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Via Email (MHickey@schiffhardin.com)

**Re: Comments on the Second Independent Monitoring Report
Consent Decree, *Illinois v. Chicago*, 17-cv-6260 (N.D. Ill.)**

Dear Ms. Hickey,

The Consent Decree gives the Parties—the City of Chicago and the State of Illinois, through the Office of the Illinois Attorney General (OAG)—an opportunity to comment on the Second Monitoring Report (Second Report) before it is filed with the Court. The OAG provides these comments at a time when the nation is experiencing a profound crisis of confidence in law enforcement in the wake of Minneapolis police officer Derek Chauvin’s brutal suffocation of George Floyd, while other officers participated or failed to stop it. Floyd’s death opened for many Chicagoans the still-fresh wound of Laquan McDonald’s murder and cover up at the hands of Chicago police officers. Chicago Mayor Lori Lightfoot reacted by saying, “There but for the grace of God goes Chicago.” It is with a heavy heart that we agree. The death of George Floyd and the calls to action that have followed demonstrate the “fierce urgency of now.” Now is the time for the City to implement the broad-ranging reforms required by the Consent Decree.

These comments also come in the midst of the COVID-19 pandemic. Our thoughts go out to those officers who were impacted by the pandemic, and we mourn for those who lost their lives from the disease. The City’s and CPD’s COVID-19 efforts will likely impact the City’s ability to meet Consent Decree requirements in the third monitoring period. The OAG’s comments are confined

to the second monitoring period, which began on September 1, 2019 and ended on February 29, 2020, before Governor Pritzker and Mayor Lightfoot implemented “stay at home” orders.

The OAG continues to closely track Consent Decree implementation. The OAG reviewed and commented on approximately 100 policies, training materials, plans, and other materials related to Consent Decree compliance in the first year, around 65 of which were in the second monitoring period. The OAG reviewed thousands of additional documents and participated in bi-weekly calls with the Monitoring Team, the City, and CPD on each major topic area in the Consent Decree. The OAG also meets regularly with the Coalition¹ and regularly reviews and responds to community feedback.

The City and CPD made some progress toward meeting the requirements of the Consent Decree in the second monitoring period. For example, CPD put in place necessary infrastructure to train officers, to improve supervision, and to clarify its promotions process. And Interim Superintendent Beck committed additional resources in key areas, such as Crisis Intervention, the Force Review Division, and Research and Development. Newly confirmed Superintendent David Brown has affirmed that implementing the Consent Decree is an urgent priority and has repeatedly emphasized that the Consent Decree is the “minimal standard” that CPD plans to exceed.²

There is, however, much work to be done to achieve these aspirations. According to the Monitoring Team, the City reached some level of compliance with only 27% of the paragraphs of the Consent Decree that the Monitoring Team assessed in the first year (37% of those with deadlines). And the City continues to fall behind schedule, having missed around 70% of deadlines for compliance in the first year. These delays preceded the impacts of the COVID-19 crisis, which will undoubtedly further slow the City’s efforts to achieve compliance. As we stated in our comments on the first monitoring report,³ some of these delays continue to be a result of insufficient resources devoted to policy development and document production. The City and CPD have also failed to demonstrate a commitment to culture change in use of force and transparency. They have failed to meaningfully engage community members in policy development, training, and policing strategies. And the City and CPD have done little to reform the City’s largely ineffective police accountability system.

¹ The Coalition consists of plaintiffs in two lawsuits against the City related to police practices, as well as other civil rights and community organizations in Chicago. The Coalition has certain enforcement rights under the Consent Decree.

² See Patrick Smith, *City Council Committee Approves David Brown as Chicago Police Superintendent*, WBEZ (Apr. 20, 2020), available at <https://www.wbez.org/stories/city-council-committee-approves-david-brown-as-chicago-police-superintendent/6afecb22-77be-4088-bc0f-e10fb52ef5a7>.

³ See OAG Comments on the First Independent Monitoring Report, available at <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/11/OAG-Comments-on-First-IMT-Report.pdf>.

In the coming year, the City and CPD must:

- implement best practices in its use of force policies;
- develop and implement a comprehensive plan to meaningfully engage community members;
- commit to reform and devote the time and resources necessary to ensure that complaints of misconduct are timely and fully investigated and officers are held accountable for misconduct;
- allocate the necessary resources and staff to ensure that reform moves forward quickly, without sacrificing quality; and
- commit to a culture of transparency with the Monitor, the OAG, and the public.

