) to identify employees and design assistance strategies to address specific issues affecting the employee. See PPB Manual 345.00. PPB agrees to enhance its EIS to more effectively

identify at-risk employees, supervisors and teams to address potentially problematic trends in a timely fashion. Accordingly, within 90 days of the Effective Date, PPB shall:

- a. Require that commanders and supervisors conduct prompt reviews of EIS records of employees under their supervision and document the review has occurred in the EIS performance tracker;
- b. Require that commanders and supervisors promptly conduct reviews of EIS for officers new to their command and document the review has occurred in the EIS performance tracker; and
- c. Require that EIS staff regularly conduct data analysis of units and supervisors to identify and compare patterns of activity.

117. PPB agrees to collect data necessary to conduct these analyses at supervisor- and team-levels.

118. PPB shall continue to use existing thresholds, and specifically continue to include the following thresholds to trigger case management reviews:

- a. Any officer who has used force in 20% of his or her arrests in the past six months; and
- b. Any officer who has used force three times more than the average number of uses of force compared with other officers on the same shift.

119. Within 90 days of the Effective Date, PPB shall add one additional threshold to trigger case management review any officer who has three uses of force in a one-month period.

120. Within 90 days of the Effective Date, PPB shall PPB identify and train a second EIS administrator. This individual may be assigned to other tasks within the Professional Standards Division or as otherwise needed.

VIII. OFFICER ACCOUNTABILITY

PPB and the City shall ensure that all complaints regarding officer conduct are fairly addressed; that all investigative findings are supported by a preponderance of the evidence and documented in writing; that officers and complainants receive a fair and expeditious resolution of complaints; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent. The City and PPB seek to retain and strengthen the citizen and civilian employee input mechanisms that already exist in the PPB's misconduct investigations by retaining and enhancing IPR and CRC as provided in this Agreement.

A. Investigation Timeframe

121. PPB and the City shall complete all administrative investigations of officer misconduct within one-hundred eighty (180) days of receipt of a complaint of misconduct, or discovery of misconduct by other means. For the purposes of this provision, completion of administrative investigations includes all steps from intake of allegations through approval of recommended findings by the Chief, including appeals, if any, to CRC. Appeals to CRC shall be resolved within 21 days.

122. PPB shall conduct administrative investigations concurrently with criminal investigations, if any, concerning the same incident. All administrative investigations shall be subject to appropriate tolling periods as necessary to conduct a

concurrent criminal investigation, or as otherwise provided by law, or as necessary to meet the CRC or PRB recommendation to further investigate.

123. If PPB is unable to meet these timeframe targets, it shall undertake and provide to DOJ a written review of the IA process, to identify the source of the delays and implement an action plan for reducing them.

B. On Scene Public Safety Statements and Interviews

124. Within 90 days of the Effective Date, the City and PPB shall review its protocols for compelled statements to PSD and revise as appropriate so that it complies with applicable law and current professional standards, pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967). The City will submit the revised protocol to DOJ for review and approval. Within 45 days of obtaining DOJ's approval, PPB shall ensure that all officers are advised on the revised protocol.

125. Separation of all witness and involved officers to lethal force events is necessary in order to safeguard the integrity of the investigation of that event. Immediately following any lethal force event, PPB shall continue to issue a communication restriction order ("CRO") to all witness and involved officers, prohibiting direct or indirect communications between those officers regarding the facts of the event. The CRO will continue, unless extended further, until the conclusion of the Grand Jury or, if no Grand Jury is convened, until a disposition is determined by the District Attorney.

126. PPB shall continue to require witness officers to lethal force events to give an on-scene briefing to any supervisor and/or a member of the Detective Division to ensure that victims, suspects, and witnesses are identified, evidence is located, and

provide any information that may be required for the safe resolution of the incident, or any other information as may be required.

127. In agreement and collaboration with the Multnomah County District Attorney, PPB shall request that involved officers in lethal force and in-custody death events provide a voluntary, on-scene walk-through and interview, unless the officer is incapacitated.

C. Conduct of IA Investigations

128. Currently, both IPR and PPB's PSD have authority to conduct administrative investigations, provided that IPR interview of PPB Officers must only be conducted jointly with IA. Within 120 days of the Effective Date, the City will develop and implement a plan to reduce time and effort consumed in the redundant interview of witnesses by both IPR and IA, and enable meaningful independent investigation by IPR, when IPR determines such independent investigation is necessary.

129. The City and PPB shall ensure that all allegations of use of excessive force are subject to full and completed IA investigations resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.

130. The City and PPB shall continue to expressly prohibit all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.

131. The City and PPB shall retain Police Review Board procedures currently utilized for purposes of investigation and making recommended findings on administrative complaints, except as outlined below:

- a. Currently, seven voting members of the PRB review use of force incidents, including two citizen members. When PRB reviews uses of force case, one of the two citizen member slots shall be drawn from the Citizen Review Committee members.
- b. The CRC slot on the PRB in use of force cases will rotate among the CRC membership so that different CRC members participate on the PRB. Within 60 days of the Effective Date, the Auditor shall develop a membership rotation protocol.
- c. All members participating in the PRB must maintain confidentiality and be able to make thoughtful, unbiased, objective recommendations to the Chief of Police and Police Commissioner that are based on facts, consistent with PRB city code provisions and “just cause” requirements set forth in Portland City Charter, City rules, and labor agreements.
- d. All community members and CRC members must meet the following qualifications to participate on the PRB:
 - i. Pass a background check performed by the Bureau.
 - ii. Participate in Bureau training to become familiar with police training and policies, including the PRB process.
 - iii. Sign a confidentiality agreement.
 - iv. Participate in ride-alongs to maintain sufficient knowledge of police patrol procedures.

- e. Current city code provides that the City Auditor and the Chief have authority to recommend to City Council the removal of citizen members from the PRB pool. Likewise, the City Auditor or Chief shall have authority to recommend to City Council removal of a CRC member from serving on the PRB. The Chief or the City Auditor may recommend that City Council remove a community member or member of the CRC from the pool for the following reasons:
 - i. Failure to attend training;
 - ii. Failure to read Case Files;
 - iii. Objective demonstration of disrespectful or unprofessional conduct;
 - iv. Repeated unavailability for service when requested;
 - v. Breach of confidentiality;
 - vi. Objective demonstration of bias for or against the police; or
 - vii. Objective demonstration of conflict of interest.
- f. Removal from participation in the PRB shall not affect CRC membership.
- g. Like current PRB citizen members, CRC members serving on the PRB may serve in that capacity for no more than three (3) years.
- h. A CRC member who participates in a PRB review shall recuse himself/herself during any later appeal of the same allegation(s) to the CRC.

132. By majority vote, the PRB may request that investigations of misconduct be returned to its investigating entity, i.e. PSD or IPR, to complete the investigation as to factual matters necessary to reach a finding regarding the alleged misconduct. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the PRB explaining why additional time is needed.

133. If an officer's use of force gives rise to a finding of liability in a civil trial, PPB shall: (1) enter that civil liability finding in the EIS; (2) reevaluate the officer's fitness to participate in all current and prospective specialized units ; (3) if no IA investigation has previously been conducted based upon the same allegation of misconduct and reached an administrative finding, conduct a full IA investigation with the civil trial finding creating a rebuttable presumption that the force used also violated PPB policy, which presumption can only be overcome by specific, credible evidence by a preponderance of evidence; (4) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, identify whether any new evidence exists in the record of the civil trial to justify the reopening of the IA investigation, and if so, reinstate an IA investigation; and (5) if an IA investigation has already concluded based upon the same allegation of misconduct and failed to reach a sustained finding, and no new evidence from the civil trial justifies reopening the IA investigation, work with IPR to identify the reason why the administrative finding was contrary to the civil trial finding and publish a summary of the results of the inquiry.

D. CRC Appeals

134. The City shall expand the membership of the CRC to 11 members, representative of the many and diverse communities in Portland, who are neutral, unbiased, and capable of making objective decisions. The quorum of CRC members necessary to act may remain at its existing level.

135. The City and PPB agree that the CRC may find the outcome of an administrative investigation is unreasonable if the CRC finds the findings are not supported by the evidence.

136. In its review process for purposes of the appeal, the CRC may make one request for additional investigation or information to the investigating entity, i.e. PSD or IPR at any point during its review. The investigating entity must make reasonable attempts to conduct the additional investigation or obtain the additional information within 10 business days or provide a written statement to the CRC explaining why additional time is needed. The request for additional investigation or information may contain multiple points of inquiry, but no follow-up requests will be permitted. The additional request be voted on by a quorum, the members voting must have read the Case File in order to vote, and any request with multiple points of inquiry must be prioritized.

E. Discipline

137. Within 60 days of the Effective Date, PPB and the City shall develop and implement a discipline guide to ensure that discipline for sustained allegations of misconduct is based on the nature of the allegation and defined, consistent, mitigating and aggravating factors and to provide discipline that is reasonably predictable and consistent.

F. Communication with Complainant and Transparency

138. Within 180 days of the Effective Date, the City shall enhance its existing website to ensure that a complainant can file and track his or her own complaint of officer misconduct.

139. Within 120 days of the Effective Date, the City shall review its protocols to ensure that the City shares with complainants requested documentation about his or her own complaint to the extent permitted by law.

140. The City shall ensure that IPR provides each complainant a tracking number upon receipt of the complaint, informs each complainant of the complaint classification, assignment (precinct or IA) and outcome of the complaint (sustained, unproven, etc.) in writing (whether mail, email/text, or fax), including information regarding whether the City took any corrective action. The City Attorney's Office shall determine whether disclosures regarding corrective action are required on a case-by-case basis consistent with Oregon's Public Records Law.

**IX. COMMUNITY ENGAGEMENT AND CREATION OF COMMUNITY
OVERSIGHT ADVISORY BOARD**

There is significant community and City interest in improving PPB's community relationships. The community is a critical resource. Redefining and restructuring existing community input mechanisms to provide for independent oversight of the Agreement, while also enhancing PPB's current community outreach efforts will promote community confidence in PPB and facilitate police/community relationships necessary to promote public safety. To achieve this outcome, at a minimum, PPB shall implement the requirements below.

141. To leverage the ideas, talent, experience, and expertise of the community, the City, in consultation with DOJ, shall establish a Community Oversight Advisory Board (“COAB”), within 90 days of the Effective Date of this Agreement. The COAB shall be authorized to: (a) independently assess the implementation of this Agreement; (b) make recommendations to the Parties and the COCL on additional actions; (c) advise the Chief and the Police Commissioner on strategies to improve community relations; (d) provide the community with information on the Agreement and its implementation; (e) contribute to the development and implementation of a PPB Community Engagement and Outreach Plan (“CEO Plan”); and (f) receive public comments and concerns.

142. Membership of the COAB shall be comprised of fifteen (15) voting members, five (5) advisory members, and the COCL.

- a. The 15 voting members and the five advisory members shall be selected as follows:
 - i. Each member of City Council will select one representative to serve on the COAB, for a total of five voting representatives;
 - ii. The chair of the Human Rights Commission shall designate one Human Rights Commissioner to serve on the COAB;
 - iii. The chair of the Portland Commission on Disability shall designate one Commissioner on Disability to serve on the COAB;
 - iv. The chair of the Human Rights Commission and the chair of the Portland Commission on Disability shall jointly

select three community members to serve as representatives of the mental health community on the COAB, after soliciting and reviewing applications from the public.

These three COAB members will possess demonstrated expertise in the field of mental health in the form of either:

(a) certification as a Qualified Mental Health Professional; or (b) no less than ten (10) years of demonstrated service to persons with mental illness. These three selections shall be completed within 60 days of the COCL selection.

v. The community-at-large will select five voting representatives directly from the community. The process used for this selection is discussed in paragraph 145 herein; and,

vi. The Chief will select a diverse group of five sworn officers within various ranks to serve as advisors and non-voting members of the COAB, and may consider whether the officer resides in Portland (“Advisory Members”).

b. The COAB’s membership will come from a reasonably broad spectrum of the community, such as: areas of expertise, advocacy experience, community involvement, profession, education, race, ethnicity, gender, gender identity, sexual orientation, national origin, age, religion, mental or physical disability and geographic identification. COAB members, including Advisory Members,

must live, work, worship, or attend school in the City of Portland.

COAB members shall not have an actual or perceived conflict of interest with the City of Portland.

143. The 15 voting members of COAB are independent of the City and PPB and shall not be currently employed by the City. Members must agree to serve for a minimum of a two-year term, and may be reappointed for one additional year. The COAB may create an executive committee or other subcommittees, as appropriate, to accomplish the tasks designated to it under this Agreement. The City shall provide administrative support so that the COAB can perform the duties and responsibilities identified in this Agreement.

144. The COAB shall report to the COCL. The COCL will chair the COAB, preside over COAB meetings, take and count votes, and perform such other activities as are necessary for the efficient operation of the COAB. If the COCL determines that a COAB member is no longer fit to serve on account of misconduct, the COCL shall consult with DOJ prior to removing such member. Following the removal of a COAB member, an alternative shall be selected from the same pool of applicants as the removed COAB member.

145. Selection of the five (5) community voting members shall be made as follows:

- a. Each neighborhood coalition in Portland may propose a candidate for membership on the Committee. Any other non-profit organization within the City may also propose a candidate for membership. Any other person who lives, works, or is enrolled in

school in Portland and is over the age of 15 may be considered provided they provide the City with the names of 50 verified residents over the age of 15 of the City of Portland who support his or her nomination;

- b. The City shall widely advertise and hold a public meeting where previously nominated candidates will be selected. Any Portland resident is welcome to attend and participate in the selection process. The City will publicize the meeting throughout all the various communities of Portland;
- c. At the public meeting, candidates will be given an opportunity to speak and ask for support. In their statements, candidates must indicate whether they live, work, worship, and/or attend school within the City of Portland;
- d. Attendees at the public meeting and will be asked to select their choice of candidates;
 - i. If there are ten or fewer candidates, then the attendees present will select the top five candidates receiving the most votes;
 - ii. If there are more than ten candidates, a preliminary vote will be taken and the top ten candidates receiving the most votes will be selected and a second vote will be taken to reduce the number to the five persons that will serve on the COAB;

- iii. The next two candidates who receive the most votes shall be identified as potential alternates, should a COAB member be removed or incapacitated; and,
- iv. Because the number of persons who may be interested in participating in this process is unknown, the City may adopt other procedures necessary to conduct the meeting and to carry out the intent of these provisions.
- e. This process of selecting the five community members shall be completed within 60 days of the COCL selection.

146. To ensure constitutional policing, to closely interact with the community to resolve neighborhood problems, and to increase community confidence, PPB shall work with City resources knowledgeable about public outreach processes to develop and finalize a CEO Plan:

- a. Within 90 days of the COAB selection, the City, in consultation with COAB, will conduct a reliable, comprehensive, and representative survey of members of the Portland community, including civilians and PPB officers, regarding their experiences with and perceptions of PPB's prior community outreach efforts and accountability efforts and where those efforts could be improved, to inform the development and implementation of the CEO Plan;
- b. COAB, in conjunction with PPB, shall consult with community members (not only through PPB Advisory Councils and

Roundtables) and hold at least two (2) public hearings, completed within 90 days of the COAB selection, in addition to the representative survey described above, to gather public input on PPB's outreach efforts; the hearings shall be held in locations to ensure that PPB receives input from all parts of the Portland community;

- c. COAB shall review PPB's prior community outreach efforts to contribute to the development of a new CEO Plan;
- d. COAB shall solicit and consider input from the Human Rights Commission's Community Police Relations Committee ("CPRC"), including its work to implement the 2009 PPB "Plan to Address Racial Profiling";
- e. Within 60 days of the anticipated due date for survey results, the COAB and PPB, in consultation with the appropriate City resources knowledgeable about public outreach and survey analysis, shall review and analyze the results of the survey and other public comments discussed above;
- f. The CEO Plan shall include strategies to ensure greater public outreach and engagement, including opportunities for outreach to a broad cross-section of community members. The Plan shall also identify gaps in available resources to achieve its goals.

- g. The COAB may also provide information to the PPB on other areas related to community engagement and outreach to contribute to the development of the CEO Plan, including:
 - i. integration of community and problem-oriented policing principles into PPB's management, policies and procedures;
 - ii. recruitment, selection, training, promotion, and personnel evaluations;
 - iii. tactics and deployment of resources; and
 - iv. systems of accountability.
- g. COAB shall submit its recommended CEO Plan to the Chief, in writing, within 90 days of the COAB's completion of survey analysis.
- h. The Chief's Office, in consultation with the five PPB advisory members of the COAB shall utilize the COAB's recommendations in developing and implementing the CEO Plan. The Chief's Office shall present the final proposed CEO (with implementation timeline) to the COAB for a vote of approval within 240 days of the effective date of this Agreement.

147. PPB shall continue to collect appropriate demographic data for each precinct so that the Precinct Commander, together with the COAB, may develop outreach and policing programs specifically tailored to the residents of the precincts.

148. PPB shall continue to require that officers document appropriate demographic data regarding the subjects of police encounters, including the race, age, sex and perceived mental health status of the subject, and provide such information to the CPRC to contribute to their analysis of community concerns regarding discriminatory policing. In consultation with the COAB and CPRC, PPB shall consider enhancements to its data collection efforts, and report on its efforts to enhance data collection to the DOJ by no later than December 31, 2013, and quarterly thereafter.

149. The COAB, COCL, PPB, and DOJ will jointly develop metrics to evaluate community engagement and outreach.

150. Annually, PPB shall issue a publicly available PPB Annual Report, which shall include a summary of its problem-solving and community policing activities. A draft of the Annual Report shall be reviewed by the COAB before the report is finalized and released to the public. Once released, PPB shall hold at least one meeting in each precinct area and at a City Council meeting, annually, to present its Annual Report and to educate the community about its efforts in community policing in regard to the use of force, and about PPB's policies and laws governing pedestrian stops, stops and detentions, and biased-free policing, including a civilian's responsibilities and freedoms in such encounters.

151. The COAB may make recommendations approved by a majority of its membership regarding implementation of the terms of this Agreement.

152. The COAB, shall meet at least twice per year with the Chief, the Police Commissioner, PPB Precinct Commanders, PPB Neighborhood Response Teams, and a representative of the Office of Neighborhood Involvement Crime Prevention to assess

and solicit comment on PPB's activities in regards to community outreach, engagement, and problem-solving policing. The COAB shall also provide the opportunity for public comment at each of its meetings to keep open lines of communication with the public-at-large.

153. A representative of the Oregon U.S. Attorney's Office shall be invited to attend all COAB meetings.

154. COAB shall meet as needed to accomplish their objectives as set forth in this Agreement. All COAB meetings shall be open to the public. In addition, COAB shall attend quarterly meetings with the COCL as provided in Par 163. To the extent that COAB meetings are subject to the Oregon Public Meetings Law, or similar regulatory or statutory requirements, the City shall be responsible to give advice necessary to the COCL to ensure compliance with those laws and agrees to represent COCL in any challenges regarding compliance with those laws.

155. The City shall provide COAB members with appropriate training necessary to comply with requirements of City and State law.

X. AGREEMENT IMPLEMENTATION AND ENFORCEMENT

156. PPB shall implement immediately all provisions of this Agreement which involve the continuation of current policies, procedures, and practices specific to force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement. Except where otherwise specifically indicated, PPB shall implement all other provisions of this Agreement no later than within 180 days of the Effective Date.

157. With regard to any provision that provides for DOJ's review and approval, including review of all policies that must be revised, approval will be granted in a timely fashion provided that the PPB's action reasonably satisfies the requirements and standards set forth in the relevant provision(s).

158. All PPB audits and reports related to the implementation of this Agreement shall be made publicly available via website and at PPB, IPR, City Hall, and other public locations. Audits and reports shall be posted on PPB's website.

159. PPB shall collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to PPB decision making and activities, and compliance with this Agreement, in accordance with the Oregon Public Records Law.

A. Compliance Officer/Community Liaison

160. Within 60 days from the Effective Date, the City shall publicly identify three potential candidates with expertise in police practices, community engagement, and crisis intervention methods, to serve as a Compliance Officer and Community Liaison ("COCL"). Following a 30-day public comment period, the City Council shall select a COCL, who shall be responsible for synthesizing data related to PPB's use of force, reporting to the City Council, DOJ, and the public and gathering input from the public related to PPB's compliance with this Agreement. The COCL shall not be attached to any one City office, shall be wholly independent of PPB, and shall be responsive to the entire City Council, the public, and DOJ. The City shall provide administrative support so that the COCL can perform the duties and responsibilities identified in this Agreement.

161. In order to collect data and report on PPB's implementation of each substantive provision of this Agreement, the COCL shall conduct the reviews specified in paragraph 173 of this Agreement and such additional reviews regarding the implementation of this Agreement as the COCL, the City, or DOJ deems appropriate. Based on the COCL's reviews and community input, the COCL shall make recommendations to the City regarding measures necessary to ensure full and timely implementation of this Agreement.

162. The COCL shall prepare quarterly, written, public reports detailing PPB's compliance with, and implementation of, each substantive provision of this Agreement. The reports shall specify: (a) the methodology and monitoring activities employed; (b) the COCL's assessment of compliance for each paragraph; and (c) the COCL's recommendations regarding necessary steps to achieve compliance, as warranted. The COCL shall substantiate his or her compliance assessments and recommendations. The COCL's reports shall be written with due regard for the privacy interests of individual officers and the subjects involved in the use of force interactions, and the interest of PPB in protecting against disclosure of non-public information.

163. The COCL shall provide a copy of all reports to the Parties and the COAB in draft form and allow the Parties and the COAB 30 days to informally comment on the reports. The COCL shall also hold open town hall meetings on a quarterly basis where he/she will present his/her draft compliance report to the COAB, and receive public comment on his/her assessments of compliance and recommendations. The COAB will be responsible for drafting comments to the COCL's report, and shall incorporate any comments or concerns from the public-at-large related to PPB's compliance with the

Agreement into its comments. The public shall have the opportunity to raise comments or concerns at the open town hall meeting or via online and/or electronic mail submissions. The COCL and COAB shall jointly ensure that the time and location of these quarterly town hall meetings are well publicized with sufficient advance notice and that significant efforts are made to procure attendance of a community body broadly representative of the many and diverse communities in Portland, including persons with mental illness, mental health providers, faith communities, minority, ethnic, and other community organizations, and student or youth organizations. These quarterly meetings shall facilitate the sharing of information on the Agreement and its implementation with the broad community body and permit the COCL and the COAB to receive comments and concerns.

164. The COCL shall consider the Parties' responses and COAB's response to its draft report and make appropriate changes, if any, before issuing a final version of the report. The COCL shall issue the final report to the Parties and make all final reports publicly available through posting on the City's website. The Parties' responses and COAB's response to the COCL's draft report shall also be published on the City's website. The Parties may submit any COCL reports to the Court if questions arise concerning compliance with this Agreement. The Parties agree that COCL reports may be used to evidence compliance or non-compliance with this Agreement, subject to the weight afforded to such reports by the Court.

B. PPB Compliance Coordinator

165. PPB will hire or retain an employee familiar with the operations of PPB for the duration of this Agreement, to serve as a PPB Compliance Coordinator. The

Compliance Coordinator will serve as a liaison between PPB and both the COCL and DOJ and will assist with PPB's compliance with this Agreement. At a minimum, the Compliance Coordinator will:

- a. Coordinate PPB's compliance and implementation activities;
- b. Facilitate the provision of data, documents, materials, and access to PPB personnel to the COCL and DOJ, as needed;
- c. Ensure that all documents and records are maintained as provided in this Agreement;
- d. Assist in assigning compliance tasks to PPB personnel, as directed by the Chief of Police or the Chief's designee; and
- e. Take primary responsibility for collecting the information the COCL requires to carry out his/her assigned duties.

C. Access to People and Documents

166. The COCL shall have full and direct access to all PPB and City staff, employees, facilities, and documents that the COCL reasonably deems necessary to carry out his/her duties. If a document requested by the COCL is a privileged attorney-client communication, the COCL shall not disclose the document in a manner that destroys that privilege without the approval of the City Attorney. The COCL shall cooperate with PPB and the City to access people, facilities, and documents in a reasonable manner that minimizes, to the extent possible, interference with daily operations. In order to report on PPB's implementation of this Agreement, the COCL shall regularly conduct reviews to ensure that PPB implements and continues to implement all measures required by this

Agreement. The COCL may conduct on-site reviews without prior notice to PPB or the City.

167. For the purpose of monitoring this Agreement, DOJ and its consultative experts and agents shall have full and direct access to all PPB and City staff, employees, facilities, and documents, that DOJ reasonably deems necessary to carry out the enforcement and monitoring provisions of this Agreement to the extent permitted by law. DOJ and its consultative experts and agents shall cooperate with PPB and the City to access involved personnel, facilities, and documents in a reasonable manner that minimizes interference with daily operations; however, DOJ may conduct on-site reviews without prior notice to PPB or the City. DOJ shall provide PPB or the City with reasonable notice of a request for copies of documents. Upon such request, PPB or the City shall provide DOJ with copies (electronic, where readily available) of any documents that DOJ is entitled to access under this Agreement, except any documents protected by the attorney-client privilege. Should PPB decline to provide DOJ with access to a document based on attorney-client privilege, PPB promptly shall provide DOJ with a log describing the document, including its author, recipients, date of production, and general topic.

168. All non-public information provided to the COCL or DOJ by PPB or the City shall be maintained in a confidential manner. Nothing in this Agreement requires the City to disclose documents protected from disclosure by the Oregon Public Records Law to third parties.

D. Review of Policies and Investigations

169. Within 180 days of the Effective Date, PPB shall revise and/or develop its policies, procedures, protocols, training curricula, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreement specific to force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement. PPB shall revise and/or develop as necessary other written documents such as handbooks, manuals, and forms, to effectuate the provisions of this Agreement. PPB shall send new or revised policies, procedures, protocols, and training curricula regarding use of force, interactions with persons in mental health crisis and systems of accountability to DOJ as they are promulgated, with a copy to the COCL. DOJ and the COCL will provide comments within 45 days and will not unreasonably withhold recommendations about policies, procedures, protocols, and training curricula. The COCL shall seek the timely input of the relevant members of the Training Division and patrol officers, as well members of the community. If the City disagrees with DOJ's comments, the City shall, within 14 days of being informed of the DOJ's comments, inform the Parties in writing of the disagreement. Within 14 days thereafter, the Parties shall meet and confer on the disagreement at a mutually agreeable time. Upon approval by the Parties, policies, procedures, training curricula, and manuals shall be implemented within 30 days of agreement or the Court's decision. PPB shall provide initial and in-service training to all officers and supervisors with respect to newly implemented or revised policies and procedures. PPB shall document employee review of and training in new or revised policies and procedures.

170. The Chief shall post on PPB's website final drafts of all new or revised policies that are proposed specific to force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement, to allow the public an opportunity for notice and comment, prior to finalizing such policies.

171. The Chief's Office shall coordinate a review of each policy or procedure required by this Agreement 180 days after such policy or procedure is implemented, and annually thereafter (on a regularly published schedule), to ensure that such policy or procedure provides effective direction to PPB personnel and remains consistent with the purpose and requirements of this Agreement.

172. PPB shall apply policies uniformly and hold officers accountable for complying with PPB policy and procedure.

173. In addition to compliance reviews, the COCL shall lead semi-annual qualitative and quantitative outcome assessments to measure whether the City and PPB's implementation of this Agreement has created: (1) capable systems and resources for responding to persons in mental health crisis; (2) competent accountability and oversight systems; (3) effective training for police officers that increases the knowledge, skills and abilities necessary for effective and successful delivery of service to persons in mental health crisis; (4) proper management of the use of force to meet constitutional standards; and (5) robust systems of community engagement. These outcome assessments shall be informed by the following:

- a. Use of Force Data:
 - i. the number of police interactions where force was used on individuals with actual or perceived mental illness, including the type of force used; the reason for the interaction, i.e., suspected criminal conduct or a well-being check; the threat to public safety, including whether the person was armed and if so, with what; a description of the type of resistance offered, if any; and a description of any attempts at strategic disengagement;
 - ii. the rate of force used per arrest by PPB; force implement used; geographic area (i.e., street address, neighborhood, or police precinct or district); type of arrest; and demographic category;
 - iii. the rate of force complaints that are sustained, overall and by force type; source of complaint (internal or external); type of arrest; type of force complained of; demographic category;
 - iv. uses of force that were found to violate policy overall and by force type; type of arrest; demographic category; force implement used; and number of officers involved;
 - v. the number and rate of use of force administrative investigations/reviews in which each finding is supported by a preponderance of the evidence;

- vi. the number of officers who frequently or repeatedly use force, or have more than one instance of force found to violate policy;
 - vii. the rate at which ECW usage decreases or increases compared to the use of force overall and by weapon; and
 - viii. the rate at which officer and subject injuries decrease or increase overall and by severity of injury.
- b. Mental health interaction data on:
- i. MCPT dispositions;
 - ii. the flow of people in mental health crisis through PPB, the County jail, emergency receiving facilities, and community agencies;
 - iii. officer and agency staff satisfaction with the transfer process;
 - iv. the rate of repeat calls for service involving individuals in mental health crisis;
 - v. the use of the mental health commitment law; and
 - vi. the availability of appropriate treatment options;
- c. Training data, including:
- i. officer evaluation of adequacy of training; and
 - ii. the Training Division's assessment of incidents involving officer or civilian injury.
- d. Performance data, including:

- i. uses of force found to be unreasonable, complaints sustained and not sustained, and other performance related indicators for supervisors/commanders promoted pursuant to the requirements of this Agreement, and for the units these supervisors/commanders command; and
 - ii. initial identification of officer violations and performance problems by supervisors, and effectiveness of supervisory response.
- e. Accountability data, including:
 - i. the number of complaints (broken out by type of complaint), with a qualitative assessment of whether any increase or decrease appears related to access to the complaint process;
 - ii. rate of sustained, not sustained, exonerated complaints;
 - iii. the number and rate of complaints in which the finding for each allegation is supported by a preponderance of the evidence;
 - iv. the number of officers who are subjects of repeated complaints, or have repeated instances of sustained complaints; and
 - v. the number, nature, and settlement amount of civil suits against PPB officers regardless of whether the City is a defendant in the litigation.

174. In conducting these outcome assessments, the COCL may use any relevant data collected and maintained by PPB, provided that it has determined, and the Parties agree, that this data is reasonably reliable and complete. Additionally, the COCL shall solicit input from community groups or initiatives that have relevant experience conducting statistical analyses. The COCL will contribute to and review the Annual Community Survey.

175. Two years after the Effective Date, DOJ shall conduct a comprehensive assessment to determine whether and to what extent the outcomes intended by the Agreement have been achieved. DOJ will further examine whether any modifications to the Agreement are necessary in light of changed circumstances or unanticipated impact (or lack of impact) of the Agreement's requirements. This assessment also shall address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating full and effective compliance. Based upon this comprehensive assessment, DOJ may recommend modifications to the Agreement that are necessary to achieve and sustain intended outcomes. Where the City agrees with DOJ's recommendations, the Parties shall stipulate to modify the Agreement accordingly. Nothing in this assessment shall empower DOJ to unilaterally modify the terms of this Agreement.

E. City Reports and Records

176. Beginning with the COCL's first quarterly report, as set forth in paragraph 166 of this Agreement, PPB shall prepare a status report no later than 45 days before the COCL's quarterly report is due. The PPB Compliance Coordinator shall lead the effort in preparing this status report and shall provide copies to the COCL, DOJ, and the public.

PPB's report shall delineate the steps taken by PPB during the reporting period to comply with each provision of this Agreement.

177. PPB shall maintain all records, as applicable, necessary to document their compliance with the terms of this Agreement and all documents expressly required by this Agreement.

F. Enforcement

178. The Parties agree jointly to file this Agreement with the United States District Court for the District of Oregon, in a matter to be captioned *United States v. City of Portland*, Civil Action No. --CV--. The joint motion shall request that the Court enter the Agreement pursuant to Federal Rule of Civil Procedure 41(a)(2), and conditionally dismiss the complaint in this action with prejudice, while retaining jurisdiction to enforce the Agreement. If the Court does not retain jurisdiction to enforce the Agreement, the Agreement shall be void.

- a. The Parties anticipate that the City will have substantially complied with all provisions of the Agreement by October 12, 2017. Substantial compliance is achieved if any violations of the Agreement are minor or occasional and are not systemic.
- b. The Court shall retain jurisdiction of this action for all purposes until the City has substantially complied with all provisions of this Agreement and maintain substantial compliance with all provisions for one year.
- c. The Parties may agree to jointly ask the Court to terminate the Agreement before the end of the five year term, provided the City

has substantially complied with all provisions of the Agreement and maintained substantial compliance with all provisions for one year. If the case has not yet been dismissed, the Parties agree to ask the Court for a non-evidentiary hearing on the status of compliance on or near October 12, 2017. If the Parties agree that there is non-compliance, or if there is a dispute about compliance, the Parties will so inform the Court, and the Court may set additional hearing dates as appropriate. The Parties may agree jointly at any time to allow for additional time to resolve compliance issues.

179. The United States acknowledges the good faith of PPB and the City in trying to address the remedial measures that are needed to promote police integrity and ensure constitutional policing in the City. The United States, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that PPB or the City have failed to fully comply with any provision of this Agreement.

180. The United States understands that many portions of this Agreement will take time to implement and that implementation may require changes to, among other things, collective bargaining agreements, the city code, and current city policies and will likely require additional revenue resources that have not yet been identified at the time this Agreement is executed.

181. If the United States reasonably believes the City has failed to implement the terms of the Agreement, it shall promptly notify the City in writing and identify with specificity the portion or portions of the Agreement about which it has concerns.

Similarly, if the City believes that DOJ has misinterpreted a provision of this Agreement it may promptly notify DOJ of its concerns, noting the specific portions of the Agreement that it believes has been misinterpreted.

182. Notices provided by the United States or by the City shall be in writing and provided by mail to the following persons:

Chief of Police
1111 SW Second
Portland, Oregon 97204

City Attorney
1221 SW 4th Avenue, Suite #430
Portland, Oregon 97204

Section Chief
Special Litigation Section
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

U.S. Attorney
District of Oregon
1000 S.W. Third Ave., Suite 600
Portland, OR 97204

183. Following receipt by mail of any written Notice, the City or DOJ shall respond in writing within 30 days to the concerns raised by the other Party. Depending on the nature and number of the concerns the City or DOJ may request additional time to respond, and such a request shall not be unreasonably denied. The Notice and the Party's Response thereto shall be considered to be in the nature of settlement discussions between the Parties and subject to Federal Rule of Procedure 408.

184. If the Response fails to resolve the other Party's concerns, the Parties agree to meet as soon thereafter as is mutually convenient to discuss the City's compliance with the portion(s) of the Agreement identified in the Notice or the interpretation of the Agreement by DOJ. Persons attending the meeting shall have authority to resolve the concerns, unless resolution of the concern requires adoption of an ordinance or resolution by City Council or by the Assistant Attorney General in Charge of the DOJ Civil Rights Division.

185. If a meeting between the Parties fails to resolve the concerns, the Parties agree to participate in mediation conducted by a neutral third party mutually agreeable to the Parties. If the Parties cannot agree upon the selection of a mediator, the Parties shall submit three names of potential mediators to each other. Each Party may then strike two of the three names provided by the other Party. The remaining two names shall be given to the Chief Judge of the U.S. District Court for the District of Oregon and the Chief Judge shall appoint the mediator from one of the names provided.

186. If mediation fails to resolve the concerns, the United States or the City may file a Motion in the Federal District Court for the District of Oregon, located in Portland, Oregon, to enforce compliance with the terms of this Agreement or to seek a Declaration of the meaning of this agreement. The Motion or request for Declaration shall only allege concerns raised by the Parties which were the subject of mediation. The Parties shall then meet with the court to schedule a date on which the Motion or Declaration shall be heard or will otherwise comply with the court's preferred procedure. The Parties agree the Judge hearing the Motion shall determine whether or not the Agreement has been breached and may interpret the meaning of the Agreement and has the power to issue an appropriate remedy, if any. If, for any reason, the Judge finds the City is not in compliance with the Agreement, but that noncompliance was beyond the reasonable control of the City, the City shall not be in breach of this Agreement. However, in the event of noncompliance beyond the reasonable control of the City, the Parties agree that the Court may exercise its equitable powers to devise an appropriate remedy or modification of this Agreement to accomplish the same result as that intended

by the portion of the Agreement with which noncompliance was found, provided the Parties cannot reach agreement on the remedy or modification.

187. Nothing prohibits the Parties from engaging in any informal or formal discussions regarding this Agreement or the City's compliance with this Agreement. The Parties may jointly stipulate to make changes, modifications, and amendments to this Agreement, which shall be effective, absent further action from the Court, 45 days after a joint motion has been filed with the Court. Any modification of this Agreement by the City of Portland must be approved by the City Council of the City by written ordinance.

188. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any City, county, or state court, removal to a federal court shall be sought by the Parties.

189. The PPB and the City agree to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining. The City agrees to keep DOJ apprised of the status of the resulting negotiations.

190. All PPB officers and persons related to the implementation of this Agreement shall sign a statement indicating that they have read and understand this Agreement within 90 days of the effective date of this Agreement. Such statement shall be retained by PPB. PPB shall require compliance with this Agreement by their respective officers, employees, agencies, assigns, or successors.

RESPECTFULLY SUBMITTED this 17th day of December 2012.

FOR THE UNITED STATES:

ERIC HOLDER
Attorney General

<u>/s/ S. Amanda Marshall</u> S. AMANDA MARSHALL United States Attorney District of Oregon ADRIAN L. BROWN BILLY J. WILLIAMS Assistant United States Attorneys	<u>/s/ Thomas E. Perez</u> THOMAS E. PEREZ Assistant Attorney General Civil Rights Division JONATHAN M. SMITH Chief Special Litigation Section LAURA COON Special Counsel R. JONAS GEISSLER MICHELLE JONES Senior Trial Attorneys

FOR THE CITY OF PORTLAND <u>/s/ Sam Adams</u> SAM ADAMS Mayor Police Commissioner	APPROVED AS TO FORM: <u>/s/ James H. Van Dyke</u> JIM VAN DYKE City Attorney

APPROVED and ORDERED this _____ day of _____, 2012.

HONORABLE
United States District Judge
District of Oregon

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case No. 3:12-cv-02265-SI

**ORDER ENTERING SETTLEMENT
AGREEMENT, CONDITIONALLY
DISMISSING LITIGATION, AND
SETTING FIRST ANNUAL
SETTLEMENT-COMPLIANCE
HEARING**

S. Amanda Marshall, United States Attorney; Adrian L. Brown and Billy J. Williams, Assistant United States Attorneys, David W. Knight, Special Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, District of Oregon, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204. Jocelyn Samuels, Acting Assistant Attorney General; Jonathan M. Smith, Chief; Laura Coon, Special Counsel; R. Jonas Geissler and Michelle Jones, Senior Trial Attorneys, Special Litigation Section, Civil Rights Division, UNITED STATES DEPARTMENT OF JUSTICE, 50 Pennsylvania Avenue, NW, Washington, D.C. 20530. Of Attorneys for Plaintiff.

Tracey Pool Reeve, City Attorney; David Woboril, Senior Deputy City Attorney; Ellen Osoinach, Deputy City Attorney, OFFICE OF THE CITY ATTORNEY, 1221 S.W. Fourth Avenue, Room 430, Portland, OR 97204. Of Attorneys for Defendant.

Anil S. Karia, TEDESCO LAW GROUP, 3021 N.E. Broadway, Portland, OR 97232. Of Attorneys for Intervenor-Defendant Portland Police Association.

J. Ashlee Albies, CREIGHTON & ROSE, P.C., 500 Yamhill Plaza Building, 815 S.W. Second Avenue, Portland, OR 97204; Shauna M. Curphey, CURPHEY & BADGER, P.A., 520 S.W. Sixth Avenue, Suite 1040, Portland, OR 97204. Of Attorneys for Enhanced Amicus Curiae Albina Ministerial Alliance Coalition for Justice and Police Reform.

Michael H. Simon, District Judge.

The United States of America (“Plaintiff” or “United States”) brought this lawsuit against the City of Portland (“Defendant” or “City of Portland”) under 42 U.S.C.

§ 14141. The United States and the City of Portland have entered into a proposed Settlement Agreement (“Settlement Agreement”) and have jointly moved the Court to accept the Settlement Agreement and enter the Settlement Agreement as an Order of the Court. Both the United States and the City of Portland agree that entering into the Settlement Agreement, rather than engaging in contested litigation, is the best way to resolve the claims brought by the United States in this matter, which concern policing practices in the City of Portland primarily with respect to persons with actual or perceived mental illness. Both the United States and the City of Portland further agree that it will likely take several years, possibly as many as five years, for the City of Portland substantially to comply with all of the provisions of the Settlement Agreement. In addition, both the United States and the City of Portland jointly ask the Court to retain jurisdiction over this action for all purposes until the City of Portland substantially has complied with all provisions of the Settlement Agreement and maintained substantial compliance with all provisions for one year.

At the Court’s request, the United States, the City of Portland, Intervenor-Defendant Portland Police Association (“PPA”), and Enhanced Amicus Curiae Albina Ministerial Alliance Coalition for Justice and Police Reform (“AMA Coalition”) engaged in mediation. The mediation produced two separate agreements: a Memorandum of Agreement (“MOA”) between the United States, the City of Portland, and the PPA; and a

Collaborative Agreement (“CA”) between the United States, the City of Portland, and the AMA Coalition.

The question before the Court is whether the Settlement Agreement, as a whole, is fair, adequate, and reasonable as a means of resolving the claims raised in the Complaint. To assist the Court in answering that question, the Court held a Fairness Hearing on February 18 and 19, 2014, and received written submissions and oral testimony from the United States, the City of Portland, Intervenor-Defendant PPA, Enhanced Amicus Curiae AMA Coalition (collectively the “Parties”), and numerous members of the public, pre-hearing, during the hearing, and post-hearing.

Following the Fairness Hearing, the Court directed several questions to the Parties. One question asked by the Court was:

Question 12: A number of police departments provide officers with “on-officer recording systems” (also known as “body cameras,” “body cams,” or “cop cams”), which are small, pager-sized cameras that clip onto an officer’s uniform or glasses or are worn as a headset. These devices record audio and video of the officer’s interactions with the public. Please explain whether requiring these devices would promote the objectives of the Agreement and, if so, why such a requirement was not included.

ECF No. 61, pp. 7-8. In response to this question, the United States stated:

The United States has not required that all PPB officers wear body cameras, but the Agreement does not prohibit the City from using body cameras. Currently, the City records many of its interactions through mobile video recorders, handheld radio transmissions, and GPS locations. *It is our understanding that the City is willing to engage in use of body cameras to the extent that the technology is dependable and that its use is affordable.* If the City utilizes body cameras, the City must carefully govern their use to protect the rights of subjects and bystanders, *e.g.*, providing *Miranda* warnings when appropriate and respecting reasonable expectations of privacy.

The determination to include or exclude body cameras from the Agreement is driven by a number of factors. While technology

limitations, concerns about privacy rights, and appropriateness of remedy may weigh on such considerations, the ultimate compromise reached in this case is the product of negotiation and subject to settlement privilege.

ECF No. 63, pp. 20-21 (emphasis added). The Court notes that as the technology in this area continues to improve and become more dependable and affordable, more city police departments in the United States are choosing to employ this technology in ways that protect both law enforcement officers and the public they serve. Notwithstanding these positive developments, the fact that the Settlement Agreement does not contain such a requirement does not justify the rejection of the Settlement Agreement.

After reviewing the Settlement Agreement and considering the views of the Parties and all public comments received, the Court finds that the Settlement Agreement, as a whole, is fair, adequate, and reasonable to address the claims raised in the Complaint and, accordingly, hereby:

ORDERS that the Settlement Agreement shall be and is entered as an Order of the Court;

ORDERS that the Complaint is conditionally dismissed without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, subject to the terms set forth in this Order, which the Court considers proper, just, and necessary;

ORDERS that the Court retain jurisdiction, pursuant to 28 U.S.C. §§ 1331 and 1345, to enforce any provision of the Settlement Agreement, the MOA, or the CA;

ORDERS that the City of Portland direct the Compliance Officer/Community Liaison (“COCL”), a position created under the Settlement Agreement, to provide copies to the Court in a timely fashion, or that the City of Portland do so itself, of all final quarterly reports, which are referenced in the Settlement Agreement;

ORDERS the Parties and the COCL (by ordering the City of Portland to so direct the COCL) to appear before the Court at periodic hearings, to be held approximately annually, unless otherwise ordered by the Court, to describe to the Court the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end, to respond to the Court's questions on these issues, and to present evidence on these issues as so directed by the Court;

ORDERS that the first post-approval periodic hearing be held on Monday, September 14, 2015, at 9:00 a.m. in Courtroom 13B of the Mark O. Hatfield United States Courthouse, in Portland, Oregon; and

ORDERS that this civil action be placed on the Court's inactive docket, other than for the periodic hearings referenced in this Order or otherwise as may be directed by the Court, and subject to recall to the active docket should the United States move to enforce the Settlement Agreement.

The Parties' Joint Motion to Enter Settlement Agreement (ECF No. 3) and alternative Joint Motion to Enter Settlement Agreement (ECF No. 77) are GRANTED IN PART AND DENIED IN PART, as set forth in this Order.

IT IS SO ORDERED.

DATED this 29th day of August, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case No. 3:12-cv-02265-SI

**AMENDED ORDER ENTERING
SETTLEMENT AGREEMENT,
CONDITIONALLY DISMISSING
LITIGATION, AND SETTING
FIRST ANNUAL STATUS
CONFERENCE**

Billy J. Williams, Acting United States Attorney; Adrian L. Brown, Assistant United States Attorneys, UNITED STATES ATTORNEY'S OFFICE, District of Oregon, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204. Vanita Gupta, Principal Deputy Assistant Attorney General; Judy Preston, Acting Chief; Laura Coon, Special Counsel; R. Jonas Geissler, Senior Trial Attorney, Brian Buehler, Trial Attorney, Special Litigation Section; David W. Knight, Trial Attorney, Disability Rights Section, Civil Rights Division, UNITED STATES DEPARTMENT OF JUSTICE, 500 Pennsylvania Avenue, NW, Washington, D.C. 20530. Of Attorneys for Plaintiff.

Tracy Reeve, City Attorney; David Woboril, Senior Deputy City Attorney; Ellen Osoinach, Deputy City Attorney, OFFICE OF THE CITY ATTORNEY, 1221 S.W. Fourth Avenue, Room 430, Portland, OR 97204. Of Attorneys for Defendant.

Anil S. Karia, TEDESCO LAW GROUP, 3021 N.E. Broadway, Portland, OR 97232. Of Attorneys for Intervenor-Defendant Portland Police Association.

J. Ashlee Albies, CREIGHTON & ROSE, P.C., 500 Yamhill Plaza Building, 815 S.W. Second Avenue, Portland, OR 97204; Shauna M. Curphey, CURPHEY & BADGER, P.A., 520 S.W. Sixth Avenue, Suite 1040, Portland, OR 97204. Of Attorneys for Enhanced Amicus Curiae Albina Ministerial Alliance Coalition for Justice and Police Reform.

Michael H. Simon, District Judge.

The United States of America (“Plaintiff” or “United States”) brought this lawsuit against the City of Portland (“Defendant” or “City of Portland”) under 42 U.S.C. § 14141. The United States and the City of Portland have entered into a proposed Settlement Agreement (“Settlement Agreement”) and have jointly moved the Court to accept the Settlement Agreement and enter the Settlement Agreement as an Order of the Court. Both the United States and the City of Portland agree that entering into the Settlement Agreement, rather than engaging in contested litigation, is the best way to resolve the claims brought by the United States in this matter, which concern policing practices in the City of Portland primarily with respect to persons with actual or perceived mental illness. Both the United States and the City of Portland further agree that it will likely take several years, possibly as many as five years, for the City of Portland substantially to comply with all of the provisions of the Settlement Agreement. In addition, both the United States and the City of Portland jointly ask the Court to retain jurisdiction over this action for all purposes until the City of Portland substantially has complied with all provisions of the Settlement Agreement and maintained substantial compliance with all provisions for one year.

At the Court’s request, the United States, the City of Portland, Intervenor-Defendant Portland Police Association (“PPA”), and Enhanced Amicus Curiae Albina Ministerial Alliance Coalition for Justice and Police Reform (“AMA Coalition”) engaged in mediation. The mediation produced two separate agreements: a Memorandum of Agreement (“MOA”) between the United States, the City of Portland, and the PPA; and a

Collaborative Agreement (“CA”) between the United States, the City of Portland, and the AMA Coalition.

The question before the Court is whether the Settlement Agreement, as a whole, is fair, adequate, and reasonable as a means of resolving the claims raised in the Complaint. To assist the Court in answering that question, the Court held a Fairness Hearing on February 18 and 19, 2014, and received written submissions and oral testimony from the United States, the City of Portland, Intervenor-Defendant PPA, Enhanced Amicus Curiae AMA Coalition (collectively the “Parties”), and numerous members of the public, pre-hearing, during the hearing, and post-hearing.