Below are the OAG’s comments on the state of the City’s compliance efforts and the Second Report. First, the OAG summarizes the City’s major compliance efforts in each area of the Consent Decree.⁴ Second, the OAG outlines three key obstacles that must be overcome to achieve Consent Decree compliance. Third, the OAG offers specific feedback about the Second Report.

Summary of the City’s Compliance Efforts

Areas with Continuing Challenges

- (1) Accountability and Transparency, (2) Impartial Policing, and
(3) Data Collection, Analysis, and Management*

As the OAG expressed to the City and CPD on many occasions during this period, the City and CPD’s compliance efforts in ***Accountability and Transparency*** have been woefully inadequate. A fair and functional accountability system with real consequences is not only critical to Consent Decree implementation but is an important step towards CPD gaining the community’s trust. Both CPD’s Bureau of Internal Affairs (BIA) and the City’s independent police oversight agency, the Civilian Office of Police Accountability (COPA), are far behind in implementing necessary reforms.

CPD does not currently have the capacity to implement the accountability requirements of the Consent Decree in a timely manner and has fallen far behind even the schedule it set for itself for policy development in this area. The United States Department of Justice (DOJ) characterized the City’s accountability structures and systems as, in a word, “broken.”⁵ Fixing these systems will

⁴ The Consent Decree is divided into 10 subject matter areas: (1) Community Policing; (2) Impartial Policing; (3) Crisis Intervention; (4) Use of Force; (5) Recruitment, Hiring, and Promotion; (6) Training; (7) Supervision; (8) Officer Wellness and Support; (9) Accountability and Transparency; and (10) Data Collection, Analysis, and Management.

⁵ Department of Justice (“DOJ”) Civil Rights Division and United States Attorney’s Office Northern District of Illinois, *Investigation of Chicago Police Department* (Jan. 13, 2017) at 53, available at

not happen without sustained investment. The City and CPD must make numerous policy changes, implement significant new training, and, most importantly, fundamentally change its practices. Recognizing the deep problems within CPD's investigative functions and the critical need to make significant changes quickly, the Consent Decree requires an almost complete re-write of nearly every policy used by BIA and a re-draft of several Department-wide directives—and this is supposed to have occurred within the first year. Very little of this work is complete and almost all of it is past due.⁶ CPD's first-year plan to use existing BIA leadership and staff to research and draft new accountability policies—with no material outside assistance—was not realistic and did not work. Without an infusion of high-quality technical assistance, policy changes that are urgently needed will take years.

Although COPA has made more progress on training and policy development, it is still behind in meeting the requirements of the Consent Decree. COPA must ensure its policies clearly articulate its expectations for complete investigations, and it must improve the consistency and effectiveness of its training. Instead of focusing on these essential tasks, COPA spent a significant amount of the Monitor's, the City's, and the OAG's time arguing that it was exempt from the policy and training review process in the Consent Decree. After several months of negotiations, COPA agreed to allow the Monitor and the OAG to provide feedback about policy revisions and trainings at the earliest possible stage and to permit the public an opportunity to review and comment on new and revised policies. The OAG did not anticipate that COPA would initially adopt such an oppositional approach to the oversight process established by the Consent Decree. The OAG looks forward to a more collaborative relationship with COPA in achieving our shared goals of achieving constitutional policing and improving community trust in CPD.

Finally, the City systems for investigating officer-involved shootings and deaths continue to be troubling. The OAG is concerned about COPA's capacity to timely respond to and take command of the scene of an officer-involved death and about its delays in interviewing key witnesses and completing investigations. CPD also continues to be far too involved in the investigation of officer-involved deaths, which must, by law, be investigated by an outside agency. Resolving these issues will be a significant challenge in the coming monitoring periods.

In *Impartial Policing*, the City completed only one of eight policies required for compliance in the first year. CPD did not complete policies on important issues, such as language access, sexual misconduct, and accessibility for people with disabilities. Meaningful community input from people with expertise and lived experience is required for the policies in the Impartial Policing section of the Consent Decree. Although CPD delivered early drafts of several policies to the OAG and the Monitor, it only began significant community engagement on one policy. CPD has also

<http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/01/DOJ-INVESTIGATION-OF-CHICAGO-POLICE-DEPTREPORT.pdf> (hereinafter, "DOJ Report").

⁶ COPA and CPD have only achieved some level of compliance with approximately 11% of the requirements the Monitor assessed this year.

been slow to incorporate the OAG and Monitoring Team initial feedback, all of which was delivered to CPD within the timeframes set by the Consent Decree.

In ***Data Collection, Analysis, and Management***, CPD is still far behind in two critical initiatives: (1) implementing a credible audit of body worn camera footage; and (2) assessing CPD’s current information systems and data technology. In general, the OAG has significant concerns about CPD’s data management. The OAG is concerned about inconsistencies across data platforms, units, and applications. CPD also fails to conduct regular evaluations of its data collection systems, including how CPD uses its data systems, how its data is managed, and how its data systems are or should be structured. CPD has indicated that it intends to contract with an independent third-party vendor to assess its information systems. CPD has made some progress implementing the Early Intervention System, which will help identify at-risk conduct by officers. CPD also created a use of force “dashboard” to share data about uses of force, but it has not yet made the underlying data publicly accessible, as is required by the Consent Decree.

Areas with Mixed Progress

(1) Community Policing and (2) Use of Force

In ***Community Policing***, the Office of Community Policing (OCP) piloted a promising new initiative to assign officers in each district to develop community relationships and solve chronic problems identified by residents. It also developed several policies, including a system for tracking performance on community policing metrics. However, much of OCP’s work is still in its infancy,⁷ and the OAG continues to have concerns that CPD is not doing enough to make community policing the philosophy of the whole Department, not just OCP. For example, the Consent Decree requires that the City ensure its Department-wide crime reduction strategies are consistent with the principles of community policing. The City has not reviewed key strategies and tactics—such as the use of accurate search warrants, the replacement and reform of the “gang database,” and summer and holiday policing strategies—to meet this goal. In particular, the OAG has seen no evidence that these Department-wide strategies were informed by input from the communities most impacted. The City will not improve its relationship with the communities it serves, particularly communities of color, if it does not fundamentally change the way it engages with them. This is especially critical in this moment, as community trust in the police is at risk of further erosion because of many Chicagoans’ concerns about police tactics used in response to citywide protests over the killing of George Floyd and systemic police violence.⁸

⁷ For example, nearly three years after CPD agreed to accept comprehensive recommendations of the Community Policing Advisory Panel, the Department now asserts the Consent Decree only requires it to make a plan to implement those recommendations, and not to actually ensure such recommendations are in fact implemented.

⁸ Dan Hinkel, *Why Chicago Police Department reform moves slowly despite cries for immediate change*, CHICAGO TRIBUNE (June 4, 2020), <https://www.chicagotribune.com/news/breaking/ct-met-police-reform-chicago-20200604-7rxm2wft6zfbj5xnevvhdygm-story.html>.

The City has made progress developing policies and trainings addressing many of the *Use of Force* requirements of the Consent Decree. However, CPD continues to be reluctant to change its culture as it relates to use of force and to hold officers accountable for excessive force. CPD refused to incorporate emerging national best practices into its revised policies and training. For example, CPD refused to mandate that officers use the “minimum amount of force necessary” to effect an arrest, CPD did not include special considerations for the use of force against individuals with physical, emotional, and psychological disabilities, or individuals in crisis, and CPD refused to train officers that pointing a weapon at a person unnecessarily may cause that person psychological harm and damage community trust in the police. The OAG also had to threaten to take the City to court to get CPD to agree to train officers that the unreasonable pointing of a firearm can constitute excessive force under the law.

The OAG is also concerned that the City’s process for reviewing uses of force is not sufficiently focused on identifying trends or developing recommendations regarding modifications to tactics, equipment, training, and policy. For example, while the Force Review Division issued recommendations to individual members after use of force incidents, the OAG did not receive evidence of it making any written Department-wide recommendations for substantive changes to CPD policy, tactics, equipment, or training. The Force Review Division is still relatively new, and CPD can ensure it meets its obligation going forward to provide recommendations regarding trends and tactics in uses of force and firearm pointing incidents. But it must urgently change course.

Areas with Progress:

- (1) Recruitment, Hiring, and Promotion, (2) Training,
(3) Supervision, (4) Crisis Intervention, and (5) Officer Wellness and Support*

In two critical areas—Recruitment, Hiring and Promotion; and Training—CPD has made progress. In ***Recruitment, Hiring, and Promotion***, CPD has begun making improvements to its promotions process. It hired an independent consultant to conduct an analysis of its captain and commander ranks. It also ended merit promotion, which many officers perceived as unfair. The OAG looks forward to working with the City and Monitor to ensure the process that replaces merit promotion is equitable, transparent, designed to elevate supervisors who will uphold and embody constitutional policing, fosters increased diversity within the leadership ranks, and is perceived as legitimate within the Department. In ***Training***, although staffing continues to be a concern, CPD has materially increased the number of hours of training officers receive. This increase is critical because training is foundational to changing officers’ behavior. Moving forward, CPD must continually assess officers’ comprehension and retention of training material and adjust its training based on those assessments. CPD will also have to move aggressively to make up training time that has been lost due to the unforeseen challenge of the COVID-19 pandemic.