Following the Fairness Hearing, the Court directed several questions to the Parties. One question asked by the Court was:

Question 12: A number of police departments provide officers with “on-officer recording systems” (also known as “body cameras,” “body cams,” or “cop cams”), which are small, pager-sized cameras that clip onto an officer’s uniform or glasses or are worn as a headset. These devices record audio and video of the officer’s interactions with the public. Please explain whether requiring these devices would promote the objectives of the Agreement and, if so, why such a requirement was not included.

ECF No. 61, pp. 7-8. In response to this question, the United States stated:

The United States has not required that all PPB officers wear body cameras, but the Agreement does not prohibit the City from using body cameras. Currently, the City records many of its interactions through mobile video recorders, handheld radio transmissions, and GPS locations. *It is our understanding that the City is willing to engage in use of body cameras to the extent that the technology is dependable and that its use is affordable.* If the City utilizes body cameras, the City must carefully govern their use to protect the rights of subjects and bystanders, *e.g.*, providing *Miranda* warnings when appropriate and respecting reasonable expectations of privacy.

The determination to include or exclude body cameras from the Agreement is driven by a number of factors. While technology

limitations, concerns about privacy rights, and appropriateness of remedy may weigh on such considerations, the ultimate compromise reached in this case is the product of negotiation and subject to settlement privilege.

ECF No. 63, pp. 20-21 (emphasis added). The Court notes that as the technology in this area continues to improve and become more dependable and affordable, more city police departments in the United States are choosing to employ this technology in ways that protect both law enforcement officers and the public they serve. Notwithstanding these positive developments, the fact that the Settlement Agreement does not contain such a requirement does not justify the rejection of the Settlement Agreement.

After reviewing the Settlement Agreement and considering the views of the Parties and all public comments received, the Court finds that the Settlement Agreement, as a whole, is fair, adequate, and reasonable to address the claims raised in the Complaint and, accordingly, hereby:

ORDERS that the Settlement Agreement shall be and is entered as an Order of the Court;

ORDERS that the Complaint is conditionally dismissed without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure;

ORDERS that the Court retain jurisdiction, pursuant to 28 U.S.C. §§ 1331 and 1345, to enforce any provision of the Settlement Agreement or the MOA upon request of the parties thereto;

ORDERS that the City of Portland direct the Compliance Officer/Community Liaison ("COCL"), a position created under the Settlement Agreement, to provide copies to the Court in a timely fashion, or that the City of Portland do so itself, of all final quarterly reports, which are referenced in the Settlement Agreement;

ORDERS the United States, the City, a voting member of the Community Oversight Advisory Board (COAB) chosen by the COAB, a group created under the settlement agreement, and the COCL (by ordering the City of Portland to so direct the COCL and the COAB) to appear before the Court at annual status conferences to describe to the Court the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end and to respond to the Court's questions on these issues;

ORDERS the United States, the City, and the PPA to also appear before the Court at the annual status conferences to describe to the Court the status of the MOA;

ORDERS the United States, the City, and the AMA to also appear before the Court at the annual status conferences to describe to the Court the status of the CA and to respond to any questions by the Court;

ORDERS that the first post-approval status conference be held on Monday, September 14, 2015, at 9:00 a.m. in Courtroom 13B of the Mark O. Hatfield United States Courthouse, in Portland, Oregon; and

ORDERS that this civil action be placed on the Court's inactive docket, other than for the annual status conferences referenced in this Order or otherwise as may be directed by the Court, and subject to recall to the active docket should the United States move to enforce the Settlement Agreement.

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The Parties' Joint Motion to Enter Settlement Agreement (ECF No. 3) and
alternative Joint Motion to Enter Settlement Agreement (ECF No. 77) are GRANTED IN
PART AND DENIED IN PART, as set forth in this Order.

IT IS SO ORDERED.

DATED this 30th day of July, 2015.



Michael H. Simon
United States District Judge

Submitted By:

All Counsel of Record

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,) 3:12-cv-02265-SI
4)
5 Plaintiff,)
6)
7 vs.) October 25, 2016
8)
9 THE CITY OF PORTLAND,)
10)
11 Defendant.) Portland, Oregon
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

TRANSCRIPT OF PROCEEDINGS

(Status Conference)

BEFORE THE HONORABLE MICHAEL H. SIMON

UNITED STATES DISTRICT COURT JUDGE

1 APPEARANCES

2 FOR THE UNITED STATES:

3 Bill Williams
4 Adrian Brown
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6 1000 SW Third Avenue, Suite 600
7 Portland, Oregon 97204

8 R. Jonas Geissler
9 Laura Coon
10 U.S. Department of Justice
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12 Washington, DC 20530

13 FOR THE CITY OF PORTLAND:

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15 Judy S. Prosper
16 Mark P. Amberg
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18 1221 SW Fourth Avenue, Suite 430
19 Portland, Oregon 97204

20 FOR THE PORTLAND POLICE ASSOCIATION:

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APPEARANCES (Continued)

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United States District Courthouse
1000 SW Third Avenue, Room 301
Portland, OR 97204
(503) 326-8182

1 (October 25, 2016)

2 P R O C E E D I N G S

3 (American Sign Language Interpreters Richard Hall
4 and Andrea Medlock were sworn by the clerk.)

5 (Open court:)

6 THE COURT: Mary, would you please call the case.

7 THE CLERK: Your Honor, this is the time set for a
8 status conference in civil case 12-2265-SI, USA versus City of
9 Portland.

10 Can I have plaintiff's counsel begin by stating your
11 appearances for the record. Then we will go on down the side
12 of the table.

13 Thank you.

14 MR. WILLIAMS: Good afternoon, Your Honor.
15 Bill Williams on behalf of the United States Attorney's Office.

16 THE COURT: Welcome.

17 MS. COON: Good afternoon, Your Honor. My name is
18 Laura Coon. I am special counsel with the Civil Rights
19 Division of the Department of Justice here on behalf of the
20 United States.

21 MS. BROWN: Good afternoon, Your Honor. Adrian Brown
22 for the United States.

23 MR. GEISLER: Good afternoon, Your Honor.
24 Jonas Geissler from the Civil Rights Division for the United
25 States.

1 MS. ALBIES: Good afternoon, Your Honor.
2 Ashlee Albies for the enhanced amicus, Albina Ministerial
3 Coalition for Justice and Police Reform, and with me is
4 Dr. LeRoy Haines.

5 THE COURT: Welcome.

6 MR. KARIA: Anil Karia for the Portland Police
7 Association.

8 MS. OSOINACH: Ellen Osoinach on behalf of the City
9 of Portland.

10 MS. PROSPER: Good afternoon, Your Honor.
11 Judy Prosper, City of Portland.

12 MR. AMBERG: Mark Amberg on behalf of the City of
13 Portland.

14 THE COURT: Welcome.

15 I would also like to welcome to the courtroom the
16 distinguished mayor, Mr. Charlie Hales. Chief of Police
17 Marshman, welcome. Commissioner Amanda Fritz and City Auditor
18 Mary Caballero, welcome. To everyone else who is taking time
19 out of their day to attend this hearing, I thank you.

20 What we will do, unless someone has a --

21 Yes.

22 MS. OSOINACH: Your Honor, I want to state that
23 IPR Director Constantin Severe is here as well, and you might
24 want to recognize him.

25 THE COURT: Yes. My apologies. Thank you.

1 Mr. Severe, thank you very much. I apologize.

2 Welcome to the IPR director. Thank you.

3 Unless anyone has any alternative suggestions, I
4 think it might be useful to go in the following order: First,
5 hearing from the plaintiff, United States; followed by
6 Defendant City of Portland through their counsel; followed by
7 intervenor, the Portland Police Association, through their
8 counsel; followed by amicus Albina Ministerial Coalition. Then
9 after that, hearing comments from COCL, the Compliance Officer
10 and Community Liaison.

11 At some point, probably about an hour and a half from
12 now, give or take, at an appropriate time I am going to have
13 probably about a ten-minute recess or so. Then if there are
14 members of the public who wish to be heard on any of these
15 matters, just make yourself known to my courtroom deputy,
16 Mary Austad, during that break, and she will keep a list of
17 your names.

18 Is there anyone else that I have left out that we
19 should be hearing from soon or any suggestions for an
20 alternative order?

21 Ms. Prosper.

22 MS. PROSPER: The COAB representative is also here.

23 THE COURT: Yes, of course. Who will be speaking for
24 the COAB?

25 MS. PROSPER: Mr. Tom Steenson.

1 THE COURT: Excellent. Very good.

2 Maybe we will do after the Albina Ministerial
3 Coalition, we will go to either the Compliance Officer and
4 Community Liaison and then the COAB, or if someone thinks we
5 should reverse that, let me know, and that will be fine. Then
6 after that, we will move to members of the public who wish to
7 be heard.

8 Any alternative suggestions or objections to that
9 procedure?

10 All right. Seeing no hands or hearing no voices, the
11 United States may proceed.

12 MR. GEISLER: Thank you, Your Honor. Shall I take
13 the podium or would Your Honor prefer here?

14 THE COURT: Whichever you prefer.

15 MR. GEISLER: For the sake of my eyes, I think I
16 will take the podium.

17 THE COURT: Wherever you prefer.

18 MR. GEISLER: Your Honor, again I'm Jonas Geissler
19 for the United States. My colleague, Adrian Brown, and I have
20 a division of labor by topic area to report compliance with the
21 settlement agreement. However, Your Honor, I would like to
22 start today with an overview.

23 The purpose of this case was to remedy violations of
24 the Fourth Amendment rights of individuals to be free from
25 unreasonable uses of force; namely, by way of law enforcement

1 officers' use of force against predominantly individuals with
2 mental health issues or perceived mental health issues.

3 Because of that focus on people with perceived mental
4 illness or actual mental illness, the remedies in this case
5 touch not just upon the Portland Police Bureau, but also other
6 aspects of the City. Though this case names the City as the
7 defendant and the case focuses on those individuals, the
8 remedies are more expansive.

9 We negotiated, and this Court found fair, reasonable,
10 and adequate an agreement that placed many responsibilities
11 squarely where they belonged, on the shoulders of the Portland
12 Police Bureau, but also shared some of those responsibilities
13 with other city agencies; namely BOEC.

14 There has been progress since this case began. When
15 we started, PPB had ten officer-involved shootings or critical
16 incidents per year. In 2015, there was one. In 2016, there
17 was one. There are more people alive today because of the
18 remedies already imposed in this case.

19 When this case started, PPB had given its officers
20 crisis intervention training -- 40 hours for all officers --
21 but there were still unreasonable force events for people with
22 mental health crises. Today, the Behavioral Health Unit
23 programs have expanded, and as my colleague Adrian Brown will
24 describe, we have given provisional approval to PPB's Enhanced
25 Crisis Intervention program.

1 While there is still work to do in this area,
2 including BOEC training and community-based mental health
3 services, the PPB response so far has been much more swift in
4 this particular area of remedies for this case.

5 There is still a need for improvements. In our
6 findings, we called confusing -- the accountability system --
7 "Byzantine." Today, the accountability system is more
8 expeditious, but is no less confounding and frustrating to both
9 the complainants and the officers involved.

10 The COAB -- the experiment in community oversight for
11 a settlement agreement that we began with in this settlement
12 agreement before others began poorly and quickly became worse.
13 The lack of training, volunteer fatigue, infighting have
14 plagued the COAB and called for an examination for how to best
15 fix the COAB going forward.

16 For the topic areas going forward, Your Honor, I will
17 speak about force, training, Employee Information System, and
18 accountability. My colleague will speak to mental health,
19 crisis intervention, and community engagement.

20 Before we go over compliance, a note about
21 methodology, this most recent compliance report covers the
22 period of August 30th, 2015 through August 29th, 2016. The
23 report is based upon our direct observations. We went and saw
24 the training. We went to meetings, to roll calls, on
25 ride-alongs.

1 This is also based upon interviews directly with the
2 community and with memberships of PPB and the City,
3 contributions from the COAB, contributions from members of the
4 COAB individually, assessments by the COCL contained in its
5 reports, and documents produced by the City in response to our
6 requests as well as our direct examination of documents as we
7 visited sites.

8 For use of force, Your Honor, what does the
9 settlement agreement ask PPB to do? Principally it asks PPB to
10 use force only in an objectively reasonable manner, to provide
11 full and accurate reporting by those who use force, and
12 on-scene investigations by first-line supervisors. It then
13 asks that those on-scene investigations be sent up the chain of
14 command for quality control and then an audit of those on-scene
15 investigations to better improve the system.

16 Results of these goals have been varied; varying
17 levels of success. PPB members have made a devoted effort to
18 force reporting and investigations. The governing policy for
19 force, 1010.00, which we preliminarily approved before the
20 effective date of this agreement on October 30th, 2013, now
21 stands for revision. Why? Officers need clear guidance on
22 what actions to take and what actions to avoid, when force is
23 authorized, and what the reporting requirements are. Sergeants
24 need guidance on how to accomplish the on-scene investigations,
25 to not accomplish them ad hoc, but to have a consistent system

1 across the entire bureau.

2 PPB currently has a reporting standard for uses of
3 force that omits very low levels of use of force. PPB does not
4 require reporting of all levels of the use of force, as
5 required by the settlement agreement's expansive definition.

6 PPB's current force data collection report, its force
7 report, also excludes firearm discharges. Though, the PPB
8 thoroughly investigates and reports on firearm discharges, the
9 exclusion from the form of firearm discharges became a
10 principal point of discussion between the City and the
11 United States going forward that has affected the timeline for
12 review of that policy.

13 Applying PPB standard to capture a wide range of
14 force -- that is most everything in between the very low levels
15 and the firearm discharges -- force has decreased significantly
16 over time since this investigation began. Though ECW --
17 meaning Electronic Control Weapon -- the use of Tasers has
18 increased in the past, supervisors have justified the use of
19 ECW in their investigative reviews rather than limit its use.

20 Officers have also not appreciated the five-second
21 rules on ECWs. That is, five seconds is one discharge, and if
22 one continues to hold down the trigger, and it goes longer than
23 five seconds, that counts as a second discharge. There is a
24 software fix that can be used for the ECWs to limit it to a
25 five-second discharge. But whether or not that's all for

1 limitations put in place, the current ECWs that PPB uses
2 officers frequently report have operational issues. There are
3 equipment failures.

4 There is a pendulum on use of force reporting
5 investigation on scene. When we first began the investigation,
6 the pendulum was swung all the way to barely any on-scene
7 investigations for most uses of force. Now it swung the other
8 direction into extreme on-scene reporting and investigation of
9 uses of force.

10 Sergeants show up to the scene and fill out what we
11 call 940 reports or after-action reports, dubbed for the policy
12 that PPB uses. Those 940s go through an audit process. What
13 has ended up happening is that lieutenants and captains now
14 spend time regurgitating the entire investigation that the
15 sergeant does. This burns valuable time, and it also delays
16 the final outcome of the 940, thus making it less effective.

17 Going forward, we need to work with the COCL and the
18 PPB to resolve an easier way, if you will, but just as
19 effective a way for lieutenants and captains to review those
20 reports without repeating everything, capturing those things
21 which need to be corrected and sending them back, but without
22 redoing the investigation.

23 Over the next two days the City and the COCL and the
24 United States intend to meet with the United States police
25 practices consultant to go over a new draft 1010.00, the force

1 reporting policy/the force governing policy with the City to
2 try to arrive at a solution to many questions about the
3 currently existing 1010.00.

4 For training, Your Honor, the Portland Police Bureau
5 and the City has placed a high priority on training. Portland
6 has a highly skilled, intelligent cadre of officers. It has a
7 beautiful training facility. It has devoted time in officers'
8 schedules each year to go to in-service training. But that
9 training has not been well informed by the community whom the
10 police serve. The academy needs to take some next steps. The
11 academy has asked for and does not yet have up and operational
12 a training management software, and the police bureau suffers
13 for the City's lack of having gotten it.

14 We have approved the training policy, 1500, and the
15 850 series of policies concerning crisis intervention. With
16 our plan to address 1010 and other force policies in short
17 order, our goal is to have the policies up in time for the
18 January 2017 start of in-service training.

19 The PPB has recently reconvened the Training Advisory
20 Committee, the TAC. The TAC produced a written report with
21 recommendations. TAC has asked for and should receive now
22 responses to those recommendations. It is the means by which
23 the public has direct input into the training material and the
24 effective training on PPB officers.

25 Your Honor, the EIS, or Employee Information System,

1 sometimes called an early warning system, sometimes called a
2 risk management system. The EIS should act to effectively
3 mitigate risk, to mitigate the risk against civil rights
4 violations among those civilians that the police serve, and to
5 mitigate risk of career-ending behavior by police officers.

6 How does the EIS work? It should work when one tries
7 to find the normal behavior among officers in a peer group,
8 particularly with respect to force and then identify the
9 outliers among those peers and then bring them back to the
10 normative levels.

11 PPB, as EIS, is very sophisticated in many ways. It
12 collects a lot of data. It is essentially a data warehouse.
13 But based upon the samples which we reviewed going into actual
14 EIS entries for officers, they do not necessarily mitigate
15 risk. As an example, an officer who we will not name was
16 recently terminated with respect to an alcohol issue. The
17 issue was known to the PPB. The PPB had definitely addressed
18 it in some respects in the past, but PPB had not used the EIS
19 as a tool to track and mitigate that risk between supervisory
20 positions between assignments.

21 Ultimately, the EIS in review did not have any
22 mentions of that issue for that officer, but that officer was
23 terminated for that issue. This is the sort of the
24 career-ending behavior that a risk mitigation tool should
25 capture.

1 The PPB's EIS system right now cannot compare between
2 finer levels of groups and assignments among PPB. For example,
3 among the specialized unit, there is a gang unit. The gang
4 unit has the highest uses of force generally. The PPB's EIS
5 can compare between the overall command -- all of East, all of
6 Central and all of the command over the gang unit, but cannot
7 compare between distinct shifts and distinct groups like the
8 gang unit. This then doesn't mean the settlement agreement's
9 mandate, but also doesn't allow the risk mitigation to
10 determine whether or not units, as a whole, are outside the
11 normative level of their peer units.

12 Once triggered, that is crossing a threshold that
13 causes an EIS review. The response is a narrative. PPB's EIS
14 system has a discussion tracker. It is a database which allows
15 the supervisor to input a review of his or her subordinates.
16 The discussion tracker right now does not record -- based on
17 our sample -- corrective action. We found supervisors did not
18 always address problematic behavior or uses of force that were
19 problematic among their subordinates.

20 Typical EIS responses should be and sometimes are
21 closer management supervision; counseling -- externally or
22 internally; retraining. Because the PPB's academy does not
23 have the training software up-to-date, that retraining tool
24 that could be used in EIS is hindered, not altogether, but
25 hindered.

1 Accountability, Your Honor. Colloquially we would
2 say that an accounting system should be designed to give a fair
3 shake to all involved here. A complainant should be heard,
4 their complaint investigated to a resolution, and officers
5 should be accorded some due measure of due process and be able
6 to come out from under the power of an allegation, which they
7 feel may be fair or unfair.

8 Organizationally an accounting system should engender
9 trust and faith in the police. In this reporting period IPA
10 and IR have significantly increased the speed with which they
11 process investigative complaints. PPB investigates criminal
12 allegations largely concurrently with administrative
13 investigations.

14 For the sake of all those watching today, the
15 distinction being, criminal investigations are those which the
16 detectives investigate for criminal prosecution, administrative
17 investigations are those which could be policy violations that
18 an employer like PPB may seek to discipline an officer for.

19 There is at least one officer walk-through for each
20 officer-involved shooting in this assessment period that is a
21 single designated witness officer along with PPB counsel
22 performed a walk-through that is significant and is a step
23 forward and part of what we asked for in the settlement
24 agreement. However, it is not a contemporaneous walk-through
25 by law officers. It is not a contemporaneous public safety

1 statement.

2 PPB has asked involved officers to give voluntary
3 statements shortly after officer-involved shootings. That is
4 precisely what the settlement agreement mandated -- was the
5 asking. Each time, however, the officers decline. We believe
6 a public safety statement is the professional standard, absent
7 an objectively reasonable belief of self-incrimination by the
8 officer providing the on-scene public statement.

9 There are challenges going forward. The system has
10 to be credible to the community and to the police members
11 themselves. It is a basic principle, as I pointed out in
12 teaching the COAB at one point, Robert Peel's base principles
13 of policing.

14 The greater the officer's ability to persuade and the
15 greater the community trust, the less force police will have to
16 use. Conversely, when there is no trust, when police are left
17 with fewer options, there is more force, more risk of injury to
18 the civilians and to the officers, lower community
19 participation in investigations, and a lower clearance rate. A
20 trustworthy accountability system requires accountability at
21 all levels.

22 There is an accountability resolution that we need to
23 reach. We gave notice to the City in May of 2015 that it ought
24 to engage in a comprehensive accountability reform. We are not
25 there yet. We need to reach a timely resolution on

1 accountability reform from soup to nuts, from beginning to end.

2 With that, Your Honor, I would like to turn it over
3 to my colleague, Adrian Brown, unless you have questions with
4 respect to these sections.

5 THE COURT: Well, I do have some general questions
6 for the United States, but I will wait until after I hear from
7 Ms. Brown.

8 MR. GEISLER: Thank you, Your Honor.

9 MS. BROWN: Thank you, Your Honor.

10 THE COURT: Welcome.

11 MS. BROWN: Thank you. Counsel, distinguished
12 guests.

13 I want to start with an overview of community mental
14 health and proceed to crisis intervention and then discussing
15 community engagement.

16 Community mental health, as noted in paragraph 88 of
17 our settlement agreement, really deserves unqualified credit to
18 the Portland Police Bureau for its leadership in initiating
19 discussions with system partners. The United States noted in
20 this aspect of the settlement agreement that this is an area
21 that is not mainly the City's responsibility. It has engaged
22 with system partners in efforts to bridge these gaps in
23 community mental health services, and such services are the key
24 focus of the State's long-awaited performance plan to improve
25 mental health services with adults, particularly those with

1 serious mental illness.

2 This is a different agreement that the DOJ has been
3 working on with the State, and the State presented its plan to
4 the Department of Justice this past summer, and we approved its
5 plan in July. The State has committed an aggressive three-year
6 implementation plan, and PPB did not miss a beat in stepping up
7 to the plate. The State has formed a behavioral health
8 collaborative of system partners, which will involve a series
9 of meetings that will start in July and go through December.
10 PPB stepped up to not only apply to be on that collaborative,
11 but is now devoting resources to continue to hold the State
12 accountable, and we have continued to assert that all system
13 partners hold the State accountable for what it has committed
14 to in this plan.

15 As noted in paragraph 89 of our report, the PPB's
16 leadership in this area has stood out immensely in its push for
17 the opening of the Unity Center for Behavioral Health. While
18 we all know that this will not be a fix to the problems, the
19 plethora of problems created by a weak infrastructure of
20 community-based services, it is intended to provide an
21 emergency psychiatric service, which is a unique particular
22 setting that is not currently available in the City of
23 Portland, along with linkages to co-located system partners.

24 In this regard PPB deserves praise for extensively
25 working with Unity and other systems partners in creating

1 particular transportation protocols. These protocols will
2 provide transportation of certain persons on mental health
3 holds by ambulance rather than by patrol car. To support this
4 protocol, PPB didn't just stop at initiating discussions with
5 Unity. They also engaged the state legislature to support the
6 necessary rule changes. That dedication deserves notice.

7 In regards to crisis intervention, as my colleague
8 Mr. Geissler pointed out, we have granted the City provisional
9 substantial compliance with this section, Section 6. PPB does
10 indeed deserve praise for the work in its creation of the
11 Behavioral Health Unit.

12 This is a team of officers that includes both the
13 behavioral health response teams, which involved the pairing of
14 a clinician with Project Respond along with a specially trained
15 officer to follow up on referrals made, not only by officers in
16 the field, but by clinicians, by members of the community, as
17 the BHU has provided to us basically anyone can provide a
18 referral to them.

19 But the BHU also involves coordination of the
20 Bureau's ECIT officers as well as its advisory committee. The
21 advisory committee is made up of system partners from nonprofit
22 service providers, advocacy organizations, as well as state and
23 local mental health officials and peer advisers.

24 The BHU should be commended for its dedication of
25 working as well with training personnel in developing a robust

1 40-hour enhanced crisis training program.

2 As Mr. Geissler mentioned, part of our monitoring
3 duties has been to observe trainings. We participated in
4 observing the entire 40 hours of this training program, along
5 with other partners -- the COCL, a member of the COAB, a member
6 of the BHU advisory committee observed this training.

7 In addition to the 40 hours that PPB reports that all
8 officers receive through the basic and advance academies, this
9 40-hour enhanced crisis intervention training is something that
10 really makes the Behavioral Health Unit stand out in its
11 efforts in working to include the most up-to-date resources and
12 information for officers that are responding to mental health
13 calls.

14 However, despite this commendable work, Portland
15 continues to establish its crisis intervention team program.
16 It needs to meet all the core competencies of the Memphis
17 model. We are not there yet. Right now, PPB specifically
18 sends specially trained officers to a specific subset of mental
19 health calls. The Memphis model, for example, sends specialty
20 officers to all mental health calls.

21 We are currently as a provisional status, as PPB
22 continues to determine whether or not its hybrid model does
23 meet those Memphis base core competencies. To their credit,
24 they have engaged in an extensive effort to determine whether
25 or not the types of calls that all officers go on that relate

1 to mental health calls that are not reserved for the specially
2 trained are handled as adequately as those by the specially
3 trained officers.

4 We are in consultation with a renowned expert in this
5 field, Dr. Mark Munetz. He is the founder of the Memphis base
6 model. We are very privileged to have him. He spent time
7 again this year, as he did last year, in Portland and working
8 with their assessment of their system. In particular, as
9 Mr. Geissler pointed out, he assessed the BOEC, the Bureau of
10 Emergency Communications' 911 call center and how their
11 dispatchers and call takers are being trained in the future for
12 the crisis triage that they engage in.

13 So those two things: The BOEC crisis triage as well
14 as assessing whether or not PPB is adequately responding to all
15 mental health calls are the two big areas that the DOJ will
16 continue to assess in our provisional approval.

17 Of note, Mr. Geissler pointed out that we conduct
18 interviews as part of our assessment for compliance. I think
19 it is in particular of note to the Court that in this area,
20 regarding community mental health and crisis intervention, we
21 reach out to all partners. Not only do we realize that it is
22 not just the City of Portland that is responsible for making
23 sure persons with mental health are being engaged in a way that
24 protects their civil rights, but we also understand that the
25 state and local officials, all the way from police officers to

1 the sheriff's office to the disability rights organization and
2 NAMI advocacy organizations, that everyone all works together.

3 We know that this is a big area that still needs
4 improvement, and part of our effort in the
5 U.S. Attorney's Office, generally speaking, is to engage the
6 community and make sure that we know where those gaps can be
7 bridged. That is part of our effort, not in this case, but
8 just in a larger effort with the U.S. Attorney's Office. So I
9 think it is important that everyone understand that we are
10 always looking for stakeholder input on how things can be
11 improved.

12 Then finally, Your Honor, I'll turn to community
13 engagement. As noted throughout Section 9 of our compliance
14 report, the City faces significant barriers in its effort to
15 build a sustainable platform for civilian oversight and for the
16 efforts to monitor the implementation of this agreement.

17 While our assessment for this status conference runs
18 from August to August, as Mr. Geissler mentioned, it would be
19 imprudent for the United States to not note the status of the
20 City's efforts at this stage, particularly given the
21 non-compliance rating that we've provided to the Court.

22 THE COURT: And you know I was going to ask you about
23 that.

24 MS. BROWN: Yes, sir.

25 Based on a variety of factors, as we reported in our

1 assessment, there was dysfunction within the COAB, to the
2 extent that the City asked for a 60-day recess of COAB
3 meetings. The landscape was constantly changing at that time,
4 whether it be from members resigning, civil unrest at the
5 meetings, concerns regarding where meetings should take place,
6 how meetings should occur, to ensure the safety of everybody.
7 At that point in time it was the United States' understanding
8 that if you gave the City 60 days, that we would have a
9 proposal about how to restructure the COAB.

10 THE COURT: And the 60 days expired a few days ago,
11 right?

12 MS. BROWN: The 60 days has expired, yes, Your Honor,
13 as of Friday.

14 Now, while the City acknowledged that it has provided
15 us a framework for a proposal as of October 12th, we do not
16 have a fully baked proposal from the City, and to some degree
17 the City's effort on that part was intentional in order to have
18 the United States, the Portland Police Association, and the
19 AMAC involved in how to fill in that frame. However, we were
20 expecting to be much farther along than we are now at the
21 60-day point. I think everyone was expecting to be further
22 along. I think the City would acknowledge that they expected
23 to be further along. It just didn't happen.

24 In a meeting last Friday, the City has committed to
25 hiring a facilitator to further the discussion amongst the

1 parties at the counsel table here, including the PPA and the
2 AMAC, and the United States certainly looks forward to
3 participating in those meetings.

4 However, we urge the City, the PPA, and the AMAC to
5 find common ground together to make a sustainable platform for
6 community engagement. That platform must last well beyond the
7 United States' investment in this case and the expiration of
8 the settlement agreement.

9 To that end, however, we are still before the Court,
10 and we are at the stage where we are wanting to know what is
11 going to happen, how it is going to happen, when it is going to
12 happen. Because we do not have additional answers at this
13 point at the 60-day mark, we do ask the Court to schedule a
14 couple of different status conferences.

15 To all fairness and candor to the Court, this was a
16 suggestion that we just recently made known to the other
17 parties an hour or so before the hearing, but we saw it as a
18 way forward, given the rating of non-compliance. In 30 days,
19 we would ask Your Honor to hold an additional status conference
20 to which the City and the parties involved here can provide the
21 Court how things are moving forward with the restructuring of
22 the COAB.

23 In addition to checking in on that area, we would
24 also request that the Court schedule an additional status
25 conference in 90 days. That would be in the effort to assess

1 where the parties are at under paragraph 175 of the
2 settlement agreement, and I would like to make note really
3 quick in regards to paragraph 175, just for everyone's
4 edification, this paragraph allows time for reflection,
5 negotiation, and possible amendments to the settlement
6 agreement.

7 It is largely in order to determine whether or not
8 the settlement agreement is achieving its desired outcomes. In
9 essence, it is an effort to have a court correction, where
10 necessary.

11 So this second status conference that the
12 United States is requesting to be had in 90 days would be the
13 effort on our part to provide the Court with a status update on
14 where we are at with any further conversations with the City in
15 regards to additional amendments, if any are necessary, and
16 where we are at in furthering that process along.

17 In the meantime, as I mentioned previously, we are
18 interested in stakeholder input in this regard. We have
19 dedicated an e-mail link or an e-mail address, which community
20 members, stakeholders from all avenues, whether it be advocacy
21 organizations, individuals, law enforcement, and that e-mail is
22 community.portland@usdoj.gov.

23 THE COURT: Say that one more time.

24 MS. BROWN: It's community.portland@usdoj.gov. This
25 is not a new e-mail address. This is an e-mail address that we

1 have had open to the public since the beginning of our case,
2 but we wanted to highlight it again here, because, in
3 particular, we're looking for input on paragraph 175 and the
4 outcomes that the agreement intended to achieve and whether or
5 not those have been met.

6 Thank you.

7 THE COURT: Thank you.

8 All right. Let me follow up with you, Ms. Brown and
9 Mr. Geissler. I want to make sure we're all on the same page,
10 because I think what I'm about to ask is consistent with what
11 you've just been describing in the last few minutes.

12 It's my understanding under the settlement agreement,
13 and so I'm going to ask you if you agree or disagree, and
14 obviously any of the parties will be able to weigh in on this
15 when it is their turn to speak.

16 It is my understanding under the settlement
17 agreement, beginning with the enforcement section, Section 178,
18 that this Court retains jurisdiction over this action until the
19 City has substantially complied with all provisions of the
20 agreement and has maintained substantial compliance with all
21 provisions for one year.

22 In addition, the United States has the right to seek
23 enforcement of the provisions of this agreement if it
24 determines that the City or the Portland Police Bureau have
25 failed fully to comply with any provision of this agreement.

1 Now, if the United States does believe that the City
2 has failed to implement the terms of the agreement, there are a
3 number of steps that needs to take place. One is that the
4 United States promptly notifies the City in writing, identifies
5 and specifies the portion or portions of the agreement about
6 which the United States has concerns. Then there is
7 discussion. There's an opportunity even for mediation. But if
8 the mediation fails to resolve the concerns, then the
9 United States or the City may file a motion with this court to
10 enforce compliance with the terms of the agreement or to seek a
11 declaration regarding the meaning of any particular provision
12 of this agreement.

13 The Court will then determine, after appropriate
14 hearing, whether or not the agreement has been breached or what
15 the meaning of any particular provision in the agreement
16 requires. And if the Court determines that a provision of the
17 agreement has been breached, this Court has the power to issue
18 an appropriate remedy.

19 I want to stop there. Well, I will add one more
20 thing. It is also my understanding that, unless and until
21 there is a motion presented to the Court, either to interpret a
22 provision of the agreement or to determine if the agreement has
23 been breached, until that happens, really the only thing that
24 this court is able to do is hear periodic status conferences
25 and hear from the parties how things are going. Then if I

1 don't receive a motion, then all I can do is receive
2 information and receive input, really from a wide variety of
3 sources. But if a motion were to be filed, then after
4 appropriate due process with respect for everyone's rights, the
5 Court will decide whether or not the agreement has been
6 breached. If not, then I suppose that's the end of that
7 motion. And if so, then the Court has the power to decide on
8 an appropriate remedy.

9 Let me first ask the Government now, do I understand
10 the agreement correctly?

11 MR. GEISLER: Yes, Your Honor. That's an accurate
12 reading of the agreement.

13 THE COURT: Obviously if any other parties disagree,
14 when it is your turn to speak, you certainly may. I may have
15 some more specific questions for the Government a little bit
16 later, but I would like to hear from the other parties for now.

17 For right now, I appreciate all the effort that the
18 United States has spent on this. By the way, I did thoroughly
19 read the submission by the Government, the second periodic
20 compliance report. I recognize all the hard work that has gone
21 into it. It is very well organized. It is very clear.

22 I think that there are many areas in it that are
23 showing tremendous positive movement forward. As you have
24 identified in your comments, and as I saw consistent with your
25 comments in the written record, there are a few areas of very

1 serious concern. But we all recognize that this is a
2 multi-year agreement. No one expected all problems to be
3 solved in the first year and, frankly, even the second year.
4 That's why you have in paragraph 175 the opportunity for a
5 comprehensive review after the second year.

6 So I commend the United States for all of its efforts
7 here. I suppose I will ask this question of you, and it is a
8 bit asking you to predict the future. But I'll say this: We
9 know that come January 20th of 2017, we are going to have a new
10 administration. We know that it is one of the hallmarks of
11 this country that we have a peaceful transfer of civilian
12 power.

13 We don't know exactly who will be filling the various
14 positions within the new administration from the top to the
15 other political appointments. But let me ask you, if you can
16 tell me, what does the United States Department of Justice
17 expect with respect to your continuing involvement in this case
18 after we have a new administration?

19 MR. GEISSLER: Your Honor, based on the past record,
20 I suspect that our involvement will continue as it is now. I
21 have been privileged and blessed to have the opportunity to do
22 police cases for almost 13 years now, and I anticipate that our
23 office will continue to do the enforcement on this case just as
24 it does now.

25 THE COURT: Excellent. Very good. Thank you.

1 All right. Before turning to the City of Portland, I
2 do want to acknowledge our American Sign Language interpreters
3 and also thank the City of Portland. I think this was your
4 idea.

5 Am I right on that?

6 MS. OSOINACH: Yes, Your Honor.

7 THE COURT: Very good. I commend you for that. It
8 is a good idea. We have as American Sign Language interpreters
9 Mr. Richard Hall and Ms. Andrea Medlock. Before I took the
10 bench, the clerk of the court did administer an oath of
11 translation to them. I, again, express my appreciation and
12 commendation to the City of Portland for having that excellent
13 idea. I appreciate it.

14 All right. I look forward to any comments from the
15 City of Portland.

16 MS. OSOINACH: Thank you, Your Honor. Ellen Osoinach
17 appearing on behalf of the City of Portland.

18 I do want to say in response to your gracious
19 comments about the City suggesting American Sign Language
20 interpreters, the City -- specifically those of us sitting at
21 the table -- have come to that conclusion through the hard work
22 of many people, including Philip Wolfe, who is here today, who
23 has certainly provided an education to the City and to those of
24 us at this table about the importance of including multiple and
25 varied forms of communication. So I specifically want to thank

1 him for his continued efforts to assist the City in being a
2 better partner.

3 THE COURT: You have the Court's appreciation as
4 well.

5 MS. OSOINACH: So I would like to give you a roadmap
6 of what the City would like to present to you today and, of
7 course, to all the members that have attended here today. We
8 have got members from the Albina Ministerial Alliance. I can
9 see members from the mental health association. The League of
10 Women Voters. Kathleen Saadat, who chaired the COAB for so
11 long. Kalei Luyben. We have members from the Portland Police
12 Bureau and from the Bureau of Emergency Communications, and
13 they are all here because they are deeply invested and deeply
14 care about the work that is being conducted under the
15 settlement agreement and about policing in the city of Portland
16 in general.

17 Personally I would like to say that I have benefited
18 tremendously, both as an attorney and certainly as someone who
19 is working on the settlement agreement, from all of the
20 good-hearted and good-faith efforts of everyone in working on
21 this project.

22 So the roadmap today that we would like to talk about
23 is, first of all, the City's response to mental health and
24 crisis intervention and to rightly claim our seat at the table
25 as an emerging national leader on these issues.

1 Second, I would like to talk about use of force and
2 force investigations and particularly recognize, because this
3 is such a data-driven assessment of our work, I wanted to
4 recognize specifically the work of the analysts who are here in
5 the courtroom today.

6 If you will wave your hands.

7 These are civilians with a tremendous amount of
8 expertise, and they are dedicating that expertise to making
9 policing in Portland better and to supporting the work of the
10 settlement agreement by putting in tremendously long hours in
11 analyzing data so that decision makers and police officers and
12 the Department of Justice and all of the stakeholders here
13 today can better understand on a granular level in a
14 data-driven way what's happening at the City.

15 So after I talk a little bit about force, I know this
16 Court in particular has expressed an interest in body cameras
17 and how they might be deployed, how they might be useful, what
18 are some of the concerns. So Mark Amberg is here to talk about
19 body cameras and the process the City is engaging in to ensure
20 that the body camera adoption and use is meeting the needs of
21 the community as well as officers.

22 The next area I would like to cover is something
23 where I'm hoping to engage in a discussion with
24 you, Judge Simon, about the First Amendment and the robust free
25 speech that we both enjoy in this country and in particular in

1 the city of Portland and how the desire of people to make their
2 voices known and to participate in the public process has too
3 often, over the course of the last several months, veered into
4 criminal activity and has impaired the rights of those who were
5 denied the opportunity to speak.

6 I would very much like to engage in a discussion with
7 you about your thoughts on that, given your background, of
8 course, but also your work over the course of your career. So
9 that would be very helpful to the City, and I think to all
10 present to have that sort of a discussion.

11 Then we want to address the area of non-compliance,
12 which is the Community Oversight and Advisory Board.
13 Judy Prosper will be addressing the work that the City has
14 done, that we intend to do, and how the challenges that we have
15 experienced we think that we can turn into opportunities,
16 because the challenges that we have experienced have been the
17 result of passionate people wanting to make a difference and
18 sometimes disagreeing about the way forward.

19 But here in Portland, that's the way we do things.
20 We engage all of the stakeholders. Sometimes those discussions
21 are volatile. But we believe that's a strength for the City of
22 Portland and Portlanders, and we want to talk about how we can
23 harness those strengths in moving forward to cure that area of
24 non-compliance.

25 Then finally, I thought that it would be helpful for

1 this Court in particular to have some demonstrative evidence,
2 not that you don't love talking to attorneys every day, but at
3 my request I asked several people who bravely volunteered to
4 appear on video for me, describing their interactions. So I
5 chose three particular incidents that I think illustrate the
6 very thoughtful and challenging and difficult experiences that
7 people have and how they have overcome what are understandable
8 fears -- both police officers being able to stand in a moment
9 of being fearful and vulnerable and yet still reaching out to
10 connect and, similarly, community members, who in their moment
11 of vulnerability and fear, reached out to police officers.

12 It is not designed to say that everything is just
13 fine, but I thought to provide some context for this Court
14 about what is occurring on our streets today, it would be
15 helpful for you to see that.

16 THE COURT: That's fine. Although let me ask you a
17 procedural question. It is difficult for a court reporter to
18 take down what is said sometimes in a video or an audio
19 recording. So would it be acceptable to the City -- I'll watch
20 that now. We will play that in court. But I would like to
21 relieve the court reporter from any obligation to take that
22 down from the audio and just ask the City at its convenience to
23 submit for the record an appropriate electronic copy of that so
24 we can have that for any record, if need be, but it will not be
25 part of the official court transcript.

1 Any objection?

2 MS. OSOINACH: No objection.

3 THE COURT: Any objection from any other party?

4 MS. ALBIES: No, Your Honor.

5 MS. BROWN: No, Your Honor.

6 THE COURT: Very good.

7 MS. OSOINACH: So in the area of crisis intervention,
8 we have continued to make significant progress, as I detailed
9 in the memo that I wrote to you. What I particularly wanted to
10 call out is the fact that the work and the progress that the
11 City was able to make in this particular area of the settlement
12 agreement could not have happened but for the coming together
13 of numerous stakeholders.

14 This was not a project that the City ever intended or
15 could have undertaken alone. So the Behavioral Health Unit
16 Advisory Committee -- BHUAC for short -- is made up of an
17 amazing group of individuals who have served for several years.
18 There are peers and consumers and providers and police
19 officers, and they sit together on this committee and come up
20 with training recommendations.

21 They directly interact with police officers on both
22 individual cases, larger cases, systemic issues. That work has
23 resulted in, as I pointed out in the memo, an enhanced crisis
24 intervention training program that is the best in this nation.
25 You can see the results of that from the surveys of individual

1 officers who are telling the City and telling others that they
2 believe in this work. It is so important to them. They
3 understand that it is important to the administration, and it
4 is important to the elected officials. And they are behind it
5 100 percent.

6 We were very pleased to see that The New York Times,
7 in their continuing love affair with the City of Portland,
8 rightly pointed out that we are writing the playbook for
9 conflicts involving mental illness.

10 What was important about The New York Times article
11 was that they did not say, "Successful outcomes every time in
12 the City of Portland." What they said was, "Here was an
13 innovative approach to a situation that appeared very
14 dangerous." And after the officers engaged in that situation,
15 they allowed the reporter to sit in and listen to their
16 thinking about it. Did they make the right decision? Should
17 they have done something differently? Should they have
18 engaged? Should they have disengaged?

19 That, I think, is what I think the citizens of
20 Portland and the Portland Police Bureau should be proudest of;
21 that officers are deeply engaged in the work of attempting to
22 figure these situations out, and they are being very
23 transparent about their thinking and the way that they are
24 managing these situations, because they've come to the
25 conclusion that they don't have all the answers, and the most

1 important thing is to learn from specific incidents. That was
2 very heartening to see that The New York Times both reported on
3 that thoughtfulness, but also the difficulties that citizens
4 and police experience in resolving these situations.

5 THE COURT: The New York Times also had an
6 interesting cover story last Sunday on body cameras.

7 MS. OSOINACH: Yes, they did. I wondered if you had
8 read that, Your Honor. It was very interesting to hear about
9 Seattle's experience and we, of course, are looking to them for
10 both guidance and what the pitfalls are.

11 Similarly, this is challenging work. It is a
12 challenging time to be working on policing issues, both as
13 advocates, as people within the Government working on them,
14 and, as you know and everyone knows, we are in the midst of a
15 national conversation that has at times been toxic and painful.

16 So in that context it was very gratifying to have the
17 Portland Police Bureau and the Behavior Health Unit and be
18 asked to present at the International Crisis Intervention
19 Training Conference where we got to describe our multi-layered
20 approach and particularly emphasize how important it was to us
21 to engage in multiple stakeholders.

22 So we had both police officers, but also Lisa Otis,
23 who has graciously agreed to serve and has been just a warrior
24 for justice. She also presented, along with
25 Officer Christopher Burley, at the CIT conference. It is those

1 sorts of experiences, where community members have expressed a
2 willingness and a vulnerability, to come together with law
3 enforcement. I think you will see that is also what the video
4 is also designed to express -- that there were lots of
5 divisions, but there are so many ways in which the community
6 and the police have come together. It is in fact changing the
7 bureau culture, and I think it is changing the culture of the
8 City of Portland for the better.

9 Do you have any comments or questions about that,
10 Your Honor?

11 THE COURT: Not yet. Although you've probably
12 noticed that I'm not shy about interrupting.

13 MS. OSOINACH: "Shy" is not a word that I associate
14 with you, Your Honor.

15 THE COURT: No. I appreciate what you are saying,
16 and I am tracking you.

17 MS. OSOINACH: So I would like to move on to use of
18 force and force investigations. This year was the first year
19 that the City of Portland undertook what we are calling a force
20 audit. The analysts that I just referred to seated in the back
21 of the room were asked to do a herculean task, and that was to
22 gather information in an overbroad way about 133 data points.

23 What we discovered is that much of the information
24 that was gathered and crunched was not actionable. In fact, it
25 created a situation where there was a lot of work that was

1 being done by officers, sergeants, and people in the chain of
2 command that was not useful and was in fact redundant, but was
3 required by the settlement agreement.

4 In consultation with the Department of Justice and
5 their police practices expert, and, frankly, in direct
6 communication with our sergeants, what we learned is that there
7 was actionable information that would be helpful in the force
8 audit. So we intend over the course of next several days to
9 discuss with the Department of Justice how it is that we can
10 have an operationally sound force audit, because that's
11 everyone's goal, is to be sure that we're adequately
12 supervising force, but in a way that's operationally sound.

13 So I think we will see significant progress and
14 relief for the members of the Portland Police Bureau who are
15 doing the work and just want it to be done in a way that helps
16 them and that helps the community to understand the work that
17 is being done.

18 We were very gratified to see that the reports of
19 force, the individual reports of force that we provided to the
20 Department of Justice, in their review of those, that they did
21 not find constitutional violations.

22 We were also pleased to see that in our first ever
23 force audit, which I should point out is something that very
24 few other jurisdictions in the United States are even
25 attempting, that in our very first use of force audit that the

1 sergeants with minimal training and an unclear policy were able
2 to hit all 133 data points 92 percent of the time. That's an
3 A minus. I think, while the United States pointed out that
4 8 percent of the time we didn't get it right, they are a
5 taskmaster, I think, that this Court and the community should
6 be proud of because they want to hold us to an A plus standard.
7 For our first ever force audit 92 is something that I think we
8 are very proud of, and I think should be.

9 Similarly, the work that is being done and will be
10 done over the next year to refine the force audit will provide
11 information to elected officials, to policymakers. But most
12 importantly for the Portland Police Bureau, it will provide
13 information to the community. This year the force inspector
14 went to all of the precincts and presented information and to
15 the training advisory council to present information about the
16 force audit.

17 That information was so well received in terms of
18 people being hungry for it. So that validated the City's sense
19 that the more information that we can generate and provide in a
20 reasonable, actionable way for the community and will
21 facilitate the kind of informed engagement that we've already
22 seen occurring, and the more that we've refined it, the better
23 able we will be to engage with community members who are
24 rightly concerned about what type of force officers are using
25 and under what circumstances, and, of course, officers are also

1 very interested in understanding when other officers are using
2 force and what those outcomes are.

3 So we are continuing to work towards that, and we
4 feel very good about our progress under the settlement
5 agreement in that regard and continue to look forward to
6 producing even better and clearer information.

7 So now I would like to turn it over to Mr. --
8 actually, Your Honor -- I know you are not shy -- but do you
9 have any questions or comments about that?

10 I will turn it over to Mark Amberg to talk about body
11 cameras.

12 THE COURT: Thank you, Ms. Osoinach.

13 Mr. Amberg, welcome.

14 MR. AMBERG: Thank you, Your Honor, Counsel, and
15 members of the audience.

16 I am going to touch briefly hopefully on the subject
17 of body cameras, which has been in the forefront for the last
18 couple of years, particularly Portland has come to the
19 forefront in the context of the City's negotiation of a new
20 contract with the Portland Police Association.

21 While I recognize that body cameras are not directly
22 a part of the settlement agreement, they most certainly are an
23 important part of a system of police accountability. There is
24 lots of issues and limitations that come with the use of body
25 cameras, a lot of misconceptions and misperceptions about what

1 body cameras can do and what body cameras can't do.

2 But one thing that I think is fairly clear at this
3 point is studies have shown that the use of body cameras only
4 captures a view of an event in question, certainly not the view
5 or a comprehensive view of the event in question. Use of body
6 cameras significantly reduces use of force overall. Frankly,
7 it improves the behavior of all involved, whether we are
8 talking about community members involved in an interaction with
9 the police or the police officers themselves.

10 The City's efforts to implement use of body cameras
11 began a couple of years ago. The first step was working on
12 legislation here in the state of Oregon, House Bill 2571, which
13 the legislation was implemented to help define in the statute
14 some of the primary issues regarding the use of body cameras
15 policies and procedures for the use, retention, and storage of
16 body cameras recordings, creating an exception in the law,
17 which restricts the recording of conversations, use of body
18 camera video in criminal proceedings, public records issues,
19 and very importantly privacy concerns primarily for the
20 citizens involved.