The City has also made efforts in Crisis Intervention and Supervision but is far from meeting the core requirements of the Consent Decree in those sections. In *Crisis Intervention*, CPD and the Office of Emergency Management & Communications continue to struggle to collect and validate the data necessary to ensure timely responses to calls involving individuals in crisis. And recruiting qualified officers to serve as certified crisis intervention officers continues to be a challenge, as the position requires specially trained officers to respond to some of the most difficult calls for service. CPD must improve its recruitment efforts because officers who are well trained to interact with people in crisis are better equipped to reduce the need to use force, save lives, and keep officers and the public safe.⁹

The *Supervision* section requires that by 2022, CPD must ensure that no more than 10 officers report to a single supervisor. CPD's existing *ad hoc* staffing provides little incentive or opportunity for supervisors to guide their subordinates or hold them accountable if they deviate from CPD policy or the law.¹⁰ Effective supervision helps prevent officer misconduct and increases public trust and safety.¹¹ CPD invested significant time and resources in this monitoring period developing and rolling out a pilot program in one of its 22 police districts to implement the new staffing model. Unfortunately, an arbitration decision may delay CPD's pilot, and it is not clear that CPD has the necessary staffing to sustain the model. Moreover, CPD has done little to ensure that its policies for supervisors set out clear responsibilities for compliance with the requirements of the Consent Decree. Without these policy changes, increased supervision will mean little.

CPD has also made progress in *Officer Wellness and Support*. CPD's Professional Counseling Division is led and staffed by dedicated individuals with diverse training and backgrounds. However, CPD has yet to complete an Officer Support Systems Plan, which must include a comprehensive suicide prevention initiative, to address officers' wellness needs. CPD must prioritize finalizing this plan, which must incorporate an aggressive timeline for implementation.

Challenges to Full and Effective Consent Decree Implementation

Robust Community Engagement

The OAG agrees with the Monitoring Team's concerns about the absence of high-quality, targeted community engagement related to impartial policing and community policing during the monitoring period.¹² CPD relied primarily on four "Community Conversations" as its engagement strategy for policy development in this period. As the Monitoring Team highlighted, these meetings were problematic. They did not sufficiently reach those with relevant knowledge or personal experience, covered too many topics at a single time, and did not provide a comfortable

⁹ DOJ Report at 37.

¹⁰ *Id.* at 105.

¹¹ *Id.*

¹² See the introduction to the Impartial Policing section of the Monitor's Report.

environment for community members to express their true feelings. In contrast, the Transgender, Intersex, and Gender Nonconforming workgroup, convened by the Mayor's Office, provides a more promising model for community engagement. It relied on trusted community organizations to convene members, included people with lived experience and relevant expertise, and the City made changes based on the group's feedback.

Broadly, the Consent Decree calls for meaningful community engagement from a cross section of Chicagoans on a wide variety of subjects, including policy development, training, and crime reduction strategies. Consequently, the City and CPD need a comprehensive community engagement plan. At a minimum, an effective community engagement plan should:

- Identify the audiences to be engaged and strategies for reaching each audience;
- Provide multiple, varied engagement methods tailored to the intended audiences and goals of engagement and ensure that those who choose to engage are actually heard;
- Provide sufficient context so community members' feedback is informed, useful, and actionable; and
- Outline steps to consider and incorporate feedback from participants and to follow up with those who provided feedback.

An effective community engagement plan should be public and should be created in collaboration with community members and organizations, as well as the Coalition, the Monitoring Team, and the OAG. The OAG looks forward to continued discussion about this critical issue.

Transparency

The City and CPD have not been sufficiently forthright with the Monitoring Team, the OAG, and the public about their challenges in achieving Consent Decree compliance and broader police reform. For example, the City's and CPD's failure to provide the public with access to downloadable use of force data via CPD's web-based dashboard hinders the public's ability to obtain a clear understanding of the patterns and practices of force in the Department. And the City's and CPD's reluctance to fully involve Coalition and community members early in the process of policy development and to provide them with sufficient information about the policies under review has hindered the community's ability to provide meaningful feedback.