21 Body cameras, as I think as is fairly obvious to
22 everybody, it doesn't record very well the actions of the
23 officer. It records the actions of what the officer is seeing.
24 So there are significant privacy concerns for the citizens who
25 are involved when body cameras are deployed.

1 The legislation includes prohibition on the use of
2 facial recognition, biometric recognition technology,
3 prohibition on the use of body cameras recordings for anything
4 other than legitimate law enforcement purposes. The City was
5 very involved in working on that legislation.

6 So following passage of the legislation, the City
7 turned its attention to gathering information on body cameras
8 and body cameras systems and receiving general public input on
9 body cameras. There were a number of public forums that were
10 held -- six public forums.

11 There was quite a volume of information that was
12 taken in. The intent at that point was that very thing -- to
13 gather general information about body cameras, body camera
14 systems without having necessarily a specific policy in place,
15 but to gather that general information to help inform a policy
16 on body cameras.

17 The City fully recognized at that point that it was,
18 again, not gathering public input about a specific body camera
19 policy, but to gather information to help inform the policy.
20 While gathering general public input about body cameras, the
21 City, along with the Portland Police Association, the police
22 union, worked on the specifics of a draft body camera policy,
23 recognizing and intending that the draft policy would be
24 publicly circulated for further public comment and input.

25 We think the draft policy -- while certainly not

1 perfect, and there are issues that we are well aware of, the
2 public has some very serious and very significant concerns
3 about that are in the draft policy, that will be resolved as we
4 go forward. Overall the policy, we believe, is a comprehensive
5 draft policy that addresses most aspects of the use of body
6 cameras, including member and supervisor responsibilities, when
7 cameras are and aren't activated, preservation for evidence,
8 review of audio/video footage, retention and access to video,
9 training, public records requests, and public release of body
10 camera footage.

11 This draft body camera policy, as I believe
12 Your Honor is aware of, has ended up being part of the
13 tentative agreement that was entered into with the police
14 union. It was approved by City Council on October 12th. It
15 will take effect on November 11th of this year. But again, a
16 major reason for including that body camera policy with that
17 tentative agreement was to memorialize the significant work
18 that had been done by the parties in coming up with this draft
19 policy, with the full understanding, the full intent that it
20 was going back out -- now that we have a specific policy -- it
21 was going back out for public review, comment, and input before
22 there was a final policy that was agreed on.

23 THE COURT: Explain to me how that will work. We
24 have a draft policy now. You envision public input before
25 there is a final policy. How does all of that relate to what

1 is going into the police association contract or collective
2 bargaining agreement? How do the pieces fit together?

3 MR. AMBERG: The body camera policy is not a part of
4 the police contract. It was part of the tentative agreement.
5 The best way I can describe it, it was part of the quid pro quo
6 in the bargaining process. There was, again, a recognition by
7 the parties. There had been significant work on the policy.
8 We hadn't come to agreement on it, and they wanted to
9 memorialize that as part of this tentative agreement going
10 forward.

11 THE COURT: So if I'm following you, you are saying
12 that the collective bargaining agreement will not have a body
13 camera policy; is that right?

14 MR. AMBERG: That's correct.

15 THE COURT: Then to what extent does the City have
16 the ability to put together and implement a final body camera
17 policy in light of the collective bargaining agreement? Or is
18 the answer, because it is not covered in the collective
19 bargaining agreement, the City has full authority to do what is
20 appropriate in a body camera policy?

21 MR. AMBERG: And that's true, Your Honor, with the
22 understanding, as was recognized in the tentative agreement,
23 that the police union has their legal collective bargaining
24 rights to make a demand to bargain over the body camera policy,
25 or at least impacts of the body camera policy to file

1 grievances.

2 If we were standing here today, and there was no
3 tentative agreement reached with the police union over the
4 police contract, and we were putting forward a body camera
5 policy/standalone body camera policy, we would be in exactly
6 the same boat that we're in right now, frankly, with the police
7 contract.

8 Now, there is no question there are issues out there
9 in terms of what's perhaps mandatory for bargaining, what's not
10 mandatory for bargaining. Frankly, another issue that we
11 haven't thought far enough down the road to fully resolve,
12 because we hope we don't have to, is how some of the aspects of
13 the body camera policy -- for example, I would say primarily
14 review of audio/video recordings, how that fits in with the
15 settlement agreement and to the extent that might fall under
16 the jurisdiction of the settlement agreement as opposed to
17 state collective bargaining laws.

18 THE COURT: I was going to ask you about that.
19 Frankly, let me do it right now. Although I certainly don't
20 have an intention to jump to any conclusions or to dictate any
21 solutions -- that's not my role -- but can you give me an
22 understanding of both sides of the argument, and if there is
23 more than two sides, all three sides, or more.

24 What is the debate about in terms of review of body
25 camera film footage or pictures before or after an officer gets

1 interviewed or is required to submit a report? What are both
2 sides of the debate? If there are more than two sides, what
3 are the third and fourth sides of that debate?

4 MR. AMBERG: Well, in fairness, I think there are a
5 number of sides to that debate, Your Honor. I think the
6 primary issues are whether -- on the one side of the issue, I
7 would say the critics of that practice would say, well, that
8 gives the officer an opportunity to basically line up their
9 recollection before they write a report, before they are
10 interviewed as part of some formal investigation rather than
11 just giving their spontaneous -- I'll call it untainted
12 recollection of the event that has not been influenced by
13 reviewing the body camera video -- that somehow it gives the
14 officer an opportunity to kind of line things up so they are
15 telling a good story. That's one viewpoint.

16 The other viewpoint is that when officers prepare a
17 report, they don't see everything. They don't hear everything.
18 They don't notice everything. It gives the officer, in
19 writing, a good report about an event that happened. Whether
20 it was a use of force event or some other event, the officers
21 are trying diligently to report accurately what happened during
22 the course of that event.

23 If you look at it from that aspect, before they write
24 their report, they want to have everything available they can
25 possibly have to help them determine or recollect what happened

1 during the event. I think those are really the two main
2 thoughts on it.

3 THE COURT: If you could do the same -- what are the
4 different dimensions -- pros and cons if you will -- of the
5 options on when to activate the camera and when an officer may
6 deactivate or fail to activate? What are the issues there?

7 MR. AMBERG: Well, again, one school of thought would
8 be, as soon as the officer comes on duty, he or he should
9 activate the body camera. I will note that in the draft policy
10 that's been prepared, at least under the draft policy, Portland
11 police officers who'd use body cameras, the body camera would
12 be on the moment they come on the shift, but there is a button
13 where they can actually activate it.

14 I wanted to clarify that, because what that means is
15 that the body camera is actually working. It is actually
16 recording. When there is an activation -- let's say an officer
17 is going to take some kind of law enforcement action, and they
18 activate the camera, depending on the system you are talking
19 about, it will actually capture -- go back about 30 seconds or
20 so, or maybe a minute before the actual activation, so it picks
21 up the recording before the actual event. I wanted to clarify
22 that point.

23 But one school of thought is they should be on all
24 the time. Of course, there were significant concerns that were
25 raised. It came up during the course of our conversation about

1 the legislation, in particular with the ACLU -- I don't want to
2 speak for the ACLU, and I am sure they wouldn't want me
3 speaking for them either -- but there was a concern that they
4 were in favor of body cameras, but they were also very
5 concerned about privacy, particularly of the citizens who are
6 involved.

7 Then there is also the privacy -- I'll call them the
8 privacy concerns of the officers involved. So if it is on
9 24/7, so to speak, there are a number of issues with regard to
10 that. Do you really want to record their private activities
11 while they are taking a break or something like that?

12 One example that is always used is if they are going
13 to record, they have to go tell a mom that their teenager was
14 just killed in a car accident. Do you really want to have that
15 recorded on a body camera? We think the legislation addresses
16 that and the policy addresses that too. We don't think that's
17 a good policy for anybody.

18 Or somebody who is experiencing some kind of serious
19 emotional or mental health crisis. Do you really want to have
20 that on body cam video, so to speak, for the world potentially
21 to see? We don't think so.

22 So the other school of thought, where we think under
23 the draft policy we struck a balance, which is when the officer
24 is going to take some kind of law enforcement action, that's
25 when they are obligated to -- assuming there is not a safety

1 issue or some other exigent circumstances -- that's when they
2 activate the body camera video, and under the draft policy they
3 could not turn that off until that event is -- is --

4 THE COURT: That's helpful. Thank you.

5 I know you touched on it before, but now if you could
6 take me through what is the process from which we get from this
7 draft body camera policy to a final policy.

8 MR. AMBERG: Sure. We are on the 30-yard line, and
9 we're moving towards getting over the goal line here. Again,
10 there was a recognition. There was further public comment and
11 input. When this matter came before City Council on the
12 ordinance to approve the tentative agreement with the Portland
13 police union, there was mention of the body camera policy going
14 out for further public comment and input, but it really wasn't
15 fleshed out very well. Council made -- there was an amendment
16 to the ultimate ordinance that was adopted that requires --

17 First of all, it directed the Police Bureau to
18 convene a stakeholder committee to review the draft body camera
19 policy and -- I'll use air quotes here -- "best national
20 practices," to the extent there are national best practices
21 with regard to the use of body cameras.

22 The City is in the process right now of putting
23 together that stakeholder committee. Council confirmed in the
24 ordinance there will be further public input through the
25 bodies, established a universal review process for new or

1 revised policies or directives, and the Council directed that
2 this stakeholder committee, once it's convened, once it comes
3 up with whatever conclusions it comes up with, is to present a
4 report to Council regarding the body camera policy.

5 Under the ordinance that report will be subject to
6 further public input to potential amendments and Council
7 approval. So at that point we hopefully will have a body
8 camera policy.

9 Again, we've left aside a little bit the collective
10 bargaining issues on this. The union has asserted their right
11 to assert their collective bargaining rights. In the tentative
12 agreement we did agree that at least the review of audio/video
13 was a mandatory subject of bargaining. There has been a lot of
14 discussion about that. We have had our own internal thoughts
15 about whether that is mandatory or not mandatory.

16 In essence what was done in the tentative agreement
17 with the union, we agreed with the union -- we agreed not to
18 fight that fight with the union. Our intent in that was to
19 focus on actually working on the substance of a body camera
20 policy, which I think all concerned, certainly including the
21 union and the police officers, want to have to --

22 THE COURT: And what are the implications of that
23 decision of agreeing that it is going to be the subject of
24 mandatory bargaining and the implications of that?

25 MR. AMBERG: Well, it means that we agreed that we

1 have to sit down and bargain with the union and talk to the
2 union about that provision. It doesn't mean it is resolved one
3 way or the other. We're saying we've given up our right to go
4 in and say, "Sorry. That's a permissive subject. We don't
5 have to talk to you about that."

6 THE COURT: So what happens if you then sit down and
7 bargain with the union, and you can't reach agreement? What
8 happen next?

9 MR. AMBERG: Well, again, we're sincerely hopeful,
10 and we sincerely think we will never ever get to that point.

11 THE COURT: I'm sorry? Did someone say something?

12 UNIDENTIFIED SPEAKER: Arbitrator --

13 THE COURT: As I said, if any members of the public
14 want to speak, just identify yourself to my courtroom deputy
15 during our break. I will hear from you at that time.

16 You may continue, Mr. Amberg.

17 MR. AMBERG: And that's a good question.

18 It is a little bit unclear, because under normal
19 process if we were leaving aside the settlement agreement that
20 we're here to -- the reason why we are here today -- normally
21 that would go to a labor arbitrator if we can't reach
22 agreement. The parties would submit their different proposals
23 on that, and the labor arbitrator would make a decision which
24 way to go, which policy to adopt. That's a very simplified
25 overview of what would happen.

1 The one issue that we're, frankly, not clear on at
2 this point is whether ultimately, because of the settlement
3 agreement, and we'd have to look at the overall effect of the
4 settlement agreement, of whether that dispute would actually
5 come before this Court or would go in front of a labor
6 arbitrator. We have not fully analyzed that.

7 THE COURT: Two years ago, and you probably know, I
8 did announce my view -- and no party is bound by it. Anyone,
9 if they wish, can challenge it in the appropriate appellate
10 fashion. I did announce my view that if I do find that there
11 is a violation of the settlement agreement, and it is up to me
12 to decide an appropriate remedy, then I'm not bound by anything
13 in the collective bargaining agreement in fashioning an
14 appropriate remedy. You don't need to respond to that right
15 now, but I did say that two years ago, and I still hold that
16 opinion.

17 MR. AMBERG: Thank you.

18 THE COURT: By the way, do you have an expectation of
19 a time frame for reaching a final body camera policy?

20 MR. AMBERG: One thing I've learned here in Portland
21 is that things take much longer than you expect to get through
22 the process. And I'm not saying that as a bad thing. I think
23 in many ways that slow-cooking process in the end maybe it's
24 more difficult and less expedient than immediately in the long
25 term. I think in the long-term that slow-cooking process is

1 beneficial. You end up with a better policy, a better program.

2 So I would expect, in terms of convening the
3 stakeholder group, bringing this back to Council, going through
4 all the discussions that we have to have, I would be hopeful
5 that by July 1st of next year we might have a body camera
6 policy. Again, I will say this: The work that we have done
7 upfront and significant work we've done upfront, in sitting
8 down particularly with the union and gathering a lot of public
9 input already and trying to come up with what we think is a
10 fairly solid body camera policy, albeit there are some clearly
11 disputed provisions in there, we've already hammered through a
12 lot of the details. We are hopeful that will be at least a
13 good starting point. It won't take us forever to get to a
14 policy.

15 THE COURT: Thank you.

16 MR. AMBERG: I think I've answered the Court's
17 questions.

18 THE COURT: You have.

19 MR. AMBERG: So I have covered basically the process.

20 Just one other final note, on the practical side, the
21 City has also been moving forward with looking at different
22 body camera systems. They are looking at storage retention
23 issues. So even though that work is not out in the forefront
24 right now, that work is going on. So the City, once we get
25 this policy issue worked out, there are obviously some

1 financing issues and those types of things. But our hope is
2 that this is all going to coincide. So once the policy issues
3 are worked out, the practical issues will also be worked out,
4 and the City will at least be good to go and ready to go with a
5 body camera system.

6 THE COURT: I think the only thing we know with
7 certainty is that, as time progresses, it gets less expensive
8 and easier to store more and more data it if wants to.

9 MR. AMBERG: Right. The other advantage of taking
10 more time is hopefully we will be able to learn by other
11 people's mistakes.

12 In any event, there is much more to be done
13 policy-wise on the practical side, but the goal is, again, not
14 necessarily a fast process. But in the end, we hope it is a
15 good process that results in having the best possible body
16 camera policy and program for the City of Portland.

17 THE COURT: Thank you, Mr. Amberg.

18 MR. AMBERG: Thank you.

19 MS. OSOINACH: So I would like to transition now into
20 talking about the First Amendment public meetings and criminal
21 activity.

22 THE COURT: Oh, no. Now you're going to ask me
23 questions, right?

24 MS. OSOINACH: I might. If you are willing.

25 THE COURT: Go ahead.

1 MS. OSOINACH: So as you know, Your Honor, the City
2 over the course of probably the last year has been grappling
3 with the control of its public meetings. By "public meetings,"
4 I refer to City Council meetings and meetings of volunteer
5 boards. The Oregon Public Meetings Manual is very clear that a
6 presiding officer at any meeting is responsible and has the
7 authority to control the public meeting.

8 What we've experienced is that that role of the
9 presiding officer is particularly challenging right now. In
10 fact, over the course of the last year there have been a number
11 of arrests at public meetings. Over the course of the last
12 several months those arrests have resulted in criminal
13 convictions here in Multnomah County.

14 The United States Department of Justice in their
15 compliance report euphemistically referred to one of these
16 criminal incidents as "throwing water" and in a rather
17 dismissive tone failed to indicate that the activity that
18 occurred at this public meeting of volunteers was criminal
19 harassment.

20 The individual was convicted of that crime. In his
21 own allocution he acknowledged that his desire to make his
22 views -- his important views about police accountability
23 known -- had veered into inappropriate criminal activity for
24 which he took full responsibility. The case is being appealed,
25 but certainly during his allocution --

1 Importantly, the judge in that case expressed,
2 I think, what many in the city have felt, which is that the
3 desire to engage in police reform and make one's views known
4 about it should not take away from the right and the
5 responsibilities that other people have also to engage in the
6 system.

7 The judge in the particular case, the criminal
8 harassment, was very concerned about the larger impacts to the
9 system that this kind of criminal activity has. It discourages
10 other people from participating. It creates fear and anxiety.

11 I think that there are many members even here today
12 in this audience who I can see who have been subject to
13 arrest -- not many but some -- here in the audience. Yes, they
14 are raising their hands.

15 So I thought it would be helpful to engage in a
16 discussion with the Court, because certainly the folks that
17 have raised their hands here today, I have personally engaged
18 in discussions. I know that they strongly believe that their
19 First Amendment rights include the need to disrupt public
20 meetings. That is something that the City has experienced an
21 enormous challenge because the presiding officers, some of whom
22 are seated here today at City Council, strongly value public
23 input.

24 I think exactly this Court has experienced each party
25 needs to have its time to be able to express their views to

1 decision makers, and that's part of the challenge. The
2 criminal activity that is occurring has led to an inability of
3 the City to conduct its business and has resulted in the City
4 having to take increasingly drastic measures in order to ensure
5 that the public's business can get done in a transparent way.

6 So I would be interested in your thoughts about the
7 relationship between civil disobedience and the need and the
8 strong history in Portland of people taking to the streets to
9 express those views.

10 THE COURT: Well, one thing I will do, and in a
11 moment I will get back to you with a question. But it occurs
12 to me that people who disrupt a meeting may do so for different
13 reasons. They have different purposes, different motives,
14 different objectives. Sometimes they are understandable or
15 legitimate objectives or motives that can be re-channeled into
16 a more productive way.

17 My question really is, has the City or any other
18 organization that you know, because I can't think of any, ever
19 held a type of public discussion, hearing views from everyone,
20 on the best way to hear from everyone? In other words, taking
21 it out of the context of any particular agenda item. If we're
22 talking about agenda item X, and someone has very, very strong
23 feelings about agenda item X, well, those strong feelings will
24 come out, and they may come out in an inappropriate fashion.
25 They may come out in a disruptive or inappropriate fashion.

1 But what if we were to proceed to talk what's the
2 best way in our community -- we all live together in the same
3 community -- what if we all were to all talk about, and I don't
4 know whether this is maybe a City-convened discussion. Maybe
5 the amicus convenes this type of discussion. Maybe you already
6 have. Maybe it is a group of people that convene this.

7 But it sounds like we might want to have a discussion
8 of the best way to have public input and have public
9 decision-makers receive information in a way that is respectful
10 to everyone, to make sure that everyone is heard. And what's
11 the best way to do that? Totally separated from any specific
12 agenda item so that way we don't have one's feelings about a
13 particular agenda item coloring that discussion, and maybe that
14 will result in a set, if you will, Portland protocols. This is
15 the way we have public dialogue in Portland. Maybe we will
16 have an agreement; maybe we won't have an agreement.

17 By the way, I want to tell you, because I'm going to
18 bring it over to some specifics in a moment, and I'll outline a
19 little bit later all the items that I have read. I have
20 received a lot of information, and I appreciate, Ms. Saadat,
21 the information you've given me about what has been happening
22 at COAB. I wasn't there. I have not had an evidentiary
23 hearing, so it is not my place, and no one is calling upon me
24 to judge who did what at the COAB meetings and who may be right
25 and who may be wrong and things like that.

1 But I do note that this is a very serious problem,
2 and it is not just at Portland City Council meetings. It is
3 not just at COAB meetings. I will say that I'm very
4 appreciative and very lucky that it is not in this courtroom.
5 For that, I appreciate and thank everyone who participates.

6 But I think we need to have a public dialogue about
7 different ways of doing a public dialogue and hear from
8 everybody on that and maybe come up with a set of protocols or
9 best practices. Maybe it is different in different
10 circumstances. Maybe the way one conducts oneself in a
11 City Council meeting may be different than a courtroom. I
12 don't know. Maybe it is the same; maybe it is different at a
13 COAB meeting. Maybe it should be different; maybe it should be
14 the same.

15 I really don't know the answer, but I do believe that
16 there are many people in our community that are both very wise
17 in this view and who probably have differing opinions. And
18 before we come up with a protocol or roadmap or blueprint for
19 how we are going to have these public discussions in the way
20 that will accomplish the objective that you've articulated, and
21 I really think are the correct objectives to make sure that
22 everyone's voice gets heard, I think it would be very useful to
23 have that, if you will, meta discussion about the best way to
24 do that.

25 Maybe the Department of Justice has already convened

1 those types of meetings. I haven't read anything about that in
2 the media, but I do think it might be time in the next few
3 months, if that hasn't already been done, for us to come
4 together as a community to talk about: What types of problems
5 take place when we have meetings that are disruptive? Why do
6 people feel a need or desire to disrupt? Is there a better way
7 to allow those people to express their feelings and to express
8 their views and to be heard and not to block off and intimidate
9 the views of others?

10 I don't know if we can reach a consensus on that, but
11 we will never find out until we have a discussion or dialogue
12 about what are the various motivations and can we reach a
13 consensus or agreement.

14 MS. OSOINACH: Those comments and thoughts are so
15 helpful and exactly what I had hoped to hear. I think that
16 is -- I'm one person. But I can look around. I think that is
17 exactly what's needed.

18 We respectfully disagree with the United States'
19 position that what needs to happen are deadlines. "In 30 days
20 we will come back to you; in 90 days we will come back to you."
21 That's not the Portland way. We need to have an opportunity
22 for the community to tell us and for the City to be able to
23 engage in a way that gets to what you are saying, which is,
24 apart from a discrete issue, we need to talk about the way
25 we're talking.

1 THE COURT: You know, I was agreeing with you so
2 much -- everything you said -- until that last point -- because
3 look at it. I think that these types of annual status
4 conferences and discussions are incredibly helpful.

5 MS. OSOINACH: I agree, Your Honor. The annual
6 status conferences are helpful.

7 THE COURT: Without pointing any fingers, at least
8 one party at this table resisted that when I first proposed
9 that.

10 MS. OSOINACH: That is correct, Your Honor. When we
11 have the hearing, we did in fact object to that. But the
12 status conferences are very helpful. To the extent there was
13 ever any indication that our resistance was based on the fact
14 that they would not be helpful, then I would extend a sincere
15 apology.

16 THE COURT: No apology needed. We are all struggling
17 to find the best way to move forward.

18 What Mr. Geissler proposed earlier, he didn't suggest
19 an evidentiary hearing in 30 days or the 90 days, but a status
20 conference. I, frankly, think that that's not a bad idea.
21 Whether the right time period is 30 or 90, less or more
22 frequently, or a little bit longer and less frequently, we will
23 talk about.

24 But I do think it is a good idea to put down markers,
25 as you have in your settlement agreement, of coming together

1 and reviewing it. Frankly, right now, as we are approaching
2 the two-year anniversary that is discussed in paragraph 175,
3 this is a perfect time to do that. I think it probably does
4 make sense to come back in approximately 30 days and come back
5 in approximately 90 days. I assure you I'm not planning on
6 ordering an evidentiary hearing, but if any party, and that
7 includes the amicus, wants a court hearing, just ask for one,
8 and you will get one.

9 Here is what we don't want to have happen, at least I
10 don't think this is what we want to have happen: We know,
11 under the agreement, if the United States files a motion that
12 the settlement agreement is not in compliance, then I hold a
13 hearing. If I find that is correct, I make a remedy. And then
14 I have way more responsibility than I really want in this
15 process. I will not be shy about exercising it if I have to,
16 but that's not the right way.

17 MS. OSOINACH: So, Your Honor, what would be helpful,
18 I think, is to talk about the purpose of a status conference.

19 THE COURT: Okay.

20 MS. OSOINACH: The purpose of a status conference
21 from the advocates' point of view is to inform the Court about
22 the progress or lack of progress being made. From the Court's
23 point of view, I assume that what is also quite helpful for the
24 Court, as you've described, you have responsibilities for
25 enforcement. So in order to manage your own docket and your

1 own work flow, it is helpful for the Court to know whether or
2 not work may be coming your way.

3 THE COURT: Precisely.

4 MS. OSOINACH: So in that regard the coming before
5 this court in 30 days or 90 days to continue to inform you
6 about whether or not you may be called upon in the future to
7 address an area of non-compliance or conduct enforcement action
8 is premature.

9 You will hear in a moment from Judy Prosper, who has
10 done an enormous amount of work on the COAB. I would like to
11 give you one example of how setting deadlines, while the intent
12 may be to hold folks' feet to the fire, it may have detrimental
13 effect.

14 When the COAB was first being formed, the City
15 undertook a leadership role in partnership with the AMAC and in
16 partnership with others in the community. The selection of the
17 five at-large members occurred entirely from members of the
18 community, vetting applicants, and choosing applicants. We got
19 five wonderful people to serve on the COAB. That process took
20 a long time, because it was so important to everyone to have
21 people who were committed to police reform, who were informed,
22 and who understood what they were getting into.

23 The City's work plan for after the selection of the
24 COAB was that we would take some time to orient, train, so that
25 people wouldn't be thrown right in. The United States at that

1 time pointed out that that would be not in compliance with the
2 settlement agreement because the COAB needed to be established
3 by a certain date. So rather than taking time prior to the
4 establishment of the COAB and to avoid a finding of
5 noncompliance, the City convened the COAB, and I believe in the
6 words of Kathleen Saadat, which I'm very glad to see you have
7 read her submission --

8 THE COURT: Two submissions.

9 MS. OSOINACH: Yes, two submissions. We were
10 building a plane while we were flying it. And that was not an
11 ideal situation either for the City, but, more importantly, for
12 the volunteers that served on the COAB.

13 So that is an example of where imposing these
14 deadlines actually hinders progress. So that is why when an
15 hour ago the Department of Justice suggested that we continue
16 to periodically come before the Court, that the City -- our
17 initial response is that we would like some time to continue to
18 work with the stakeholders involved to figure out exactly on a
19 higher level what you suggested, which is how we, as a
20 community wanting and able to be engaged in this work, and then
21 what are some of the concrete plans that we have.

22 So it is not coming from a place of being obstinate.
23 It is coming from a place of wanting to move forward, and there
24 is plenty of fire on these feet. I do not think the Court's
25 involvement, particularly because you have that potential

1 enforcement role, is warranted at this time.

2 I will turn it over to Ms. Prosper at this time.

3 THE COURT: You make some very good points. But also
4 tying it back to the points that you made a little bit earlier
5 in your presentation, I do think one of the reasons why we may
6 be seeing disruptions at various public meetings, whether they
7 be City Hall, whether they be COAB, and other contexts maybe --
8 and I don't know this, because we haven't had that full of a
9 discussion on this -- maybe is in part driven because of public
10 frustrations with the perception of how slowly things are
11 moving. I'm not saying things are moving slowly, but nor am I
12 saying they are not. But that may be a source of some public
13 frustration.

14 One of the ways to address that may be with more
15 transparency, more public hearings. It doesn't have to be in
16 this vehicle. But if that's what one of the parties is
17 suggesting, I am going to make this Court's time and this
18 Court's courtroom available to assist -- if that's what one of
19 the parties think.

20 But I'd like to leave it alone for right now. We
21 will be taking a break a little bit later. I will hear from
22 Ms. Prosper in a few moments. But let me encourage you and
23 Mr. Geissler to discuss these issues during our break. I will
24 hear from both sides after the break. If you have reached an
25 agreement, I will most likely adopt whatever you all have

1 agreed upon. And if you don't have an agreement, I will do
2 what courts do when parties have a disagreement, and that is
3 make a ruling. I encourage you to speak with each other during
4 our break.

5 Now I am looking forward to hearing from Ms. Prosper.

6 Dennis, if you are all right, let's keep going a bit
7 little further.

8 MS. PROSPER: Thank you. I am going to go over to
9 the podium.

10 THE COURT: Wherever you wish.

11 MS. PROSPER: Good afternoon again, Your Honor. I am
12 actually thrilled today. It is a great privilege for me to
13 appear before you because this is my very first court
14 appearance in the state of Oregon.

15 While I have been an attorney for almost two decades,
16 I moved to Portland and joined the City Attorney's Office two
17 years ago, a little more, in the fall of 2014, and I absolutely
18 love Portland. The City has warmly welcomed my family, and I
19 am delighted to have made this move.

20 Shortly after my arrival to the office, I was asked
21 to "help out" with implementation of the settlement agreement.
22 And here I stand, right? Two years later, I'm proud to be a
23 full-fledged member of the team. I have submerged myself in
24 the history that gave rise to the need for the settlement
25 agreement, and I continue to seek to understand the nuanced

1 perspectives of the various stakeholders.

2 As mentioned, I will address the Court regarding the
3 City's community engagement obligations under the settlement
4 agreement, mostly found in Section 9, but also in other places.

5 These areas have been deemed to be in non-compliance
6 with significant barriers, as the DOJ mentioned. So I want to
7 start by saying that meaningful community engagement on police
8 reform is very, very challenging, but also very, very
9 necessary.

10 The City is committed to considering informed input
11 in recommendations from all voices -- be they small,
12 individual, collective, or very powerful. The City is
13 immensely grateful for the volunteer community oversight and
14 advisory board members, both past and present, who dedicated
15 countless hours, well beyond that which was expected to work on
16 this very important experiment in direct community
17 participation in police reform.

18 It is, however, painfully clear to the City that
19 there have been several obstacles in the way of COAB's ability
20 to be successful at its stated goals and tasks. All parties --
21 amicus and intervenor included -- agree that the settlement
22 agreement structure to support the COAB must be reconsidered.
23 All have agreed to continue working to develop a clearer path
24 forward.

25 Going back to the beginning, as my colleague pointed

1 out, in late 2014, in early 2015, it is clear that the vetting
2 process for the selection of COAB members could have been more
3 streamlined. It could have been more informative to both those
4 who were tasked with collecting as well as those ultimately
5 chosen to serve from the community at large.

6 Aggressive and, in hindsight, unreasonable deadlines
7 resulted in the COAB being seated before receiving a
8 comprehensive orientation and training for its members prior to
9 beginning their work. Looking back, it's also clear that the
10 agreement failed to adequately delineate and focus the scope of
11 the work expected of COAB members.

12 As the COAB's own report points out, the amount of
13 work expected was completely underestimated and impossible to
14 accomplish in the "ten hours per month" that they were told it
15 would take.

16 Because of these foundational deficits, the Board's
17 priorities shifted often. This, unfortunately, delayed the
18 invitation of the mayor and police chief until November of
19 2015. That invitation was postponed by the COAB executive
20 committee to accommodate another training they needed.

21 Many could not interpret the City's legally required
22 processes, procurement rules, and state law requirements for
23 the City's use of funds. That's because we never had a chance
24 to really clearly articulate them. But that's on us. And even
25 seasoned city employees are not fully versed with the many

1 restrictions on the use of city funds.

2 Obligations and requirements of public service as
3 "public officials" were only described to the members as issues
4 arose, causing great confusion and mistrust. Again, that's on
5 us.

6 The COAB seemed to begin to coalesce after a private
7 facilitated retreat last spring, and I want to piggyback on
8 what Your Honor said and say that common rules for common
9 ground were created and voted on by the full COAB, and there
10 was an expectation that those who attended the meetings as well
11 as the COAB members with each other would respect a certain
12 level of decorum.

13 Soon afterward the meetings started to become very
14 difficult. The civil unrest at COAB meetings referred to by
15 the DOJ resulted in COAB members, the chair, city employees,
16 and members of the public expressing concern for their physical
17 safety at COAB meetings and facing reputational harm due to
18 both verbal attacks, attacks in person, and electronically
19 online.

20 There were online communities with the sole purpose
21 of disrupting and disbanding COAB. These individuals were
22 organized in their goal and would grind public COAB meetings to
23 an abrupt halt without stating their intended purpose for doing
24 so.

25 Memberships of the public have had to be excluded for

1 disrupting the meetings and arrests for criminal behavior, as
2 mentioned earlier, have unfortunately been necessary. It is
3 not a good optic when police officers come in to arrest
4 citizens at a meeting for police accountability and reform.

5 Several COAB members called for a temporary halt to
6 activities to cope with the increasing difficulties to the
7 proper functioning of COAB. Again and unfortunately, the April
8 meeting where the mayor and the chief were again invited had to
9 be canceled by the COCL because the meeting preceding it ended
10 abruptly due to extreme circumstances.

11 Several COAB members resigned, bringing the
12 membership from 15 voting members to a mere eight. As the DOJ
13 points out, the effort to keep the COAB functioning began to
14 require a disproportionate amount of time and resources from
15 all sides, with mixed results, at best, in actually achieving
16 what was envisioned.

17 At its July 14th meeting of this year, the COAB made
18 a recommendation to the parties requesting to be independent of
19 the COCL. On July 19th, the COCL delivered a petition to the
20 parties requesting relief from its contractual obligations to
21 chair and manage the COAB. This has colloquially been referred
22 to as "the divorce."

23 Both requests would require structural amendment to
24 the agreement. The summer was upon us, and it seemed like
25 folks just needed a little break to reset, restore, maybe take

1 a vacation, and spend a little more time with their families.

2 In late August, after consultation, the City and the
3 United States agreed that a 60-day hiatus of COAB activities
4 would give everyone this breathing room.

5 I just want to say a little bit about the 60 days.
6 We all know lawyers are not very good with math. We sort of, I
7 think in the beginning, requested an open-ended time frame, but
8 we knew that wouldn't fly, so someone -- probably me -- came up
9 with 60 days. It was a number. And again, as my colleague
10 points out, a lot of times things don't get done. Quite
11 frankly, I could use a lot more time to check in with
12 stakeholders.

13 During the break the understanding of the parties was
14 that the City would engage the amicus party, Albina Ministerial
15 Alliance, the intervenor, the Portland Police Association, PPB
16 community groups, constituencies, our commissioners to seek a
17 different and less challenging path to incorporate community
18 input into the City's work.

19 I want to make a note here. You have heard that the
20 City could "fix" the COAB simply by reappointing new members to
21 fill the vacancies created by the slate of resignations. It is
22 true, that despite the peril of lack of forum, the mayor and
23 three city commissioners have not appointed replacement members
24 as the appointees resigned. This was not a lighthearted or
25 casual decision on their parts.

1 Four council appointees resigned almost
2 simultaneously. All appointees gave varying personal reasons
3 for their resignations. But the difficulties faced by COAB's
4 lack of cohesion and functionality were among them. Each, like
5 all the other dedicated members of COAB, gave generously of
6 their time and talent to the process, but were met with
7 daunting obstacles to their success.

8 Counsel members want the current issues addressed
9 before appointing new members, recognizing that such
10 appointments could prove to be an exercise in futility and
11 discourage interested and dedicated volunteers from accepting
12 such appointments in the future.

13 The City staffs over 100 boards and commissioners.
14 We realize that more needs to be done to ensure their success.
15 A project for on-boarding on all city volunteers is actually in
16 the works toward that end.

17 At the beginning of the 60-day period of reflection
18 the City drafted a survey and circulated it at a public forum
19 generously hosted by Maranatha Church on September 12th and
20 then beyond to anyone who wished to give their input, be it
21 anonymously or citing who they were.

22 I personally spoke with several mental health peer
23 support specialists, many advocates and providers for those
24 experiencing mental health challenges. Council staffers and I
25 spent many hours with the steering committee of the AMAC to

1 engage our city commissioners and their staffs on their
2 thoughts.

3 I spoke to other police accountability bodies and
4 sought advice from community leaders such as the faith
5 community and police forum. We interviewed almost every former
6 and current COAB member, with Commissioner Fritz sitting in on
7 the former and current COAB members so she could report back to
8 her colleagues. The COCL and former COAB chair were also
9 consulted. We continued to meet with stakeholders to gather
10 their diverse perspectives to include this input in our new
11 proposal.

12 Despite the recess, the City provided resources to
13 the remaining members of COAB to have two work sessions to help
14 them craft their report for the Court today. Toward the end of
15 the 60-day recess the City drafted an outline for a proposal to
16 move forward based on the comments and recommendations
17 received.

18 I just want to say something about being fully baked.
19 Since I have arrived to the City, we have been criticized over
20 and over for fully baking the cake and presenting it for people
21 to slice up. We didn't do that this time. We didn't fully
22 bake the cake. We put out a couple of eggs, some flour, some
23 sugar, and some butter, and we asked for continued input from
24 the parties to get the thing together.

25 It should be noted that one of the most pervasive

1 comments was that the settlement agreement gave the COAB too
2 much work, and the Board needed to be focused with fewer
3 tangible deliverables. The City proposed this loose
4 framework -- cake not quite baked -- as a starting point for
5 party discussion in a way forward.

6 COAB's recess has ended. It ended last Friday, as
7 you pointed out, Your Honor. There is a COAB meeting scheduled
8 for this Thursday, October 28th, that will be -- per the
9 settlement agreement -- chaired by the COCL.

10 The framework for conceptual amendments were shared
11 with the parties, including the intervenor and amicus prior to
12 an October 14th meeting. The parties met again a week later to
13 set some parameters for further discussion on what the future
14 COAB structure should be, including a selection process.

15 Again, I want to point to what Your Honor said
16 earlier: We're lawyers. We're used to fighting, or not being
17 on the same side. Thus, the parties agreed to facilitate
18 future conversations in moving the way forward. This was
19 pointed out, I believe by Ms. Brown earlier.

20 Another thing on timing and something I make very,
21 very clear when we agreed to do this. We need to follow the
22 procurement processes of the City and State of Oregon. Those
23 things take time.

24 So hopefully within the next week or so we will agree
25 on somebody who we think can facilitate us. Then we will

1 engage the procurement process. So that's going to take time.
2 And I hate to say it, but 30 days from now maybe we will have a
3 contract. So there might not be too much to report back on in
4 30 days.

5 All the parties agree that the settlement agreement
6 structure needs to be reconsidered. All the parties have
7 agreed to continue working to develop that structure.

8 Were do we go from here? What's next? Giving up on
9 informed community input is not an option. The City is
10 dedicated to moving forward with the benefit of hindsight,
11 acknowledging the areas where we are lacking.

12 We have a renewed dedication to improving intentional
13 and well-informed community engagement on police reform. We
14 wish to continue to improve upon what we have done well and
15 attempt not to repeat what we have not. The City looks forward
16 to addressing the issues that have overwhelmed COAB as we
17 consider modifications to the settlement agreement.

18 Thank you for this opportunity to stand before the
19 Court, on behalf of Portland, and for this Court's unyielding
20 dedication to this case.

21 THE COURT: Thank you, Ms. Prosper.

22 Let me share with you one reaction you said about
23 deadlines, lawyers, numbers, and timing. You know from your
24 practice -- maybe not that much in this district, but it is
25 pretty constant around the country -- that judges set

1 deadlines. For some responses our deadlines are 14 days;
2 others it's 21 days. Other types of things, you have deadlines
3 of 30 days. The specific number isn't that critically
4 important, as you know, because more often than not, if someone
5 asks for a reasonable extension, they get it.

6 But I've noticed, and my guess is you probably have
7 too as a practicing lawyer for some time, that deadlines are
8 good to actually get the attention of the lawyers and others to
9 actually do something. I do think that deadlines are valuable
10 for that purpose because they tend to focus attention that
11 enough time has gone on. We now have to do something about a
12 particular problem before a deadline comes up.

13 Without that, we run into too great of a risk of
14 other priorities, other matters that we have to attend to,
15 maybe that do have other deadlines taking precedent because we
16 don't have a deadline for something else.

17 So I do believe that deadlines play a good and
18 valuable role in getting things accomplished and done. That
19 said, and I'll say a few more comments in a few moments, that I
20 also recognize that we don't always necessarily get things
21 right the first time. It is constantly an iterative process of
22 learning and improving.

23 But I am quite sympathetic to and supportive of a
24 suggestion that we have some deadlines, as Mr. Geissler
25 proposes, and I'll leave to the parties to discuss exactly what

1 those right parameters and quantities should look like during
2 our recess, but I'm quite supportive of that.

3 By the way, I will say right now a comment I was
4 going to say a little bit later, but I will say it right now.
5 I recognize this country has a tremendous history of making
6 efforts and realizing that sometimes we don't get it right.
7 Then we go back to the drawing board. We're constantly
8 improving, but we don't necessarily always get it right. We
9 recognize the flaws, and then we build on them and improve.

10 You know, the cleanest example that I can think of
11 right now was when our country started, after we won the
12 Revolutionary War, we came up with the Articles of
13 Confederation. It looked like a good idea at the time to the
14 Continental Congress, and it proved it wasn't working. It had
15 too many serious flaws.

16 Then we had our Constitution. We had our
17 Constitutional Convention in 1787, and that was a dramatic
18 change from the Articles of Confederation. They still didn't
19 quite get it right. That's why the First Congress in 1791
20 proposed the Bills of Rights that were ratified, and that was a
21 nice step forward, an improvement, but it still wasn't far
22 enough. It didn't accomplish enough.

23 Ultimately, we had the Civil War. One of the good
24 things that brought us was the Reconstruction Amendments, the
25 Thirteenth, Fourteenth, and Fifteenth Amendments going in the

1 right direction -- and I'm just talking Constitutional changes.
2 I'm not even getting into statutory issues. But that didn't go
3 far enough.

4 Ultimately, we needed the Nineteenth Amendment, and
5 my guess is that we haven't gone far enough and that someday
6 historians or others will look back and say in this time period
7 we hadn't gone far enough, and we need it even more. So we are
8 getting there.

9 So I'm not being overly critical of what has taken
10 place in the last two years. I do acknowledge the parties have
11 agreed we're not in compliance with settlement agreement.
12 However, we're not done. Nobody expected that this would be
13 fully complied with in just two years. We need to keep moving
14 forward. We can't lose sight of it. I do recognize the
15 contributions of everyone here toward that objective.

16 So moving forward, we will get it done. It may come
17 with three steps forward and two steps back, but we are making
18 progress. We are moving forward.

19 Ms. Osoinach, I know you wanted to show a video.
20 Approximately how long is that?

21 MS. OSOINACH: It is approximately ten minutes.

22 THE COURT: Maybe we should do this: I would like to
23 relieve our court reporter at this time -- although when I stop
24 talking, of course. Then we will listen to and watch the
25 video. Then we will take a ten-minute recess right after the

1 video ends. It sounds like the City is done with its opening
2 comments, am I correct, after the video?

3 MS. OSOINACH: Yes. I would like to make a few
4 comments to set the video in context.

5 THE COURT: We will do that. After the video ends,
6 it sounds like the City will be done with the presentation.

7 MS. OSOINACH: We will have no further comments.

8 THE COURT: Then we will take a ten-minute recess.

9 After that, I would like to hear, Mr. Karia, if you
10 have any comments on behalf of Portland Police Association.

11 Ms. Albies and Dr. Haines, if you have any comments
12 on behalf of the Albina Ministerial Coalition.

13 I also look forward to hearing from our COCL,
14 Dr. Rosenbaum, Dr. Watson, and Dr. Christoff. You can tell me
15 what you all want to do.

16 I do want to hear from the COAB representative,
17 Mr. Steenson.

18 Ms. Saadat, that is you. If you would like to share
19 comments after Mr. Steenson, I would like to hear your
20 perspective.

21 Ms. Hardesty, I received a letter from Mr. Hardesty.
22 I would be interested in hearing your comments, Ms. Hardesty.

23 Frankly, anyone else who wants to speak.

24 I have got Dr. Bethel.

25 Frankly, the invitation is open. Just see Mary

1 afterwards.

2 What I would like to do is after the COCL and COAB,
3 Mr. Steenson, then hear from Ms. Saadat, Ms. Hardesty,
4 Dr. Bethel, if you wish.

5 Mr. Walsh, if you are willing to share some of your
6 views.

7 MR. WALSH: Oh, yes.

8 THE COURT: I would be very interested in hearing
9 your views a little bit later, including the point about what
10 can and should be done to make COAB meetings more productive
11 and less disruptive. I would like to hear from you on that,
12 sir.

13 Anybody else, just let Mary know, and we will hear
14 from you after our break.

15 So the floor is now yours, Ms. Osoinach, to set the
16 stage.

17 Yes, Ms. Albies.

18 MS. ALBIES: Your Honor, for the AMA Coalition,
19 Dr. Haines was going to give a presentation, but also I was
20 going to direct the Court to Dr. Bethel for a brief
21 presentation.

22 THE COURT: Of course. I leave it in your hands to
23 decide how AMA best decides to present whatever you wish.

24 So it is in your hands, Ms. Osoinach, to set the
25 stage for the video. Whenever you tell us you are ready, we

1 will then start the video. I will relieve the court reporter.
2 When the video ends, we will take a ten-minute recess.

3 MS. OSOINACH: Thank you.

4 So I mentioned this first, but I just wanted to make
5 clear, this is a video that was prepared specifically for this
6 court proceeding as demonstrative evidence for you at my
7 request.

8 I spoke to the individuals who agreed to appear on
9 this video, and I cannot thank them enough. Some of them were
10 going to try to be here today and weren't able to be. These
11 are officers and citizens who had interactions that transformed
12 them, and they agreed to make themselves vulnerable in
13 describing the challenges that they faced in coming together,
14 but how it made a difference in both of their lives.

15 I thought it would be very helpful, not only for the
16 Court, but all of us, after the discussion we've had, about how
17 challenging it was to have public discourse at the COAB and
18 other meetings and to have micro examples of the fact that
19 those challenges have not overwhelmed, nor will they, the
20 good-hearted efforts of people to come together to work on
21 police reform in Portland.

22 UNIDENTIFIED SPEAKER: I am going to object to this.

23 THE COURT: Pardon me?

24 I don't know what you are saying, but I look forward
25 to what you are saying later.

1 UNIDENTIFIED SPEAKER: Should I come on video with
2 the people I have recorded?

3 THE COURT: You are welcome to say anything you want.
4 Just talk to Mary, and we will get you on the list.

5 (Technical difficulties with the presentation.)

6 THE COURT: Let's take a ten-minute recess. We will
7 watch it when we come back.

8 (Recess.)

9 (Open court; proceedings resumed:)

10 THE COURT: All right.

11 Mary, did we get that taken care of?

12 Dennis, you don't need to take this.

13 You may proceed.

14 MS. OSOINACH: Your Honor, we are still working on
15 the video, so if we could have just a few moments.

16 After the last status conference, after conferring
17 with our clients, there were some things that we felt it was
18 important to put in the record and so Mr. Amberg would like to
19 put a few things on the record. Then we will play the video.

20 THE COURT: Very good.

21 MR. AMBERG: Thank you, Your Honor.

22 Referring back to the body cameras -- and I apologize
23 if I misstated some things. I wanted to make sure that they
24 were clarified for the record before the Court.

25 The body camera, we have the tentative agreement that

1 was agreed to with the Portland Police Association. Then we
2 have the labor contract itself.

3 I wanted to clarify, first of all, there is no body
4 cameras policy that is part of the contract. It is not part of
5 the contract. There is not a body camera policy that was
6 agreed to as part of the tentative agreement. It was a draft
7 body camera policy. It was referred to as part of the
8 tentative agreement. There has been no agreement on a body
9 camera policy. I wanted to make sure to clarify that.

10 I also stated per the -- the ordinance was adopted by
11 Council. Under the ordinance that was adopted by Council, I
12 may have implied that there was a report from stakeholder
13 groups that was going to come back to Council for approval. I
14 didn't want to imply that it was a report that was going to be
15 approved by Council. I want to make clear it is the body
16 camera policy will come back to Council for further public
17 input and ultimately approval by Council on the body camera
18 policy.

19 The bargaining over the mandatory subject, we believe
20 that there are a number of aspects that are mandatory for
21 bargaining. That was acknowledged in the tentative agreement.
22 As I tried to say, we didn't want to fight that fight with the
23 union. We acknowledge that. It wasn't that we were giving up
24 something that we thought we had in the first place. We didn't
25 come to the conclusion that we felt it was mandatory for

1 bargaining.

2 There is no decisions made by Council ultimately on
3 body cameras, and also there has been tremendous money spent
4 already by the City, close to about \$850,000, looking into
5 implementing the body camera program.

6 So I wanted to make sure to clarify those things for
7 the record.

8 THE COURT: Very good. Thank you, Mr. Amberg.

9 MS. PROSPER: Your Honor, one more thing -- I won't
10 go to the podium -- about timing.

11 THE COURT: Yes.

12 MS. PROSPER: We respect deadlines. One of the
13 reasons we may seem reluctant to have such a short deadline is
14 we have a new administration starting in January, and we would
15 really like to have the opportunity to check in with the new
16 mayor in January before we finalize a lot of these things. So
17 we are not opposed to deadlines; we are just opposed to
18 unrealistic ones.

19 THE COURT: I understand that. And I look forward to
20 hearing the results of the discussion between the City and the
21 United States.

22 MS. OSOINACH: Thank you very much, Mary, and my
23 legal assistant, Katherine Kehoe, for the video.

24 THE COURT: Watch out for the volume on that.

25 (The video was played in open court.)