The City's ability and willingness to produce information related to Consent Decree implementation was again a significant challenge in the second monitoring period. The OAG and the Monitoring Team have submitted many requests for information. But the City and CPD did not devote sufficient resources to responding to requests. Again in this period, the majority of requests the Monitor and the OAG submitted did not yield a timely or complete response, and the City and CPD again supplied most responsive documents at the very end of the monitoring period.

The City continues to prioritize providing information that supports its compliance efforts over information that might yield a more unvarnished view of the state of reform efforts within the City.

For example, the City has so far not provided the IMT and the OAG with information responsive to several important inquiries, such as:

- Complete documentation of community engagement efforts;
- Information about the disciplinary and litigation history of those in key accountability functions, including those serving in BIA, in the Force Review Division, and as Accountability Sergeants in the Districts;
- Information about summer and holiday violence plans;
- Complete and timely information about collective bargaining issues and negotiations;
- Materials related to the disciplinary process, including sample verbal abuse investigative files and affidavit override forms; and
- Representative samples of Firearm Pointing Incident reviews.

Of the requests the OAG prioritized in the second monitoring period, the OAG received a complete response to approximately 30%. The City also failed to provide the OAG access to CPD systems that would allow it to directly access information responsive to its requests for information and forced the OAG to make repeated inquiries to gain access to trainings.

A Schedule to Address Past Due Requirements

For several months, the OAG has repeatedly requested the City and CPD work with the Monitoring Team and the OAG to draft a plan to address past due requirements. The OAG recognizes that presently any plan will be complicated by the pressing needs of the COVID-19 response. But the City must develop a concrete, publicly transparent plan with new targets, and it must outline the resources it will devote to ensuring those targets and future deadlines are met. The Parties agreed to the deadlines in the Consent Decree. In order to be accountable to the public and the agreement the Parties signed and the Court approved, the City and CPD must draft a plan to get current, obtain the OAG and Monitor agreement to that plan, seek Court approval, and post it publicly. Currently, the City is pursuing its own undisclosed schedule for meeting Consent Decree requirements, which is inconsistent with the agreement it negotiated and the expectations of the public it serves.

Additional Comments about the Second Report

We are concerned that the report obscures the extremely slow pace of the City and CPD's progress. The OAG does not see a material distinction between paragraphs with deadlines in the first year and those without deadlines. Many important requirements in the Consent Decree do not have a deadline for compliance, including critical requirements related to de-escalation, diversion, body-

worn cameras, and numerous requirements related to investigations of officer misconduct. In most cases, the paragraphs without deadlines were intended to be implemented in all due haste.

The OAG also has concerns that the Second Report does not contain analysis of the City's efforts to meet compliance with the "best efforts" provisions of the Consent Decree, which require the City to take all reasonable steps to obtain modifications to its collective bargaining agreements (CBAs) or secure legislative change. For example, the Consent Decree requires the City to make best efforts to change requirements that complaints of misconduct are accompanied by sworn affidavits and to end restrictions on the investigation of anonymous complaints. These requirements prevent COPA and CPD from investigating most misconduct complaints. The Consent Decree also requires the City to make best efforts to ensure that disciplinary records are retained indefinitely and that complainants are not revealed to officers prior to a misconduct interrogation. The report does not describe the status of the City's efforts to renegotiate its CBAs with its unions. The OAG believes it is critically important for the Monitor to evaluate and publicly report on the City's efforts to meet these obligations.

Finally, the OAG does not agree with the compliance determination and narrative in some areas. For example, the OAG does not agree that the City has made good progress to "ensure there are adequate policies and practices in place to encourage and protect CPD members who report potential misconduct by other CPD members." CPD's draft policy is inadequate. Likewise, we disagree that CPD has demonstrated that it trained all officers on foot pursuits. The OAG also noted that it has not had the benefit of reviewing or hearing the City's concerns about the Second Report. If the Second Report changes substantially in response to the City's comments, the OAG will apprise the public of any additional concerns with the compliance determinations.

Conclusion

The Consent Decree requires a tremendous amount of work from the City and CPD. While there are significant challenges ahead, they can be overcome through increased collaboration, transparency, and a stronger commitment to public accountability. The OAG looks forward to working collaboratively with the stakeholders of this Consent Decree during the third monitoring period to overcome the challenges the OAG has identified and to make continued progress on achieving sustainable reform.

For the State of Illinois,

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Respectfully,

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cc: Tyeesha Dixon and Allan Slagel, Counsel for the City of Chicago; Dana O'Malley, General Counsel for the Chicago Police Department (via email)