1 (Proceedings resumed:)

2 THE COURT: That is the end of the video, I assume.

3 All right. Thank you very much.

4 Let me invite Mr. Karia on behalf of Portland Police
5 Association.

6 MR. KARIA: Thank you, Your Honor.

7 While our attention has been focused particularly
8 laser-like on the details of the City's technical compliance
9 with the terms of the settlement agreement, we believe it is
10 important for this Court and everybody in attendance to
11 consider an important aspect of our reality in the Police
12 Bureau, which is we are in the midst of an unprecedented
13 staffing crisis. We are facing 10 percent shortage in officers
14 compared to our desired strength of the Police Bureau. We are
15 also anticipating 385 officers will retire within the next four
16 to five years.

17 We have been working diligently with the Police
18 Bureau to ensure that we have focused, constructive solutions
19 to our recruiting and retention problems. We want the best and
20 brightest officers, officers with diverse backgrounds and life
21 experiences.

22 But fixing the staffing crisis will take time, and
23 the Police Bureau has found itself in the position of having to
24 make incredibly difficult cuts to units which serve the public,
25 whether they be the transit division, the traffic division, or

1 gang enforcement.

2 The staffing crisis has strained the Police Bureau's
3 ability to do the very things we just saw in this video -- to
4 proactively engage with the community, to take time in these
5 incredibly sensitive and important calls.

6 Notwithstanding that shortage, Portland's officers,
7 our members have diligently showed the desire to focus their
8 attention on serving the community in the various ways we've
9 seen, not just in this video, but daily.

10 Time and again we have seen Portland police officers
11 engage with our communities. We have seen them attempt to
12 humanize the badge -- whether it is in simple community
13 relation events like Shop-with-a-Cop or more complex public
14 policy discussions such as Race Talks.

15 Our officers are dedicated, they are diligent, and
16 they are to be commended for their commitment, not just to the
17 community, but to the mental health component of the settlement
18 agreement, which we are here to provide you an update with.

19 For example, as has been mentioned already by the
20 United States and the City, Portland's Behavioral Health Unit
21 has received national attention for its creative and effective
22 approach to handling our community's mental health service
23 needs. We have seen Portland officers volunteer to take on the
24 responsibility, to take on the duties, both to their chief of
25 police and to their community to serve on the Enhanced Crisis

1 Intervention Team. They want to be part of the solution.

2 As Ms. Brown mentioned, we also have to be cognizant
3 that the solution to our mental health services needs in this
4 city and our community cannot start and stop solely with police
5 officers in the Portland Police Bureau. We cannot forget that,
6 although we demand that our officers are the frontline
7 responders to individuals in mental health crisis, that we need
8 to ensure that there are robust federal, state, and
9 county-funded mental health infrastructures so that we can
10 address mental health issues in a holistic manner.

11 On a daily basis Portland officers handle incredibly
12 important and at times potentially volatile situations with
13 professionalism, skill, and patience. It is what the
14 settlement agreement demands of them. It is what their chief
15 and police commissioner demand of them. It is what they demand
16 of themselves.

17 In our discussions about the City's compliance with
18 the settlement agreement, we must not forget all of these
19 positive steps that our officers have taken, whether they are
20 small steps -- the steps we don't see every day -- or the big
21 steps on larger policy initiatives.

22 To borrow the sentiments from Dr. Rosenbaum, one of
23 the esteemed COCL members in his written sentiments to this
24 Court, for this process to be successful, the process that
25 we're sitting here today discussing with you, Your Honor, we

1 have to ensure that our officers have confidence in the
2 Police Bureau's leadership; that the system is fair and just
3 for both the community's members and for the officers who serve
4 the community; and that the officers have a voice, as our
5 Police Bureau evolves, under this settlement agreement.

6 To that end and with regard to, for example, the
7 COAB, the Portland Police Association's President Daryl Turner
8 has actively participated in the stakeholder discussions in how
9 to reformulate the COAB so that it is successful. He fully
10 intends and the Portland Police Association fully intends to
11 continue in that endeavor to be part of the solution.

12 With respect to body-worn cameras, while the
13 body-worn camera policy is not in the collective bargaining
14 agreement, we all acknowledge that both under our collective
15 bargaining agreement and under state law both the City and the
16 PPA have an obligation to collective bargain, to negotiate, to
17 come to an agreement through good-faith processes on a
18 body-worn camera policy. We respect that obligation, and we
19 take it seriously. We will continue to negotiate with the
20 City. We will continue to push for our final body-worn camera
21 policy. Even after all the public input, we will continue to
22 talk with the City.

23 We will ensure that it is a cost-effective program;
24 that it respects the rights of our citizens -- their privacy
25 rights, among others -- and it respects the due process rights

1 of the officers who will be utilizing those cameras.

2 We believe, as the City has said, this is an ongoing
3 discussion. As this Court has mentioned, this is an evolution,
4 and we fully intend to be part of the evolution.

5 Thank you.

6 THE COURT: Thank you, Mr. Karia.

7 MR. KARIA: Thank you.

8 THE COURT: Ms. Albies. By the way, I did receive,
9 and I did read the status report from Albina Ministerial
10 Alliance for Justice and Police Reform. I thank you for that.
11 The Court has also read the report from the United States and
12 the City and from the COCL.

13 MS. ALBIES: Thank you, Your Honor. Briefly, before
14 I introduce Dr. Haines, I want to introduce Kristen Chambers.
15 She is co-counsel. She filed a notice of appearance just a few
16 weeks ago in this case.

17 THE COURT: Welcome, Ms. Chambers.

18 MS. ALBIES: She will be with me for the next couple
19 of status hearings and beyond. The AMA Coalition appreciates
20 the Court's attention to issues in this case and welcomes the
21 Court's invitation to the community to give their perspective
22 as well.

23 To give the AMA's position beyond what's in the
24 status report, I am going to present Reverend Dr. LeRoy Haines
25 who was recently awarded the first annual award of

1 Advocate for Community Policing by the U.S. Attorney General,
2 which is a great honor. He is a long-time community oversight
3 police reform activist.

4 THE COURT: Welcome, Dr. Haines. Congratulations on
5 that award.

6 DR. HAINES: Thank you. To the Honorable Judge
7 Michael H. Simon and to the other distinguished members of the
8 party, I am the Reverend Dr. LeRoy Haines, Junior, Chairperson
9 of the Albina Ministerial Alliance for Justice and Police
10 Reform.

11 The process of implementation of the court-issued
12 settlement agreement has been a long and hard road, but a road
13 that is necessary for us to get it right and to come into that
14 perfect union in our community. We have seen significant
15 progress in a few areas like the community-based mental health
16 services and the mobile crisis prevention team, yet there are
17 other major areas of the settlement agreement that I want to
18 highlight that significant progress has not been made.

19 The AMA Coalition agrees to advocate for the
20 implementation of the settlement agreement reform. The AMA
21 further agrees to oppose any attempt that is part our aspect of
22 the settlement agreement -- of our enhanced amicus. So we have
23 been diligently engaged. In fact, we set up a couple of the
24 forums in order to continue the process of engagement.

25 In reference to the Community Oversight Advisory

1 Board and the Compliance Oversight Community Liaison, the AMA
2 Coalition is greatly concerned about the implementation of the
3 community oversight of the settlement agreement. The COAB got
4 a rocky start. Thirteen members have resigned due to lack of
5 support from sometime the City and sometime also from the
6 Bureau as well as other personal issues.

7 The City and the COAB itself has made over 50
8 recommendations and unclear expectations regarding the Board's
9 role and its purpose became also a hindrance. This is an
10 alarming number considering that the Board has had only 15
11 members. Many of those who resigned were Council appointees
12 rather than those that were at large. In addition,
13 Kathleen Saadat was appointed to replace Judge De Muniz after
14 he stepped down on April 20, 2015 as chair of COAB and COCL.

15 Despite pleas from the AMA Coalition in numerous
16 meetings of the selection of new members, we have a
17 disagreement respectfully with the City, but it has not taken
18 action to fill the vacancies. The AMA Coalition participated
19 in discussions with the City on plans to fill vacancies thereby
20 committed to at-large members of the COAB, but the City did not
21 implement those plans.

22 There are currently four vacancies on the COAB that
23 the commission can fill by appointment. They have not done so.
24 As a result of the City's failure to appoint replacement
25 members, the COAB lacks a quorum to carry out its most

1 important work.

2 On July 11, 2016, the COCL team requested that the
3 settlement agreement be amended to separate COCL and COAB
4 because of its contractual obligation relating to community
5 oversight.

6 On August 19, 2016, the DOJ agreed with the City to
7 place COAB on a 60-day recess while the City worked out changes
8 to the constructure, which it would present to DOJ as a
9 conceptual amendment to the settlement agreement. As a result,
10 the work of COAB was put on hold, as it could not meet and hold
11 votes.

12 The AMA Coalition opposed this period of time and
13 felt that it could have about done parallel; that we could have
14 had parallel structures moving at the same time in trying to
15 come up with structure changes as well as keeping the COAB
16 moving. So we strongly opposed this recess and raised concerns
17 in advance that this would be seen as abandonment in the eyes
18 of the community of the settlement agreement. The AMA
19 Coalition instead asks that they would provide for a settlement
20 agreement and that the city commissioners appoint members of
21 the COAB so that the work would continue.

22 The AMA Coalition has serious concerns that the City
23 will request more and more time from the DOJ to develop a new
24 COAB and select new members. Any further delay will harm
25 public perception and engagement of community involvement, and

1 police accountability will also prolong the non-compliance in
2 the settlement agreement.

3 It reminds me, as a young civil rights worker, when
4 we were marching to break down the laws of Jim Crow, that we
5 had a theme "Freedom now," but folks kept saying, "Wait, wait."
6 We waited a hundred years, but never got nothing done.

7 The AMA Coalition met with members of the COAB and
8 representatives from the City regarding moving forward with
9 improvement to the COAB structure. Based upon these meetings,
10 the AMA Coalition made several recommendations to the City
11 regarding the COAB structure, and these include:

12 1. The COAB would have adequate funding.

13 2. The COAB would have no bars in hiring its own
14 staff.

15 3. The COAB staff would be able to fill roles of
16 management, administrative support, and community organizing.

17 4. The COAB members would receive stipends,

18 5. The COAB chair would be selected from its
19 membership and serve the role of a traditional board chair with
20 a facilitator available, if needed. ***he skips 6

21 7. The number of city appointees to be limited to
22 two to three members.

23 8. A criteria be established for the selection of
24 Portland Police Bureau members of the COAB, including having
25 expertise in the areas addressed by the settlement agreement.

1 Moreover, the AMA Coalition has advocated the funds
2 allocated to COCL to be redirected towards the COAB in light of
3 the COCL request to seize operation of oversight of the COAB.
4 The AMA Coalition understands that the COAB members themselves
5 have proposed a court monitor. The Coalition is concerned with
6 that proposal that it may eliminate community engagement and
7 meaningful involvement in the oversight process.

8 The City provided the AMA Coalition with a
9 confidential proposal regarding the new COAB on October 12,
10 2016. The AMA Coalition met representatives from the City,
11 DOJ, and PPA to discuss that proposal on October 14th, 2016.

12 At the meeting the AMA Coalition provided its
13 criticism of the proposal, and the City proposed that the COAB
14 hold public meetings to seek input directly from the public on
15 the COAB structure. The City indicated, as several former COAB
16 members had recently resigned, were willing to reconvene for
17 that purpose.

18 The COAB serves an extremely important function as to
19 the community laws and oversight of the implementation of the
20 settlement agreement. The process and decision making of COAB
21 should be transparent and accessible to the public and
22 community.

23 In light of that, the AMA Coalition does not oppose a
24 plan to seek proposals for former COAB members, so long as the
25 current COAB members continue to do the work of COAB as well as

1 discuss how to move forward.

2 The COAB is gravely concerned that the original
3 60-day hiatus, which ended on October 21st with no plan in
4 place to implement the settlement agreement reform related to
5 community oversight implementation of the settlement agreement.

6 The AMA Coalition also notes that in the year and a
7 half in implementation of this agreement there has been little
8 development of community outreach engagement plan pursuant to
9 the settlement agreement.

10 In the area of the 48-hour rule, as the Court is
11 aware, the AMA Coalition has long advocated 12 years ago,
12 beginning with the Kendra James case, that the provision of the
13 PPA collective bargaining agreement, that officers involved in
14 serious use of force have 48 hours providing a statement on the
15 incident. The Coalition has repeatedly criticized that
16 provision. It runs counter to national standards and policies
17 of best practices. The settlement agreement in paragraph 124
18 required that the PPA review its protocols for compelling
19 statements and revised them as appropriate according to the
20 applicable law and current professional standards.

21 The City recently approved changes in its agreement
22 with the PPA removing the concrete language of the 48-hour rule
23 embedded in the contract. We are thankful for that. The AMA
24 Coalition welcomes it and appreciates this long overdue chain.

25 The elimination of 48-hour rule, however, did not

1 fully address the problem with officers' statements. The
2 City's tentative agreement, which clarifies the contract, would
3 become city policy and provides that the officer be afforded a
4 reasonable opportunity to review the officer police report and
5 body cam audio/video before submitting to an investigative
6 interview in not deadly force cases.

7 As a result, this could potentially circumvent the
8 purpose of eliminating the 48-hour rule when it comes to Taser
9 less than deadly force cases, as officers would have the
10 opportunity to review footage without clear time limitation.
11 Furthermore, officers might have decided not to cooperate with
12 the on-scene investigation of the less than lethal force by
13 sergeants that would implement it as part of the agreement if
14 they feel they need to review the video.

15 I want to say, Judge Michael, this is one of the most
16 volatile issues, not only in the city of Portland, but in our
17 nation today. The communities throughout this nation and in
18 the city of Portland feel that this is an undermining of
19 community policing; that it is undermining the settlement
20 agreement; and that it is undermining the relationship that has
21 been built so far with the Portland Police Bureau. That
22 particular provision has created such outrage in our
23 community -- not only in Portland but throughout this nation.

24 So the AMA Coalition has serious concern about the
25 manner in which the City has negotiated the agreement with PPA.

1 The outgoing mayor and the PPA negotiated the agreement without
2 public participation. This was a departure from a prior
3 practice, which allowed the public to observe at least some of
4 the bargaining session.

5 The AMA Coalition and other community groups have
6 strongly advocated the City to consider proposed changes to the
7 CBA's several areas of accountability, not just limited to the
8 48 hours. But the City does not appear to advocate or propose
9 these changes in the bargaining agreement.

10 In addition, the AMA Coalition is outraged regarding
11 the manner in which the City passed the ordinance adopting the
12 agreement and the time was moved up for consideration. There
13 could have been more community input. The way that it was
14 handled, it was not handled in what we call "the Portland way."

15 The City's use of police to get the civil
16 disobedience protestors out of City Hall was an overuse of
17 police force.

18 Also, we believe in terms of the independent police
19 review and the citizen review committee, in the settlement
20 agreement, paragraph 123, the AMA Coalition has advocated for a
21 less complicated system for police oversight and for increased
22 power for the IPR, including the authority to compel officer
23 testimony and the ability to investigate serious use of force
24 in cases involving the death of community members.

25 The proposals would reduce the complexity of the

1 current system, which has two different entities -- IPR and
2 Internal Affairs, IA -- conducting administrative
3 investigations of the use of force incident.

4 In addition, under the current IPR system, the IPR
5 cannot interview an officer unless a bureau member is present
6 in order to comply with the restriction on IPR authority
7 embedded in the agreement with the union.

8 The new agreement, however, maintains that the
9 provision that prohibits IPR from conducting investigations in
10 deadly force cases and from compelling officer testimony. The
11 City failed to bargain or address the issue, and the agreement
12 prohibited effective oversight of the Portland Police Bureau by
13 IPR and hinder accountability and effective oversight. The
14 City auditor and director of IPR weighed in regarding their
15 frustration with this, and we wonder whether that was a
16 consultation process to get their opinion during the
17 negotiation.

18 Auditor Caballero wrote that a significant
19 overarching concern is that the proposed collective bargaining
20 agreement was negotiated with no notice to community
21 stakeholders and a break from previous contract negotiation.
22 IPR was not notified that the City was engaged in the
23 collective bargaining with the Portland Police Association, and
24 the City did not request IPR input.

25 We are concerned, Judge Michael, that the veil of

1 secrecy has been invoked in the proposed contract, and its
2 creation stands to do long-term harm to the City's effort to
3 build a strong police-accountability system.

4 Also, the AMA Coalition agrees with Auditor Caballero
5 that the IPR's current practice of interviewing through the IA,
6 necessarily be left intact by the City's failure to address the
7 IPR, does not address the City's obligation under the
8 Department of Justice's settlement agreement, which requires
9 that the IPR be provided with the means to conduct independent
10 investigations of police officer misconduct. As such, the AMA
11 Coalition believes that the City failed to address these
12 issues.

13 The City auditor proposed changes to our IPR and CRC,
14 which include limited public input in CRC hearing and creating
15 an appeal panel with a smaller number of CRC members to hear
16 the appeal. The AMA Coalition strongly opposes any limit on
17 public involvement; any decrease in diversity of the appeal
18 panel.

19 We find that the proposed agreement of an attempt at
20 least to convene another stakeholder group to deal with
21 proposed changes of IPR and CRC, and the AMA Coalition intend
22 to participate, but we also want to understand that there are
23 other topics that need to be addressed.

24 Finally, I want to talk about the body camera. In
25 approving the settlement agreement, the Court acknowledged the

1 role that the body-worn cameras could play in the role of
2 police oversight.

3 To that end, the AMA Coalition expects the City to
4 engage with the community, not as a footnote or an afterthought
5 after designing a proposal, but to be engaged from the
6 beginning, engage in drafting a proposal related to policies of
7 body-worn cams.

8 The City solicited input from the public in a forum
9 that we believe, as we count, our count is three forums with
10 little notice and a small public participation. However, when
11 the proposal was introduced in the agreement, with negotiation
12 with the PPA, that draft created a struggle within our city.

13 The AMA Coalition was one of many community groups
14 who opposed the proposed policy, as written, because it affords
15 the officer to review body camera footage before writing their
16 reports. Because the City concedes the issue when the officer
17 could review body camera footage is subject to mandatory
18 bargaining under state law, the AMA Coalition notes that the
19 City did not even appear to seek a legal opinion from the city
20 attorney on the issue of whether there was an issue subject to
21 permissive mandatory bargaining until the day before the City
22 adopted the new contract. It appears the City did not get the
23 legal opinion prior to bargaining and submitting this proposal.

24 The AMA Coalition has been clear in its opposition to
25 officer reviewing footage of excessive force and other serious

1 incidents. I just want to say that we feel that this will be a
2 backstep to eliminating the 48-hour rule for officers in
3 writing up their report to be able to review the body cam
4 footage.

5 We thank you, Mayor. We have been at this over 12
6 years on the battlefield -- for 12 years. We are at this
7 point, and we still believe that we can come out with a
8 community policing program that will be a model for this
9 nation.

10 Thank you very much.

11 THE COURT: Thank you very much, Dr. Haines.

12 Anyone else from the AMA Coalition?

13 MS. ALBIES: Yes. We have Dr. T. Allen Bethel, who
14 is co-chair of Justice for Police Reform.

15 THE COURT: Good afternoon, Dr. Bethel.

16 DR. BETHEL: Good afternoon, Judge Simon, and all of
17 the esteemed counselors who are here, and my friends who are
18 part of this community. I will take a couple of minutes to
19 just reiterate a few things and make a statement.

20 In regards to the proposal by the Department of
21 Justice to have a status conference in a 30-day period, plus 90
22 days, and whatever else to come, we are not opposed
23 conceptually to the idea. Our concern is the delay that may
24 occur, if and when this is extended. What we would like to see
25 is exactly what it seems the City doesn't want, which is a

1 deadline.

2 Judge Simon, if you might remember, I stood on that
3 side of the courtroom during the fairness hearing. One of the
4 things that I said that you needed to retain was the hammer. I
5 walked in this room today to say that the City is out of
6 compliance. They snuck the COAB back in so they wouldn't have
7 to face that. But for 60 days they were out of compliance,
8 even though I know they got the agreement with the DOJ to do
9 that.

10 Since the 21st of October, there has still been
11 nothing that has happened. So I still think I want to ask you
12 to drop the hammer on this non-compliance.

13 THE COURT: If I can interrupt you for one second to
14 make sure we are on the same page. Under the settlement
15 agreement, I don't have a hammer yet. Under the settlement
16 agreement, I do not have a hammer until the U.S. Department of
17 Justice files a motion to enforce the settlement agreement,
18 after going through the notice provision and the mediation
19 provision.

20 But under the settlement agreement they have to give
21 notice to the City that they are out of compliance. They have
22 to go through the other steps outlined in the settlement
23 agreement. Then they file a motion with me. That filing a
24 motion with me is the legal equivalent of handing me the
25 hammer. I will exercise my authority with that hammer, in my

1 opinion, judiciously, fairly, appropriately, and consistent
2 with the Rule of Law. But I don't have a hammer until it is
3 handed to me, consistent with the settlement agreement. I want
4 to make sure we are on the same page.

5 I am sorry for interrupting, but now I look forward
6 to the rest of your comments.

7 DR. BETHEL: That's no problem at all, Judge. You
8 have the right interrupt any time you want. You are the judge.
9 This is your courtroom.

10 THE COURT: I wasn't going to say that. (Laughter.)

11 DR. BETHEL: But I understand your position and you
12 made that very clear at the fairness hearing as well. We still
13 have that understanding, and we are still on the same page.

14 That hammer is not so much perhaps in the legal sense
15 now, but to help encourage us to set deadlines. We set
16 deadlines with some stipulations in there that the AMC and all
17 the parties will be able to receive information in a timely
18 manner. You cannot be expected to be called to a meeting two,
19 three days out and try to reach something. I feel that the
20 last two weeks, even though we met in good faith to talk about
21 getting this COAB process restarted, was a push to have
22 something to be said by the time we got here to this status
23 hearing.

24 If the judge would be so kind to re-read the City's
25 submission -- I don't have it before me. In one place they do

1 reference they have had a meeting, and the implication seems to
2 be that they've had another meeting to continue to discuss the
3 restructuring of the COAB. I find it very amazing that the
4 report can be submitted several days ahead of the second
5 meeting and yet already be included in there as having
6 happened.

7 So my support, my statement, as we talk about these
8 deadlines, let's impose the deadlines, and let's work on them.
9 We have come enough times downtown. We've gathered together at
10 the last minute to try to put a forum together to be able to
11 have an opportunity to talk about some changes. We are tired
12 of doing that. We are tired of being disappointed with the
13 delays. We want to see some action as we move forward.

14 This process of selection and getting alternates and
15 all, the first COAB meeting at the library with Judge De Muniz,
16 during a break I mentioned to him, "We don't have a process in
17 which to replace anybody." He said, "Okay, we are going to
18 work on that." We are two years in, and we still don't have
19 that process. When will we get the process? When will the
20 City finally say we are going to give the City something to
21 deal with? And when will the City listen to us? Listen to
22 us -- not with your ears -- but with your understanding.

23 Bear in mind that you have to make decisions, as the
24 mayor and as the council. I do want to remind you that you are
25 serving at the pleasure of these, who are your constituents.

1 We know that as we put you in that seat, we know how to take
2 you out of that seat. You all are going to want to respond to
3 the community and what we feel needs to happen for us, and I
4 think we are going to mount some campaigns to take you out of
5 your seats and find somebody who is willing to say they are
6 going to do it during campaign time, but they will do it during
7 that time.

8 Public meetings and discussions of the Portland
9 Police Association contract. Our current mayor said during the
10 campaign, "I know how to make that happen. I'll take several
11 other council members with me, and then it will become a public
12 meeting, and the public can be there and hear." He didn't get
13 it.

14 During this time of the injury, we want the COAB
15 fully functioning during this time being able to carry out its
16 work, being able to give recommendations so that we can reach a
17 conclusion of reinstating a full COAB that's functioning with
18 its powers and its duties. Whatever becomes the intended plans
19 of the City, don't keep them until you hand us a document a
20 couple of days before and say, "Read this and let's discuss."
21 Come to us on the front page.

22 I am reminded, as I am moved to my seat, when I was
23 about eight years old I used to go up to New York. You see, I
24 grew up in the country. We couldn't afford to ride the
25 expensive train. We had to ride what was known as "the local."

1 The local would come. Sometimes the local would be late,
2 because it would break down. It could never get to where it
3 was supposed to be on time.

4 We set there impatiently and waited, and it took time
5 to hear the train horn blow. The old riders would say, "Oh,
6 that's not it." And I was all excited, because the train was
7 finally coming. But it didn't come. Finally the horn blew and
8 they said, "There she blows," and all we got up and got ready
9 to make that trip.

10 City of Portland, the horn has blown. There she
11 blows. Let's make this trip.

12 THE COURT: Thank you, Dr. Bethel.

13 Ms. Albies, anything further from AMAC at this time?

14 MS. ALBIES: Nothing further. That you very much.

15 THE COURT: Thank you very much.

16 I would like to hear from the compliance officer and
17 the community liaison, whether it be Dr. Rosenbaum, Dr. Watson,
18 Dr. Christoff, or some combination.

19 Dr. Rosenbaum, welcome.

20 DR. ROSENBAUM: Thank you. I am Dennis Rosenbaum,
21 Compliance Officer and Community Liaison, or COCL. I am going
22 to present for a few minutes and then leave the time for
23 Dr. Watson to discuss the mental health components of the
24 agreement.

25 I will start by saying that I am a proud native of

1 Portland, Oregon. It is a great city, and it can even be
2 greater.

3 Our compliance assessment and our rating system is
4 evidence-based in the sense that we've spent months of field
5 observations and one-on-one interviews and focus groups and
6 surveys of all the police personnel and reviews of documents
7 and analysis of incident data, et cetera. We are not only
8 looking here for compliance with specific terms of the
9 agreement, but we also examine the capacity of data systems to
10 capture the right information about the process of reform and
11 about the impact of reform.

12 Finally, I want to say that through technical
13 assistance and consultation, we've advised the Portland Police
14 Bureau about best practices and evidence-based policing so that
15 Portland can actually reach beyond the requirements of the
16 settlement agreement to a higher level of professional
17 practice.

18 At this point, you know, I know that there is
19 frustration in many ways, but our general conclusion is that we
20 see the City independently, quite frankly, I want to say that,
21 because I don't live here now. We see the City and the
22 Portland Police Bureau working quite hard in most areas towards
23 substantial compliance with the terms of the settlement
24 agreement. But at present, they've obtained only partial
25 compliance with most of the areas. It is definitely, as you

1 said, Judge, an iterative process. It is going to take time.
2 But there has been progress, and I think we have to acknowledge
3 that.

4 First, I'm going to talk about Section 3, use of
5 force. I will comment on that. The Bureau's policies on use
6 of force and supervisory review of force incidents are being
7 revised based on feedback from DOJ, from the COAB, and from the
8 COCL's team of force experts. Most of the problems with that,
9 with the language, the definitions, the procedures have been
10 corrected, in our opinion. Unfortunately, that policy review
11 process -- and there are many policies -- has been extremely
12 slow. I think to help expedite that, recently the City and the
13 Police Bureau have committed more resources to that, and we
14 have offered, as the COCL, to help the Department of Justice
15 with its review process to help speed that up.

16 Regarding the management of use of force within the
17 police bureau, the most noticeable improvement, I think since
18 last year, has been the successful implementation of the force
19 audit. DOJ has already talked about that as well as the City,
20 so I won't belabor that much.

21 We helped develop that system with the Bureau. Since
22 it was implemented in January of this year, the audit system
23 has been quite successful at identifying errors in the way that
24 force reports and force reviews are done. Now the inspector is
25 sending these audit reports back through the chain of command

1 to the appropriate assistant chief for corrective action.

2 Hopefully that feedback loop will prevent future mistakes in
3 report writing.

4 But the next big step, frankly, is a more challenging
5 one, which is to take data and use this force audit to identify
6 force patterns and force that's inside of policy, force that's
7 outside the policy, force that is questionably justified, and
8 those results will have important implications for training and
9 for the Employee Information System and intervening, frankly,
10 with employees who need assistance. So overall I think the
11 audit program is progressing quite well, but there is a lot yet
12 to be done now to put it to work

13 Last year we reported the Bureau's new record
14 management system, this RegJIN. It was a huge obstacle, the
15 compliance with the force reporting requirements, and it caused
16 a backlog of 17,000 cases within the police bureau. Just
17 briefly I want to say that we worked with them. They
18 identified 14 areas of problems in the system; eight of those
19 have been addressed pretty seriously. They have resolved this
20 to the point where 94 percent of the backlog cases of those
21 17,000 have been eliminated, and 2016 is up-to-date. So within
22 the next month or so they should be caught up on that.

23 THE COURT: I thought I read it was November 1st.

24 DR. ROSENBAUM: November 1st, it should be.

25 THE COURT: That's next week.

1 DR. ROSENBAUM: Yeah. They are very close. There is
2 only 1,000 out of 17,000 left. So the RegJIN system, though, I
3 want to say, continues to have problems such as development of
4 the software to properly analyze the data once you get it in
5 there on force.

6 Also, we have concerns, frankly, from interviewing a
7 number of officers on the street. They feel the system is a
8 major burden. There are hours of time spent every day entering
9 data and extracting data because of the cumbersomeness of the
10 system. So it reduces their time they feel to do other
11 proactive kind of policing. So we are going to investigate
12 that more in the months ahead to see if that is really a flaw
13 in the system and to what extent that can be alleviated with
14 better training, et cetera.

15 Moving on to training, Section 4, I don't need to say
16 this, but I'm going to because I'm a big fan of training. It
17 is an essential component of police reform that can be used to
18 educate officers about new policies, communicate new values and
19 priorities of the Bureau and strengthen their skills and
20 tactics that reduce the probability of using force. They were
21 required in the settlement agreement to do a number of
22 things -- identify training needs.

23 To do that, they've utilized a wide number of
24 sources, but we also feel they also need to get more community
25 input on that and also more rank-and-file officers and not just

1 command-level folks

2 To evaluate training, we have spoken with them
3 extensively, and they've chosen to adopt what is called the
4 Kirkpatrick model of evaluation, which is basically four
5 questions:

6 How well was the training developed and delivered?

7 Did the officers learn anything in terms of knowledge
8 and attitude change?

9 Did the training affect their actual behavior on the
10 job?

11 Finally, did it change the organization? Did it
12 change the way they're doing business? Did it change the
13 police culture, et cetera?

14 We believe that's a sound model, quite frankly, but
15 it must be implemented rigorously so that both the Bureau and
16 the community has confidence that, in fact, this training is
17 being delivered in the most effective way. So we have given a
18 lot of recommendations there, frankly, to help them improve
19 that through technical assistance reports.

20 In terms of training coverage, we are very impressed
21 with the quality and quantity of crisis intervention in
22 Portland. Dr. Watson will talk more about that, but we still
23 encourage the Bureau to explore different options to strengthen
24 an officer's communication skills -- that's such a big deal
25 today in policing -- and the tactics for all situations that

1 involve intense emotions and non-compliance by community
2 members with officers' instructions

3 For example, right now there is very innovative
4 training being developed in de-escalation and procedural
5 justice in other parts of the country, and we encourage the
6 City to participate in that.

7 Section 7, Employee Information Systems. That's part
8 of the settlement agreement. The Bureau has agreed to enhance
9 its Employee Information System to learn -- to more effectively
10 identify at-risk employees, supervisors, and teams to address
11 potentially problematic trends.

12 Now, over the past year the Bureau has made some
13 headway with its EIS system, but we continue to maintain that
14 much more can be done using EIS to intervene early with at-risk
15 employees, to prevent force problems, to save officers'
16 careers -- to put it in a positive way -- and even identify
17 those few officers that should be removed from the Bureau.

18 First, we believe that there is thresholds that
19 they've created in the settlement agreement. We disagree with
20 those thresholds. We think they are too low and too lenient.
21 For example, an officer has to have used force three times more
22 than the average officer on the same shift in order to be
23 identified as one of the thresholds. You're just not going to
24 get too many people that way.

25 Secondly, we recommend the Bureau work with experts

1 to use advance statistical modeling to identify the best
2 predictors of adverse events. This is being done. This is the
3 kind of creative thinking that I think the Bureau is capable of
4 doing -- going upstream to identify risk factors that
5 contribute to force. In other cities, for example, in
6 analyzing a thousand algorithms have discovered things you
7 wouldn't predict, like the number of calls an officer has
8 handled that involve suicide increases that officer's
9 probability of using force. Is that stress? We don't know
10 what's going on.

11 Other factors: Days off -- sick leave. Excuse me.
12 But again, the best predictor -- I am a psychologist by
13 training. The best predictor of future adverse events is past
14 adverse events. There are patterns in behavior and in data.
15 But this EIS should not be a substitute for good supervision; I
16 will say that a hundred times. It is a tool to help the
17 Bureau.

18 Third, when an officer is flagged in the EIS system,
19 we have requested that the Bureau document the decision-making
20 process and rationale for those decisions. That has not
21 happened today. We hope that that does happen. Otherwise, it
22 is kind of a black box. Specifically, for those of you who are
23 not familiar with this, these EIS administrators go through
24 these force reports, and they flag and determine whether there
25 is a problem with an individual case.

1 We don't know why is a particular case flagged? Why
2 are more than 90 percent of the flags not forwarded for
3 supervisory review, but disposed of that EIS administrator?
4 When cases are forwarded to supervisors, what decisions are
5 being made to address the problem by those supervisors? What
6 type of intervention was recommended, if any? Training,
7 restraining, coaching, counseling, or discipline. We don't
8 know.

9 Finally, down the road, we'd love to know what the
10 effects of those interventions are on future officer behavior.
11 So there is a lot of missing pieces yet that need to be put
12 together. I am confident that they will be over time. Again,
13 we all have to be vigilant and stay with this.

14 Finally, I want to say that this process is somewhat
15 new, but the measurement systems, again, need to be created now
16 to document both current process decisions and future outcomes.

17 Again, EIS is a tool to help officers avoid
18 potentially career-ending events, and we feel it needs to be
19 utilized more comprehensively as a tool for supervisors and
20 managers.

21 Section 8, officer accountability. That has been
22 talked about today. The events surrounding -- I should say --
23 I do want to make a comment. The events surrounding the chief
24 of police -- the previous police chief kind of tainted, I
25 think, the public's view of accountability and policing.

1 However, I do want to say that the restructuring of the Bureau
2 that resulted from that gives me confidence that there is a
3 silver lining here.

4 Chief Marshman has done a number of changes that have
5 dramatically restructured things so that both the status and
6 the resources that are devoted to accountability and to
7 oversight functions through this new strategic development and
8 oversight group are significantly better than what was in place
9 before.

10 So by upgrading and integrating these functions,
11 including training under this one group, there is a higher
12 probability, frankly, even though it has yet to be seen, that
13 the reforms will be infused into the Bureau's overall mission
14 and the daily operations of the Bureau rather than something
15 imposed by DOJ, the COCL, or someone else.

16 There has been talk already -- while we are talking
17 about accountability -- of the Independent Police Review. We
18 have seen some steady increase in the number and quality of the
19 investigations of community complaints, but certainly there is
20 still lots of room for improvement, and the civilian oversight
21 continues to be a source of contention. I don't need to tell
22 you guys that. You know that better than I do.

23 Public debate. The accountability process, including
24 the 180-day timeline for complaint resolution, has hit
25 roadblocks. Consequently, at this time there is no approved

1 plan for a revised accountability process yet.

2 In terms of on-scene statements, I can't say -- we
3 have been working on this 12 years, but certainly in our very
4 first statement here more than a year ago we recommend the
5 elimination/abandonment of the 48-hour rule. That was based on
6 research and findings in other cities as well as the loss of
7 public trust in the system. We are very pleased that that
8 clause has been removed from the latest police contract.

9 I do want to recognize and have us be cognizant of
10 the accountability process from the police officer's view. The
11 only person here who probably mentioned that was you. Our
12 survey data shows that nine out of ten of the survey
13 respondents of officers in Portland do not feel that officers
14 who consistently do a poor job are held accountable. Eight out
15 of ten feel that officers who do a good job are not praised.

16 Again, this idea that the administration -- the
17 ability to recognize and respond appropriately to positive and
18 negative performance by individual police officers was
19 identified by the officers themselves as one of the more
20 serious accountability problems that needs to be addressed.

21 THE COURT: Although in that area, in addition to
22 Mr. Karia's comments, the video shown by the City of Portland
23 showed some superb behavior by police, and I praise them for
24 that. I know they have already been praised, and I will add my
25 praise to them for that.

1 DR. ROSENBAUM: Yes, absolutely. I think there could
2 be positive trends there with a new administration and a new
3 police chief, who I see who is here today, Chief Marshman.

4 Section 9, community engagement and the creation of
5 the community oversight work. Well, that's a big one. There
6 has been plenty said about that. That's the COAB, one of the
7 primary mechanisms that was created for community engagement.
8 We, frankly, have done our best to support and facilitate the
9 work of this body. We have employed some of Oregon's most
10 respected individuals to chair and be the presiding officer of
11 the COAB, including former Oregon Chief Justice Paul De Muniz
12 and community leader Kathleen Saadat, who is here today in red.

13 They did a fantastic job, in my opinion, under the
14 circumstances. But with input from the City and DOJ, and given
15 the level of disruption that you've all heard about already
16 that was faced, we were forced, frankly, we felt to change the
17 venue at one meeting, to schedule meetings differently, to keep
18 members of the COAB and the community safe, and to keep the
19 business of the COAB moving forward, which was part of our job.

20 It wasn't perfect. Some people objected to it, but
21 we felt it was the best we could do under the circumstances.
22 Apparently nobody -- the City, DOJ, the COCL, ourselves, or
23 members of the COAB -- had any idea how difficult and
24 challenging it would be to create and support this advisory
25 body and keep control of these meetings and keep them moving,

1 frankly, in this current environment.

2 So despite some early successes, and there really
3 were some, so let's not forget them. In the final analysis the
4 COAB, as currently conceived, did not work. We do not feel it
5 is our position to opine on the reasons for this outcome,
6 although I could spend an hour doing that --

7 THE COURT: No, you can't.

8 DR. ROSENBAUM: I could, but I can't here exactly.
9 We tried to keep the parties, though, all of us, on the hot
10 seat to deal with this, and it has been a challenge. However,
11 we did officially request that the COAB and the COCL be
12 separated so that the investigation of compliance with the
13 settlement agreement could be independent of the process of
14 community engagement. We will, however, continue to uphold our
15 responsibility to chair the COAB until such time as the
16 settlement agreement has been officially modified.

17 I want say, though, for those people -- there are
18 various perspectives on this, but I personally have devoted
19 much of my professional career over the last 35 years to deeply
20 understanding and trying to improve police-community relations.
21 I have written books about stuff. I've talked about this. I
22 deeply value the importance of community engagement in public
23 safety and in policing and truly hope the City can arrive at a
24 workable model that gives voice to the many different
25 stakeholders that make up Portland.

1 I just wanted to make a couple of closing comments.
2 Obviously this is a very difficult time in the history of
3 policing nationwide and certainly here in Portland. I think
4 community members rightfully are angry about police injustices
5 over the years and are demanding change and accountability.

6 We encourage everyone, however, to think about the
7 best ways to achieve reform in policing. Just a couple of
8 quick thoughts: My biggest hope is that everyone approaches
9 this reform with sincere intentions to help improve the
10 Portland Police Bureau through constructive criticism and
11 collaborative reform.

12 I am saddened by -- I think we have to be vigilant
13 all the time of government. There is no question. But I am
14 saddened by the distrust of motives and the lack of cooperation
15 in many ways about this. I feel strongly that greater
16 transparency, trust, listening, and empathy in all directions
17 could go a long way toward finding common ground and achieving
18 the goals of the settlement agreement.

19 Secondly, as someone who has spent a lot of time
20 studying police behavior and organizational behavior in 100
21 American cities, I caution Portland that reforms can backfire
22 if they are viewed simply as systems of punishment for all
23 employees within this organization, when the actual number of
24 bad cops, I have learned over the years, is relatively small.
25 Yes, there is rudeness. There are other various things that go

1 on, I know that. But really bad cops are rare.

2 But my point here is our research and other research
3 by other scholars suggests that organizational change and
4 reform is more likely to occur when officers have confidence in
5 the leadership of the organization, when they feel the reasons
6 for change have been clearly explained to them, when they
7 believe the system that they are working in is fair and just,
8 and they believe they have a voice in the process. Just as the
9 community here has expressed its desire for a voice, so do
10 officers. It is about them. It is about their lives, their
11 careers, their families. Unfortunately, I usually don't hear
12 much about that.

13 Our surveys, for example, recently in Portland
14 document the serious downward decline in those things I've just
15 mentioned over the past year, where it has resulted in the 36
16 percentage point drop in job satisfaction in 2016 versus 2015
17 among PPB officers. The last survey I should say was finished
18 prior to the appointment of the new chief.

19 One potential adverse effect -- I'm pointing this out
20 for a reason. I'm not some cop chaser who believes in let's
21 support the police all the time. I've just spent a lot of time
22 thinking what they are going through. There is a need for
23 reform.

24 One potential adverse effect is what we call
25 de-policing. You have heard about that, the post-Ferguson

1 effect, whatever you want to call it, where officers reduce
2 their effort on the streets to avoid punishment.

3 In fact, even the vast majority of officers in our
4 survey told us that they are much less willing now to stop
5 anybody who is suspicious, to use force, et cetera. Some of
6 this you could argue is good news. We want them to maybe use
7 less force.

8 But the alternative of this kind of proactive
9 policing is what we call reactive policing, where the police
10 just lay low, do the minimum amount, respond to the calls they
11 have to do -- this is just not Portland. I have been in many
12 cities where I hear this.

13 One of the consequences of that -- we have studies in
14 many cities that show that proactive policing actually reduces
15 crime and violence and disorder, whereas officers who just lay
16 back, don't do much, doesn't help. I am not saying they are
17 all going out and doing this. Good cops will go out and do
18 their job every day. But there is right now a mood of not
19 wanting to do as much.

20 I want -- my last point, use of force, for example,
21 is an absolute necessity in some situations, and we must expect
22 that police -- we gave the police the authority to do that. We
23 must expect them to exercise that authority, when there is no
24 alternative at all. We don't ever talk about that. I hope
25 that's part of the dialogue, because most -- force is a complex

1 issue that we don't talk even about.

2 Anyway, in light of all these organizational dynamics
3 and realities, my advice to the City is this: Not only does
4 the Bureau need strong leadership that values positive
5 community engagement and transparency, it also needs leadership
6 that can create a system of accountability and supervision that
7 rewards positive action and decisions by officers and holds
8 officers accountable for poor decisions that put lives at risk
9 and threaten the legitimacy of the Portland Police Bureau.

10 Our first impression is that the recent
11 reorganization of the Bureau appears to be a major shift in the
12 right direction.

13 Thank you, Your Honor. Dr. Watson is --

14 THE COURT: I do want to say this. I have read the
15 entirety of your report and Dr. Watson's. It is 18 pages. I
16 have read the entirety of it. It is available on the public
17 record. It is Docket 129, filed yesterday in the public
18 record. I have read the entirety of it.

19 I do want to turn to some of the other people that
20 would like to speak. I would like to see if we can conclude
21 this by 5:30.

22 So let me ask, Dr. Watson, is there one or two points
23 you would like to make very briefly, but speaking slowly. If
24 it is one or two minutes, if you possibly can. I have read the
25 entirety of your report, and it is public record.

1 DR. WATSON: I will try not to cover something that
2 has already been covered by other people's testimony. I think
3 one of the important things is just looking at the City's
4 crisis intervention model. We know that it varies somewhat
5 from the Memphis model, where the Memphis model has a CIT
6 officer/specialist officer dispatched to any
7 mental-health-related call.

8 The Portland model has an CIT officer dispatched to
9 calls meeting the criteria that is a little bit narrower than
10 that. So it is just a subset of the calls. There are some
11 reasons for that. Part of that, it is hard for the City to do
12 the Memphis model when they already have everybody with 40
13 hours of crisis intervention training.

14 The other thing is the Memphis came out in 1988,
15 where most rank-and-file officers had at best about three
16 hours' training responding to what was then called aberrant
17 behavior. So your floor competency for most officers was very
18 low. I think the expectation of policing generally in Portland
19 is higher than that now. So that could be part of, I guess, an
20 argument for the particular Portland model.

21 What we don't have right now is the data to assess
22 the extent to which the current criteria that the ECIT capacity
23 can meet the need for calls that meet their current criteria or
24 the data to look at if there is reason to expand that criteria.

25 So I think as the City moves forward with the

1 implementation of their mental health mask, which is a data
2 template for actually collecting data on mental health calls so
3 they can look at that -- will be better able to opine on -- is
4 the current criteria adequate to really meet the needs of the
5 community for a specialist that responds to certain
6 mental-health-related calls? So I think that's something that
7 there is a lot of progress that has been made. It is something
8 that we need to continue to watch and work with the City on.

9 Also, I think I would encourage the City to take a
10 look at the data from the Bureau of Emergency Communications.
11 We didn't get that for our current outcomes report. We are
12 hoping to look at that soon. But look at the calls that they
13 identify as meeting criteria for an ECIT response: Is there
14 somebody available? And are they having to have an ECIT
15 officer from one precinct travel to another precinct, so they
16 can get a better handle on what the capacity is, are they
17 meeting demand, and do they need to expand that capacity?
18 Again, as we talked about last year, if the need for capacity
19 would change if they released that criteria to all
20 mental-health-related calls.

21 The other thing that hasn't been talked about too
22 much there is that has been progress on the BHUAC side. They
23 have updated their policies. They got feedback from the
24 Behavior Health Advisory Committee. They took that feedback to
25 heart. They are in the process of implementing training for

1 all of their RegJIN communicators so that they are better able
2 to identify the calls that should get an ECIT response.

3 So I think there is certainly progress there that we
4 hope to report on in our next compliance report, as we will
5 actually be able to observe that training. But in the interest
6 of time and the fact that this is all available, I will end.

7 THE COURT: Thank you very much, Dr. Watson. I
8 appreciate it.

9 Let me tell you I would like to go next briefly to
10 Mr. Steenson, if you want to talk on behalf of the COAB,
11 Ms. Saadat, Ms. Hardesty then, and Mr. Walsh.

12 MR. WOLFE: (Interpreted by ASL)

13 Your Honor, may I request that we delay the meeting
14 potentially until 6:00. I think Dennis Rosenbaum went on for
15 several minutes, and there are several members of the community
16 that want to speak briefly. I think in all fairness, I think
17 it would be reasonable to ask that we delay it until 6:00.

18 THE COURT: Here is what we are going to do: I am
19 not going to impose an artificial deadline, like 5:30 or 6:00.
20 I will be here as late as we need to to hear from everybody.

21 But, Mr. Walsh, I encourage everyone, including you,
22 to be relatively brief. No one needs to repeat what has
23 already been said. If everyone can speak for a minute or two
24 and make your point, I am very interested in hearing it. I
25 won't impose an artificial deadline. Let's respect everyone's

1 time.

2 All right. Mr. Steenson, welcome.

3 MR. STEENSON: It is actually good evening now,
4 Your Honor, since it is past five o'clock.

5 THE COURT: But I don't want to say "good morning" to
6 you though.

7 MR. STEENSON: I am one of the eight remaining COAB
8 members. Because we were placed on hiatus, this year we don't
9 have an officially approved COAB report. We had to work this
10 out through a couple of work sessions in the last month and a
11 half. I assure you, though, that the report has been carefully
12 prepared. It has taken into account community input, and it is
13 endorsed by all eight of the remaining COAB members.

14 THE COURT: I will tell you, I have received a
15 report. It is dated October 24th, 2016. It is 22 pages. I
16 have read it in its entirety. And I found it very, very
17 interesting. So thank you for that.

18 MR. STEENSON: Briefly, we want to talk about the
19 expansive nature of the activities we have been engaged in. We
20 want to talk about what has befallen us. We want to talk about
21 the twelve recommendations we have to try to save the COAB.

22 Two of the recommendations involve complete
23 independence from the City and the COCL, except for necessary
24 funding and a provision of resources. The second one is, we
25 believe, given the three years or so that has passed and the

1 obvious concerns about the adequacy of the settlement
2 agreement, that the Court should conduct another fairness
3 hearing to allow the community to be heard.

4 THE COURT: Let me respond to that. A fairness
5 hearing is to decide whether a particular agreement or change
6 to the agreement is or is not fair. If someone presents me
7 with a proposed amendment to the agreement, I will hold a
8 comprehensive fairness hearing on deciding whether or not to
9 approve it. If nobody presents me with that, but someone does
10 present me with a motion to enforce, I will deal with that.
11 But in the absence of a motion to enforce or a motion to amend
12 the agreement, I don't think I can hold a fairness hearing
13 per se.

14 MR. STEENSON: I know I don't have authority, but I
15 would move to divorce ourselves from the COCL right now. I
16 don't know why the parties couldn't join in that today and get
17 it done.

18 Our duties have been extensive. There are duties
19 requiring us to make recommendations, to advise the police
20 chief, to reach out to the community and listen to them, to
21 work on a community engagement plan, and receive public
22 comments and concerns. The areas in the settlement agreement
23 are expansive. Virtually nothing that the police bureau does
24 or shouldn't be doing isn't covered by the areas in the
25 settlement agreement. Given that, the task that we have had to

1 try to address those areas has been daunting to say the least.

2 We have four subcommittees and an executive
3 committee. Most of the work is done in what I would consider
4 the "think tanks" of the subcommittee level. Sometimes we also
5 use workgroups comprised of either subcommittee members or
6 members of the community at large. What they do is carefully
7 examine Portland Police Bureau policies, look at information
8 that may be needed and requested from the bureau, look at best
9 practices throughout the country in cities such as Seattle and
10 New Orleans where the Department of Justice has sued and
11 reforms have been implemented. We also look back at the
12 repeated consults that the City has received over the years on
13 police reform and look at what they haven't implemented and
14 taken those also as best practices.

15 Finally, we receive from Portland public input. Then
16 we develop recommendations. We move them on to the COAB, and I
17 can say with very, very few minor exceptions the full COAB over
18 the last year and a half have approved almost all of those
19 recommendations.

20 In total, we've approved 48 recommendations for
21 reform of the Portland Police Bureau. There have been some
22 other recommendations that are related to procedural matters.
23 Many of them are complex with multiple subparts and almost all
24 are based on existing best practices in cities such as Seattle
25 and New Orleans or based upon what the City's consultants have

1 told them over the years they should be doing, but they failed
2 to do it.

3 Of those recommendations, four address how to respond
4 to mental health crisis situations, six address training, seven
5 address police accountability issues, including the elimination
6 of the 48-hour rule, officer-compelled testimony, and allowing
7 the IPR to investigate all misconduct and getting the Internal
8 Affairs Division out of that business. 17 address use of
9 force, including an important comprehensive de-escalation
10 policy required by the settlement agreement, and in many, many
11 ways serious restrictions on the current level of force that's
12 allowed, either non-deadly force or deadly force.

13 Lastly, we've approved nine bias-free policing
14 recommendations that address the fact that the Bureau
15 continues, after data they've kept for 16 or 17 years, to
16 racially profile. Mayors, chiefs of police, stakeholder groups
17 have all called the City out on it, and nothing has happened.
18 So we've passed nine recommendations to try to address that
19 serious problem.

20 Unfortunately, we have to report that our
21 recommendations seemingly have been ignored. We have heard
22 nothing directly from the DOJ or the City about our
23 recommendations other than to say "we've got them." We have
24 heard indirectly in a couple of minor respects the DOJ has
25 approved either provisionally or otherwise changes in policy

1 that they say they took into account our recommendations, but
2 it is unclear what they took into account, what they rejected.
3 There is no interactive process. We don't hear anything.

4 Also, it is not acceptable to us to hear from the DOJ
5 or the City that they are busy and that they live with a
6 bureaucracy, and that's the excuse for the justification they
7 offer for this inordinate delay in trying to move police reform
8 through the police bureau.

9 Another problem we've had, we haven't been able to
10 consider some recommendations because, as you've heard, the
11 City has been responsible for allowing our membership lapse to
12 the point where we are almost dead, and they put us in recess
13 over our objection for two months, which has further prevented
14 us on working on some recommendations. Ironically the most
15 important ones that are outstanding and ready for COAB review
16 are 46 recommendations that are comprehensive and detailed
17 regarding police accountability in the City. It is the most
18 comprehensive list of recommendations that have been put
19 together for any stakeholder that I can find.

20 Although I presented it personally at a public
21 meeting to I think four or five of the commissioners and
22 otherwise I believe they are aware of the recommendations that
23 are going to be passed, we've heard nothing from the City about
24 those.

25 One of the primary objections the community had to

1 the new collective bargaining agreement was it did not address
2 any of the necessary police accountability changes, some of
3 which are restricted by the language of the collective
4 bargaining agreement.

5 What we fear is now that the agreement has been
6 passed -- rushed through -- for the next three-and-a-half
7 years, unless the union wants to agree to reopen the contract,
8 we are stuck with provisions that will prohibit better and more
9 comprehensive accountability because of the collective
10 bargaining agreement. Two of those are the IPR cannot
11 investigate some matters, and the other one is
12 officer-compelled testimony by the IPR

13 We also have run into a brick wall in trying to
14 recommend or get through recommendations with the COCL. When
15 they put out a compliance report, for example, in 2015, we
16 recommended that 14 of their recommendations were too lenient.
17 They were talking about partial compliance, and it should have
18 been much less than that. The response was, "We're right, and
19 you are wrong." I'm not sure that is true. But again, our
20 recommendations went unheeded.

21 We've also spent time working our processes. The
22 processes were not good, and there have been some difficulties.

23 Because a number of people today have spoken about
24 the issue of -- some people call it civil unrest; some people
25 call it civil disobedience. I prefer the words

1 "civil disobedience." This country has a long history of civil
2 disobedience by people trying to get the attention of the
3 government. It is not always nice. Sometimes it is criminal
4 in nature, but it is an attempt for people to express
5 themselves.

6 This is what I want to say about the COAB meetings.
7 I can't speak to the City Council meetings that may have been
8 disrupted. The second chair we had from the COCL -- I am going
9 to make this my personal observation, because I have not
10 discussed this with all of the existing COAB members -- ran
11 meetings very, very tightly, was on occasion rude, and I think
12 in part also because of the history of the COCL and the fact
13 that the community did not want Rosenbaum and Watson hired, it
14 created a lot of tension.

15 The meetings erupted, so to speak, or there were
16 problems. They all involved meetings chaired by the COCL. I
17 personally facilitated or chaired countless subcommittee
18 meetings with some of the same people there, some of the same
19 people who raised their hands and said, "I was arrested." They
20 may not be easy meetings to get through, but with some respect
21 and some patience you can get through the meetings. Nobody
22 gets arrested, and you go home.

23 We also at various times have been allowed to
24 facilitate full COAB meetings. By that, I mean us, the COAB,
25 and work sessions. Again, those have gone off without a hitch.

1 No one has been arrested, and we've all gone home. It doesn't
2 answer the problem or answer the question raised about the
3 process to address it.

4 I think respect for people and patience goes a long
5 way. Much of the problems that are being described could have
6 been avoided with a more careful approach how to interact with
7 the community at large.

8 THE COURT: Mr. Steenson, would you please convey to
9 the current and former members of the COAB the recognition and
10 appreciation of the Court for their hard work, their patience,
11 their tolerance.

12 Thank you, Mr. Steenson.

13 MR. STEENSON: I will. Thank you.

14 THE COURT: All right.

15 MR. STEENSON: The City is responsible for actually
16 all 15 of the appointments to the COAB; five, one each from the
17 city commissioners; five from two other public bodies run by
18 the City; five from a selection committee at large. Two-thirds
19 of the 21 appointed have resigned; one was actually removed.

20 I did not know as clearly until I heard it today that
21 apparently the four commissioners, including Mayor Hales, who
22 have not appointed people to fill the vacancies have done so
23 and apparently intend to keep us in that situation.

24 THE COURT: We have heard that before earlier today.
25 May we make time for other people who wish to speak this

1 evening?

2 MR. STEENSON: I want to make the point that the
3 violation of the settlement --

4 THE COURT: That point has been made.

5 MR. STEENSON: I think under the settlement
6 agreement, the way I read it, just because the parties want to
7 ignore something serious like that, I think with your
8 continuing jurisdiction, sua sponte I believe, you have the
9 authority to step in and try to intervene and save the COAB.
10 We have recommended 12 specific things that should
11 happen to make the COAB work. I want to list those because
12 nobody is talking about anything --

13 THE COURT: What I would rather you do than list,
14 because I want to hear from everyone else, you are certainly
15 welcome to file whatever you wish to file. We will make it
16 part of the public record, and I will read it.

17 By the way, I will also encourage you to re-read
18 paragraph 178 of the settlement agreement, but we will talk
19 about that at another time.

20 MR. STEENSON: And I would encourage Your Honor to
21 read 187.

22 THE COURT: I know. Fairer arguments can be made,
23 but I'm not being called upon to rule on anything now. We will
24 see what I decide to do if I do anything sua sponte.

25 Thank you. Mr. Steenson, may we please make room for

1 someone else.

2 MR. STEENSON: One more point. I want to say for the
3 record, once again, it feels much like the COAB is being sent
4 to the back of the bus and not being allowed to fully present
5 as others have, including Dr. Rosenbaum, who spoke for 20 or 25
6 minutes. So I would be remiss if I didn't express our
7 disappointment in not being fully heard.

8 THE COURT: Well, I did read the entirety of the
9 22-page submission from the members of the COAB that was sent
10 in yesterday. I did read the entirety of that.

11 MR. STEENSON: One other point. In every other
12 jurisdiction where the DOJ has got in, if I did my homework
13 correctly, there has been a court-appointed monitor.

14 THE COURT: That's correct.

15 MR. STEENSON: Court-appointed monitors have teeth.
16 They have relationships with police bureaus and cities, and
17 they get things done. Substantial reforms get done. They get
18 done relatively quickly, usually with the consent of the
19 parties once the monitor has stepped in.

20 We believe one of the serious problems in the delay
21 in this case in addressing our reforms or reforms that
22 otherwise may be out there and need to be put in place is the
23 lack of the court-appointed monitor. We highly recommend the
24 parties consider doing that.

25 THE COURT: As you know, there was no court-appointed

1 monitor put in as part of the agreement here that the parties
2 reached. To the extent that the parties reach an agreement now
3 and propose to amend the settlement agreement to make a
4 court-appointed monitor a part of the amended settlement,
5 obviously I will consider that. Maybe even if there is not an
6 agreement, to the extent the Government moves to show that the
7 City is not in compliance, then obviously if I make that
8 finding, and I'm not going to prejudge that, but if I were to
9 make such a finding, I would ask all parties to provide input
10 as to what an appropriate relief should be. If there is a
11 proposal as part of that appropriate relief to have a
12 court-appointed monitor, then I believe it would be within my
13 authority to do that. Again, I'll keep an open mind and would
14 allow all parties to be heard on that issue before making a
15 final decision.

16 Thank you, Mr. Steenson.

17 Ms. Saadat.

18 And I thank you for your past work as chair of the
19 COAB.

20 MS. SAADAT: Thank you very much. Thank you for
21 thanking me and thank you for giving me the time to speak.

22 First of all, I want to say that I took the job after
23 Mayor Hales asked me about it. I took it because I thought it
24 was important. The important part for me was that there would
25 be a voice from the community that would help shape policy with

1 things like democratic principles to me.

2 I last time I was involved with any kind of
3 police-community relationship was when Kendra James was killed,
4 12 years before that. So this was a serious
5 coming-out-of-retirement decision for me, and I see it as very
6 big, very complicated. My report that I wrote and a number of
7 people have read talks about institutions and structures that
8 are barriers to the efficient operation of the COAB. I wanted
9 to talk first about the COAB.

10 In my report Chapter 1 is "The Dead Horse," so I am
11 going to beat it one more time.

12 THE COURT: By the way, I did read your
13 September 13th letter and also your June 26th memorandum,
14 "The Dead Horse" memorandum, and I thank you for those.

15 MS. SAADAT: We are starting to is discuss the
16 revision of the COAB in the wrong place. We need to discuss
17 the processes that create the COAB in order to get an efficient
18 body. To start back here is to ignore all the things that went
19 on before or didn't go on before, which is more important.
20 That led to a lot of the confusion, anger, frustration, both on
21 the part of the COAB members and the public.

22 I haven't heard anybody talk about that first part,
23 where people were not told what the tasks were in a clear way,
24 where they were not told about their status as public
25 officials, or they were not told about, you know, just training

1 and in general how to be on the board. Those are essential if
2 you are going to have a really, really good board.

3 A couple of other points I want to address. I firmly
4 believe -- it is my strong opinion -- that revision of the COAB
5 has no place in the City Attorney's Office. It should not be
6 there. The City Attorney defends the City, it defends the
7 police, and it is also responsible for defending the COAB.
8 There is a place for that -- to me -- where it gets pretty
9 messy. If I teased that, I could probably tease that out.
10 Right now, that's not a very good picture.

11 I also think that there needs to be included within
12 whatever revision there is -- not just the parties -- but
13 trainers, human resource people, people who do the dynamic
14 human stuff, because the plan was good. It is a good idea
15 poorly executed. The execution fell down around issues of
16 human dynamics, around how we were going to get people to do
17 what they want to do, which started with not training the
18 people to do what we wanted them to do.

19 My third thing is the role of the unions in all of
20 this has to be addressed some kind of way. When you have an
21 entity that is not accountable to the same people that sets
22 policy, it de facto sets policy, and we don't have anything to
23 say about that -- we, the community. So there has to be some
24 talk about how to resolve that.

25 I think the thing that people heard me scream loudest

1 the most was: Who is in charge? Who is in charge? Who is
2 ultimately making the decisions? It is hard to find those
3 people a lot of times. There were people who simply
4 disappeared. They weren't there. There were people who didn't
5 know who was in charge. They weren't there.

6 I think until it is clear that the City knows who is
7 in leadership and responsible for the outcome of the settlement
8 agreement and that there is some identifiable point at which we
9 can look and say that's where we need to go, it is still going
10 to be a mess.

11 So I am going to say you can rewrite the settlement
12 agreement all you want to. It is not going to fix the problem.
13 It is not going to fix the COAB problem. And it is not going
14 to fix the accountability problem for who is in charge of
15 overseeing the COAB and the dynamics between the COAB and the
16 people in the city of Portland and the other structures,
17 because there are other structures that need to change also.
18 You can't just change the police bureau and think that that's
19 going to stand alone.

20 I'm going to end by thanking some folks:
21 Mike Marshman, Diana, Joyce Harris, Dante James, Richard Brown,
22 Commissioner Fritz, Joanne Hardesty. There are lots more
23 people, including the COCL staff. But those are people that
24 tried to help me get answers over and over again. Judy and
25 Ellen were part of the people that I talked with almost daily

1 to help me get some kind of direction as a COAB chair. I agree
2 that there needs to be some restructure with the COAB, but not
3 a whole bunch. Let the COAB elect its chair executive/hire an
4 executive director.

5 Thank you.

6 THE COURT: Thank you very much, Ms. Saadat.

7 Ms. Hardesty.

8 MS. HARDESTY: Thank you, Judge Simon. It is a
9 pleasure to be here today, and I will be very brief.

10 There are a couple of points that I wanted to make
11 sure were on your record. I have been an activist my entire
12 life, but never have I showed up to provide my input at a
13 City Council meeting with the doors of City Hall locked and
14 armed police standing outside.

15 But because I'm someone that doesn't take no for an
16 answer, when they tell me that I can't come in because there is
17 a secret list of six people, and nobody knows how you get on
18 the list, but we know those are the only six people that will
19 be allowed in City Hall that day. But then I hear somebody
20 say, "But if you are escorted by a city employee, you can get
21 in the building." So guess what? I got a city employee to
22 escort me into the building.

23 Then I get to the City Council chambers. Once again,
24 we have armed guards from Homeland Security, Portland Police,
25 TriMet, Gresham Police, all standing there preventing the

1 public from having entry into their City Council chambers.
2 Imagine my shock when, once again, I'm told there's a list.
3 They can't tell me how to get on the list, but all they can
4 tell me is that if your name is not on the list, you cannot
5 provide your voice.

6 Now, I was inside City Hall the day that community
7 members went out of their mind and started screaming and
8 yelling and cursing, and I sat in that chambers because I came
9 to provide public testimony. So I sit in that chambers, and I
10 waited for the City Council to come back, because they went
11 running from the room. So I sat there, and I wait. And I
12 wait. And I wait. I waited until 1:15, when it occurred to me
13 they weren't coming back, and so I left.

14 Thursday was the day I came back, and City Hall was
15 locked up. Nobody was allowed in except the people on the
16 secret list of six people. And so once I got inside City Hall,
17 once again, there were armed police officers from Homeland
18 Security, Portland Police, TriMet, preventing the public from
19 going inside the chambers.

20 But then I heard a police officer say to the media,
21 "But don't worry; when the doors open, we will let the media
22 in." So I put my KBOO hat on and said, "Hi, I am here
23 representing KBOO," and I went into the City Hall chambers.

24 So inside the City Council chambers it became clear
25 who the six people were who were on the secret list. Then I

1 found out they were people who didn't get to testify before.
2 So that was where the secret list came from.

3 Because I knew my friend and colleague
4 Dr. Reverend LeRoy Haines was in the air, his name was called.
5 So, of course, I stood up in the City Council chambers and
6 said, "I am here representing the AMA Coalition. I would like
7 to speak on behalf of Dr. Reverend LeRoy Haines," and the mayor
8 gave me the opportunity to do that.

9 I've got to tell you, I've never had such subterfuge
10 to actually be able to get my voice heard by my elected
11 officials. I have been an advocate my entire life. I have
12 never, ever encountered a City Hall where the doors were locked
13 and where Homeland Security had facial recognition cameras
14 taking pictures of all the people who came in to actually
15 provide their input to their elected leaders.

16 I want to tell you I hope I never have that
17 experience again in the city of Portland when I go to let my
18 elected officials know what I think, and they didn't want to
19 hear it, and so they get armed police.

20 Now, it is kind of ironic, because they were trying
21 to convince us that we had this shortage of police officers.
22 If you had been at City Hall, you would have known there was no
23 shortage of police officers, because they were clearly standing
24 around making sure that the public did not get access to their
25 elected leaders.

1 So I want you to know, Judge Simon, I am thrilled
2 that you are a judge that wants to hear from the public,
3 because you didn't have to let us talk -- the public -- today.
4 I appreciate you. I appreciate the fact that I have this
5 ability to talk to you.

6 I want to let you know that I believe that when you
7 shut the public out of a severe public deliberation that is
8 about policy, it's about community safety, when you shut the
9 public out and you tell them that you don't want to hear them,
10 you, Judge, ruled that you can exclude someone from a public
11 meeting at the meeting that you are being disruptive at.
12 Ironically the mayor called all four disrupters by name when
13 they disrupted the City Council meeting, but yet the entire
14 public was shut out. How is that a democracy? How does that
15 work?

16 So I am here today to say that I appreciate that we
17 at least have a federal judge that is willing to hear from the
18 public. I am absolutely frustrated that I have a City Council
19 that decides because they get an e-mail, that they are going to
20 shut the entire public out of the building. I think that's
21 appalling. I think that somebody has to do something about
22 that.

23 We are looking to find out, legally, what is the
24 community's right when our voices have been shut down, when the
25 City is about to spend millions more dollars on things we

1 should have input into? Where is our ability to actually have
2 our voices heard when City Hall is locked and armed guards are
3 preventing us from being inside?

4 The last thing I will say is the biggest barrier to
5 the COAB is that most of us volunteer police accountability
6 people, we don't get paid. We spend our own money to drive
7 downtown. We spend our own money to actually pay those parking
8 tickets, because the meetings always run longer than they are
9 supposed to.

10 THE COURT: Like court hearings.

11 MS. HARDESTY: Well, I am in the garage today,
12 because I knew this was going to take a while.

13 So the fact that COAB members have never been given
14 one dime for their participation, but I hear today that we have
15 spent \$840,000 on body cams, and we don't even have a policy,
16 right. But the policy that has been given away by the City of
17 Portland is the only two things that the public has an interest
18 in, right.

19 The City has given away the police get to review the
20 video before they provide a written report, and they have a
21 reasonable amount of time. When I asked the mayor and City
22 Council, so is that two days? Two months? Two weeks? Two
23 years? What? It is unwritten.

24 The second thing is if you're under investigation,
25 you get to review any video before you are interviewed. Again,

1 why would the public agree to spend millions of dollars for
2 body cam footage that they have no access to, only the police
3 get to see, and the police get to write their reports based on
4 what they see on the camera. It's absolutely a waste of public
5 resources. Absolutely we don't want body cams, especially
6 under this condition. We don't want them. We should not be
7 spending the money. We are hiring analysts to actually
8 evaluate body cam footage that we don't even have yet, because
9 we don't have body cams. It is absolutely stupid.

10 Thank you.

11 THE COURT: Thank you, Ms. Hardesty.

12 Let's go to Mr. Walsh. Then my not-so-secret list
13 shows we have Philip Wolfe, a person whose name only appears as
14 "Lightning," if that makes sense. You are welcome to come up
15 after Mr. Wolfe, Robert West, and Ann Brayfield.

16 Mr. Walsh. Welcome, sir.

17 MR. WALSH: Again, Your Honor, I have trouble with my
18 voice. So if I get too loud, just tell me.

19 THE COURT: Mary, would you take Mr. Walsh a cup of
20 water too.

21 THE CLERK: Yes.

22 MR. WALSH: Your inquiring with the city attorney
23 completely changed my presentation to you because two years ago
24 we suggested exactly what you suggested. We needed a group to
25 get together to figure out why does such hostilities between

1 the City Council and the activists. Now, I draw a difference
2 between "activist" and "advocates." I think activists throw
3 rocks. I am an activist. There are advocates. And you've
4 heard from them today. They advocate for something special --
5 police accountability.

6 Us activists are involved in everything. We just see
7 the injustice, and we go after it. So we are always in trouble
8 with City Council, with the COAB, with Human Rights Commission,
9 with people that are on the opposite side of us, like the
10 police union. We are always in trouble with them, and that's
11 okay, because there is nothing they have that we want. We
12 don't want grants. We don't want special interests. We don't
13 want to be known. What we want is for them to do their job --
14 that's all -- just do your job and convince us that you are
15 trying.

16 THE COURT: Can I make a suggestion there? I think
17 that if you throw "verbal rocks," you are more likely to
18 achieve that result than if you throw real rocks. Obviously I
19 know you don't throw real rocks, but maybe the metaphor needs
20 to be changed to try to accomplish more of the legitimate goal
21 that you are trying to accomplish.

22 MR. WALSH: It was a metaphor. I really believe in
23 what Gandhi talked about, but Gandhi also talked about
24 confrontation. There must be confrontation with the
25 authorities if you need to change something, because they are

1 not going to do it. It is going to come out from the bottom.
2 They are only going to do it when it is to their advantage, and
3 so the activists have to figure out how to make it to their
4 advantage. And we do that sometimes.

5 I am very complimentary sometimes to the City
6 Council -- not all the time -- but sometimes. I think that
7 there are really good people in this room and very bright. You
8 are all very bright, and your heart is in the right place. Why
9 do we fail? Why do we fail so badly? Why did COAB
10 disintegrate?

11 The reason is we do not have a capacity to look in
12 the mirror and say, "Joe, what's your responsibility on this
13 failure?" Not "You did something wrong. You didn't do it
14 right. You violated some rules."

15 All of us, and I beg you, look in the mirror and say,
16 "Could I have done something more?" Could I have been easier?
17 You are right. Could I have thrown verbal instead of real
18 rocks that hurt people's feelings?

19 THE COURT: Or that frighten them.

20 MR. WALSH: Or that frighten them, you are right. I
21 have people who said to me, "You frighten me." I say, "Wait.
22 I am 74. I'm on oxygen. I walk with a cane. How can I
23 frighten you?" They say, "Your words are so angry sometimes."

24 I spend a lot of my time crying, because we are in a
25 mess, and it is down here. It is right here. We are one

1 incident away from Ferguson -- one incident. If we have one
2 major killing of an innocent person, this city will explode.
3 That's what makes me cry. That's what makes me so angry,
4 Commissioner Fritz.

5 When you see me angry, that's what makes me angry.
6 We have good people here. I don't want us to point fingers
7 anymore. I want you to go home, Judge, and say, "Can I do
8 more? Can I go out on a limb?" I want Joe Walsh to go home
9 and say, "You promised you would be easier at 74. Will you
10 please do it. You are running out of time."

11 Thank you.

12 THE COURT: Thank you, Mr. Walsh. It was a pleasure
13 to hear from you, sir.

14 Mr. Philip Wolfe.

15 MR. WOLFE: (Interpreted through ASL)

16 Hello, Your Honor. My name is Philip Wolfe. Thank
17 you for allowing me a moment to speak.

18 I am the chair of the executive committee. I have
19 been the chair for about six months. I was appointed after
20 someone resigned. It has really been a great experience. It
21 has been challenging. There has been a diversity of energy, so
22 I am in the middle of trying to figure out what the exact
23 issues are.

24 I've re-read and re-read the settlement agreement,
25 and I'm seeing that the problem is that COAB and COCL are

1 united. I think that we need to be truly independent from each
2 other to accomplish our work without interruption from COCL.

3 Looking back, COCL has caused the disruption. They
4 are not experts at community engagement. They have failed at
5 community, and that is a proven fact. I, as the executive
6 committee chair, have tried to engage with them, educate with
7 them, set up meetings, create less of an "us versus them"
8 feeling, and to no avail.

9 We've finally figured out how to run meetings, but
10 without their involvement. At the same time the City, the
11 chief of police, the mayor, the city commissioners, they have a
12 dark history. There has been media. There has been articles
13 documenting this.

14 Where is the transparency? That is what is key --
15 transparency is important -- and trust. And right now, there
16 is none. For COAB to be successful, that trust must be
17 present, and trust needs to happen by disassociation from COCL
18 and COAB.

19 Any couple who asks for a divorce, either party who
20 requests that, is granted. They haven't asked us for a
21 divorce. They went straight to the Department of Justice. We
22 were not informed of that. We are here, and we were not
23 informed.

24 I'm hoping to make a request. I did file a complaint
25 with the Department of Justice. I found many issues where the

1 City is not in compliance. You have already heard this from
2 other people. They have already accounted how they are not
3 within compliance. I filed that report two weeks ago. I've
4 heard nothing. I've sent follow-up e-mails.

5 The Department of Justice, they have the authority.
6 I'm hoping they will read my complaint, forward it to you, if
7 you have that authority, but nothing has happened. I have
8 tried everything I can.

9 The settlement agreement needs to be modified. We
10 have made recommendations for that to the DOJ and the City. We
11 have been trying to get all four parties involved in that
12 agreement, but nothing has happened.

13 In order for COAB to survive, we need redirection.
14 We need to be disassociated from COCL, and that's what needs to
15 happen in order for to us continue. Communities all over the
16 U.S. are depending on us. For other cities, we need to become
17 a model. It is a challenge because in bigger cities they have
18 a lot of issues, but here in Portland we are unique. For us to
19 have the chance for a police reform to happen, we can truly
20 have an impact on the rest of the nation. So please, I hope
21 you honor my request.

22 Thank you

23 THE COURT: Thank you very much, Mr. Wolfe. I
24 appreciate those comments. Thank you.

25 Lightning.

1 I would ask Lightning to be brief, but I don't think
2 I need to. I think it happens by definition. I am being
3 facetious. Take your time.

4 LIGHTNING: Now, Judge, I might say a few things that
5 you may not like to hear from me.

6 THE COURT: As long as it is brief, I will listen to
7 anything.

8 LIGHTNING: It will be brief, sir.

9 The gentleman that got removed by the U.S. Marshal, I
10 think that was completely inappropriate. I think he did have a
11 right to sign up for public communication. When the individual
12 went up to him and asked what he was doing, he responded, "You
13 don't have any right to tell me or ask me what I'm doing at
14 this point." I don't think he should have been dropped to the
15 ground and removed. That's just my statement to you, sir.

16 THE COURT: I appreciate that. I will tell you, I
17 was not in the courtroom at the time. I did not observe that.
18 One of the things I've learned in this job is not to draw
19 conclusions until I hear all of the evidence. But I understand
20 what you are saying, but I'm not drawing any conclusions.

21 LIGHTNING: Thank you, sir.

22 My next issue is that I want you to know that I truly
23 enjoyed The Odd Couple show, and it is something to always be
24 remembered. I watched that when I was a young kid, so I want
25 you to know that. I think you know what I'm saying right now.

1 Now moving to public communication issues. One of
2 the things that I want to have very clear for the Mayor and the
3 commissioners is, do you think public communication is
4 necessary? I would like to have an understanding and your
5 opinions on that. Do you think it is necessary? Do you think
6 it is necessary for the public to have the right to talk about
7 the issues? Do you think it is necessary to have the public
8 have additional time, if needed, to talk about the issues? Do
9 you think it is important for the public to have communication
10 for you to be able to do your job, because a lot of the public
11 right now doesn't think you believe that.

12 A lot of the public thinks that you want to make
13 these decisions. You want to push these contracts through.
14 And you really don't care what the public has to say. We are
15 seeing a lot of resistance from the public. We saw what
16 happened at City Hall.

17 There has to be that element of reasonableness, due
18 to the public communication, the points they want to stress to
19 you and understand that public communication is a necessity in
20 a limited public forum, and it is First Amendment rights of the
21 public to speak to you in a reasonable manner, give their
22 opinions, and also be respected at the same time.

23 If you don't have respect for the public, please step
24 down from your jobs. We will get people in there that do and
25 understand that as part of the process it is necessary.

1 I went to an EPA meeting where they had public
2 communication all day long, every other day, to the point I
3 walked out of there, and I said, "I love this, because I like
4 public communication," and I respected them for the way they
5 did their jobs. They even told me to go over to their office
6 if I wanted to talk to them and would be glad to talk and
7 communicate, and they did. And I have a lot of respect for the
8 way they did their job.

9 Thank you.

10 THE COURT: Lightning, let me tell you, I think part
11 of the genius of the original Odd Couple -- don't get me
12 started on the current stuff. Part of the genius of the
13 original Odd Couple is that it shows that people with very
14 different perspectives, attitudes, values, and habits can live
15 together, learn to respect each other, and see what's good
16 about each other, even though they come at it from different
17 perspectives, and that's a very good lesson for our community.

18 LIGHTNING: Laughter is so very important, and I do
19 agree.

20 THE COURT: Thank you.

21 Mr. Robert West.

22 MR. WEST: How are you doing today, Your Honor? My
23 name is Robert West. I am from Police 911. I videotape the
24 police. I have been videotaping City Hall and stuff like that.

25 Let me go through my experiences. When I first went

1 to COAB, I would get on a subject, and if there is something
2 that the leader, Ms. Saadat, didn't like, I was interrupted.
3 She would explain something, and it would go to the next
4 person. She had like three minutes per person.

5 To me, I felt disrespected that way. I felt
6 belittled and stuff like that. There was a big outcry about
7 what she was doing.

8 Okay. Later on, one of the individuals called a guy
9 that films the police -- not me but another guy -- "a Nazi that
10 goes after blacks," and the guy is Jewish, which is a major
11 problem, you know, you don't -- it is really bad when you
12 disrespect people like that.

13 I have observed -- I have had several confrontations
14 with police because they will say, "We want you to be beyond
15 that pole," which is over a hundred yards away, or "we want you
16 past this sign," which is a block away, or "we want you across
17 the street on 122nd," or some like that, right.

18 I have had issues with police as far as -- "Well, we
19 need you to go across the street right now. Well, I'm in the
20 middle of the block. Can I go around the corner? No, you go
21 across the street." Then they want to come over and have a
22 confrontation with me because I jaywalked, you know.

23 They've had -- there is just continuous stuff like
24 that. It has gotten to the point where there has been
25 disrespect. They have had their license plates videotaped, and

1 they are all upset about that.

2 But not to go off the subject, I went to City Hall
3 several times, right. The mayor tries to control everything.
4 I think he is too forceful in his controlling. If you use the
5 "F" word, he warns you that you can't use the "F" word. If you
6 use it again, he excludes you, which has caused a lot of
7 problems. People say, "Well, I'm not going to go because I use
8 the 'F' word. It is freedom of speech."

9 And so people wind up getting arrested and stuff like
10 that. I was arrested at City Hall just sitting there
11 videotaping. I couldn't believe it. I was sitting there
12 videotaping. They closed the chambers. Joe Walsh just got
13 injured by G4S. I was standing there to make sure he wasn't
14 injured or reinjured and stuff like that.

15 When I stepped down, I asked Mike Cohen, which is
16 security for G4S, "Am I being trespassed?" He goes, "No, you
17 are not trespassing. We just don't want you in there." When I
18 stepped out, they arrested me for interrupting the City Council
19 meeting, and all I did was film, and trespass, which Mike Cohen
20 told me I was not trespassing. So that's kind of the stuff
21 we're facing.

22 There is the incident where they gave us little
23 tickets to testify on different subjects and stuff like that.
24 Well, if you are an activist, your name was never called.
25 People got upset. They put tents up in there, but people were

1 still hostile. They were decent to the police. They were
2 decent to everybody else. If someone from the City wanted to
3 leave, they let them leave. There was an incident at the
4 elevator where I got shoved in the back and got a criminal
5 charge for that.

6 So then what happened was they weren't happy, and so
7 they brought in their little riot squads and proceeded in
8 shoving people and literally picked one dude up and slammed him
9 into a pillar at City Hall. I was appalled at that. That was
10 the first act of violence by anyone there, was when an activist
11 was picked up and slammed into the pillar.

12 The second act of violence was when he turn around
13 and swung at one of them. Excuse me. If somebody picked me up
14 and threw me into a pillar, I think I would swing too. You
15 have a right to defend yourself in this country, although the
16 Portland Police don't agree with that.

17 Then it escalated. As they were having people leave,
18 they were literally pushing people. When they got near the
19 doors, you are trying to squeeze 100 people out of a door where
20 there are two small doors. Then you've got stairs. We had the
21 elderly, we had disabled, and stuff like that.

22 THE COURT: Mr. West, there are a few more people on
23 the list. I would like to make sure to get to them this
24 evening. If I could ask you to wrap up.

25 MR. WEST: That's what I'm doing, Your Honor.

1 THE COURT: Thank you.

2 MR. WEST: So when they got outside, right, the riot
3 squad showed up. They decided that it was necessary to pepper
4 spray four ladies that were sitting down there asking what was
5 happening. The Portland Police have been out of control for a
6 while. They have basically been waging war, arresting
7 Cop Watchers for little minor stuff that they don't arrest
8 anyone else for.

9 If there is a march, and I'm standing there filming
10 it, they don't arrest the marchers. They arrest Cop Watchers.
11 That day they arrested six Cop Watchers, and that's what I
12 wanted to bring up.

13 THE COURT: Thank you, Mr. West. I appreciate you
14 being here.

15 Let me hear from Ann Brayfield, David Davis,
16 Mary Eng, and I believe Laurel Vanderlyn.

17 So Ms. Ann Brayfield.

18 MS. BRAYFIELD: Thank you, Your Honor. I appreciate
19 the opportunity to speak this afternoon. One of my hopes out
20 of this that's happened here today is that others around the
21 room in whatever position they happen to be in will see the
22 value of public speaking.

23 You've shown right now, right here today, that it is
24 a good thing. You have shown it is not something to be afraid
25 of. It is something you have been willing to interact with --

1 the community -- following everyone else. And I would hope,
2 whether it is the chief, whether it is commissioners, the DOJ,
3 the union, the city attorneys, whomever, I would hope that you
4 could listen to the public and find a way to do that.

5 Personally I often send e-mails. What I find -- I
6 have a question; I have a thought. I don't go on. I don't get
7 a response. It is very, very rare. I think that if people can
8 interact with each other, we will have less of the kind of
9 thing that is happening where people take the streets, people
10 perhaps are disruptive. I think that respect and listening to
11 one another is one of the ways that we're going to move forward
12 here. I would just ask that we all step back and take a moment
13 to do that when someone reaches out, or to reach out yourself.

14 Thank you.

15 THE COURT: Thank you, Ms. Brayfield. I appreciate
16 those comments.

17 David Davis, followed by Mary Eng.

18 MR. DAVIS: My name is David Davis. I am with
19 Multnomah County Cop Which, is a separate entity than Portland
20 Cop Watch. Thank you for this opportunity for public comment,
21 because I know you didn't need to allow the public to speak.
22 You have respect for the First Amendment and the public, where
23 a lot of the people, like Mayor Hales/police commissioner and
24 Mike Marshman --

25 THE COURT: Let's keep it more to the policy issues,

1 if we may.

2 MR. DAVIS: I pretty much view policing these days as
3 "death by a thousand cuts" policing basically, you know.
4 Anyone familiar with that concept -- I'm sure there are a lot
5 of people in this room. But there are serious problems when
6 the police can't even sign their union contract without
7 launching a DOJ report on itself by its treatment of mentally
8 ill, handicap people, women, and children.

9 I even saw the police mace G4S guys. Speaking for
10 G4S, G4S Security is frequently as an extra-legal mechanism to
11 prosecute and intimidate people, especially Cop Watchers.

12 Then you have Ellen Osoinach over here. She accused
13 me of up-skirting her at a COAB meeting in front of
14 Mike Marshman who was then just the COAB liaison. He wasn't
15 the chief of police. That was before the O'Dea shooting
16 unraveled.

17 They are saying that people who disrupt a meeting,
18 you know, the real disruption is coming from the mayor himself
19 who can't handle any dissenting voices at City Hall. There is
20 this Orwellian language change, like Judith Prosper, who used
21 to work for former Haitian Dictator Aristide.

22 They are trying to frame freedom of speech and the
23 First Amendment as being disruptive civil unrest. Give me a
24 break. You don't know what civil unrest is. Civil unrest is
25 what happens when our voices are frequently trampled on,

1 stomped on, and beaten out of us by a bunch of fascist goons
2 that think they represent the community.

3 You know, the use of force at City Hall, you know,
4 that was ridiculous. I saw people with prosthetic legs being
5 pushed down the stairs. People that had brain surgery three
6 weeks previous to that weren't allowed to exit out the front
7 door. They had to go out and be herded out and pushed down the
8 stairs. Sarah Hobbs, who comes to City Hall, which Amanda
9 Fritz and Charlie Hales know about her brain injury.

10 All this stuff -- I view COCL actually as a weapon
11 against the mentally ill. It has been used as a weapon against
12 the mentally ill. I have PTSD. I was invited to a COAB
13 meeting by Vianni Rivera over there to do a presentation about
14 the treatment of mentally ill and homeless people and my
15 experiences of people at Cop Watcher.

16 You know what? I am one of the people that has been
17 arrested at City Hall and at these COAB meetings. The reality
18 of the situation is, I have been arrested four times since
19 June. All four cases are dropped. So your narrative totally
20 fails in a court of law. Half the time these charges were
21 dropped even before I made it home.

22 So these toxic advocates of the City who portray
23 themselves as lawyers that serve the best interests of the
24 community, they are far from it. They think sprinkling a
25 little mace and trampling on the First Amendment rights of

1 citizens and all that is a great thing.

2 One of the main reasons for COAB and COCL unraveling
3 is because I was called a white supremacist. I am a Jewish
4 person. My family fled Kiev. We fled for a reason -- to
5 escape this same type situation that's going on and --

6 THE COURT: Mr. Davis, were you called a white
7 supremacist by a member of COAB or COCL?

8 MR. DAVIS: Yes, by Bud Fueless. Kathleen Saadat is
9 a very good friend with him. She drove him in her car and
10 dropped him off at his front doorstep. She also lied and said
11 she was intimidated by some people that were filming her.
12 Judith Mallory, a city employee, even sent out an e-mail
13 talking about how Kathleen Saadat felt intimidated.

14 Well, you can go look at the video. It is on
15 Mike BlueHair from the Film Portland Police Channel. You can
16 see just how intimidated she was when she is chuckling about me
17 getting arrested and Bud Fueless is talking about, "Yeah, I
18 called him a skinhead; ha, ha, ha, ha, ha."

19 So that's one of the main reasons this whole thing
20 unwrapped, because when you have this thing that's just based
21 on public perception, and then members of the public actually
22 come in and engage and ruin your narrative because it is
23 totally false, fabricated.

24 I think you should go back to Haiti and go join the
25 dictatorship again or some other dictator because your

1 dictatorship in Hales administration isn't working out.

2 Building a plane wall. We are flying it. It doesn't
3 ever work out and it will always lead to plane crashes and
4 fatalities.

5 THE COURT: Mr. Davis. Thank you, sir. I appreciate
6 that.

7 MR. DAVIS: That's all I have got to got to say. I
8 could go on for ten minutes, but I am going to allow others to
9 speak.

10 THE COURT: Thank you. I appreciate it, sir.

11 All right. Mary Eng, Laura Vanderlyn, Linda Senn,
12 followed by Dan Handleman, Trudy Cooper, and Mike Schumann, and
13 that's the end of my list.

14 MS. ENG: Can you hear me all right?

15 THE COURT: Yes, I can.

16 MS. ENG: My birth name is Mary Rose Lenore Eng. I
17 have been going as "Mr. Eng," because I've really had to
18 "man up" for this whole situation. So is a little joke between
19 me and Charlie Hibbs.

20 I would like to apologize to you for those comments.
21 I found them disgraceful, insulting, and I also don't
22 understand the context from which they arise. They don't know
23 much about the history of that country. So I just want to
24 apologize from my personal point of view.

25 I also wanted to bring up -- I wanted to give you

1 this book. So don't let me get out of here -- it is not a
2 bribe at this point, unlike the COAB house deal with the PDC.

3 THE COURT: I will consider it as a submission to the
4 Court much like any other court filing.

5 MS. ENG: Read page 47. There is a wonderful poem.
6 It is from my father, which I spare -- it is called
7 Golden Eagle. It is about what it was like to be 23 when
8 Kennedy was killed.

9 So there is a new loophole the Walsh/Eng decision.
10 Have you heard of it?

11 THE COURT: No, but please be brief. We have a lot
12 more people to hear from.

13 MS. ENG: Great. Great. It is called "the corkscrew
14 exemption." What you do is you take a perfectly innocent
15 lovely Catholic school girl like me and then you say: Gee, we
16 really don't like her. She is always so polite. She uses
17 proper manners. We just really want to get rid of her. She
18 hasn't quite committed a crime. Why don't we have her arrested
19 and brutalized on false charges of a weapon planted on my bag.

20 It turns out that G4S does want metal detectors. And
21 I am on the bandwagon, if we need more security at City Hall
22 that is reputable, fair, and honest. The dirty dealings with
23 "the corkscrew exemption" -- Charlie Hales got -- one week
24 after asked to resigned on the O'Dea shooting, in a very
25 cordial and polite manner, regarding the squirrel shooting

1 episode. I did so in his job. I felt more comfortable
2 speaking to him that way. But he had me arrested and
3 brutalized and bruised. Constantin Severe has all the
4 pictures.

5 But what's so interesting is for the three years I
6 worked on the Benjamin Pickering case, he is now dispositioned
7 in the Oregon State Hospital after an unfortunate June 2nd,
8 where I nearly lost my life as my head was being crushed, as he
9 accused me of being a secret agent.

10 So I got into a choke hold with that, and he is not
11 fit to stand trial for anything. It was never my goal that
12 someone who was a Portland Police brutality victim in 2013
13 would be failed by Providence, failed by Cascadia, failed by
14 the City of Portland, by everyone in four counties.

15 THE COURT: Thank you, Ms. Eng.

16 Ms. Eng, you are welcome to deliver the book to my
17 courtroom deputy. I will take a look at it. Thank you for
18 being here.

19 MS. ENG: I met your lovely wife down in Astoria.

20 THE COURT: I do not discuss her in this building.
21 It is separation of powers, but thank you.

22 All right. Laurel Vanderlyn.

23 MS. VANDERLYN: Thank you very much for allowing the
24 public to speak today.

25 I am Laura Vanderlyn. I am an artist. I am a mother

1 of five. I was one of the persons that was arrested also. I
2 was arrested on June 9th for speaking robustly. Maybe the
3 attorneys are really not understanding what the word "robust"
4 means, it is true that in fact I was speaking "robustly." We
5 do speak robustly in meetings when we are feeling it
6 necessary -- when we find it necessary to speak up.

7 I went to a meeting on June 9th, and I found that the
8 procedure and the protocols were so offensive that we had to
9 get up and speak up. And we were given instructions that we,
10 as a public body, could speak robustly. That's exactly what we
11 did. And for that, I was arrested. As I was leaving the
12 building, I was arrested. Four or five or six police officers
13 who was running after me.

14 I have never been arrested in my life. I left the
15 building. They came from behind me, and they escorted me out.
16 They took me out from the left side of the door. I didn't
17 choose to walk out that door. They escorted me out. I tried
18 to give my belongings to a friend, and they refused. They
19 refused.

20 I did not leave the jail. They had my phone. They
21 had my keys. They had everything. I did not leave the jail
22 until after midnight -- after midnight. I have never been
23 arrested. I felt like I was a domestic abuse -- I have a good
24 husband. I have never been abused, but I understand that
25 feeling of having like a domestic abuse violence happening to

1 you. I had no choice.

2 THE COURT: Thank you, Ms. Vanderlyn.

3 MS. VANDERLYN: I just want to say that we are not an
4 audience. We are civically engaged citizens that may have had
5 an experience with police or a system, and then we are there to
6 engage. We have a mind. We are not an audience. I've heard
7 this over and over: The audience -- dot, dot, dot. We are
8 civically engaged citizens. We care.

9 THE COURT: The whole purpose, including the COAB, is
10 to get the community's advice and the community's input. It is
11 a critically important part of this process.

12 MS. VANDERLYN: I tried. I suggested that they do a
13 settlement agreement in audio form. They have ignored me over
14 and over. They have this way of talking to you where they
15 spinning and spinning and spinning. You're just talking in
16 circles.

17 You ask a question and no question can be answered
18 because we get this like talking and talking and talking in
19 circles. We then go to these meetings and we speak robustly.
20 I was also arrested on October -- on the 5th, when we did --
21 there was like a demonstration. I was leaving. I wasn't even
22 part of the demonstration. My name wasn't called down to be
23 excluded. As I was leaving the building, again, I was
24 arrested.

25 My phone was taken away that day for video evidence.

1 No charges are against me on either one of those arrests. My
2 phone is still -- the City of Portland still has my phone.
3 Refusing to give it to back to me, and I don't know why.

4 THE COURT: Thank you, Ms. Vanderlyn. May I move on
5 to any other people or do you have any final comments?

6 MS. VANDERLYN: I just want to make one more comment.
7 Childcare has been provided. It is a very elitist way. They
8 make the procedure and protocol so difficult. What they do,
9 the City says that you have ten days -- call us ten days ahead
10 of time. Nobody needs a babysitter when you can plan ten days
11 ahead of time. You need a childcare provider -- people are
12 coming to the meeting that are broken and hurt and poor and
13 impoverished.

14 THE COURT: Have you tried Court Care at Multnomah
15 County Courthouse?

16 MS. VANDERLYN: COAB has childcare provided, but they
17 don't provide it unless you call ten days ahead. I think the
18 whole system is so flawed. It is just like it is a joke. They
19 have never provided childcare the entire two years, but yet
20 they have childcare available. That's all I wanted to say.

21 THE COURT: I understand.

22 All right. Thank you, Ms. Vanderlyn.

23 I am going to Linda Senn, Dan Handleman,
24 Trudy Cooper, and then close with Mike Schumann.

25 But then I am going to Mr. Geissler and ask you if

1 you've had any further discussions regarding any items and what
2 we should do on our agenda/calendar.

3 MS. OSOINACH: Your Honor, there was a name left off
4 the list, Commissioner Fritz, who was the last person to sign
5 up on the list.

6 THE COURT: I didn't see that. Of course. Then we
7 will end with Commissioner Fritz.

8 All right.

9 Linda Senn.

10 MS. SENN: My name is Linda Senn. I am extremely
11 nervous right now. My heart is beating really fast.

12 First and foremost, thank you, Your Honor, for having
13 us speak out today. I am a member of the subcommittee for the
14 COAB. I get it mixed up with the abbreviations. I also
15 applied for the chair position, because I feel like police
16 accountability, above and beyond, needs be ratified. It needs
17 to be re-purposed. That's a word I used in one of our
18 meetings. Retooling.

19 I don't think that police should be abolished. I
20 think we are all humans. We all err. And forgiveness is
21 necessary.

22 Like I forgive Officer Nicholas -- I will use his
23 first initial of the last name, which is B -- for the
24 incredible injustice that he did to me by macing me right in my
25 eye. I don't know if you were able to see that on media

1 coverage across the our nation. That was me pouring milk into
2 my eye.

3 I was brought to the COAB and the COCL through
4 Cop Watch because I reached out through another friend because
5 my son was brutalized by Gladstone Police Department -- yet to
6 receive their abuse report, the report they are supposed to do
7 when they beat up somebody.

8 He was 15 -- he was 14 then. He is 15 now. What
9 they have done to my son and other people's sons and daughters
10 and mothers, there is no excuse for that treatment of life.

11 We were brought into this world by our parents.
12 Discipline by our parents is what we expect as we grow up.
13 Harsh discipline by community representatives that are there to
14 protect us is not something that we grow up expecting. We grow
15 up understanding that there is a line to toe. We grow up
16 understanding that there is a line not to cross.

17 But we don't grow up with an understanding that if
18 you do that, that you may lose your life. This loss of life is
19 a tragedy beyond all tragedies, especially when it can be
20 stopped by the adult behind the weapon. When it is loss of
21 life due to inconsideration of your position, it's disgusting.
22 It is a tragedy that no one -- none of us should have to
23 reflect on when we take that time out to look in the mirror and
24 go, "What did I do to help?" I joined the committee. I tried
25 to get the job as the chair.

1 I'm still reaching out through other agencies. I
2 have just become a board member of a distinguished board. I am
3 expecting to be a board member at Sisters of the Road Cafe
4 where I have extended several times to everyone here to come
5 and have a cup of joe, talk to some of us. Sometimes it is
6 just that we are tired; we are not mentally ill. But you need
7 to know the difference. Training our officers in that is
8 imperative.

9 Thank you for your time.

10 THE COURT: Thank you, Ms. Senn.

11 Mr. Dan Handleman.

12 MR. HANDLEMAN: Good evening, Judge Simon. Thank you
13 very much for letting the community speak too. I am a member
14 of the steering committee of the AMA Coalition. I am speaking
15 on behalf of Portland Cop Watch. In any case, our counsel is
16 here, so they are informed of my contact with you.

17 I wanted to ask before we run out of time if it is
18 okay -- I heard you took ex parte contact from other people,
19 including Ms. Hardesty, into the court record. Is it okay if
20 we send our analyses to you as well?

21 THE COURT: Absolutely.

22 MR. HANDLEMAN: All right. We will do that in the
23 future. In fact, I would like to offer our analysis to the
24 COCL report before I leave tonight.

25 THE COURT: Give it to my courtroom deputy, and we

1 will enter it into the public record probably tomorrow.

2 MR. HANDLEMAN: Thank you.

3 One of the things we've observed is that the more
4 secret a committee is, the more the Bureau and the City listens
5 to them. The Behavioral Health Unit Advisory Committee does
6 not have open, public meetings, but the reports from the DOJ
7 and the COCL reveal that their recommendations have been
8 adopted by the Bureau. They have gotten feedback on all of
9 their recommendations and that they are allowed to participate
10 in training. That is not true for the COAB or for any
11 community committees.

12 The Training Advisory Council has open meetings.
13 They only recently opened it up to open comment because the DOJ
14 thankfully asked them to do that. They have put in their
15 recommendations, and we have heard now that they have gotten
16 feedback on their recommendations. COAB still hasn't.

17 The focus group that they put together to talk about
18 the accountability system met behind closed doors, and the
19 people who were on it understood, even if it wasn't accurate,
20 but they understood that they weren't to communicate with their
21 organizations about what was going on. So a member of the CRC
22 and a member of the steering committee of the AMA were on that
23 group, but we had no idea what was going on. Then when the
24 City came out with a proposal that was terrible, they were
25 surprised that people didn't like it. But that's because there

1 was no public input.

2 THE COURT: Mr. Handleman, if I can interrupt for a
3 moment. At the risk of making you go a little bit longer, let
4 me ask you speak a little more slowly. I have been working our
5 court reporter hard all afternoon, so a little bit slower.

6 MR. HANDLEMAN: I have been told that many times,
7 believe me.

8 ALS INTERPRETER: The interpreters as well.

9 MR. HANDLEMAN: Sorry about that.

10 The Police Review Board meets behind closed doors.
11 They make recommendations to the chief, and they get responses
12 about their recommendations. The Citizen Review Committee
13 makes recommendations. They have public meetings. They hardly
14 hear back. They make recommendations on crowd control, in
15 fact, but they never heard back from the chief or the City
16 about those.

17 COAB, of course, we have talked. The Committee
18 Police Relations Committee not only didn't get as much feedback
19 on the recommendations as they could, but they have fallen
20 apart due to lack of support, which happened to a lot of
21 groups.

22 One of the comments that was made was that there was
23 no excessive force found in the last year, but there was an
24 incident in one of the reports about an a bicyclist who was hit
25 by a police car. They refused to investigate it because they

1 said it wasn't deadly force.

2 The Graham standard, as I understand it, says you
3 can't use 20/20 hindsight as the perspective of the officer at
4 the time of the incident. So allowing them to review footage
5 to write their reports and interviews completely throws that
6 out the window, because then they will know it becomes their
7 20/20 hindsight because they can look at video. So that has
8 got to be avoided.

9 You've heard already the contract doesn't have the
10 body cameras in it, but the agreement that they signed gave
11 away the story. It says, "Mandatory bargaining," even though
12 the lawyers put together a memo saying, "We argue that it is
13 permissive," so they gave away the story on that one. There is
14 nothing we can do about that when we make our recommendation
15 about the body camera policies.

16 Somebody used the term "suicide by cop" here today.
17 That's not a good term. Our group that reviews shootings for
18 the City of Portland discussed how it is a homicide. And when
19 we use that term, it takes the responsibility off the police
20 for taking away life.

21 On that note, the last person who was killed by the
22 Portland Police last year in November was a mental health
23 crisis outside a hospital, and the officers who shot him
24 received awards for it. 15 years ago when Jose Mejia was shot
25 and they gave awards, the City realized that was not a good

1 idea because the community became outraged. But now that
2 policy has gotten back into place.

3 We have made numerous recommendations about how to
4 fix the accountability system, and we never get listened to.
5 Hopefully there is a stakeholder group where there is some
6 limited discussion about it, but again, because the focus group
7 that talked about it was done in secret, we want to open up the
8 whole process again from beginning. Our proposal is to take
9 the Citizens Review Committee that meets in public, the Police
10 Review Board that meets in private and try to merge them so it
11 is all in public. The original proposal from the City was to
12 merge them all and put them in private. That was not
13 acceptable to anybody.

14 Incidentally, the testimony that you heard that the
15 new recommendation is to limit public input at appeals
16 hearings, it is actually to eliminate public input at appeals
17 hearings. Other people call that "the Cop Watch clause,"
18 because they don't like hearing us talk.

19 I know you have been listening. I also know that
20 Dr. Rosenbaum is supposed to be holding a town hall meeting at
21 six o'clock. I know he is not starting it because I know he is
22 behind me right now. I would like to get to that myself
23 because I have some comments on that.

24 THE COURT: Hand those comments to my courtroom
25 deputy.

1 MR. HANDLEMAN: Yeah. We will type up some more
2 comments.

3 The video that was shown, nobody is going to dispute
4 that those were moving stories. You heard moving stories here
5 from people who were at City Hall. I left City Hall early that
6 day because City Council had shut us out, voted on a contract
7 without taking public input. I watched the video of the people
8 being pushed down the stairs. That's even more emotional for
9 me to watch. But we weren't allowed to bring that in the
10 courtroom. We didn't know they were preparing something like
11 that. I would have brought that video.

12 I think that's the way the City plays it: Look at
13 these great things. But they never admit things aren't going
14 well. That's what we need to hear. I think the way to fix all
15 the problems we have talked about today is to engage in active
16 listening. Even if they disagree with it, they can say thanks
17 for that idea you had about whatever it is to show that they
18 heard what you said. That's a good step forward to do some
19 active listening, City. I am really encouraging that.

20 I just want to let you know also there are seven
21 members of the Portland Cop Watch here today to observe these
22 hearings. A lot of people think I do this work alone. I
23 don't. I appreciate my group and all the support they have
24 given to make these analyses possible and our work possible. I
25 will send in more stuff in writing because I know you want to

1 get on.

2 THE COURT: Thank you very much, Mr. Handleman. I
3 look forward reading to whatever you submit.

4 All right. We will have Trudy Cooper, Mike Schumann,
5 and then Commissioner Fritz.

6 MS. COOPER: Thank you, Judge Simon, for the
7 opportunity to speak.

8 I would like to speak to two things that you raised
9 that I thought were challenges to all of us -- one of them
10 being the 30, 60, 90, whatever -- it is being called the status
11 conference. Then the second being how to have a dialogue about
12 how to have a dialogue. I think those two are very related
13 because I think they have the same source, the resistance to
14 them has the same source.

15 The way I was hearing what you were proposing was
16 like a pause and assess, an opportunity to say where the
17 progress was at this point, to take stock of where you are.
18 The way I think it is heard instead is an opportunity to pause
19 and be judged or pause and be condemned or pause and be graded.

20 I think that the City sees itself in an adversarial
21 role in relation to the community and also in relation to your
22 role, and I will always recall in the Council meeting when the
23 Council was considering making a decision -- was making a
24 decision that they wanted to challenge your role and to have it
25 be this role that we have here today. The "pre-hammer role" is

1 what we have anyway. But one of the commissioners said, "It is
2 as if we're on probation." It's as if we are all on probation.
3 We all, as Joe Walsh said, have had a contribution to the
4 adversarial atmosphere that exists. We can all reflect and
5 have that dialogue about how to have a dialogue.

6 THE COURT: Let me respond to that briefly, because
7 on this probation point, remember how we all started here
8 two-something years ago. The United States Department of
9 Justice filed a lawsuit. It was against the City. The City
10 had every right to defend itself and to go to trial. Instead,
11 they chose not to, and they chose to enter into a settlement
12 agreement. That is not at all uncommon. But it is their
13 decision.

14 They entered into a settlement agreement, and now
15 we're talking about implementing the settlement agreement.
16 Part of that settlement agreement included continuing court
17 oversight to ensure that all of the terms of settlement
18 agreement were being complied with, because everyone recognized
19 they couldn't comply with it instantly, and we're just
20 implementing the settlement agreement.

21 So no one is really on probation. Frankly, what
22 we're doing is implementing the parties' agreement. The
23 United States Department of Justice and the City of Portland
24 both acted very responsibly in entering into an agreement.
25 Part of that calls for the Court to keep jurisdiction over the

1 case, and that's all we are doing.

2 So I hope nobody really does view it as probation,
3 because it really is the parties have entered into an
4 agreement, and they have brought the Court into that. And I'm
5 just following my role under the agreement.

6 MS. COOPER: Right. What I'm saying is I think that
7 should be the frame of reference; that it is an iterative
8 process; that the settlement agreement is an iterative process.
9 We can all think about it together.

10 But if we want to have dialogue, we have to have
11 processes that use the arts of dialogue. We don't have that.
12 As Tom was saying and as Philip was saying, in pockets we have
13 that. Left on their own, they can have a meeting. Sometimes
14 it is rough. But it happens.

15 But in the City overall we don't have that kind of
16 sponsorship or trust. It is an adversarial atmosphere. But we
17 could have that. The tools for genuine dialogue are known.
18 They exist. They are well tested. We could do that.

19 I'm hoping that that is what we are going to do. You
20 challenged us to figure out how to engage people so that they
21 don't feel their only option is to clam up or blow up. I know
22 we can do that. Thank you.

23 THE COURT: Thank you. I agree with you.

24 All right. Mike Schumann, please, and then
25 Commissioner Fritz.

1 MR. SCHUMANN: Your Honor, my name is Mike Schumann.
2 I am a former attorney, now retired, and I have been
3 volunteering with an organization called Portland Cop Watch.

4 I will try to be brief. I want to talk about
5 Dr. Rosenbaum's testimony. He has a great system for finding
6 police officers that are using excessive force repeatedly.
7 Then what happens, after they are identified and disciplined,
8 is they then file a union grievance and then they go to
9 arbitration. Arbitration, under the Portland Police contract,
10 based upon the things that they've done in the past, in the
11 past they've never found officers in any kind of problems where
12 they give them serious discipline or terminate them. They
13 don't terminate them.

14 So the result of that is, even though Dr. Rosenbaum
15 has this great system, the result of that is going to be that
16 nobody gets disciplined. If you have an organization and the
17 people at the top -- there was an officer that got fired by the
18 mayor and the former police chief, for good reason, because he
19 shot somebody he shouldn't have shot and killed him. He went
20 to union arbitration, he filed a grievance, and they put him
21 back on the force, and that's where he is today.

22 This problem with the City isn't going to get solved
23 until somebody deals with that. For the City to go and do what
24 they did, which is in rapid-fire succession they suspended the
25 COAB and then they secretly negotiated the union contract, put

1 in that same system of arbitration that has been the problem
2 year after year, and then they decided they were going to
3 reform the IPR.

4 In fact, I don't see good faith over here. I don't
5 see good faith on how they could have signed that union
6 contract and put that same arbitration clause back in that
7 contract. They did it secretly, and that's why everybody got
8 mad.

9 Thank you.

10 THE COURT: Thank you, Mr. Schumann. I appreciate
11 your comments and being here.

12 Commissioner Fritz, welcome.

13 COMMISSIONER FRITZ: Good evening, Your Honor. Thank
14 you so much for hearing us and thank you for setting up this
15 process for having this annual check-in. I was nervous about
16 it. What I've seen this afternoon and tonight means you were
17 absolutely right. So I'm glad we are having this conversation.

18 I want to, first of all, just put some information
19 into the record. The body cam money was just set aside. It
20 has not been spent. Council would have to have a public
21 hearing on whether to have body cameras. Then we would need to
22 have another public hearing on which kind of body cameras.
23 Then we will have a third one -- maybe we will be combining
24 them -- on which what should the rules be. So it has been in
25 some ways helpful that we have had so much controversy over the

1 past month because all of those things have come to light, and
2 we now know what needs to be fixed, at least some of them. So
3 thank you for that.

4 Second, one of the things that people don't know
5 about the contract we just got is that the union agreed to a
6 standard discipline guide. So what was mentioned by the person
7 who testified before, that's how it used to be. The mayor has
8 fired 12 members of the Police Bureau since he has been in
9 office. Chief Marshman has fired four just since he has been
10 the chief. Those will stay fired because the union in the
11 contract, through their grievances, has agreed to the
12 discipline guide. So the standard is no longer what did we do
13 previously. It is if you did this, then the discipline guide
14 says you get this. The union has agreed to that.

15 So that, coupled with the 48-hour rule going away, I
16 think those are two of the main things that we really needed to
17 fix in this contract. That's why I am enthusiastically
18 espousing on it.

19 You very kindly said that you would listen to all
20 sides. The Council is not on trial for what happened with the
21 contract, nor is City Hall. There have been many complaints
22 filed with the Independent Police Review, and the mayor has
23 promised a full report on that. I'm sure everyone will have
24 the opportunity to do that.

25 I wanted to tell you that every Wednesday Council

1 convenes at 9:30 in Council chambers. Everybody is allowed in.
2 You said very clearly in another case that even people who were
3 disruptive -- causing a disruption yesterday could not be kept
4 out the next day.

5 THE COURT: What I said was that anyone who was
6 disruptive in a meeting may be removed by the chair or the
7 presiding officer for that meeting. You are not allowed to
8 disrupt a meeting. However, you may not be punished so as to
9 be precluded from attending future meetings. But if you were
10 to attend a future meeting and be disruptive, the presiding
11 officer has every right and every legal authority to remove
12 someone who is being disruptive from that meeting.

13 COMMISSIONER FRITZ: Thank you, sir.

14 So we did take hours of testimony on the police
15 contract, and we had to stop because various members of the
16 Council had other things they committed to. So everybody who
17 was still supposed to speak but had signed up was allowed to
18 speak at the next one.

19 I've lost track of which particular meetings got
20 disrupted. I do remember one, though, where people signed
21 up -- five people can sign up for citizen communications on any
22 Council calendar. The fourth person was a Franklin High School
23 Russian teacher who wanted to introduce to the Council and
24 community a visiting dignity from Russian.

25 Thank you. I am very nervous.

1 THE COURT: By the way, one of the things that we all
2 do when we are nervous is we speak too quickly, and I am really
3 sympathetic to our court reporter.

4 COMMISSIONER FRITZ: And I should breathe
5 occasionally.

6 The protestors disrupted that testimony. So we did
7 exclude that person who was disruptive.

8 Then the next one was the proclamation celebrating
9 Filipino-American month, and the assembled dignitaries of the
10 Filipino-American community were not able to speak because so
11 many people were disrupting the meeting and saying, "Get to the
12 police contract. Get to the police contract." So over and
13 over again they have been disrupted.

14 Then also there is staff at City Hall that are not
15 assigned to be in Council chambers who are supposed to be doing
16 work in their various offices, including the auditor's staff
17 and the IPR staff. We've had situations where we have had
18 hundreds of people in City Hall with doors locked just banging
19 on our doors and not letting staff do their work, and it is
20 really frightening.

21 So we appreciate your suggestion to have a
22 conversation without a particular topic, but just a
23 conversation about how to have a conversation.

24 With respect, Your Honor, I don't think we are
25 supposed to do that if we are supposed to come back in 30 days

1 for how we are going to move forward with the COAB. I helped
2 set up the rules for the COAB when Mayor Sam Adams was
3 negotiating with Amanda Marshall, and so I take full
4 responsibility for the fact that this hasn't worked, despite
5 all of our best efforts.

6 I don't know what to do to make it work. You said
7 that we are not probation, but in a way we are because it is
8 our police force that has to change. It is our community that
9 has to begin to trust our police.

10 So I was asked to not be very much involved with the
11 COAB in its first stages so they could figure out amongst
12 themselves what they wanted to do. Yet there is that: Do they
13 report to the COCL? Do they report to you? They certainly
14 don't report to me, but then they expect the City to respond to
15 their requests.

16 Mr. Steenson said they've developed dozens and dozens
17 of recommendations. It is not clear to me at least whether
18 that's in the settlement agreement. I do know that we don't
19 have a formal community engagement oversight plan, which is in
20 the settlement, and so it would be really helpful -- if we do
21 come back in 30 days -- for you to tell us what should the COAB
22 be focusing on. How should we appoint the members? Even in
23 the AMAC's summary to you they said "to be determined," in
24 terms of how do these people get selected.

25 Four members of the Council have had their members

1 resign. Each of them have said they can't in good conscience
2 ask somebody else to come in when they don't know what they are
3 doing, they are subject to verbal abuse at every meeting, and
4 the scope of work is at least 20 hours every month, not ten,
5 and so I would appreciate your direction.

6 THE COURT: Although let me just respond to it this
7 way, and, then, of course, we will let counsel think about this
8 as the days proceed. We have a lawsuit here between primarily
9 the United States and the City of Portland. It settled with a
10 settlement agreement where the parties have agreed to continued
11 court jurisdiction. I will do whatever the parties ask me to
12 do; footnote, provided that it is constitutional and otherwise
13 legally appropriate.

14 If the parties come together and give the Court a
15 question, an assignment, and ask me to provide direction, I
16 will do whatever the parties jointly ask me to do. But until
17 then, and unless that happens, this is the parties' settlement.
18 The parties are to work together. If the parties working
19 together want to go ask a third party to do something, they can
20 do that. If they want to ask the Court to do something, they
21 can do that.

22 But if they don't agree, then the only real vehicle
23 that is left under the law is for the United States to file a
24 motion before me. If they file a motion, I'll go through
25 appropriate due process and give everybody an opportunity to be

1 heard. I will give the best decision that I can, consistent
2 with the law and the facts. Whoever doesn't like my decision
3 will have an opportunity, to the extent the law permits, to
4 appeal that, and that's how we proceed.

5 So you can ask me to do something, and that's fine.
6 But my suggestion back to you is: Ask the City -- through
7 their counsel -- to discuss this with the plaintiff, the United
8 States -- through their counsel -- and if the parties jointly
9 ask me to do something, I will do it. Footnote: Assuming it
10 is legal.

11 COMMISSIONER FRITZ: Thank you, sir. And I feel the
12 same way. I am sorry that we haven't gotten further than we
13 have. I'm sorry that at the beginning of this meeting, this
14 hearing, we heard a lot about partial compliance and
15 substantial compliance, and the big part that's not compliance
16 is the part that I feel responsible for, which is the community
17 engagement.

18 I need to know either from the four parties or you or
19 both what you want me to do and what authority do I have then
20 to do it. And do I stay away? Do I guide them? And the
21 Council needs to know what are we going to be asking our
22 appointees to do when we appoint them.

23 The other piece I would like everybody to consider,
24 in terms of a timeline, we do have a new mayor coming in on
25 January 1st. He will be the police commissioner, and he has to

1 buy into whatever it is we decide. So I would really like to
2 have him involved in setting the course for the next year of
3 the COAB.

4 THE COURT: Not to set an inappropriate tone on that,
5 whether he buys in or not, he is legally bound to the
6 settlement.

7 MS. OSOINACH: Your Honor, I would like to step in
8 here because Commissioner Fritz has been a warrior for the
9 COAB. So I think what I am hearing and what I might ask is
10 that the City wants to take ownership of this. While I
11 appreciate the Court's willingness to set deadlines and have
12 this come before you, there are a number of complicated
13 factors, and so what we would like is to be able to talk to the
14 Department of Justice, the AMAC, the PPA, the COAB, the COCL,
15 and if we need to come back before this Court for a status
16 conference, we would like to be able to at least to confer
17 other than the five minutes that we have been given to come and
18 ask you and to do that.

19 THE COURT: I will turn to Mr. Geissler in a moment.

20 Let me respond to one aspect you just said. The
21 reason why we don't have a court monitor in this settlement
22 agreement is because the parties, when they negotiated the
23 settlement agreement, didn't want a court monitor. If I recall
24 the arguments that were being made to me two years ago in the
25 fairness hearing, the City said that they want to take

1 ownership of this, and that's why they were the ones who would
2 be contracting with the COCL and ultimately forming the COAB.

3 I approved the settlement as fair, reasonable, and
4 adequate. It may not have been perfect. It may have had some
5 mistakes, in hindsight, but on balance I concluded that it was
6 a fair, reasonable, and adequate resolution of the problems
7 identified in the complaint.

8 We are all now bound to the settlement agreement and
9 follow its procedures. But I do react when you say that the
10 City wants to take ownership, because that's what I heard two
11 years ago for the reason why we don't have a court monitor,
12 which I approved, and it is too late to go back in that river.

13 MS. OSOINACH: Your Honor, to be clear, the City has
14 taken ownership, and I appreciate very much your comments today
15 recognizing. We are talking about one area, an important area
16 of the settlement agreement. It is not fair to say, as
17 Ms. Saadat pointed out, that there hasn't been progress made
18 with the COAB; that the City hasn't taken ownership. There
19 have been enormous challenges, and we are continuing to work on
20 them.

21 THE COURT: I agree. As we've heard today, including
22 the United States in its opening remarks commented, there has
23 been some tremendous achievements already accomplished under
24 the settlement agreement. All parties should be commended for
25 moving us forward in the positive way that we have already

1 moved forward to achieve.

2 However, we all recognize there is more work to be
3 done, as the United States in both their written in oral
4 comments, have identified. There are some aspects, including
5 an important one, where there is non-compliance with the
6 settlement agreement.

7 Now, in addition to the parties figuring out how we
8 continue to move forward and accomplish that which the
9 settlement agreement was designed to achieve, we also need to
10 be mindful, or at least we start with the parties, be mindful
11 of what we should do about the non-compliance and when should
12 we do it.

13 With that, I will hear another comment from
14 Ms. Osoinach and then turn to Mr. Geissler.

15 MS. OSOINACH: The City is standing before you today
16 with the recognition that is an area in which we are
17 non-compliant, and I applaud Commissioner Fritz, my client, for
18 her willingness to stand before you today and discuss the
19 challenges that we face, and I will allow her to finish her
20 comments.

21 THE COURT: That's between client and lawyer. I'm
22 staying out of that one.

23 COMMISSIONER FRITZ: I just wanted to repeat the
24 City's commitment, my commitment, and you make a good point.
25 The new mayor doesn't have a choice about this, and I have been

1 telling him that ever since he started running. So if we had
2 some time to do it properly, because what I heard especially
3 from Ms. Saadat, if we are pushed into deadlines, then
4 community members -- and that's the other thing to remember.
5 These are volunteers.

6 I'm told often we are not appointing new council
7 members. I can't make a volunteer show up to ten meetings. So
8 that's where we have got to be very clear, so it is something
9 that my colleagues can actually go to somebody and say, "I bet
10 you would want to do this, this is what you are going to do,
11 and this is what the product is."

12 At this point I don't think we are quite there.
13 Thank you so much.

14 THE COURT: Thank you, Commissioner. I appreciate
15 it.

16 Mr. Geissler.

17 MR. GEISSLER: Thank you, Your Honor.

18 I was remiss in not giving my thanks to all of the
19 members of the community with whom we have worked and are
20 parties and their counsel who we have worked with over the past
21 two years. It has been a pleasure to work with them. I will
22 offer one slight correction.

23 My learned colleague, Mr. Karia, said that he
24 believed that we all are in agreement that body-worn cameras
25 were a mandatory subject of bargaining. The United States does

1 not believe that. It is a permissive category of bargaining,
2 just as it has not been mandatory subject of bargaining, mobile
3 video cameras or other surveillance cameras that have been used
4 heretofore.

5 THE COURT: So the record is clear on this, I am not
6 expressing an opinion on that. That issue is not before me.
7 If it ever does come before me, I will be glad to review
8 briefing, hear oral argument, make whatever ruling is
9 appropriate at the time, but I've expressed no opinion on that
10 question.

11 MR. GEISLER: Thank you, Your Honor.

12 With respect to the issue of status conferences, I
13 believe the time we had to speak was abbreviated. There is
14 room still to come to reach an agreement, both on the
15 scheduling and the mere logistics of the holidays that we face
16 now. I believe the parties would benefit with the ability to
17 speak with one another before providing Your Honor the
18 proposition of setting dates on Your Honor's own.

19 THE COURT: I wouldn't think it would be appropriate
20 for me to set a deadline of when counsel will respond to me on
21 additional scheduling issues. Does that sound reasonable, and
22 if so what, what would you propose?

23 MR. GEISLER: It does. I am in town this week,
24 Your Honor. I imagine we can speak this week. Perhaps one
25 week from day we can have the agreements from both the Civil

1 Rights Division, the U.S. Attorney's Office, as well as the
2 other parties.

3 THE COURT: All right. I don't think I need to right
4 now today, although I will if you want, set another annual
5 status conference for next year. But perhaps what the parties
6 can do is think about what they would like to see in the next
7 twelve months. If it turns out a status conference in X number
8 days or every month or every other month or quarterly, you talk
9 about it and let me know what you want.

10 I could set a conference now, a public hearing, or
11 our third annual hearing for the fall of 2017, or I could wait
12 and let the parties discuss and see how it fits into the big
13 picture. I will tell you this, though, that there will be no
14 fewer than one meeting per year. It does sound like there will
15 also be several interim meetings between now and next fall.

16 Should I set next fall's meeting now or should I wait
17 and see what you all want to talk about?

18 MR. GEISLER: Without providing too daunting a task
19 for our one-week assignment -- I don't want to withdraw my
20 offer of that one-week deadline -- I think perhaps we could
21 spend some of our time talking about the proposed schedule
22 going forward so that the City and the other parties can come
23 to an agreement when best to have a hearing and set the
24 briefing schedule.

25 THE COURT: Very good.

1 MS. OSOINACH: Your Honor, from the City's point of
2 view, we request that you set the annual status conference
3 today, mainly because when you did that last year, it provided
4 advance notice to everyone, including members of the public who
5 were here, and I found that to be very helpful.

6 THE COURT: Very good. Does Thursday, October 5th,
7 2017, work for counsel? 2017. Feel free to check.

8 MR. GEISLER: Yes, Your Honor.

9 MS. OSOINACH: Yes for the City, Your Honor.

10 MR. KARIA: Yes, sir.

11 MS. ALBIES: Yes, sir.

12 THE COURT: All right.

13 Then let's set our next conference.

14 Our next annual conference -- I forgot to ask Mary.

15 Mary, do you agree that will work?

16 THE CLERK: Yes.

17 THE COURT: October 5, 2017 at 10:00 a.m. in this
18 courtroom. I look forward to receiving -- probably the best
19 thing to do is file it as a formal publicly filed document,
20 either as a status report or a request for the next conference.
21 File something after you have conferred. If you would like to
22 know about the Court's availability before you put anything on
23 paper on that, just call or e-mail my courtroom deputy. She
24 has our calendar, and I will do my very best to accommodate
25 whatever you all have agreed upon.

1 If for whatever reason you can't agree, then let me
2 direct the United States to take the lead in preparing a joint
3 status report stating what is the United States' position.
4 Confer with the City and put in that same document what is the
5 City's position. Confer with Intervenor Police Association,
6 and let me he know what their position is. Then confer with
7 Amicus AMA Coalition. If you agree, I will give you darn near
8 anything you ask for. If you disagree, I will make a prompt
9 ruling.

10 MS. OSOINACH: Thank you.

11 MR. GEISLER: Thank you.

12 THE COURT: All right. As I think I said earlier
13 today, I thank everyone for their hard work and their
14 tremendous accomplishments so far. There is more to do, as you
15 all know and as you all recognize, but we have come a long way.
16 There is more work to do, but I think we all live in this
17 community together. I am sort of including the COCL in that,
18 even though I understand what you said geographically.

19 We all live in this community together. We are
20 trying to solve an important problem to make things better for
21 everyone. We have different perspectives, different
22 experiences, different views on how to make things better. But
23 I do believe that everyone in this room is trying to make
24 things better for everyone, and I appreciate everyone's hard
25 work in this.

1 Thank you. We will be in recess.

2 (Recess.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RDR, RMR, FCRR, CRR
Official Court Reporter

November 5, 2016
DATE

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

PLAINTIFF,

v.

**DEFENDANT CITY OF PORTLAND'S
POST STATUS CONFERENCE
MEMORANDUM**

CITY OF PORTLAND,

DEFENDANT.

Preliminary Statement

The City of Portland submits this Memorandum to address two issues which arose at the annual Status Conference held in this matter on October 25, 2016. The City reaffirms its strong commitment to working collaboratively and constructively with the United States, the intervenor and the enhanced amicus to resolve outstanding issues respecting implementation of the Settlement Agreement. The City nonetheless has two primary objections to place in the record regarding the conduct of the October 25, 2016 status conference and any proposal to require additional status conferences on any greater than an annual basis.

First, the City believes that there was no legal basis to allow courtroom observers to participate in the status conference. The Court invited any members of the public who were present in the courtroom to offer non-sworn commentary on any subject of their choosing. The City finds it objectionable that the Court specifically invited a party adverse to the City in another case handled by the Court to speak. It also was objectionable that the Court allowed ad hominem attacks directed at Kathleen Saadat, the recently retired Chair of the Community Oversight and Advisory Board (COAB), Portland Mayor Charlie Hales and Portland City Commissioner Amanda Fritz.

The City is most disturbed about and objects in the strongest possible terms to the Court's allowance of heated attacks against two female attorneys representing the City. These attacks included a reference to "upskirting"¹ one attorney, and an exhortation to the other, a Black Haitian-American woman, that she should "go back to Haiti." This latter direct attack on an attorney appearing in a federal courtroom based on her national origin and race was allowed to go unchallenged and unadmonished by the Court. Filed herewith as Exhibit A to the Declaration of Portland City Attorney Tracy Reeve is a letter to the Court from the City's six elected officials expressing their condemnation that this was permitted to occur.

Second, the Court offered at the status conference to schedule future status conferences upon the request of any of the parties or the amicus. The City objects to the scheduling of any additional status conferences in this matter beyond the annual status conferences negotiated by the parties as part of the settlement of the City's appeal of the Court's original Order approving the Settlement Agreement. *See* Amended Ordering Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Status Conference ("Amended Order"), Docket Order 96.² The City is willing to provide the United States, intervenor and

¹ "Upskirting" is the practice of surreptitiously photographing underneath a female's dress or skirt. <http://definitions.uslegal.com/u/upskirting/>

² In its post-conference filing, the United States refers to the portion of the Amended Order that provides for "annual status conferences referenced in this Order or otherwise as may be directed by the Court," (Docket No. 96, referred to in error by the United States as Docket No. 99). Nothing in the Amended Order, which the parties heavily negotiated, was intended to allow for

enhanced amicus with a written progress report within thirty (30) days, and periodically thereafter, but believes that further in-court status conferences prior to the next annual Status hearing to be held on October 5, 2017, would be counterproductive.

Procedural and Legal Framework

In 2010, Aaron Campbell, an unarmed black man experiencing a mental health crisis, was shot and killed by a Portland Police Bureau (PPB) officer. In the aftermath of that tragedy, Portland's then-Mayor Sam Adams and then-Police Commissioner Dan Saltzman invited the United States Department of Justice ("DOJ") to investigate the PPB and make recommendations for improvement of its policies and procedures. The DOJ conducted a lengthy review of police use of force in Portland, and issued a report asserting that PPB had a policy or practice of unconstitutionally using excessive force on people who either were or were perceived to be mentally ill. The City of Portland denied, and continues to deny, that any such policy or practice existed. But the City also was and is committed to improving both the performance and the perceived legitimacy of its Police Bureau. Desiring an outcome beneficial to all, and most importantly to the community PPB serves, the City embarked on extended negotiations with DOJ to agree on improvements that the City could implement to improve the interactions between the police and people with mental illness, to enhance transparency, and to build trust and legitimacy with the community.

The City's insistence that these results be achieved through a Settlement Agreement between the City and the United States, rather than by a consent decree entered by the Court, was intentional. An essential feature of the Settlement Agreement, from the City's point of view, was that the parties themselves would be responsible for its progress and enforcement. The DOJ agreed to this structure, so long as it could file, and then conditionally dismiss, this federal court action in order to ensure that the Court would retain jurisdiction to enforce the Agreement under

in-court conferences or hearings more frequently than on an annual basis, in the absence of the invocation by one party or the other of the Court's authority to enforce the Settlement Agreement in accordance with its terms.

specific circumstances. Those circumstances are set forth at paragraphs 181 through 186 of the Settlement Agreement. Short of invocation of that process by the DOJ, however, the Settlement Agreement was never intended to involve the active, independent participation by the Court in its monitoring or implementation. As agreed by the parties, DOJ filed this action and moved to enter the Settlement Agreement and to dismiss the case.

The Court proposed to hold a “fairness hearing” before determining whether to approve the Settlement Agreement. The parties consented to that process. The Portland Police Association (PPA) was allowed to intervene in the case, and the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMAC) was granted “enhanced amicus” status. After the fairness hearing, the Court entered an “Order Entering Settlement Agreement, Conditionally Dismissing Litigation, And Setting First Annual Settlement-Compliance Hearing,” Docket No. 86. As part of its Order, the Court directed “periodic hearings, to be held approximately annually, unless otherwise ordered by the Court, to describe to the Court the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end, to respond to the Court’s questions on these issues, and to present evidence on these issues as so directed by the Court.” *Id.* The City objected to the breadth of this provision. Specifically, the City objected to being required to attend status hearings more than once per year, and to evidence-taking by the Court other than to receive reports from the United States, the City (to include the Compliance Officer and Community Liaison (COCL) and COAB), the Portland Police Association and the AMAC on the progress of implementation of the Settlement Agreement.³ The City appealed the Order, and, on appeal, reached a mediated agreement with the other parties that resulted in the Court’s entry of its Amended Order, Docket No. 96. The Amended Order calls for “annual status conferences

³ The Order and the Amended Order contemplate annual status conferences to report on three agreements: the Settlement Agreement between the United States and the City; the Memorandum of Agreement between the City and the Portland Police Association; and the Collaborative Agreement between the City and the AMAC. For ease of reference they are collectively referred to as the “Settlement Agreement.”

to describe to the Court the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end and to respond to the Court's questions on those issues." Importantly, the Amended Order calls only for "annual" status conferences, and does not contemplate participation by anybody other than the parties, the amicus, the COAB and the COCL at those annual status conferences.

The October 25, 2016 Status Conference

The Second Annual Status Conference held on October 25, 2016, demonstrated starkly the foreseeable and counter-productive consequences of the Court's inserting non-parties into the implementation process. The parties expected that this status conference would be conducted in accordance with the Amended Order, as the First Annual Status Conference (held on September 14, 2015) had been. Specifically, the parties expected that the Court would hear from the United States, the City, a member of the COAB and the COCL on "the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end and to respond to the Court's questions on these issues;" would hear from "the United States, the City and the PPA. . . to describe to the Court the status of the MOA;" and would hear from "the United States, the City and the AMA . . . to describe to the Court the status of the CA and to respond to any questions by the Court...." Amended Order, Docket No. 96.

To the City's surprise, in addition to the anticipated reports from the parties, amicus, the COAB member and the COCL, the Court invited all members of the public in attendance to speak including an invitation by name to a party adverse to the City in another case recently before the Court. The result was a series of commentaries from a collection of individuals (many of whom routinely disrupt City Council and COAB meetings) which included ad hominem attacks on the City's elected officials and volunteers and racist and sexist comments directed toward the City's lawyers.⁴ These unwarranted diatribes were extremely disturbing to the people

⁴ After the conclusion of the status conference, the city attorneys who appeared in Court, along with two representatives of the Police Bureau, were followed, filmed and verbally insulted and

at whom they were directed, and were inappropriate for any setting, much less a United States District Court. The Court did not prevent, admonish or limit this behavior. The Court's tolerance of ad hominem attacks and explicit disparaging references to one attorney's national origin was not in keeping with its obligations under Canon 3.A(3) of the Code of Conduct for United States Judges: "A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process."

All six of the City of Portland's elected officials are offended that the Court allowed such conduct to occur. See Exhibit A to Reeve Declaration filed herewith. It is not reasonable, as the Court appeared to suggest at the status conference, to expect the City and its representatives "to have a conversation about having conversations" with people who behave in this manner. City staff and volunteers should not be expected to have a conversation about how to listen to verbal abuse or how to tolerate the threat of physical violence. The City of Portland has an obligation to those who work for it or on its behalf not to acquiesce in their exposure to the kind of behavior that this Court permitted at the October 25, 2016, hearing.

The Community Engagement Area of Noncompliance

In determining how to restructure the community engagement process to optimize the goals shared by the City, the DOJ, amicus and the community, the City is committed to considering informed input and recommendations from all voices – small, individual, collective and powerful, and to dedicating the resources necessary to achieve the goals of the Settlement Agreement in this area. The City is immensely grateful to the volunteer Community Oversight and Advisory Board members, both past and present who have dedicated countless hours – well beyond that which was expected when they agreed to serve – to work on a very important

harassed all the way back to City Hall by a group of individuals who attended the status conference, including the individual who made the sexist and discriminatory insults to the two city attorneys at the status conference. See Declaration of Tracy Reeve at ¶¶ 4-5.

experiment in direct community participation in police reform.

It is painfully clear that there have been several obstacles in the way of COAB's ability to be successful at its stated tasks and goals, and that amendments to the Settlement Agreement will be necessary to achieve the objectives of meaningful community engagement. All parties – amicus and intervenor included – agree that the Settlement Agreement's structure to support the COAB must be reconsidered. Despite substantial efforts by many parties, and the dedication of significant resources by the City, COAB meetings devolved to the point where the COAB Chair, COAB members and City staff faced the type of behavior that was on display at the Status Conference on October 25, 2016, and worse, from some of the same individuals. The “civil unrest” at COAB meetings referred to by DOJ in its compliance assessment resulted in COAB members, the Chair, City employees and members of the public expressing concern for their physical safety at meetings and facing reputational harm due to verbal attacks both in person and electronically.

The COAB has requested independence from the COCL and the COCL has requested to be relieved of its obligation to chair the COAB. Given all of this, and as DOJ pointed out in its compliance assessment, the effort to keep the COAB functioning began to require a disproportionate amount of time and resources, with mixed results at best in actually achieving the outcomes envisioned by the Settlement Agreement.

In sum, all parties agree that the Settlement Agreement's structure to support the COAB must be reconsidered. All have agreed to continue working to develop an updated proposal and necessary amendments. The City is dedicated to moving forward and acknowledges that there are areas where it needs to do better, including providing more training and support for community members who agree to serve and a better delineation of the work to be accomplished. The City renews its commitment and dedication to improving and ensuring intentional and well-informed community engagement with the police bureau. The City looks forward to continuing to work with DOJ, amicus and others to address the issues that have prevented success to date in

achieving community engagement as contemplated under the Settlement Agreement. The City is willing to be fully accountable to the DOJ and the public as the parties collectively consider modifications to the Settlement Agreement to ensure meaningful community engagement. And DOJ, of course, retains the ability to invoke this Court's jurisdiction under the Settlement Agreement should it determine that the City is in breach and that the breach cannot be resolved through the mechanisms set forth in the Settlement Agreement.

Short of that, however, the City is neither willing nor obligated to participate in court status conferences beyond the annual status conferences set forth in the Amended Order entered by this Court. This issue has already been the subject of an appeal in this case. When this Court entered the parties' Settlement Agreement, it also issued an order mandating "periodic hearings" to "present evidence ... as so directed by the court" to be held whenever "ordered by the court." The City objected to the breadth of that order and to this Court's assumption of the power to unilaterally call hearings and direct the taking of evidence independently of the parties. On appeal, the parties (including the AMAC and the PPA) reached a mediated agreement providing only for annual, non-evidentiary status conferences at which specified entities (the City, the United States, the PPA, the AMAC, the COCL and the COAB) would participate. There was no provision for participation at the annual status conference by members of the public. This Court signed the parties' proposed amended order to that effect. It is the City's position that unless and until the United States invokes the process set forth in paragraphs 181 through 185 of the Settlement Agreement to secure compliance without success, and files a motion to enforce compliance under paragraph 186 of the Agreement, the Court has no legal basis to schedule any proceedings until the next annual status conference which is scheduled for October 5, 2017.

Conclusion

The City of Portland remains committed to working collaboratively and constructively with the United States, the intervenor and the enhanced amicus to resolve outstanding issues respecting implementation of the Settlement Agreement. To that end, the City is agreeable to

providing a written report to the United States, the intervenor and the enhanced amicus in thirty (30) days, regarding efforts to address the community engagement aspects of the Settlement Agreement, and periodically thereafter.

Dated: November 3, 2016.

Respectfully submitted,

/s/ Tracy Reeve

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

PLAINTIFF,

DECLARATION OF TRACY REEVE

v.

CITY OF PORTLAND,

DEFENDANT.

I, TRACY REEVE, being first duly sworn, do depose and say:

1. I am the City Attorney for the defendant City of Portland, Oregon in the above-entitled matter and I make this declaration in support of Defendant City of Portland's Post Status Conference Memorandum.

2. I was present for the entirety of the October 25, 2016, Status Conference.

3. David Kif Davis and Robert West both spoke at the status conference and Mr. Davis made racist and sexist comments during the hearing about two of the city attorneys who represented the City at the hearing.

4. Shortly after conclusion of the status conference, I walked back to City Hall with the city attorneys who appeared in Court, along with two Police Bureau representatives. We were verbally accosted immediately outside the courthouse by several individuals, two of whom, David Kif Davis and Robert West, were known to me.

5. Both Mr. Davis and Mr. West followed, filmed and verbally harassed us all the way back to City Hall, and had to be prevented from entering City Hall with us after hours.

6. I am aware that Mr. Davis has also posted disturbing video about one of these attorneys online resulting in extreme online harassment and misogyny directed toward that attorney.

7. Attached hereto as Exhibit A is a true and correct copy of a letter signed by Portland's six elected officials: Mayor Charlie Hales, Commissioner Nick Fish, Commissioner Amanda Fritz, Commissioner Steve Novick, Commissioner Dan Saltzman and Auditor May Hull Caballero.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury pursuant to 28 U.S.C. § 1746.

Dated: November 3, 2016.

Respectfully submitted,

/s/ Tracy Reeve

TRACY REEVE, OSB # 891123

City Attorney

Email: tracy.reeve@portlandoregon.gov

Of Attorneys for Defendant



CITY OF

PORTLAND, OREGON

Charlie Hales, Mayor
Amanda Fritz, Commissioner
Nick Fish, Commissioner
Dan Saltzman, Commissioner
Steve Novick, Commissioner

Mary Hull Caballero, Auditor

November 3, 2016

Honorable District Judge Michael H. Simon
Mark O. Hatfield United States Courthouse
Courtroom 13B
1000 Southwest Third Avenue
Portland, OR 97204-2944

Re: *United States v. City of Portland*, 3:12-cv-02265-SI

Dear Judge Simon:

We, the Mayor, Council, and Auditor elected by the people of the City of Portland write to express our unanimous condemnation of the behavior permitted to occur at the status conference held on October 25, 2016. Your Honor invited and permitted members of the public to subject the City's former COAB Chair, lawyers and officials to racist, sexist, and other ad hominem attacks during a court proceeding. That abuse included references to "up-skirting" a female attorney and telling another attorney, a Black Haitian-American woman, to "go back to Haiti."¹ Your Honor also affirmatively invited a party adverse to the City in another case before this court to speak, despite the fact that he had no connection to the subject matter of the status conference. All of these circumstances raise concerns of partiality and the City's ability to receive fair treatment from this court.

Some of the abuse directed at Deputy City Attorney Judy Prosper was accompanied by shouts of "that's enough" from the audience, but your Honor allowed the slurs against her based on national origin to proceed without interruption or admonishment. This represented a failure to maintain order and decorum in a courtroom and we believe contravened expected standards of judicial conduct. See Canon 3.A(3) of the Code of Conduct for United States Judges.

The City has always been and remains committed to the Settlement Agreement with the United States and to improving the performance of and trust in its Police Bureau. Its progress toward doing so, however, is delayed and frustrated when City employees and officials have to subject themselves to the sort of ad hominem diatribes that are unacceptable in any setting, let alone a United States

¹ We do not yet have access to a transcript or recording of the proceedings and are accordingly relying on the collective memory of those in attendance as to what was said.

District Court. We commend our attorneys and employees who sat stoically through that verbal abuse. As elected officials, it is our duty to stand up for them when they are exposed to such unacceptable behavior.

Respectfully yours,



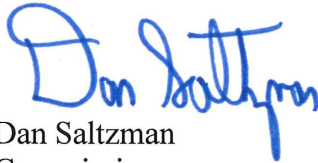
Charlie Hales
Mayor



Amanda Fritz
Commissioner



Nick Fish
Commissioner



Dan Saltzman
Commissioner



Steve Novick
Commissioner



Mary Hull Caballero
Auditor

cc: Bill J. Williams, United States Attorney's Office
Janice E. Hebert, United States Attorney's Office
Adrian L. Brown, United States Attorney's Office
Jared Hager, United States Attorney's Office
Laura L. Coon, United States Department of Justice
R. Jonas Geissler, United States Department of Justice
Brian Buehler, United States Department of Justice
Anil Karia, Portland Police Association
Kristen A. Chambers, AMAC
Shauna M. Curphey, AMAC
Jessica Ashlee Albies, AMAC

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE CITY OF PORTLAND,

Petitioner,

v.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON,**

**Respondent,
and**

**UNITED STATES OF AMERICA,
PORTLAND POLICE ASSOCIATION, and
ALBINA MINISTERIAL ALLIANCE COALITION
FOR JUSTICE AND POLICE REFORM,**

Respondents-Real Parties in Interest.

**From the United States District Court
For the District of Oregon, Portland Division,
The Hon. Michael H. Simon
Case No. 3:12-cv-02265-SI**

**PETITIONER CITY OF PORTLAND'S
EXCERPTS OF RECORD AND ADDENDUM
VOLUME II**

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INDEX OF EXCERPTS OF RECORD

Order

(Oregon USDC Docket No. 140, November 11, 2016) ER-300

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(Oregon USDC Docket No. 141, December 2, 2016) ER-305

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Joseph Walsh v. Bryant Eng, Charles Hales, and City of Portland D.C. Case No. 3:15-cv-01666-SI

(Oregon USDC Docket No. 29, December 31, 2015) ADD-1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case No. 3:12-cv-2265-SI

ORDER

Billy J. Williams, United States Attorney; Adrian L. Brown, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF OREGON, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204. Steven H. Rosenbaum, Chief; Laura L. Coon, Special Counsel; R. Jonas Geissler, Senior Trial Attorney; Brian Buehler and Seth Wayne, Trial Attorneys, Special Litigation Section, Civil Rights Division, UNITED STATES DEPARTMENT OF JUSTICE, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530. Of Attorneys for Plaintiff.

Tracey Pool Reeve, City Attorney; Ellen C. Osoinach, Senior Deputy City Attorney; Judy S. Prosper, Deputy City Attorney; Mark P. Amberg, Chief Deputy City Attorney, OFFICE OF THE CITY ATTORNEY, 1221 S.W. Fourth Avenue, Room 430, Portland, OR 97204. Of Attorneys for Defendant.

Anil S. Karia, PUBLIC SAFETY LABOR GROUP, 3021 N.E. Broadway, Portland, OR 97232. Of Attorneys for Intervenor-Defendant Portland Police Association.

Jessica Ashlee Albies, CREIGHTON & ROSE, P.C., Powers Building, 65 S.W. Yamhill Street, Suite 300, Portland, OR 97204; Shauna M. Curphey, CURPHEY & BADGER, P.A., 520 S.W. Sixth Avenue, Suite 1040, Portland, OR 97204; Kristen A. Chambers, KIRKLIN THOMPSON & POPE, LLP, 1000 S.W. Broadway, Suite 1616, Portland, OR 97205. Of Attorneys for Enhanced Amicus Curiae Albina Ministerial Alliance Coalition for Justice and Police Reform.

Michael H. Simon, District Judge.

In the Amended Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Status Conference (ECF 99), entered on July 30, 2015, the Court Ordered that there shall be “annual status conferences referenced in this Order *or otherwise as may be directed by the Court.*” ECF 99 at 5 (emphasis added). No party objected to that text or timely appealed from that Amended Order.

On October 18, 2016, one week before the Court held its Second Annual Status Conference in this case, the United States filed Plaintiff’s Notice of Second Periodic Compliance Assessment Report. ECF 124. As an exhibit to that Notice, the United States attached its 2016 Settlement Agreement Compliance Assessment. ECF 124-1. The United States noted in that Compliance Assessment that, in addition to substantial or partial compliance with many aspects of the Settlement Agreement, which the Court commends, the City was in “non-compliance” with regard to its obligations relating to the Community Oversight Advisory Board (“COAB”). ECF 124-1 at p. 2 and pp. 114-125.

The Court held its Second Annual Status Conference on October 25, 2016. At that conference, the United States initially requested that the Court hold an interim status conference after 30 days for the City of Portland to report on its progress in developing a revised plan for the COAB and to hold another interim status conference after 90 days to hear from the Parties regarding any proposed modifications to the Settlement Agreement pursuant to Paragraph 175. After the United States and the City conferred, both parties requested one week to confer further. The Court allowed that and directed the filing of a post-conference status report.

On November 2, 2016, the United States filed Plaintiff's Post Status Conference Status Report. ECF 136. The following day, the City filed its Post Status Conference Memorandum (ECF 138) and a declaration from the City Attorney (ECF 139). The Court has reviewed all of these documents.

The United States reiterates its request for interim status conferences in 30 and 90 days, but offers in lieu of the first conference that the City be required to file a written Supplemental Compliance Report by December 2, 2016, describing the "steps taken to achieve compliance with Section IX of the Settlement Agreement." ECF 136 at 3. The United States further requests that the Court hold an interim status conference on or about January 31, 2017, "for the Parties to report on the obligation of Paragraph 175 of the Settlement Agreement and any stipulated modification." *Id.*

The City objects to the Court holding status conferences on a basis more frequent than annually. ECF 138. Based on the Amended Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Status Conference (ECF 99), as well the Court's inherent authority, the Court has the authority to hold status conferences whenever appropriate and will do so.

The Court hereby adopts the Plaintiff's alternative proposal and ORDERS the City to file not later than December 2, 2016, a written Supplemental Compliance Report, describing the steps taken to achieve compliance with Section IX of the Settlement Agreement. The Court further ORDERS that an interim status conference be held on Tuesday, January 31, 2017, at 2:00 p.m. in Courtroom 13B for the Parties to report on the status of any proposed changes to the Settlement Agreement and the appropriate steps to

be taken by the Court when considering any such proposed changes, including the requirements of Paragraph 175 of the Settlement Agreement.

In Plaintiff's Post Status Conference Status Report, the United States further proposes a specific agenda for the Third Annual Status Conference, which is set for Wednesday, October 5, 2017, at 10:00 a.m. The Court will defer providing an agenda for the Third Annual Status Conference until approximately 30 to 60 days before that conference.

Finally, in Defendant City of Portland's Post Status Conference Memorandum and the related Declaration of Tracy Reeve, the City comments on the *non-sworn* commentary offered by members of the public during the Second Annual Status Conference. First, the Court observes that it was the City that originally objected to the Court holding an *evidentiary* hearing as part of its continuing jurisdiction and oversight over this matter. The Parties then requested, and the Court agreed, that the Court will hold status conferences, rather than evidentiary hearings. Second, the Court has the inherent authority to hear comments at a status conference from any *amicus curiae* that the Court considers appropriate. Third, the Court understands and appreciates the concerns expressed by the City regarding the content and tenor or tone of several of the comments voiced during the Second Annual Status Conference by some of the *amici curiae*. The Court will appropriately address these issues in open Court.

CONCLUSION

The Court ORDERS the City to file not later than December 2, 2016, a written Supplemental Compliance Report, describing the steps taken to achieve compliance with Section IX of the Settlement Agreement. The Court further ORDERS that an interim

status conference be held on Tuesday, January 31, 2017, at 2:00 p.m. in Courtroom 13B for the Parties to report on the status of any proposed changes to the Settlement Agreement and the appropriate steps to be taken by the Court when considering any such proposed changes.

IT IS SO ORDERED.

DATED this 10th day of November, 2016.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

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Of Attorneys for Defendant City of Portland

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

PLAINTIFF,

v.

**DEFENDANT CITY OF
PORTLAND'S SUPPLEMENTAL
MEMORANDUM**

CITY OF PORTLAND,

DEFENDANT.

The City of Portland (City) submits this Supplemental Memorandum in compliance with the Court's Order of November 11, 2016.¹ ECF 140. This Supplemental Memorandum outlines the steps the City has taken since the Second Annual Status Conference on October 25, 2016, to develop proposed amendments to Section IX of the Settlement Agreement, as well as the steps the City proposes to take. The City and the United States have both indicated that amendments are necessary for the City to achieve compliance with this section.

¹ The City maintains its objections (Docket No. 138) to the Court's Order (Docket No. 140), entered following the October 25, 2016 Annual Status Conference, and notwithstanding submission of this Supplemental Memorandum, reserves its right to seek appellate review of that Order.

As it reported at the October 25, 2016 Second Annual Status Conference, the City engaged multiple constituencies during the Community Oversight Advisory Board's (COAB) 60-day hiatus.² The City interviewed almost all current and former COAB members, as well as mental health peer support advocates, mental health providers and members of other police accountability boards. In addition, the City circulated a survey and collated the feedback.

Also during the hiatus, representatives from the Mayor's Office and City Attorney's Office met on three separate occasions with representatives of amicus Albina Ministerial Alliance Coalition for Justice and Police Reform to solicit their advice about options for successful community engagement as contemplated by the Settlement Agreement. On October 14 and October 21, 2016, the City hosted meetings of intervenor Portland Police Association, amicus, and the United States. The group offered differing opinions about a draft conceptual framework that the City proposed.

During these discussions, the City, amicus and intervenor agreed it would be most productive to conduct further discussions with the assistance of a professional facilitator. It was agreed that the participants would propose a facilitator by October 27, 2016. On November 2, 2016, intervenor suggested a candidate. Because the City had not received a candidate from amicus by November 14, 2016, despite several requests that one be provided, the City suggested a candidate. On November 23, 2016, amicus rejected the City's candidate and suggested two others. Amicus represented to the City that these two candidates emerged as a result of private meetings between amicus and intervenor. On November 28, 2016, the City notified amicus it would agree to use one or the other of these two facilitators.

The City has contacted both candidates and each has agreed to provide a proposed work plan by December 9, 2016, for the City's consideration. The City will select and engage one of these facilitators by the end of December 2016, if one of these facilitators agrees to contract with the City. The City will pay for the facilitation services. The City's goal is for the facilitated discussions to be conducted and completed during January 2017.

² The City and the United States agreed to a 60-day hiatus to the operation of the COAB commencing on August 19, 2016, and ending on October 20, 2016.

Through the facilitated discussions, the City seeks input on the following topics: selection process for members of the reconstituted body, function/scope of work, deliverables and timelines. The City believes it would be beneficial for the United States to participate in the facilitated discussions. The City's proposed framework for discussion is a body that:

- a. is significantly smaller than the 20 seats that made up the COAB;
- b. is not a public body for purposes of Oregon public meetings law but holds periodic public town hall meetings;
- c. receives independent professional administrative and facilitation services paid for by the City;
- d. has a chair selected by the body from among its members;
- e. is independent of the Compliance Officer and Community Liaison (COCL);
- f. receives necessary training; and
- g. is tasked with recommending systems for successful engagement between police and the community with a particular emphasis on racial equity and mental health.

After the facilitated discussions in January 2017, the City intends to immediately engage with the United States in the collaborative process required by paragraph 175 of the Settlement Agreement to develop the necessary amendments to Section IX. The terms of all remaining COAB members expire at the end of January 2017. The City's goal is to reconstitute a body as soon thereafter as possible.

Since the Second Annual Status Conference on October 25, 2016, the City has kept the United States informed of the City's progress via phone calls, written correspondence, and in-person meetings with United States representatives.

Dated: December 2, 2016.

Respectfully submitted,

/s/ Tracy Reeve

TRACY REEVE, OSB# 891123

City Attorney

Email: tracy.reeve@portlandoregon.gov

Of Attorneys for Defendant

TERMINATED

**U.S. District Court
District of Oregon (Portland (3))
CIVIL DOCKET FOR CASE # 3:12-cv-02265-SI**

United States of America v. City of Portland
Assigned to: Judge Michael H. Simon
Case in other court: 9th Circuit Court of Appeals, 14-35903
Cause: 42:14141 Violent Crime Control and Law Enforcement
Act of 1994

Date Filed: 12/17/2012
Date Terminated: 09/29/2016
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America

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V.

Defendant

City of Portland

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V.

Intervenor Defendant

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Amicus

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Date Filed	#	Docket Text
12/17/2012	<u>1</u>	Complaint. (<i>fee exempt status selected (AUSA)</i>) Jury Trial Requested: No. Filed by United States of America against The City of Portland (Attachments: # <u>1</u> Civil Cover Sheet). (Brown, Adrian) (Entered: 12/17/2012)
12/17/2012	<u>2</u>	Notice of Case Assignment to Judge Michael H. Simon and Discovery and Pretrial Scheduling Order. NOTICE: Counsel shall print and serve the summonses and all documents issued by the Clerk at the time of filing upon all named parties in accordance with Local Rule 3-5. Discovery is to be completed by 4/16/2013. Joint Alternate Dispute Resolution Report is due by 5/16/2013. Pretrial Order is due by 5/16/2013. Ordered by Judge Michael H. Simon. (cib) (Entered: 12/17/2012)
12/17/2012	<u>3</u>	Joint Motion for Settlement <i>Agreement and Conditional Dismissal of Action</i> . Filed by United States of America. (Attachments: # <u>1</u> Proposed Order) (Brown, Adrian) (Entered: 12/17/2012)
12/17/2012	<u>4</u>	Memorandum in Support of <i>Joint Motion to Enter Settlement Agreement and Conditionally Dismiss Action</i> . Filed by United States of America. (Related document(s): Motion for Settlement <u>3</u> .) (Attachments: # <u>1</u> Attachment 1) (Brown, Adrian) (Entered: 12/17/2012)
12/17/2012	<u>5</u>	Declaration of Billy J. Williams . Filed by United States of America. (Related document(s): Motion for Settlement <u>3</u> .) (Brown, Adrian) (Entered: 12/17/2012)
12/17/2012	<u>6</u>	Declaration of Clay Roberts Neal . Filed by United States of America. (Related document(s): Motion for Settlement <u>3</u> .) (Attachments: # <u>1</u> Attachment 1) (Brown, Adrian) (Entered: 12/17/2012)
12/18/2012	<u>7</u>	Motion to Intervene . Oral Argument requested. Filed by Portland Police Association. (Karia, Anil) (Entered: 12/18/2012)

12/18/2012	<u>8</u>	Memorandum in Support of <i>Motion to Intervene</i> . Filed by Portland Police Association. (Related document(s): Motion to intervene <u>7</u> .) (Karia, Anil) (Entered: 12/18/2012)
12/18/2012	<u>9</u>	Declaration of Anil S. Karia in Support of <i>Motion to Intervene</i> . Filed by Portland Police Association. (Related document(s): Motion to intervene <u>7</u> .) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Karia, Anil) (Entered: 12/18/2012)
12/18/2012	10	Order – Setting a Status Conference for 12/21/2012 at 09:30AM in Portland, Courtroom 13B, before Judge Michael H. Simon. Ordered by Judge Michael H. Simon. (mja) (Entered: 12/18/2012)
12/18/2012	<u>11</u>	Notice of Appearance of Ellen C. Osoinach appearing on behalf of City of Portland titled as " <i>Defendant City of Portland's Notice of Appearance</i> " Filed by on behalf of City of Portland (Osoinach, Ellen) (Entered: 12/18/2012)
12/19/2012	<u>12</u>	Unopposed Motion for Extension of Time to File a Response/Reply to PPA's <i>Motion to Intervene (ECF #7)</i> to Motion to Intervene <u>7</u> . Filed by United States of America. (Brown, Adrian) (Entered: 12/19/2012)
12/19/2012	<u>13</u>	Declaration of Adrian Brown in Support of <i>Unopposed Motion for Extension of Time to Respond to PPA's Motion to Intervene</i> . Filed by United States of America. (Related document(s): Motion for Extension of Time to File Response/Reply to a Motion <u>12</u> .) (Brown, Adrian) (Entered: 12/19/2012)
12/19/2012	14	ORDER – Granting Plaintiff's Unopposed Motion for Extension of Time to File a Response to PPA's Motion to Intervene <u>12</u> . Response is due by 1/22/2013. Ordered by Judge Michael H. Simon. (mja) (Entered: 12/19/2012)
12/20/2012	<u>15</u>	Unopposed Motion for Extension of Time to Respond to Portland Police Association's <i>Motion to Intervene</i> . Filed by City of Portland. (Osoinach, Ellen) (Entered: 12/20/2012)
12/20/2012	<u>16</u>	Affidavit in Support of Motion for Extension of Time. Filed by City of Portland. (Related document(s): Motion for Extension of Time <u>15</u> .) (Osoinach, Ellen) (Entered: 12/20/2012)
12/20/2012	17	ORDER – Granting Defendant's Motion for Extension of Time to Respond to Portland Police Association's Motion to Intervene <u>15</u> . Response is due by 1/22/2013. Ordered by Judge Michael H. Simon. (mja) (Entered: 12/20/2012)
12/21/2012	18	MINUTES of Status Conference: Order – The Court adopts the following schedule: (1) January 8, 2013: Any motions to intervene will be deemed timely if filed by this date; (2) January 22, 2013: (a) All responses due to motions to intervene; and (b) All parties and any other interested persons may file written comments and suggestions regarding the notice, timing, conduct, and other processes of the anticipated Fairness Hearing; (3) February 5, 2013: All replies due in support of motions to intervene; and (4) February 19, 2013: HEARING scheduled at 9:00 a.m. in Courtroom 13B to address all pending motions to intervene and to discuss all procedures relating to the anticipated Fairness Hearing. Adrian L. Brown, Amanda Marshal, Michelle A. Jones and Laura Coon present as counsel for plaintiff(s). Ellen Osoinach, James VanDyke and Anil Karia present as counsel for defendant(s). Court Reporter: Jill Erwin. Judge Michael H. Simon presiding. (mja) (Entered: 12/21/2012)
01/08/2013	<u>19</u>	Motion to Intervene . Oral Argument requested. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Attachments: # <u>1</u> Attachment 1) (Albies, Jessica) (Entered: 01/08/2013)
01/08/2013	<u>20</u>	Memorandum in Support of <i>AMA Coalition's Motion to Intervene</i> . Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Related document(s): Motion to intervene <u>19</u> .) (Albies, Jessica) (Entered: 01/08/2013)
01/08/2013	<u>21</u>	Declaration of Doctor LeRoy Haynes, Jr. in Support of <i>The AMA Coalition's Motion to Intervene</i> . Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Related document(s): Motion to intervene <u>19</u> .) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11) (Albies,

		Jessica) (Entered: 01/08/2013)
01/22/2013	<u>22</u>	Memorandum in Support <i>Regarding Fairness Hearing</i> . Filed by Portland Police Association. (Karia, Anil) (Entered: 01/22/2013)
01/22/2013	<u>23</u>	Memorandum <i>Suggesting Processes for Anticipated Fairness Hearing</i> . Filed by City of Portland. (Osoinach, Ellen) (Entered: 01/22/2013)
01/22/2013	<u>24</u>	Unopposed Motion for Order <i>To Set Procedures for Fairness Hearing</i> . Filed by United States of America. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit Public Comment Form) (Brown, Adrian) (Entered: 01/22/2013)
01/22/2013	<u>25</u>	Response in Opposition to Motion to Intervene <u>7</u> , Motion to Intervene <u>19</u> Oral Argument requested. Filed by United States of America. (Attachments: # <u>1</u> Attachment Notice Letter, # <u>2</u> Attachment Findings Letter, # <u>3</u> Attachment Statement of Intent) (Brown, Adrian) (Entered: 01/22/2013)
01/22/2013	<u>26</u>	Response <i>in Support of Conditional Grant</i> to Motion to Intervene <u>7</u> . Filed by City of Portland. (Osoinach, Ellen) (Entered: 01/22/2013)
01/22/2013	<u>27</u>	Response <i>in Support of Conditional Grant</i> to Motion to Intervene <u>19</u> . Filed by City of Portland. (Osoinach, Ellen) (Entered: 01/22/2013)
02/05/2013	<u>28</u>	Reply <i>to Defendant's and Plaintiff's Opposition</i> to Motion to Intervene <u>19</u> . Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Albies, Jessica) (Entered: 02/05/2013)
02/05/2013	<u>29</u>	Reply <i>In Support</i> to Motion to Intervene <u>7</u> . Filed by Portland Police Association. (Karia, Anil) (Entered: 02/05/2013)
02/05/2013	<u>30</u>	Supplemental Declaration of Anil S. Karia <i>In Support of Motion to Intervene</i> . Filed by Portland Police Association. (Related document(s): Reply to Motion <u>29</u> .) (Attachments: # <u>1</u> Exhibit A) (Karia, Anil) (Entered: 02/05/2013)
02/14/2013	<u>31</u>	Notice of Appearance of R. Jonas Alexander Geissler appearing on behalf of United States of America Filed by on behalf of United States of America (Geissler, R. Jonas) (Entered: 02/14/2013)
02/19/2013	<u>32</u>	Opinion and Order – Portland Police Associations Motion to Intervene <u>7</u> is GRANTED in PART and DEFERRED IN PART. The PPA is permitted to intervene at this time only in the remedy phase of this litigation, with leave to renew its Motion to Intervene in a liability phase if such a phase becomes necessary. The AMA Coalitions Motion to Intervene <u>19</u> is DENIED in PART and DEFERRED in PART, with leave to renew its Motion to Intervene (and file an amended complaint in intervention) in a liability phase if such a phase becomes necessary. Although the AMA Coalition may not formally intervene in the "remedy phase, the Court GRANTS the AMA Coalition enhanced amicus curiae status as set forth in the Opinion and Order. The Court further Orders that the United States, the City, the PPA, and the AMA Coalition provide the several reports and briefing, if necessary, as directed by this Opinion and Order. The next status conference will be held on Tuesday, March 5, 2013 at 12:15. Signed on 2/19/13 by Judge Michael H. Simon. (mja) (Entered: 02/19/2013)
02/19/2013	33	MINUTES of Status Conference: Status of case discussed as stated on the record. See Opinion and Order <u>32</u> . Adrian Brown, R. Jonas Alexander Geissler and Billy Williams present as counsel for Plaintiff United States. Anil Karia present as counsel for Defendant–Intervenor Portland Police Association. James Van Dyke and Ellen Osoinach present as counsel for Defendant City of Portland. Jessica Ashlee Albies and Shauna M. Curphey present as counsel for amicus AMA Coalition. Court Reporter: Jill Erwin. Judge Michael H. Simon presiding. (mja) Modified on 2/21/2013 to correct party type(mja). (Entered: 02/20/2013)
02/26/2013	<u>34</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on February 19, 2013, before Judge Michael H. Simon, Court Reporter Jill L. Erwin, telephone number (503)326–8191. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through the court reporter or PACER–See Policy at ord.uscourts.gov. Notice of

		Intent to Redact Transcript is due by 3/8/2013. Redaction Request due 3/22/2013. Redacted Transcript Deadline set for 4/1/2013. Release of Transcript Restriction set for 5/31/2013. (Erwin, Jill) (Entered: 02/26/2013)
03/05/2013	<u>35</u>	MINUTES of Status Conference: Status Conference held. The parties reported that they have agreed on the selection of the Hon. Paul J. De Muniz, former Chief Justice of the Oregon Supreme Court, to serve as their mediator. The Court approves the parties' proposed mediation agreement and directs the parties to file a Joint Status Report not later than April 8, 2013. Adrian Brown, R. Jonas Alexander Geissler, Michelle Jones, Laura Coon and Billy Williams present as counsel for Plaintiff United States. Anil Karia present as counsel for Defendant-Intervenor Portland Police Association. Ellen Osoinach present as counsel for Defendant City of Portland. Jessica Ashlee Albies and Shauna M. Curphey present as counsel for amicus AMA Coalition. Court Reporter: Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 03/05/2013)
04/08/2013	<u>36</u>	Joint Status Report . Filed by All Parties. (Brown, Adrian) (Entered: 04/08/2013)
04/09/2013	<u>37</u>	Order – As requested by the parties in the Joint Status Report <u>36</u> , the filing of another Joint Status Report is due by 4/22/2013. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/09/2013)
04/10/2013	<u>38</u>	Notice of Appearance Filed by United States of America (Morse, Thomas) (Entered: 04/10/2013)
04/22/2013	<u>39</u>	Joint Status Report . Filed by All Parties. (Brown, Adrian) (Entered: 04/22/2013)
04/23/2013	<u>40</u>	Order – As requested by the parties in the Joint Status Report <u>39</u> , the Court is extending the deadline for the completion of mediation to 6/7/2013. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/23/2013)
06/07/2013	<u>41</u>	Joint Status Report . Filed by All Parties. (Brown, Adrian) (Entered: 06/07/2013)
06/10/2013	<u>42</u>	ORDER – As requested by the parties in their Joint Status Report dated June 7, 2013 <u>41</u> , the Court shall hold a status conference on Thursday, July 18, 2013 at 10:00 a.m. in Courtroom 13B to set a briefing schedule for the matters discussed in the Court's Order of February 19, 2013 <u>32</u> ; in addition, the parties' request to file a supplemental report not later than June 21, 2013, regarding the resolution of the issues raised by the AMA is GRANTED. Ordered by Judge Michael H. Simon. (mja) (Entered: 06/10/2013)
06/21/2013	<u>43</u>	Joint Status Report . Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform, City of Portland, United States of America. (Brown, Adrian) (Entered: 06/21/2013)
07/18/2013	<u>44</u>	MINUTES of Proceedings: Status Conference held. Counsel advised the Court that an agreement has been reached between USA, City of Portland and AMA Coalition. The Court addressed with the parties factors and issues involved in determining the procedural course of action to follow in resolving this action. All parties agree that trial shall be bifurcated as to the issues of liability and remedies. The Court identified specific issues the parties are to address in additional briefs, which shall be filed as follows: Opening briefs are due by October 21, 2013 (not to exceed 35 pages). Response briefs are due November 4, 2013 (not to exceed 35 pages). Reply briefs are due November 18, 2013 (not to exceed 10 pages). Oral argument is set for December 3, 2013 at 10:00 a.m., in Courtroom #13B . If not otherwise waived, the parties may postpone Rule 26(a) disclosures. Adrian Brown; Bill Williams; R. Jonas Geissler (by phone); Jack Morse (by phone), and Laura Coon (by phone) present as counsel for plaintiff(s). Ellen Osoinach and David Woboril present as counsel for defendant(s). Anil Karia present as counsel for Intervenor Portland Police Association. Counsel Shauna M. Curphey and J. Ashley Albies present as counsel for Amicus Albina Ministerial All. Court Reporter: Jill Erwin. Judge Michael H. Simon presiding. (kb) (Entered: 07/18/2013)
08/20/2013	<u>45</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on July 18, 2013, before Judge Michael H. Simon, Court Reporter Jill L. Erwin, telephone number (503)326-8191. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline

		for Release of Transcript Restriction. Afterwards it may be obtained through the court reporter or PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 8/30/2013. Redaction Request due 9/13/2013. Redacted Transcript Deadline set for 9/23/2013. Release of Transcript Restriction set for 11/21/2013. (Erwin, Jill) (Entered: 08/20/2013)
10/17/2013	<u>46</u>	Joint Motion for Extension of Time – <i>Continuance of Briefing Schedule</i> . Filed by United States of America. (Brown, Adrian) (Entered: 10/17/2013)
10/18/2013	47	ORDER – Granting the Parties' Joint Motion for Extension of Time – Continuance of Briefing Schedule <u>46</u> as follows: Opening Briefs are due by 11/12/2013. Responses are due by 11/25/2013. Replies are due by 12/2/2013. Resetting the Oral Argument Hearing from 12/3/2013 to 12/17/2013 at 10:00AM in Portland, Courtroom 13B, before Judge Michael H. Simon. Ordered by Judge Michael H. Simon. (mja) (Entered: 10/18/2013)
11/08/2013	<u>48</u>	Joint Status Report and Request for Stay of Deadlines. Filed by United States of America. (Brown, Adrian) (Entered: 11/08/2013)
11/12/2013	49	Order – Pursuant to the joint request of all the parties, all current case deadlines are stayed. The parties shall confer on future deadlines in advance of the 12/17/2013 status conference. Ordered by Judge Michael H. Simon. (mja) (Entered: 11/12/2013)
12/02/2013	50	Scheduling Order by Judge Michael H. Simon. Order – At the City of Portland's request, the Court is resetting the Status Conference from 12/17/2013 to 12/19/2013 at 01:30PM in Portland, Courtroom 13B, before Judge Michael H. Simon. Ordered by Judge Michael H. Simon. (mja) (Entered: 12/02/2013)
12/18/2013	<u>51</u>	Unopposed Motion for Order to Set Procedures for Fairness Hearing (Amended). Filed by United States of America. (Attachments: # <u>1</u> Attachment Proposed Order and Exhibit A) (Brown, Adrian) (Entered: 12/18/2013)
12/19/2013	52	MINUTES of Status Conference: Order – Status Conference held. The Court and the Parties discussed the procedures for a fairness hearing regarding the parties' jointly proposed Settlement Agreement. Order – A Fairness Hearing is set for 2/18/2014 at 09:00AM in Portland, Courtroom 13B, before Judge Michael H. Simon. Adrian L. Brown, Billy J. Williams and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen C. Osoinach, David Woboril, Harry Auerbach and Mark Amburg present as counsel for the City of Portland. Anil Karia present as counsel for Portland Police Association. Shauna M. Curphey present as counsel for amicus party Albina Ministerial Alliance Coalition for Justice and Police Reform . Court Reporter: Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 12/19/2013)
12/19/2013	<u>53</u>	Order Setting Fairness Hearing and Procedures. Signed on 12/19/13 by Judge Michael H. Simon. (Attachments: # <u>1</u> Testimony Form, # <u>2</u> Notice of Fairness Hearing) (mja) (Entered: 12/19/2013)
12/23/2013	<u>54</u>	Notice of Withdrawal of Objections to Proposed Settlement Agreement Filed by Portland Police Association (Attachments: # <u>1</u> Exhibit A) (Karia, Anil) (Entered: 12/23/2013)
12/30/2013	<u>55</u>	Amicus Notice of Collaborative Agreement Regarding the Proposed Settlement Agreement Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform (Attachments: # <u>1</u> Exhibit A) (Albies, Jessica) (Entered: 12/30/2013)
02/05/2014	56	Scheduling Order by Judge Michael H. Simon. Order – Setting a Telephone Status Conference for 2/10/2014 at 09:00AM. The Court will provide the parties with a call-in number prior to the conference by separate email. Ordered by Judge Michael H. Simon. (mja) (Entered: 02/05/2014)
02/10/2014	57	MINUTES of Telephone Conference: Order – Modifying deadline set in <u>53</u> for United States to provide pre-hearing submission from February 11 to February 13 at 9:00AM; Granting a continuing objection by all four parties to any evidence presented at the Fairness Hearing not in conformance with Federal Rules of Evidence (including, but not limited to, relevance, cumulative testimony, inadmissible hearsay, lack of personal knowledge or other foundation,

		argumentativeness, and inadmissibility of compromise offers and negotiations); Discussing other Fairness Hearing logistics and procedures as stated on the record. Adrian L. Brown, Billy J. Williams, Michelle A. Jones, and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen C. Osoinach, Anil Karria, Shauna M. Curpney and Jessica Ashlee Albies present as counsel for defendant(s). Court Reporter: Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 02/10/2014)
02/13/2014	<u>58</u>	Notice of Summaries of Written Submissions for Fairness Hearing in Compliance with Court's Order (ECF #53) Filed by All Plaintiffs (Attachments: # <u>1</u> Exhibit A) (Brown, Adrian) (Entered: 02/13/2014)
02/18/2014	59	MINUTES of Fairness Hearing before Judge Michael H. Simon. Testimony from the public and parties given. Court is in recess until 2/19/2014 at 08:30AM in Portland, Courtroom 13B, before Judge Michael H. Simon. Adrian L. Brown, Billy J. Williams, Michelle A. Jones, and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen C. Osoinach, David Woboril, Anil Karia, Shauna M. Curphey and Jessica Ashlee Albies present as counsel for defendant, intervenor defendant and amicus party. Court Reporter: Jill Erwin and Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 02/18/2014)
02/19/2014	60	MINUTES of Fairness Hearing before Judge Michael H. Simon : Testimony from the public and parties given and the record was closed for public oral testimony. The record shall be held open one week, until Wednesday, February 26, 2014, for additional written public testimony. Any person or organization wishing to provide written testimony may submit it by delivering or mailing the testimony to the Clerk of the Court, Civil Intake, Fairness Hearing Comments, United States District Court, District of Oregon, 1000 SW Third Avenue, Suite 700, Portland, OR 97204, or emailing to mary_austad@ord.uscourts.gov. The Court anticipates asking the Parties written questions by February 28, 2014, and will file them in the Court record. The Parties shall have until March 11, 2014, to submit post-hearing memoranda. A final hearing is scheduled for March 24, 2014, at 9:00 a.m. in Courtroom 13B. Adrian L. Brown, Billy J. Williams, Michelle A. Jones, and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen C. Osoinach, David Woboril, Anil Karia, Shauna M. Curphey and Jessica Ashlee Albies present as counsel for defendant, intervenor defendant and amicus party. Court Reporter: Jill Erwin and Dennis Apodaca. Judge Michael H. Simon presiding. (mja) Modified on 2/20/2014 to correct email (mja). (Entered: 02/19/2014)
02/28/2014	<u>61</u>	Post-Hearing Questions. The Court presents the attached questions to the four parties and requests that any responses be filed not later than 3/11/2014. Signed on 2/28/2014 by Judge Michael H. Simon. (sm) (Entered: 02/28/2014)
03/05/2014	<u>62</u>	Notice of Appearance of David W. Knight appearing on behalf of United States of America Filed by on behalf of United States of America (Knight, David) (Entered: 03/05/2014)
03/11/2014	<u>63</u>	Memorandum in Support of Acceptance of Settlement Agreement and Response to Questions from the Court. Filed by United States of America. (Related document(s): Order <u>61</u> .) (Brown, Adrian) (Entered: 03/11/2014)
03/11/2014	<u>64</u>	Memorandum in Support OF ENTRY OF PROPOSED SETTLEMENT AGREEMENT. Filed by Portland Police Association. (Karia, Anil) (Entered: 03/11/2014)
03/11/2014	<u>65</u>	Declaration of Anil S. Karia IN SUPPORT OF ENTRY OF PROPOSED SETTLEMENT AGREEMENT. Filed by Portland Police Association. (Attachments: # <u>1</u> Exhibit A) (Karia, Anil) (Entered: 03/11/2014)
03/11/2014	<u>66</u>	Brief in Response to Questions from the Court. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Related document(s): Order <u>61</u> .) (Albies, Jessica) (Entered: 03/11/2014)
03/11/2014	<u>67</u>	Brief "City of Portland's Post Hearing Brief". Filed by City of Portland. (Related document(s): Order <u>61</u> .) (Osoinach, Ellen) (Entered: 03/11/2014)

03/24/2014	68	MINUTES of Proceedings before Judge Michael H. Simon. Order – The parties have until 4/14/2014 to submit additional briefing. Adrian L. Brown, Billy J. Williams, Michelle A. Jones, and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen C. Osoinach, David Woboril, Anil Karia, Shauna M. Curpney and Jessica Ashlee Albies present as counsel for defendant(s). Court Reporter: Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 03/24/2014)
04/14/2014	69	Order – At the Parties' request, the Court is extending the deadline for the filing of additional briefing from 4/14/2014 to 4/21/2014. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/14/2014)
04/21/2014	70	Scheduling Order by Judge Michael H. Simon. Order – At the Parties' request, the Court is extending the deadline for the filing of additional briefing from 4/21/2014 to 4/28/2014. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/21/2014)
04/25/2014	71	Scheduling Order by Judge Michael H. Simon. Order – At the parties' request, the Court is setting a Telephone Status Conference for 4/28/2014 at 01:30PM. The Court will provide the parties with a call-in number by separate email. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/25/2014)
04/28/2014	72	Scheduling Order by Judge Michael H. Simon. Order – Due to a conflict in the court reporter's schedule, the Court is resetting the TIME set for the Telephone Conference from 4/28/2014 at 1:30PM to 4/28/2014 at 02:00PM. Ordered by Judge Michael H. Simon. (mja) (Entered: 04/28/2014)
04/28/2014	73	MINUTES of Telephone Status Conference: Order – At the request of the parties, a further Telephone Status Conference is set for 5/8/2014 at 01:30PM. The Court will provide the parties with a call-in number prior to the conference. Adrian L. Brown, Billy J. Williams, Michelle A. Jones, David Knight, and R. Jonas Alexander Geissler present as counsel for plaintiff(s). Ellen Osoinach, David Worbil present as counsel for Defendant City of Portland. Anil Karia present as counsel for Intervenor Defendant Portland Police Association. Jessica Albies and Shauna Curphey present as counsel for Amicus party Albina Ministerial Alliance Coalition for Justice and Police Reform. Court Reporter: Bridget Montero. Judge Michael H. Simon presiding. (mja) (Entered: 04/28/2014)
05/08/2014	74	Scheduling Order by Judge Michael H. Simon. Order – At the parties' request, the Court is resetting the Telephone Status Conference from 5/8/2014 to 5/30/2014 at 01:30PM. The Court will provide the parties with a call-in number prior to the conference. Ordered by Judge Michael H. Simon. (mja) (Entered: 05/08/2014)
05/20/2014	<u>75</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Telephone Conference held on April 18, 2014 before Judge Michael H. Simon, Court Reporter Bridget Montero, telephone number 714-873-7248. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER-See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript is due by 5/30/2014. Redaction Request due 6/13/2014. Redacted Transcript Deadline set for 6/23/2014. Release of Transcript Restriction set for 8/21/2014. (sm) (Entered: 05/20/2014)
05/30/2014	76	MINUTES of Telephone Conference: Order – The parties have until 6/24/2014 to submit additional briefing. Responses are due by 7/2/2014. Amanda Marshall, Michelle A. Jones, R. Jonas Alexander Geissler and David W. Knight present as counsel for plaintiff(s). Ellen C. Osoinach and David L. Woberil present as counsel for defendant(s). Anil Karia present as counsel for Intervenor Defendant Portland Police Association. Jessica Albies and Shauna Curphey present as counsel for Amicus party Albina Ministerial Alliance Coalition for Justice and Police Reform. Court Reporter: Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 05/30/2014)
06/20/2014	<u>77</u>	Joint Motion to Enter Settlement Agreement and Conditional Dismissal of Action. Filed by City of Portland. (Attachments: # <u>1</u> Exhibit A) (Osoinach, Ellen) (Entered: 06/20/2014)
06/20/2014	78	ORDER – On May 30, 2014, the Court granted the parties' request to have until June 24, 2014, to submit additional briefing on the issue of whether the Court should grant the original Joint Motion for Settlement <u>3</u> , with responses due by July

		2, 2014. 76 . On June 20, 2014, Plaintiff United States, Defendant City of Portland, and Intervenor-Defendant Portland Police Association filed a Joint Motion to Enter Settlement Agreement, which contains a modified condition of dismissal. <u>77</u> The original briefing schedule remains. Any Party, including Plaintiff United States, Defendant City of Portland, Intervenor-Defendant Portland Police Association, or Enhanced Amicus Albina Ministerial Alliance Coalition for Justice and Police Reform, may submit additional briefing by June 24, 2014, on whether the Court should grant or deny the original Joint Motion for Settlement <u>3</u> or the modified Joint Motion <u>77</u> , with responses due by July 2, 2014. There shall be no further extensions of the briefing schedule. The Court will take the matter under advisement on July 3, 2014. Ordered by Judge Michael H. Simon. (mja) (Entered: 06/20/2014)
06/20/2014	<u>79</u>	Brief in Support of the Court's Proposed Periodic Hearings. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Albies, Jessica) (Entered: 06/20/2014)
06/24/2014	<u>80</u>	Memorandum in Support of Agreed Order Entering Settlement Agreement Or, Alternatively, For Entry of Settlement Agreement and Separate Order Requiring Status Conferences. Filed by United States of America. (Knight, David) (Entered: 06/24/2014)
06/24/2014	<u>81</u>	Memorandum in Support OF JOINT MOTION TO ENTER SETTLEMENT AGREEMENT AND CONDITIONAL DISMISSAL OF ACTION. Filed by Portland Police Association. (Related document(s): Motion - Miscellaneous <u>77</u> .) (Karia, Anil) (Entered: 06/24/2014)
06/24/2014	<u>82</u>	Memorandum in Support OF JOINT MOTION TO ENTER SETTLEMENT AGREEMENT AND CONDITIONALLY DISMISS ACTION. Filed by City of Portland. (Related document(s): Motion - Miscellaneous <u>77</u> .) (Attachments: # <u>1</u> Exhibit 1) (Osoinach, Ellen) (Entered: 06/24/2014)
07/02/2014	<u>83</u>	Response to the City of Portland's Memorandum in Support of Joint Motion to Enter Settlement Agreement and Conditionally Dismiss Action. Filed by United States of America. (Related document(s): Memorandum in Support of Motion <u>82</u> .) (Knight, David) (Entered: 07/02/2014)
07/02/2014	<u>84</u>	Brief in Support of Entry of Settlement Agreement and Separate Order Requiring Periodic Changes. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Albies, Jessica) (Entered: 07/02/2014)
07/02/2014	<u>85</u>	Response to Joint Motion to Enter Settlement Agreement and Conditional Dismissal of Action <u>77</u> . Filed by City of Portland. (Attachments: # <u>1</u> Exhibit 1-10) (Osoinach, Ellen) (Entered: 07/02/2014)
08/29/2014	<u>86</u>	ORDER - The Parties' Joint Motion to Enter Settlement Agreement (ECF No. <u>3</u>) and alternative Joint Motion to Enter Settlement Agreement (ECF No. <u>77</u>) are GRANTED IN PART AND DENIED IN PART, as set forth in this Order. Signed on 8/29/2014 by Judge Michael H. Simon. (mja) (Entered: 08/29/2014)
10/27/2014	<u>87</u>	Notice of Appeal to the 9th Circuit from Order on Motion for Settlement, Order on Motion - Miscellaneous,, <u>86</u> Filing fee \$505 collected; Agency Tracking ID 0979-3880756: . Filed by City of Portland. (Attachments: # <u>1</u> Attachment Representation Statement) (Osoinach, Ellen) (Entered: 10/27/2014)
10/28/2014		USCA Case Number and Notice confirming Docketing Record on Appeal re Notice of Appeal <u>87</u> . Case Appealed to 9th Circuit Court of Appeals Case Number 14-35903 assigned. (dsg) (Entered: 10/28/2014)
11/26/2014	<u>88</u>	Transcript Designation and Order Form before Judge Simon. Court Reporter: Dennis Apodaca. regarding Notice of Appeal, <u>87</u> . Filed by City of Portland. Transcript is due by 1/2/2015. (Attachments: # <u>1</u> Attachment Transcripts Requested) (Osoinach, Ellen) (Entered: 11/26/2014)
12/01/2014	<u>89</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Continued Fairness Hearing held on March 24, 2014 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court

		Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 12/11/2014. Redaction Request due 12/29/2014. Redacted Transcript Deadline set for 1/5/2015. Release of Transcript Restriction set for 3/5/2015. (Apodaca, Dennis) (Entered: 12/01/2014)
12/30/2014	<u>90</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on March 5, 2013 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)
12/30/2014	<u>91</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on December 19, 2013 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)
12/30/2014	<u>92</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on February 10, 2014 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)
12/30/2014	<u>93</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on March 24, 2014 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)
12/30/2014	<u>94</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on May 30, 2014 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)
12/30/2014	<u>95</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on December 21, 2012 before Judge Michael H. Simon, Court Reporter Jill Erwin, telephone number (503) 326-8182. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER—See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 1/9/2015. Redaction Request due 1/23/2015. Redacted Transcript Deadline set for 2/2/2015. Release of Transcript Restriction set for 4/2/2015. (Apodaca, Dennis) (Entered: 12/30/2014)

07/10/2015	<u>96</u>	(VACATED See Dkt # 97) Amended Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Status Conference. Signed on 7/10/2015 by Judge Michael H. Simon. ORDER – By letter dated June 16, 2015, the United States, the City of Portland, the Portland Police Association, and the Albina Ministerial Alliance Coalition for Justice and Police Reform (collectively, the "Parties") requested the District Court to indicate its approval of the Parties' jointly proposed Amended Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Status Conference. After reviewing the Parties' joint proposal, the Court indicates its approval. Further, because the Court has retained jurisdiction over this matter, the Court has signed the proposed Amended Order and directs that it be entered as part of the record in this case. Judge Michael H. Simon (mja) Modified on 7/20/2015 pursuant to Order Dkt # 97 (mja). (Entered: 07/10/2015)
07/20/2015	<u>97</u>	ORDER – At the request of the Circuit Mediator and the Parties, the Court hereby VACATES its Amended Order Entering Settlement Agreement <u>96</u> , entered on July 10, 2015. If and when this case is remanded to the Court by the Ninth Circuit without further directions, the Court intends to re-sign and re-enter this Order at that time at the request of the Parties. See Fed. R. App. P. 12.1. Judge Michael H. Simon. Ordered by Judge Michael H. Simon. (mja) (Entered: 07/20/2015)
07/30/2015	<u>98</u>	Order from USCA for the 9th Circuit, re Notice of Appeal <u>87</u> . The parties joint motion for remand is granted. This appeal is remanded to the district court for the limited purpose of adopting and entering the parties proposed Amended Order Entering Settlement Agreement. REMANDED. (dsg) (Entered: 07/30/2015)
07/30/2015	<u>99</u>	Amended Order Entering Settlement Agreement Conditionally Dismissing Litigation, and Setting First Annual Status Conference. Signed on 7/30/2015 by Judge Michael H. Simon. (mja) (Entered: 07/30/2015)
07/30/2015	<u>100</u>	Motion to Substitute Attorney <i>Brian Buehler for Thomas J. Morse</i> . Filed by United States of America. (Buehler, Brian) (Entered: 07/30/2015)
07/30/2015	<u>101</u>	ORDER – Granting Motion to Substitute Attorney <u>100</u> Brian Buehler in place of Thomas J. Morse for United States of America added as counsel of record. Signed on 7/30/2015 by Judge Michael H. Simon. (mja) (Entered: 07/30/2015)
08/20/2015	<u>102</u>	Scheduling Order by Michael H. Simon. The Court has just realized that it inadvertently set the first annual status conference concerning the settlement implementation in this matter on the Jewish high holiday of Rosh Hashanah. Thus, the status conference is RESET from Monday, September 14, 2015, to Wednesday, September 16, 2015, still at 9:00 A.M. in Courtroom 13B. The Court apologizes for any inconvenience that the Court's error or this corrective change may cause. (bb) (Entered: 08/20/2015)
08/20/2015	<u>103</u>	Scheduling Order by Judge Michael H. Simon. At the request of the parties, the Status Conference RESET for 09/16/2015 is VACATED and is RESET for 10/21/2015 at 02:00 PM in Portland Courtroom 13B before Judge Michael H. Simon. (bb) (Entered: 08/20/2015)
09/21/2015	<u>104</u>	MANDATE of USCA for the 9th Circuit, USCA # 14-35903 , re Notice of Appeal <u>87</u> . The parties joint motion for voluntary dismissal of this appeal is granted. This appeal is dismissed. See Fed. R. App. P. 42(b). This order served on the district court shall act as and for the mandate of this court. (dsg) (Entered: 09/21/2015)
09/29/2015	<u>105</u>	Notice of Periodic Compliance Assessment Report Filed by All Plaintiffs (Attachments: # <u>1</u> Attachment 1, # <u>2</u> Attachment 2) (Brown, Adrian) (Entered: 09/29/2015)
10/07/2015	<u>106</u>	Letter from Sharon Maxwell. (mja) (Entered: 10/07/2015)
10/13/2015	<u>107</u>	Order Setting Agenda for First Post-Approval Annual Status Conference. Signed on 10/13/2015 by Judge Michael H. Simon. (mja) (Entered: 10/13/2015)
10/13/2015	<u>108</u>	Report " <i>First Quarterly Report of the Compliance Office and Community Liaison</i> ". Filed by City of Portland. (Osoinach, Ellen) (Entered: 10/13/2015)

10/14/2015	<u>109</u>	Status Report by Albina Ministerial Alliance Coalition for Justice and Police Reform. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Albies, Jessica) (Entered: 10/14/2015)
10/14/2015	<u>110</u>	Notice of Attorney Withdrawal: Filed by City of Portland (Osoinach, Ellen) (Entered: 10/14/2015)
10/15/2015	<u>111</u>	Notice of Attorney Substitution: Attorney Jared D. Hager is substituted as counsel of record in place of Attorney David W. Knight Filed by United States of America (Hager, Jared) (Entered: 10/15/2015)
10/21/2015	<u>112</u>	Notice <i>Defendant City of Portland's Notice of Compliance Reporting</i> Filed by City of Portland (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Osoinach, Ellen) (Entered: 10/21/2015)
10/21/2015	113	MINUTES of First Annual Status Conference: Order – Setting the Second Annual Status Conference for 10/25/2016 at 01:00PM in Portland, Courtroom 13B, before Judge Michael H. Simon. Adrian L. Brown, R. Jonas Alexander Geissler and Janice Hebert present as counsel for Plaintiff. Ellen C. Osoinach, Tracey Pool Reeve and Mark Amberg present as counsel for Defendant City of Portland. Anil S. Karia present as counsel for Intervenor–Defendant Portland Police Association. J. Ashlee Albies and Shauna M. Curphey present as counsel for Albina Ministerial Alliance Coalition for Justice and Police Reform. Dennis Apodaca. Judge Michael H. Simon presiding. (mja) (Entered: 10/21/2015)
10/26/2015	<u>114</u>	Notice of Attorney Withdrawal: <i>of Michelle Jones</i> . Filed by United States of America (Buehler, Brian) (Entered: 10/26/2015)
11/12/2015	<u>115</u>	Notice of Appearance of Janice E. Hebert appearing on behalf of United States of America Filed by on behalf of United States of America (Hebert, Janice) (Entered: 11/12/2015)
12/02/2015	<u>116</u>	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Hearing held on October 21, 2015 before Judge Michael H. Simon, Court Reporter Dennis W. Apodaca, telephone number (503) 326–8182 or dennis_apodaca@ord.uscourts.gov. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER–See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript is due by 12/14/2015. Redaction Request due 12/28/2015. Redacted Transcript Deadline set for 1/7/2016. Release of Transcript Restriction set for 3/4/2016. (Apodaca, Dennis) (Entered: 12/02/2015)
02/01/2016	<u>117</u>	Notice of Change of Address. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform (Albies, Jessica) (Entered: 02/01/2016)
03/01/2016	<u>118</u>	Notice of Change of Address. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform (Curphey, Shauna) (Entered: 03/01/2016)
04/02/2016	<u>119</u>	Notice of Change of Address. Filed by Portland Police Association (Karia, Anil) (Entered: 04/02/2016)
06/27/2016	<u>120</u>	Report <i>COCL Semi–Annual Compliance Report Third and Fourth Quarters</i> . Filed by City of Portland. (Osoinach, Ellen) (Main Document 120 replaced on 7/7/2016) (cw). (Entered: 06/27/2016)
07/07/2016	121	Clerk's Notice of Docket Correction regarding <u>120</u> Report. The PDF attached to this entry at filing was incorrect. The document was missing a case caption cover page. A corrected PDF has been uploaded and has replaced the incorrect attachment. The Notice of Electronic Filing will be regenerated to all parties. (cw) (Entered: 07/07/2016)
09/23/2016	122	Order – At the request of the Defendant, the Court is authorizing the services of two ASL Interpreters for the Status Conference set for 10/25/2016 at 1:00PM in Portland, Courtroom 13B, before Judge Michael H. Simon. Ordered by Judge Michael H. Simon. (mja) (Entered: 09/23/2016)

10/18/2016	<u>123</u>	Notice of Appearance of Kristen A. Chambers appearing on behalf of Albina Ministerial Alliance Coalition for Justice and Police Reform Filed by on behalf of Albina Ministerial Alliance Coalition for Justice and Police Reform (Chambers, Kristen) (Entered: 10/18/2016)
10/18/2016	<u>124</u>	Notice of <i>Second Periodic Compliance Assessment Report</i> Filed by United States of America (Attachments: # <u>1</u> Attachment) (Brown, Adrian) (Entered: 10/18/2016)
10/19/2016	<u>125</u>	Notice of Appearance of Laura L. Coon appearing on behalf of United States of America Filed by on behalf of United States of America (Coon, Laura) (Entered: 10/19/2016)
10/19/2016	<u>126</u>	Status Report by Albina Ministerial Alliance Coalition for Justice and Police Reform. Filed by Albina Ministerial Alliance Coalition for Justice and Police Reform. (Attachments: # <u>1</u> Attachment 1) (Albies, Jessica) (Entered: 10/19/2016)
10/19/2016	<u>127</u>	Notice of Periodic Compliance Report. Filed by City of Portland (mja) (Entered: 10/19/2016)
10/19/2016	<u>128</u>	Memorandum for Second Status Conference. Filed by City of Portland. (mja) (Entered: 10/19/2016)
10/24/2016	<u>129</u>	Notice of <i>Periodic Compliance Report</i> Filed by City of Portland (Attachments: # <u>1</u> Exhibit Exhibit A – Cover Letter COCL Testimony for Status Conference, # <u>2</u> Exhibit Exhibit B – COCL Testimony for Status Conference) (Osoinach, Ellen) (Entered: 10/24/2016)
10/25/2016	130	MINUTES of Second Annual Status Conference: Order – Setting the Third Annual Status Conference for 10/5/2017 at 10:00AM in Portland, Courtroom 13B, before Judge Michael H. Simon. Adrian L. Brown, Billy J. Williams, Laura L. Coon and J. Jonas Alexander Geissler present as counsel for Plaintiff. Ellen C. Osoinach, Judy Prosper and Mark Amberg present as counsel for Defendant City of Portland. Anil Karia present as counsel for Intervenor Defendant Portland Police Association. Jessica Ashlee Albies present as counsel for Amicus Party Albina Ministerial Alliance Coalition for Justice and Police Reform. Judge Michael H. Simon presiding. ASL Interpreters Andrea Medlock and Richard Hall. Oath administered in Court. (mja) (Entered: 10/26/2016)
10/26/2016	<u>131</u>	Submission by Dan Handelman. (mja) (Entered: 10/26/2016)
10/27/2016	<u>132</u>	Submission by Kathleen D. Saadat (mja) (Entered: 10/27/2016)
10/27/2016	133	Order – At the Second Annual Status Conference held on October 25, 2016, the Court received the City of Portland's Exhibit 101, entitled "De-Escalation, Compassion & Respect, A Trilogy". Exhibit 101 is a video on DVD. Ordered by Judge Michael H. Simon. (mja) (Entered: 10/27/2016)
11/02/2016	<u>134</u>	Notice of Appearance of Judy S. Prosper appearing on behalf of City of Portland Filed by on behalf of City of Portland (Prosper, Judy) (Entered: 11/02/2016)
11/02/2016	<u>135</u>	Notice of Appearance of Mark P. Amberg appearing on behalf of City of Portland Filed by on behalf of City of Portland (Amberg, Mark) (Entered: 11/02/2016)
11/02/2016	<u>136</u>	Status Report by United States of America. Filed by United States of America. (Brown, Adrian) (Entered: 11/02/2016)
11/03/2016	<u>137</u>	Notice of Appearance of Tracy Pool Reeve appearing on behalf of City of Portland Filed by on behalf of City of Portland (Reeve, Tracy) (Entered: 11/03/2016)
11/03/2016	<u>138</u>	Memorandum Titled as " <i>Defendant City of Portland's Post Status Conference Memorandum</i> ". Filed by City of Portland. (Reeve, Tracy) (Entered: 11/03/2016)
11/03/2016	<u>139</u>	Declaration of <i>Tracy Reeve</i> . Filed by City of Portland. (Related document(s): Memorandum <u>138</u> .) (Attachments: # <u>1</u> Exhibit A) (Reeve, Tracy) (Entered: 11/03/2016)
11/10/2016	<u>140</u>	Order – The Court ORDERS the City to file not later than December 2, 2016, a written Supplemental Compliance Report, describing the steps taken to achieve compliance with Section IX of the Settlement Agreement. The Court further ORDERS that an interim status conference be held on Tuesday, January 31, 2017,

		at 2:00 p.m. in Courtroom 13B for the Parties to report on the status of any proposed changes to the Settlement Agreement and the appropriate steps to be taken by the Court when considering any such proposed changes. Signed 11/10/2017 by Judge Michael H. Simon. (mja) (Entered: 11/10/2016)
12/02/2016	<u>141</u>	Supplemental Memorandum . Filed by City of Portland. (Osoinach, Ellen) (Entered: 12/02/2016)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOSEPH WALSH,

Plaintiff,

v.

**BRYANT ENGE, CHARLIE HALES, and
CITY OF PORTLAND,**

Defendants.

Case No. 3:15-cv-01666-SI

OPINION AND ORDER

Joseph Walsh, 7348 SE Division St., Portland, OR 97206, *pro se*.

David A. Landrum, Senior Deputy City Attorney, and Daniel A. Simon, Assistant Deputy City Attorney, City of Portland, Oregon, City Attorney's Office, 1221 SW Fourth Avenue, Room 430, Portland, OR 97204. Of Attorneys for Defendants.

Michael H. Simon, District Judge.

This case requires the Court to decide whether the First Amendment allows a Mayor or his or her designee, acting pursuant to a city ordinance, to exclude a person, potentially indefinitely, from attending future City Council meetings to which the public is otherwise invited to attend and present their opinions simply because the person has been disruptive at previous meetings. The First Amendment protects, among other things, "freedom of speech" and "petitioning for a governmental redress of grievances." U.S. Const. amend. I. The First Amendment is incorporated into the Fourteenth Amendment and thus applies to the states and

local governmental bodies. *Gitlow v. New York*, 268 U.S. 652, 666 (1925). No appellate opinion of which this Court is aware has ever held that the First Amendment permits prospective exclusion orders from otherwise public city council meetings. A presiding officer may remove a disruptive individual from any particular meeting, and a sufficiently disruptive person may even be prosecuted for such conduct if public law permits. But no matter how many meetings of a city council a person disrupts, he or she does not forfeit or lose the future ability to exercise constitutional rights and may not be prospectively barred from attending future meetings. Our democratic republic is not so fragile, and our First Amendment is not so weak.

On July 8, 2015, Joseph Walsh (“Walsh” or “Plaintiff”) attended a Portland City Council meeting at City Hall. After Walsh raised his voice and interrupted proceedings, Defendant Mayor Charlie Hales (“Mayor Hales”) asked Walsh to leave the City Council meeting and told Walsh that he would be excluded from future City Council meetings for 60 days. This was not the first time that Walsh had been disruptive at a City Council meeting, and it was not the first time that he had been ejected from a meeting that he had disrupted. In fact, Walsh had twice previously been given 30-day exclusion orders from City Council meetings based on his disruptive conduct. He did not, however, challenge those two earlier orders in court.

On July 15, 2015, Defendant Bryant Enge (“Enge”) issued Walsh a Notice of Exclusion from City Property (the “Notice”). The Notice informed Walsh that Defendant City of Portland (the “City”) was excluding him from City Hall for a period of 60 days, from July 15, 2015, to September 15, 2015. Walsh, representing himself, filed this lawsuit against Defendants on September 3, 2015, under federal civil rights laws, specifically 42 U.S.C. § 1983. He seeks a permanent injunction against enforcement of Portland City Code (“PCC”) § 3.15.020B.5.b, which authorizes up to an indefinite exclusion from City Hall and City Council Chambers of

persons who disrupt a City Council meeting. Walsh also seeks a declaratory judgment that the exclusion ordinance violates the First Amendment. Walsh challenges the exclusion ordinance both facially and as applied to him. In lieu of proceeding on Walsh's motion for a temporary restraining order, Defendants and Walsh agreed that they would file cross-motions for summary judgment. For the reasons that follow, Defendants' motion is denied and Walsh's motion is granted.¹

The First Amendment reflects our democratic republic's commitment to the principle that "debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The First Amendment's guarantees do not, however, require the government freely to grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker's activities. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799-800 (1985). Even in a democracy, the government need not tolerate actual disruptions of government business. Undisputedly, a presiding officer may remove from an official public meeting anyone who engages in actual disruption, provided that the officer is acting in a manner that is neutral with regard to the viewpoint being expressed by the disruptive speaker.

What the government may not do is prospectively exclude individuals from future public meetings merely because they have been disruptive in the past. A contrary holding might lead to officials shutting the government's doors to those whose viewpoints the government finds annoying, distasteful, or unpopular. Permanent or even lengthy exclusions for past disruptive conduct could become a convenient guise for censoring criticisms directed toward the powerful.

¹ In his complaint and motion for summary judgment, Walsh also stated that he sought any monetary compensation that the Court deemed appropriate. The Court held oral argument on December 21, 2015, during which Walsh stated that he was abandoning his claim for money damages. The Court thus does not consider any claim for money damages.

The First Amendment's guarantees, although not absolute, are not so flimsy. The Court holds that PCC § 3.15.020B.5.b violates the First Amendment because the ordinance allows for the prospective exclusion of an individual from future City Council meetings based solely on a finding that the excluded person has been disruptive in the past.

STANDARDS

A party is entitled to summary judgment if the “movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party has the burden of establishing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in the non-movant's favor. *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001). Although “[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment,” the “mere existence of a scintilla of evidence in support of the plaintiff's position [is] insufficient . . .” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 255 (1986). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation and quotation marks omitted).

Where parties file cross-motions for summary judgment, the court “evaluate[s] each motion separately, giving the non-moving party in each instance the benefit of all reasonable inferences.” *A.C.L.U. of Nev. v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006) (quotation marks and citation omitted); *see also Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 674 (9th Cir. 2010) (“Cross-motions for summary judgment are evaluated separately under [the] same standard.”). In evaluating the motions, “the court must consider each party's evidence,

regardless under which motion the evidence is offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011). “Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party’s case.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). Thereafter, the non-moving party bears the burden of designating “specific facts demonstrating the existence of genuine issues for trial.” *Id.* “This burden is not a light one.” *Id.* The Supreme Court has directed that in such a situation, the non-moving party must do more than raise a “metaphysical doubt” as to the material facts at issue. *Matsushita*, 475 U.S. at 586.

In addition, a court must liberally construe the filings of a *pro se* plaintiff and afford the plaintiff the benefit of any reasonable doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). “A *pro se* litigant must be given leave to amend his or her complaint unless it is ‘absolutely clear that the deficiencies of the complaint could not be cured by amendment.’” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988) (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded on other grounds by statute as stated in Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000)).

BACKGROUND²

A. The Portland City Code and Rules of Conduct

The City of Portland’s Office of Management and Finance (“OMF”), through the OMF Bureau of Internal Business Services, manages city-owned property assigned to OMF under PCC

² The Court notes Defendants’ objections to statements that Walsh included in his factual description of the July 8, 2015 events. The Court has reviewed the factual description in Walsh’s response to Defendants’ motion. The Court also has reviewed Defendants’ evidence, including videos of several meetings of the Portland City Council during which Walsh has been actually disruptive. Walsh raises no objections to Defendants’ evidence. The Court overrules all objections as duplicative of the summary judgment standard and considers only admissible evidence in deciding the parties’ cross-motions for summary judgment.

§ 3.15.020. PCC § 3.15.020B.5 gives OMF the authority to “[d]evelop and enforce Rules of Conduct for City Buildings, and require all persons to obey the Rules of Conduct. . . . Any person who fails to comply with the Rules of Conduct for City Buildings, or the reasonable direction of the Person-in-Charge, may be excluded as provided in this Section.” According to PCC § 3.15.020B.5.b:

Any Person-in-Charge may exclude any person who violates any Rule of Conduct while in or upon any City building or property, from a specific City building or property or from all City buildings and properties, for a period of 24 hours. The Mayor, and specifically identified designees of the Mayor, may issue an exclusion for any period of time up to and including permanent exclusion from City buildings.

Mayor Hales has designated Enge as the “Person-in-Charge” under the authority of PCC § 5.36.115, which allows the Mayor to designate a “Person-in-Charge” for purposes of excluding people from city buildings managed by OMF, including City Hall. Enge has served in this role since January 3, 2013. The memorandum designating Enge as the Person-in-Charge also allows him to determine what period of exclusion a person’s conduct warrants.

The “Rules of Conduct for City of Portland Properties,” effective August 12, 2013, are posted in the windows next to the public entrance to City Hall. Rule Five of the Rules of Conduct states: “No person shall engage in conduct that disrupts or interferes with the normal operation or administration of City business, its tenants, employees, visitors or customers, or any City permitted activity.” Rule Six of these Rules of Conduct states: “No person shall disobey the reasonable direction of a City employee, law enforcement, person in charge or security officer A direction is reasonable if it . . . is reasonably necessary to preserve the peace or prevent the disruption of any activity . . . at City Properties.” If a person violates the Rules of Conduct, he or she “may be immediately excluded from City properties as ordered by the ‘person in charge’ pursuant to City of Portland Ordinance No. 161538 (Portland City Code Section

5.36.115). Immediate Exclusion shall be for a minimum of 24 hours.” An abbreviated list of the Rules of Conduct is posted inside the public entrance to City Hall.

B. Walsh’s Exclusion from City Hall

The Portland City Council conducts its meetings at City Hall, which the City Council opens to the public. In 2014, Mayor Hales began giving a brief statement at the beginning of City Council meetings, reminding those in attendance to remain courteous and respectful and to refrain from interrupting others. Mayor Hales made this statement at the beginning of the meeting on July 8, 2015.

Walsh describes himself as an activist and representative of a group he calls “Individuals for Justice.” He frequently attends City Council meetings to observe and provide public testimony. Walsh attended the meeting on July 8, 2015, with the intention of making comments on Agenda Item Number 743, a proposed appropriation of funds from the Oregon Department of Transportation to the Portland Police Bureau. Walsh requested that the Council remove this item from the Council’s “Consent Agenda.” The Consent Agenda expedites votes on certain matters without amendment or debate, but members of the public may “pull” an item from the Consent Agenda to provide comments. *See* PCC § 3.02.036. At the request of Walsh, the Council removed Agenda Item 743 from the Consent Agenda, but when the matter came up for debate later in the hearing, Walsh was not present because he had briefly stepped out of the Council Chambers. The Council then voted on this agenda item and proceeded to discuss other matters.

When Walsh returned to the meeting and learned that he had missed his opportunity for public comment on the proposed appropriation, he began shouting. Among other things, Walsh stated: “I have to leave from time to time, you know—I stand here outside, I pulled that item” He then told Mayor Hales “to explain ADA” to everyone (referring to the Americans with Disabilities Act). Mayor Hales responded that Walsh would be excluded from this meeting

and from future meetings for 60 days if he continued to interrupt the proceeding. Walsh continued shouting, slammed his hand on a conference table, and accused Mayor Hales of being “cheap.” A security officer requested that Walsh leave the City Council Chambers. Walsh then engaged in a loud confrontation with a City Hall staff person in the building atrium, but ultimately left City Hall voluntarily.

One week later, on July 15, 2015, Walsh returned to City Hall. When Walsh entered the building, John Chandler, project manager for security services at City Hall, personally served Walsh with the Notice. The Notice informed Walsh that he could not enter City Hall or the loggias, ramps, or driveways leading to the City Hall, including past the decorative fence surrounding the building. The Notice stated that the exclusion was for 60 days because Walsh had violated the Rules of Conduct for City of Portland Properties and that his “behavior created an unsafe and hostile environment for City employees and visitors conducting City business.” The Notice also informed Walsh of the process for appealing the exclusion to the Code Hearings Office.³ Additionally, the Notice described alternative ways that Walsh could participate in City Council proceedings during the period of exclusion: he could view City Council meetings live online, submit written comments on the posted agenda to the Council Clerk before meetings, and schedule appointments with other City offices, which the offices might request take place at locations other than City Hall. Enge had signed the Notice. After being handed the Notice, Walsh left the building.

³ An excluded individual may appeal a formal exclusion from City Hall by filing a written request for an appeal with the City Code Hearings Office within five calendar days of the date of the exclusion notice. The written request must specify the basis for the appeal. The individual seeking to appeal must serve a copy of the request for appeal to the Director of Internal Business Services. The request for appeal does not stay the effectiveness of the exclusion. PCC § 3.15.020B.5.b(2), Dkt. 19-1 at 22. Walsh did not appeal the exclusion notice dated July 15, 2015, to the City Code Hearings Office.

Later that day, on July 15, 2015, Walsh attempted to enter City Hall through the main entrance. A Mayor's Security Detail Sergeant, James Wood, informed Walsh that he was trespassing. Walsh entered City Hall despite the warning and went to use the men's restroom on the first floor of the building. Sergeant Wood called Mr. Chandler, who then called the police. Mr. Chandler and Portland Police Officer Mike Bledsoe entered the restroom and informed Walsh that he would be arrested for trespassing if he did not leave.

The period of exclusion from City Hall of July 15 to September 15, 2015, was not Walsh's first exclusion from City Hall. On September 17, 2014, Enge issued Walsh a 30-day exclusion notice based on Walsh's interruptions of City Council meetings on March 12, May 7, and September 10, 2014. An incident report indicated that one of the interruptions put another attendee of the meeting "in fear for her personal safety." The exclusion prohibited Walsh from entering the City Council Chambers on the second floor and the third floor mezzanine of City Hall for 30 days.

On May 20, 2015, Enge issued Walsh another 30-day exclusion notice based on his interruption of a City Council meeting on May 13, 2015. This exclusion again prohibited Walsh from entering City Council Chambers on the second floor and the third floor mezzanine of City Hall for 30 days. Walsh estimates that he has been excluded from City Hall for a total of 120 days and has missed approximately 17 meetings of the City Council.

DISCUSSION

Defendants argue that the Court should grant their summary judgment motion for three independent reasons: (1) Walsh lacks standing; (2) the doctrine of mootness bars his claims; and (3) the City's prospective exclusion of Walsh from City Council meetings constitutes a reasonable restriction of speech in a limited public forum. Walsh argues that the Court should grant his motion for summary judgment because PCC § 3.15.020B.5.b unreasonably authorizes

the prospective exclusion of persons from City Council meetings in violation of the First Amendment.⁴

A. Standing

To have standing, a plaintiff must have a “personal interest . . . at the commencement of the litigation.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 6, n.22 (1997)). The personal interest must satisfy three elements: (1) an injury in fact, *i.e.*, an invasion of a legally protected interest that is concrete and particularized, as well as actual or imminent; (2) a causal connection between the injury-in-fact and the defendant’s challenged behavior; and (3) likelihood that the injury-in-fact will be redressed by a favorable ruling. *Id.* at 180-81; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Declaratory and injunctive relief also require “a ‘substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 617 (9th Cir. 1999) (quoting *Ross v. Alaska*, 189 F.3d 1107, 1114 (9th Cir. 1999)) (alteration in original).

When a plaintiff challenges the constitutionality of a statute or ordinance, “especially in the context of First Amendment cases,” courts do not require “that the plaintiff risk prosecution by failing to comply with state law” in order to have standing to challenge the statute. *Id.* at 618-19. A plaintiff must still “demonstrate a realistic danger of sustaining a direct injury as a result of the statute’s operation or enforcement.” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S.

⁴ In his response to Defendants’ motion, Walsh also references “due process.” Walsh, however, did not allege in his complaint a violation of his due process rights.

Because the Court finds that PCC § 3.15.020B.5.b violates the First Amendment on its face, the Court does not reach Walsh’s as-applied claim.

289, 298 (1979). A plaintiff, however, “does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.” *Id.* (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)) “[A] credible threat of prosecution” under the challenged statute serves to show impending injury. *Id.* The bar for such a showing is low; the Supreme Court has found a credible threat of prosecution even when the government has never enforced the statute but “has not disavowed any intention of invoking” the statute’s penalties. *Id.* at 302.

Courts assess standing based on the facts of the case as they existed at the time the action commenced. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830 (1989) (“The existence of federal jurisdiction ordinarily depends on the facts as they exist when the complaint is filed.”); *Mollan v. Torrance*, 22 U.S. 537, 539 (1824) (“It is quite clear, that the jurisdiction of the Court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events.”); *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1171 (9th Cir. 2002) (“Standing is determined as of the commencement of litigation.”) (citing *White v. Lee*, 227 F.3d 1214, 1243 (9th Cir. 2000)).

Here, Walsh challenges the constitutionality of a municipal code authorizing Defendants to exclude individuals from City Hall for any period of time, including 60 days. At the time Walsh filed suit, Defendants were enforcing the exclusion policy against him, and Walsh sought a temporary restraining order within the 60-day period of the exclusion. The parties then agreed that they would instead address Walsh’s claims by proceeding with cross-motions for summary judgment.

At the commencement of litigation, Walsh was suffering an injury caused by Defendants’ actions. Walsh’s past exclusions from City Council meetings also demonstrate Defendants’

willingness to exclude people from City Hall and the City Council Chambers for increasingly longer periods of time. Thus, there exists a credible threat of future exclusions under PCC § 3.15.020B.5.b. An order from the Court finding that PCC § 3.15.020B.5.b violates the First Amendment would prevent future extended exclusions. Accordingly, Walsh had standing at the time he filed his complaint,⁵ and he has standing now to seek injunctive and declaratory relief against the exclusion ordinance.⁶

B. Mootness

Although the Court considers standing to determine whether it exists at the commencement of litigation, the Court considers whether a “case or controversy” continues to exist throughout the litigation under a mootness analysis. *See Arizonans*, 520 U.S. at 67 (“To qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’” (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975))). According to the Supreme Court, “Standing doctrine functions to ensure,

⁵ Because Walsh had standing at the time he filed his complaint, his case is distinguishable from *Bricker v. Tri-Met*, 2013 WL 2037123 (D. Or. Feb. 28, 2013). There, a Tri-Met patron filed suit after the expiration of an exclusion order. Additionally, the *Bricker* court found the likelihood of the plaintiff again engaging in conduct that warranted an exclusion order to be too speculative to give rise to standing. The court, however, stated: “The situation might be different if the facts indicated, for example, that [the plaintiff] regularly made ‘soapbox speeches’ on TriMet platforms. She then might be able to show a legitimate concern regarding future enforcement of the regulation against her.” *Id.* at *10. Unlike in *Bricker*, the facts here show that Walsh engages in the kind of speech-making that could very well result in the continued enforcement of the exclusion policy against him in the future.

⁶ To the extent that the Court could construe Walsh’s complaint as an assertion of claims on behalf of a class, the Court agrees with Defendants that an individual appearing *pro se* may not represent other individuals in federal court. *Johns v. Cnty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (“While a non-attorney may appear *pro se* on his own behalf, ‘[h]e has no authority to appear as an attorney for others than himself.’”) (quoting *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)) (alteration in original). The Court does not, however, construe Walsh’s complaint as an attempt to represent a class. His reference to other activists merely attempts to invoke the overbreadth doctrine as an alternate basis for standing.

among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated” *Friends of the Earth*, 528 U.S. at 191.

Mootness “focuses upon whether [a court] can still grant relief between the parties.” *In re Pattullo*, 271 F.3d 898, 901 (9th Cir. 2001). A case becomes moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000) (quoting *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)). An exception to mootness exists, however, “for acts that are ‘capable of repetition, yet evading review.’” *Friends of the Earth*, 528 U.S. at 190. For example, if a mentally-disabled patient is institutionalized and files a lawsuit challenging the conditions of her confinement, “her postcomplaint transfer to a community-based program will not moot the action, despite the fact that she would have lacked initial standing had she filed the complaint after the transfer.” *Id.* at 190-91 (citing *Olmstead v. L.C.*, 527 U.S. 581, 594, n.6 (1999)).

When an act is capable of repetition yet evading review, “the fact that the court cannot give [a plaintiff] the full relief he sought will not render the case moot.” *Schaefer v. Townsend*, 215 F.3d 1031, 1033 (9th Cir. 2000). For a controversy to fall within the capable-of-repetition-yet-evading-review branch of the mootness doctrine, two elements must be present: “(1) the duration of the challenged action is too short to be litigated prior to cessation, and (2) there is a ‘reasonable expectation’ that the same parties will be subjected to the same offending conduct.” *Demery v. Arpaio*, 378 F.3d 1020, 1026-27 (9th Cir. 2004) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17-18 (1998)).

The burden of establishing mootness rests on the party raising the issue, and “[t]he burden is a heavy one.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). It must be

“absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *United States v. Concentrated Phosphate Export Ass’n*, 393 U.S. 199, 203, (1968); see *Demery*, 378 F.3d at 1025. The party seeking to invoke mootness must also show that “interim relief or events have completely and irrevocably eradicated the effects of the alleged violation” of the plaintiff’s rights. *Davis*, 440 U.S. at 631.

PCC § 3.15.020B.5.b gives Mayor Hales and Enge authority to “issue an exclusion for any period of time up to and including permanent exclusion from City buildings.” Walsh asserts that he has been an activist for decades and continues to represent Individuals for Justice. He asserts his intention to continue attending and commenting on agenda items in City Council meetings, and Defendants have excluded Walsh on several previous occasions. By their nature, 60-day exclusion orders are short-lived and will likely expire before the conclusion of any litigation. Although Walsh is no longer currently subject to a formal exclusion order from City Hall, his case is capable of repetition yet evading review. Walsh’s challenge to his exclusion, therefore, is not moot.⁷

C. First Amendment

The First Amendment protects an individual’s right “to speak freely, to advocate ideas, to associate with others, and to petition his government for redress of grievances.” *Smith v. Ark. State Highway Emp., Local 1315*, 441 U.S. 463, 464 (1979). The Constitution’s “prohibition on encroachment of First Amendment protections is not an absolute. Restraints are permitted for

⁷ The Court finds Defendants’ citation to *Bricker v. Tri-Met*, 2013 WL 2037123, unpersuasive. There, the court found that one of the plaintiff’s claims was moot based on her failure to follow Oregon state procedures not relevant in this case. The plaintiff had failed to obtain a proper stay of an exclusion order before petitioning for a writ of review of a hearing officer’s decision. *Id.* at *4-7. The court also based some of its mootness analysis on doctrines more applicable to standing. See *Friends of the Earth*, 528 U.S. at 190 (“There are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.”).

appropriate reasons.” *Elrod v. Burns*, 427 U.S. 347, 360 (1976); see *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 (1961) (rejecting “the view that freedom of speech and association . . . as protected by the First and Fourteenth Amendments, are ‘absolutes’”). For example, “[n]othing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Cornelius*, 473 at 799-800 (1985). Yet, despite the restraints imposed in appropriate contexts, the First Amendment “reflects a ‘profound national commitment’ to the principle that ‘debate on public issues should be uninhibited, robust, and wide-open.’” *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *Sullivan*, 376 U.S. at 270).

The Supreme Court has identified a three-pronged test for beginning the evaluation of a claim of unconstitutional restriction on speech: (1) whether the First Amendment protects the plaintiff’s speech; (2) the nature of the forum; and (3) whether the justifications offered for limiting or excluding speech from the forum satisfy the requisite standards. *Cornelius*, 473 U.S. at 797.

Under the first prong, Defendants argue that Walsh’s speech at City Council meetings is not protected, but Defendants do not dispute that Walsh voiced concerns—albeit loudly and vigorously—about the order of the meeting and his inability to comment on the item he “pulled” from the Consent Agenda. As a critique of the City Council’s behavior, Walsh’s speech, his actual and primary message, was not mere “amplification.” *Cf. Bush v. City of San Diego*, 2010 WL 2465034, at *1-2 (S.D. Cal. June 11, 2010) (stating that nudity is not protected expressive conduct because it only amplifies the plaintiff’s primary message). The Ninth Circuit has emphasized, “Citizens have an enormous first amendment interest in directing speech about

public issues to those who govern their city.” *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990). Walsh’s speech is protected under the First Amendment. As the Ninth Circuit has done in similar cases, the Court next turns to the nature of the forum. *See Reza v. Pearce*, 806 F.3d 497 (9th Cir. 2015).

1. The Forum

The extent to which the government may regulate speech depends on the nature of the forum where the speech takes place. *See Seattle Mideast Awareness Campaign v. King Cty.*, 781 F.3d 489, 495-96 (9th Cir. 2015). Federal courts have generally recognized three types of public forums: (1) traditional public forums; (2) designated public forums; and (3) limited public forums. *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 44-46 (1983); *Reza*, 806 F.3d at 502. Traditional public forums are places such as streets and parks, “which by long tradition or by government fiat have been devoted to assembly and debate.” *Perry*, 460 U.S. at 45. Designated public forums include nontraditional forums that “the state has opened for use by the public . . . for expressive activity.” *Id.* Finally, limited public forums are government property “limited to use by certain groups or dedicated solely to the discussion of certain subjects.” *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 470 (2009).

City council meetings are limited public forums. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) (“[T]he entire city council meeting held in public is a limited public forum.”) (citing *Norwalk*, 900 F.2d at 1425). The nature of the remainder of a city hall building is less clear. The Ninth Circuit has found areas of a city hall to be “designated public forums” when the city has opened the spaces to expressive activity. *Hopper v. City of Pasco*, 241 F.3d 1067, 1078 (9th Cir. 2001) (finding that when the city decided to invite local artists to display their works in the public hallways, the city thereby created a designated public forum in the art gallery). When the government has not expressly opened a public building to expressive speech,

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however, the Ninth Circuit has held that buildings such as a state senate building are limited public forums. *Reza*, 806 F.3d at 503.

There is no evidence in the record that the City has opened the loggia, driveways, and first floor of City Hall to expressive speech. The City's Rules of Conduct and historical reliance on exclusions show a desire to limit public access to the building. Moreover, the City Hall as a whole somewhat resembles a judicial and municipal complex that the Ninth Circuit found to be a nonpublic forum. *Sammartano v. First Judicial Dist. Court, in & for Cty. of Carson City*, 303 F.3d 959, 966 (9th Cir. 2002), *abrogated on other grounds by Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008). In *Sammartano*, the Ninth Circuit considered that the complex contained judges' chambers, courtrooms, and agencies; that the building had minimal compatibility with expressive activity; and that the building had a need for security. City Hall also contains various agency offices and has a need for security. Thus, Walsh has not shown that these areas have become designated public forums, and the Court finds that the City Council meetings and the City Hall building are at most limited public forums.⁸

2. Legal Standard for Regulating Speech in a Limited Public Forum

In a limited public forum, such as a city council meeting, “[a] council can regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech—as long as content-based regulations are viewpoint neutral and enforced that way.” *Norse*, 629 F.3d at 975; *see also Perry*, 460 U.S. at 61 (“Once the government permits discussion of certain subject matter, it may not impose restrictions that discriminate among viewpoints on those subjects whether a nonpublic forum is involved or not.”). In addition, in a limited public forum, the government “may not exclude speech where its distinction is not ‘reasonable in light

⁸ In contrast, the Sixth Circuit has held that the steps of a city hall building are a traditional public forum. *Pouillon v. City of Owosso*, 206 F.3d 711, 717 (6th Cir. 2000).

of the purpose served by the forum.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (quoting *Cornelius*, 473 U.S. at 804–806). Thus, the applicable standards for regulating speech in a limited public forum are whether a restriction is viewpoint neutral and reasonable. *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 270-71 (9th Cir. 1995) (“[L]imitations on speech at those meetings [city council and city board meetings] must be reasonable and viewpoint neutral, but that is all they need to be.”).

3. Whether the Exclusion Ordinance Is Viewpoint Neutral

The Ninth Circuit has upheld ordinances that allow for the immediate exclusion from a city council meeting of any person who makes disruptive remarks or who engages in disruptive conduct. *See Norwalk*, 900 F.2d at 1424. The moderator of such a meeting has “a great deal of discretion” to determine what constitutes a disruption. *Id.* at 1426. Although “abuses can occur, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like,” the Ninth Circuit allows immediate exclusion policies that do not have such abuses written into them. *Id.*

Here, the City’s ordinance has no abuses written into it. Additionally, Mayor Hales only excluded Walsh after Walsh became actually disruptive by yelling and interrupting the meeting. Walsh points to no evidence suggesting that Defendants selectively enforced the exclusion ordinance against Walsh because of his viewpoint and even concedes that Defendants’ exclusion ordinance is viewpoint neutral. PCC § 3.15.020B.5.b is a viewpoint-neutral municipal code that Defendants implemented to prevent disruptions of City Council meetings.

4. Whether the Exclusion Ordinance Is Reasonable

Walsh does not argue that his *immediate* exclusion for actually disruptive conduct on July 8, 2015, was unreasonable. Ninth Circuit precedent clearly establishes that it is reasonable for city councils immediately to exclude a disruptive individual from a meeting for the duration

of that meeting. *Norwalk*, 900 F.2d at 1426 (“Speakers are subject to restriction only when their speech ‘disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting.’ So limited, we cannot say that the ordinance on its face is substantially and fatally overbroad.”); *see also Norse*, 629 F.3d at 976 (describing *Norwalk* as holding that a city’s “‘Rules of Decorum’ are not facially over-broad where they only permit a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting”) (emphasis added).

Walsh, however, argues that the 60-day prospective exclusion is unreasonable.

Undeniably, Defendants had authority to exclude Walsh on the day of his disruption. But Ninth Circuit precedent makes it a closer call whether Defendants may reasonably exclude Walsh prospectively from future meetings over the next 60 days. *See Reza*, 806 F.3d at 506 (“No cases, in the Ninth Circuit or otherwise, even remotely suggest that *Norse*’s principle can be inverted to indefinitely ban an individual from a government building based on a single disruption of a hearing.”).

A restriction on protected speech must be “reasonable in light of the purpose served by the forum.” *Id.* at 504 (quoting *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir.1999)); *see Healy v. James*, 408 U.S. 169, 180 (1972) (“First Amendment rights must always be applied ‘in light of the special characteristics of the . . . environment’ in the particular case.”) (quoting *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969)). This reasonableness requirement demands “more of a showing than does the traditional rational basis test; i.e., it is not the same as ‘establish[ing] that the regulation is rationally related to a legitimate governmental objective, as might be the case for the typical exercise of the government’s police power.” *Tucker v. State of Cal. Dep’t of Educ.*, 97 F.3d 1204, 1215 (9th Cir. 1996) (quoting *Multimedia Pub. v. Greenville–Spartanburg Airport Dist.*, 991 F.2d 154, 159

(4th Cir. 1993)). The government's "failure to select . . . simple available alternative[s] suggests" that a restriction is not reasonable. *Id.* at 1216 (quoting *Multimedia Publishing*, 991 F.2d at 161). Here, the simpler available alternative is removal from any meeting that a person actually disrupts.

To show that a restriction is reasonable, the government must offer "evidence that the restriction reasonably fulfills a legitimate need." *Sammartano*, 303 F.3d at 967. Public safety concerns, the avoidance of disruptions, and the existence of alternative communication channels are all relevant to a restriction's reasonableness. *See Swarner v. United States*, 937 F.2d 1478, 1482 (9th Cir. 1991); *Hale v. Dep't of Energy*, 806 F.2d 910, 917 (9th Cir. 1986). Defendants offer all three reasons in support of their contention that the prospective exclusion ordinance is reasonable.⁹

a. Public Safety Concerns and the Avoidance of Disruption

In *Reza*, the Ninth Circuit addressed the defendants' argument that safety concerns justified the plaintiff's exclusion from a limited public forum. The court noted that safety concerns regarding future disruptions "must be supported by the record." *Reza*, 806 F.3d at 507. Additionally, any restrictions at issue must "serve the government's public safety interest," although the Ninth Circuit emphasized that this is not "a least restrictive means test." *Id.* Based on the record in *Reza*—which showed one incident of disruption and a generally "tense environment" at the time of the plaintiff's actions—the Ninth Circuit found that the government's safety concerns did not justify a complete ban from the senate building. *Id.*

⁹ Although reasonableness is often a question for the jury, "reasonableness becomes a question of law appropriate for determination on motion for summary judgment when only one conclusion about the conduct's reasonableness is possible." *W. v. State Farm Fire & Cas. Co.*, 868 F.2d 348, 351 (9th Cir. 1989). Further, the only forms of relief sought by Plaintiff are injunctive and declaratory, which present only questions for the Court.

In other cases, the Ninth Circuit held that in order to justify a ban on speech in a limited or nonpublic forum, the safety concerns must be “real.” *Sammartano*, 303 F.3d at 967; *Tucker*, 97 F.3d at 1211. In *Sammartano*, the Ninth Circuit found “no evidence in the record supporting a conclusion that clothing indicating affiliation with biker organizations is particularly likely to be disruptive or intimidating.” 303 F.3d at 968. Absent such evidence, the Ninth Circuit found that a ban on clothing with biker symbols was unreasonable even in a nonpublic forum. *Id.* Any conflict that occurred because of a challenge to the regulation could not serve as “evidence of circumstances giving rise to the need for that very regulation.” *Id.* The Ninth Circuit further stated:

We agree with Appellees that the interest in keeping a government building accessible and safe is both legitimate and significant. But absent a showing in the record of actual (or realistic threat of) interference or disruption, the demonstrated hardship imposed upon Appellees by the barring of enforcement of the Rules is minimal. This is especially so given the continuing ability of the individual judges to maintain decorum in their courtrooms or in particular cases, which is not at issue in this case.

Id. at 973.

In *Tucker*, the Ninth Circuit emphasized that in asserting that a regulation is reasonable, the government must do more than make “a minimal showing that one individual’s speech has disrupted the workplace, or threatens to do so.” *Tucker*, 97 F.3d at 1211. Finding that a state employer had not made this showing, the *Tucker* court held that orders banning religious advocacy in the workplace and religious displays outside employees’ offices or cubicles violated the First Amendment. *Id.* at 1214, 1217.

The Supreme Court has not required proof of past disturbances for a government entity to justify restrictions of speech on government property. Where a lower court required a showing of “past disturbances” or “evidence that future disturbance would be likely” to justify restricting

access to school mail facilities, the Supreme Court reversed. *Perry*, 460 U.S. at 52 n.12. The Supreme Court stated: “We have not required that such proof be present to justify the denial of access to a non-public forum on grounds that the proposed use may disrupt the property’s intended function.” *Id.* In another case, the Supreme Court highlighted that “the Government need not wait until havoc is wreaked to restrict access to a nonpublic forum.” *Cornelius*, 473 U.S. at 810.¹⁰

In the context of a limited public forum, the Ninth Circuit has recognized “that content-based restrictions may be reasonable ‘in order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience.’” *DiLoreto*, 196 F.3d at 968 (quoting *Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974)). Still, courts may consider all the surrounding circumstances in assessing whether a “limitation is consistent with preserving the property for the purpose to which it is dedicated.” *Id.* at 967.

Defendants argue that the prospective exclusion ordinance is necessary in order to protect public safety and prevent future disruptions. They argue that the policy is particularly necessary in cases, such as this one, where an individual has a history of disrupting meetings and making other people in attendance feel unsafe. Defendants have presented some evidence about their concerns. The evidence includes Walsh banging his hand on a conference table in meetings and tossing a pocket-sized copy of the Constitution towards Mayor Hales. Additionally, Defendants

¹⁰ Defendants cite these Supreme Court cases in support of their contention that they are not required to show that future disruptions will occur in order to justify the prospective exclusion ordinance. These cases, however, relate to nonpublic forums, with different purposes than the limited public forum here, and do not dictate the result in the present case. Yet because restrictions on speech in nonpublic forums must still be “viewpoint neutral” and “reasonable in light of the purpose served by the forum,” the Court considers cases relating to nonpublic forums to be instructive. *Sammartano*, 303 F.3d at 966 (quoting *Cornelius*, 473 U.S. at 806).

have produced an incident report showing that someone at a meeting once asked for an escort because she had a verbal confrontation with Walsh and felt fearful.

Defendants cite *Rosebrock v. Beiter* in support of their argument that public safety concerns and the avoidance of disruption justify the ordinance. 788 F. Supp. 2d 1127 (C.D. Cal. 2011), *aff'd sub nom. Rosebrock v. Mathis*, 745 F.3d 963 (9th Cir. 2014). In *Rosebrock*, the court held that a regulation prohibiting displays on the fence of a campus of U.S. Department of Veterans Greater Los Angeles Health Care System ("VAGLA") did not violate the First Amendment because it was a reasonable restriction of speech in a nonpublic forum. The court found that the defendant's proffered rationale for the restriction—threats to the security and wellbeing of VAGLA patients—was "reasonable and legitimate in light of the purpose of the VAGLA Campus." *Id.* at 1138. That purpose was "to provide high quality health care services to eligible veterans." *Id.* The rationale offered for the restriction on speech was specific to a hospital setting. *Rosebrock* is consistent with the Supreme Court's holding in *Cohen v. California* that "an undifferentiated fear or apprehension of disturbance . . . is not enough to overcome the right to freedom of expression." 403 U.S. 15, 23 (1971) (quoting *Tinker*, 393 U.S. at 508) (internal quotation marks omitted).

Here, the purpose of the limited public forum, specifically the City Council meetings, is to allow public discourse on proposed City Council actions. The Ninth Circuit has stressed that "a City Council meeting is still just that, a governmental process with a governmental purpose. The Council has an agenda to be addressed and dealt with." *Norwalk*, 900 F.2d at 1425. Nonetheless, "City Council meetings . . . , where the public is afforded the opportunity to address the Council, are the focus of highly important individual and governmental interests." *Id.* The "very purpose" of a council meeting "is the creation of a forum for public discourse and

decisionmaking.” *Id.* at 1425 n.3 (quoting Robert Post, *Between Governance and Management: The History and Theory of the Public Forum*, 34 U.C.L.A. L. Rev. 1713, 1799 (1987)).

Like judges in their courtrooms, Mayor Hales has the continuing ability to maintain decorum in Council meetings by ordering disruptive individual immediately to leave the City Council Chambers. Maintaining decorum does not, however, require prolonged and prospective exclusions from a forum intended for public discourse and debate. The Ninth Circuit has emphasized that in a city council meeting, the council may exclude individuals for actual disruption, but the council may not exclude people for “constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption” *Norse*, 629 F.3d at 976. According to the Ninth Circuit, “Actual disruption means actual disruption.” *Id.* Defendants have not pointed to any appellate court decision, nor was the Court able to locate any such decision, allowing an incident, or even several incidents, of actual disruption to justify the prospective exclusion of an individual from future public meetings. Defendants have a simple alternative to the prospective exclusion ordinance. They can order any disruptive individual to leave the meeting that he or she is disrupting for the duration of that meeting.

Additionally, nothing in the record shows that Walsh actually threatened anyone with violence, encouraged others to engage in violence, or refused voluntarily to leave a meeting that Mayor Hales ordered him to leave. In this case, mere speculation that some persons may make others feel unsafe or engage in additional disruptions is an insufficient basis upon which to erect a governmental power to bar those who wish to express their views from participating in public

debate. Here, with other alternatives readily available to the City, avoidance of future disruption simply does not justify the prospective exclusion ordinance at issue.¹¹

b. Availability of Alternative Channels of Communication

The reasonableness inquiry for restrictions in limited public forums also takes into account “whether the restrictions imposed leave open alternative channels of communication.” *Reza*, 806 F.3d at 504. The Supreme Court has found that no First Amendment violation occurs when the government bars citizens from exchanging views in formal settings when opportunities for informal communication also exist. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 n.4 (1984). That other places may be available for speech does not, however, save an unconstitutional restriction. *Schneider v. NJ, Town of Irvington*, 308 U.S. 147, 163 (1939) (“[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.”). Other modes of communication do not qualify as alternative channels where those modes are “insufficient, inappropriate and prohibitively expensive.” *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 516 (1981) (internal quotation marks omitted).

Defendants argue that the Court should uphold the prospective exclusion ordinance because the PCC § 3.15.020B.5.b leaves open alternative channels of communication. Excluded individuals can (1) watch City Council meetings live online; (2) view the upcoming agenda for Council meetings online and then submit written comments to the Council Clerk before the meetings; and (3) schedule appointments with City offices, although the offices may be able to request that the appointments take place at locations other than City Hall.

¹¹ The Court does not intend this decision to prevent the City from attempting to formulate an ordinance more “tailored to the legitimate concerns” of City Hall. *See Sammartano*, 303 F.3d at 968.

In support of their argument that the availability of alternative channels of communication saves the prospective exclusion ordinance in this case, Defendants cite *Mead v. Gordon*, 583 F. Supp. 2d 1231 (D. Or. 2008). There, a county Jail Division Temporary Division Order directed for a one-year exclusion from a county courthouse. The exclusion at issue in *Mead* still allowed the plaintiff to enter the courthouse with an escort. The plaintiff was thus able to enter the courthouse “approximately once per week during the period of her exclusion.” *Id.* at 1240. The court in *Mead* also noted that although “one might question the necessity of a year-long exclusion when [the plaintiff’s] actions were not violent,” the plaintiff’s ability to visit the courthouse with an escort “was a reasonable means to accommodate both parties’ [plaintiff’s and the government’s] interests.” *Id.* at 1239-40. In contrast, PCC § 3.15.020B.5.b allows the complete and indefinite ban of an individual from City Hall. Moreover, the purposes of City Hall and City Council meetings, as opposed to a courthouse, affects the analysis in this case.

As discussed above, the purpose of the forum, particularly City Council meetings, is to allow public discourse on proposed City actions. As did the exclusion policy in *Reza*, the City’s prospective exclusion ordinance allows for the complete ban of individuals from a government building where legislative actions take place. In *Reza*, the complete exclusion ultimately prevented the plaintiff from meeting with an elected senator at the senate building. According to the Ninth Circuit, “imposing a complete bar on [the plaintiff’s] entry into the Building, clearly exceeds the bounds of reasonableness clearly established by *White*, *Kindt*, and *Norse* as a response to a single act of disruption” *Reza*, 806 F.3d at 505.

That other modes of communication might be available to excluded individuals does not save the ordinance. The prospective exclusion ordinance allows Defendants to prevent individuals from physically using any of the facilities in City Hall, making live comments on any

City Council business during public meetings, and formally or informally meeting with anyone, including elected council members, on the premises. Thus, prolonged and prospective exclusions defeat the very purpose of the forum: to provide the opportunity for discourse on public matters.¹²

Even drawing all reasonable inferences in Defendants' favor, to prospectively exclude Walsh, or any other individual, based on a past incident, or even several past incidents, of disruption is not exclusion from a given meeting for actual disruption: it is an impermissible prospective exclusion for possible or assumed disruption in the future. None of the justifications offered by Defendants show that PCC § 3.15.020B.5.b is reasonable in light of the purpose of the forum. The Court declines Defendants' invitation to be the first federal court in the nation to uphold such a broad prospective exclusion ordinance. The Court grants the permanent injunctive and declaratory relief Walsh seeks.¹³

¹² Some courts have been more willing to allow prospective restraints on speech in the context of private speakers threatening to continue to defame other private individuals. *See, e.g., Hill v. Petrotech Res. Corp.*, 325 S.W.3d 302, 309 (Ky. 2010) (allowing an injunction of defamatory speech after a trial court's determination that the speech at issue was false); *Balboa Island Vill. Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1155-56, (2007), *as modified* (Apr. 26, 2007) (holding that the court may issue an injunction prohibiting the defendant from repeating statements determined to be defamatory). But even in a context more tolerant of restraints on speech, courts emphasize that silencing future speech is harmful. *See, e.g., McCarthy v. Fuller*, 2015 WL 9245308, at *7 (7th Cir. Dec. 18, 2015) ("An injunction against speech harms not just the speakers but also the listeners '[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.'") (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)); *Hill*, 325 S.W.3d at 307 ("A rush to enjoin distasteful, annoying, unpopular, or even damaging speech would often result in the suppression of truthful, legitimate discourse."); *Balboa*, 40 Cal. 4th at 1159 ("We recognize, of course, that a court must tread lightly and carefully when issuing an order that prohibits speech.").

¹³ When a plaintiff seeks a permanent injunction, he or she must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that he or she has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that the remedy in equity is warranted considering the balance of hardships between the plaintiff and defendant; and (4) that a permanent injunction would not be contrary to the

CONCLUSION

Defendants Bryant Enge, Mayor Charlie Hales, and City of Portland's Motion for Summary Judgment (Dkt. 17) is DENIED. Plaintiff's Motion for Summary Judgment (Dkt. 23) is GRANTED. Accordingly, the Court GRANTS Plaintiff's request for injunctive relief and a declaratory judgment as to the City's prospective exclusion ordinance, Portland City Code § 3.15.020B.5.b.

IT IS SO ORDERED.

DATED this 31st day of December, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

public interest. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Walsh has satisfied this four-factor test. He has suffered the irreparable injury of having his speech in City Council meetings prospectively suppressed. He does not seek money damages nor would remedies at law adequately compensate him for violation of his First Amendment rights. *See, e.g., Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1502 (9th Cir. 1996) (finding that irreparable harm stemming from constitutional violations "cannot be adequately compensated at law"). The equitable remedy is warranted considering that Defendants may still maintain decorum in City Council meetings without prospectively excluding individuals by excluding disruptive individuals from any meetings those individuals actually disrupt. Finally, a permanent injunction will protect the First Amendment rights of Walsh and other similarly-situated individuals without unduly burdening Defendants and is therefore not contrary to the public interest.

CERTIFICATE OF FILING AND SERVICE

I certify that on December 9, 2016, I filed the original PETITIONER CITY OF PORTLAND'S EXCERPTS OF RECORD AND ADDENDUM VOLUME I & VOLUME II with the Clerk of the United States Court of Appeals at this address:

OFFICE OF THE CLERK
JAMES R. BROWNING COURTHOUSE
UNITED STATES COURT OF APPEALS
P.O. BOX 193939
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by electronically filing in the Appellate CaseManagement/Electronic Case Files (CM/ECF) system on said day.

I further certify that on December 9, 2016, I served a true and correct copy of the foregoing PETITIONER CITY OF PORTLAND'S EXCERPTS OF RECORD AND ADDENDUM VOLUME I & VOLUME II on:

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by mailing in a sealed envelope, with postage paid and deposited with the U.S. Postal Service in Portland, Oregon to the last known address of said judge and attorneys on said day.

/s/ Tracy Reeve

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Clerk of Court

December 09, 2016

No.: 16-73878
D.C. No.: 3:12-cv-02265-SI
Short Title: City of Portland v. USDC-ORP

Dear Petitioner/Counsel

A petition for writ of mandamus and/or prohibition has been received in the Clerk's Office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. Always indicate this docket number when corresponding with this office about your case.

If the U.S. Court of Appeals docket fee has not yet been paid, please make immediate arrangements to do so. If you wish to apply for in forma pauperis status, you must file a motion for permission to proceed in forma pauperis with this court.

Pursuant to FRAP Rule 21(b), no answer to a petition for writ of mandamus and/or prohibition may be filed unless ordered by the Court. If such an order is issued, the answer shall be filed by the respondents within the time fixed by the Court.

Pursuant to Circuit Rule 21-2, an application for writ of mandamus and/or prohibition shall not bear the name of the district court judge concerned. Rather, the appropriate district court shall be named as respondent.