



Stop LAPD Spying Coalition

April 14, 2015

Coordination and Review Section
 Civil Rights Division
 U.S. Department of Justice
 P.O. Box 66560
 Washington, D.C. 20035-6560

To Whom it May Concern:

On behalf of the Stop LAPD Spying Coalition (“Coalition”) we write to you with deep concern on the failure of the Los Angeles Board of Police Commissioners (“Commission”) to meaningfully respond to community concerns regarding the Los Angeles Police Department (“LAPD”).

The function and role of the Board of Police Commissioners officially states: *“The Commissioners’ concerns are reflective of the community-at-large, and their priorities include implementing recommended reforms, improving service to the public by the Department, reducing crime and the fear of crime, and initiating, implementing and supporting community policing programs.”*¹

Despite this mandate, on the many occasions when advocates from across Los Angeles have brought to the Commission’s attention LAPD programs, policies, and enforcement practices that violate the human and civil rights of residents of Los Angeles, the Commission has repeatedly dismissed valid concerns and has failed to act upon repeated requests to investigate and to take corrective action.

We bring this issue to the attention of the Department of Justice (“DOJ”) for two reasons. First, we believe that the actions of the LAPD and the Commission unlawfully amount to “a pattern or practice of conduct ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”² Second, we believe such practices are not new to the LAPD, and that such practices clearly violate the terms of the 2001 consent decree. We are also concerned with what appears to be intentional sabotage of specific terms of the 2001 consent decree. Evidence indicates that officers in LAPD South Bureau and LAPD Central Bureau have strategically tampered with in-car video system equipment.

Fifteen years ago, community activists and legal advocates from across Los Angeles submitted similar complaints of police misconduct to the DOJ. The Attorney General (“AG”) conducted an investigation, which revealed irrefutable proof of a pattern or practice of rights violations committed by the LAPD. The DOJ ordered federal oversight of the LAPD. The LAPD was monitored for twelve years under the aforementioned consent decree. The consent decree was renewed once, and certain provision remained in place until a federal judge found, in 2013, the LAPD to be in full compliance. Within months of the lifting of the consent decree, however, it became clear that the LAPD had slipped back into old habits.

Given the history of police misconduct within the LAPD, and the failure of the Commission to effectively or responsively regulate, we respectfully request that the DOJ order renewed scrutiny and evaluation of the LAPD. We believe that upon such investigation it will be clear that the LAPD must remain under federal

¹http://www.lapdonline.org/police_commission/content_basic_view/900

² 42 U.S.C § 14141

monitorship indefinitely. We believe this is necessary to protect, respect, and ensure the human and civil rights of all citizens of Los Angeles.

Background on Consent Decree

Under title 42, section 14141 of the United States Code, law enforcement agencies may be found liable for “Pattern or Practice violations.” A pattern or practice violation “deprives persons of rights, privileges, or immunities secured or protected by the Constitution of the United States.”³ A pattern or practice may be found through use of excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests, among others.

A civilian or civil society group may submit complaints of law enforcement misconduct to the Civil Rights Division of the Department of Justice. After a complaint is received, an investigation is conducted and if the AG finds that a law enforcement agency has engaged in a pattern or practice of rights deprivation, then the AG may file a civil action to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”⁴ Enforcement of § 14141 is left to the discretion of the DOJ.

The LAPD became the subject of a § 14141 investigation in early 2000.⁵ The investigation was conducted partly in response to the Rampart Scandal and partly in response to decades of institutional corruption and racism. The DOJ investigation revealed a pattern of unconstitutional practices at all levels of the LAPD.⁶ The patterns and practices included:

[T]he unconstitutional use of force by LAPD officers, including improper officer-involved shootings; improper seizures of persons, including making police stops not based on reasonable suspicion and making arrests without probable cause; seizures of property not based on probable cause; and improper searches of persons and property with insufficient cause.

The AG authorized filing of a civil suit⁷ in United States District Court against the City of Los Angeles and the LAPD. Before the suit commenced, however, the AG and LAPD agreed to enter a consent decree,⁸ a negotiated settlement in the form of injunctive relief.

On June 15, 2001, the Honorable Judge Gary Feess authorized a federal consent decree⁹ between the DOJ and the City of Los Angeles, the Los Angeles Board of Police Commissioners, and the LAPD.

The most significant reform measures included: the establishment of an early-warning tracking system to monitor officer conduct complaints (this became known as TEAMS II), improvements to officer training, documentation of vehicle and pedestrian stops, documentation and centralized investigation of all officer-involved, categorical use of force incidents, and electronic monitoring of certain police-citizen interactions.

³ 42 U.S.C.A. § 14141(a).

⁴ 42 U.S.C.A. § 14141(b).

⁵ LAPD Investigation Notice Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, Department of Justice (May 8, 2000) (available at <http://www.justice.gov/crt/about/spl/documents/lapdnoti.php>) (“We have reviewed LAPD policy statements; reports on officer-involved shootings and incidents in which non-lethal force was used; misconduct complaint files in which serious misconduct was alleged; information on civil suits filed against the LAPD and its officers; information on criminal charges filed against LAPD officers; information relating to police training; and reports and memoranda prepared by the LAPD, the Board of Police Commissioners (“Police Commission”), and the Inspector General that discuss or analyze reform initiatives. We have met with LAPD leaders and Police Commission members on several occasions, and have met with LAPD managers and supervisors responsible for such matters as internal investigations, reviews of officer-involved shootings, and training.”).

⁶ Id.

⁷ Id. The AG notified the City that the DOJ would continue to investigate the LAPD to determine whether criminal charges would be filed against particular LAPD officers.

⁸ Id.

⁹ http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf

Importantly, the consent decree called for an independent monitor to oversee the implementation of the reform measures. Kroll Inc. was appointed as Independent Monitor.

The role of the independent monitor was to watch closely departmental adherence to the negotiated reforms. The LAPD monitor was required to file quarterly written, public reports detailing the City's compliance with and implementation of each substantive provision of the agreement. Substantial compliance, which is assessed per substantive paragraph of an agreement, is the standard to which defendants to consent decrees are held and is generally defined as performance of the material terms of an agreement. Materiality means the overall objectives of an agreement.

Once the LAPD achieved substantial compliance for a pre-determined length of time with an agreement paragraph (with approximately one reform measure per paragraph), that paragraph was no longer monitored to the highest level. The goal was for LAPD to achieve substantial compliance with each paragraph of the consent decree.

The LAPD was slow to implement the mandated reforms. As a result, the LAPD was not successful in achieving substantial compliance with all provisions of the consent decree by the end of the first five-year term. In May 2006, Federal Judge Gary Feess agreed to extend portions of the consent decree for an additional three-year term. The extension applied to those provisions on which LAPD had earned a grade of "functional non-compliance."¹⁰ This included several use of force training and officer evaluation provisions.

The three-year extension expired in June 2009. However, Judge Feess was not yet completely satisfied with the level of LAPD compliance. After negotiations between the DOJ and LAPD, the parties agreed to a watered-down "Transition Agreement." Judge Feess approved the Transition Agreement on July 17, 2009.

Judge Feess formally lifted the Consent Decree on May 15, 2013 after "city and police leaders made assurances that LAPD had adequate safeguards, such as the cameras {In-car video cameras}, in place to monitor itself."¹¹

In-Car Video System

The history of support for the installation of In-Car video cameras dates back to the Christopher Commission recommendations in the aftermath of the Rodney King beating in 1991.¹² The Board of Police Commissioners reviewed the first set of proposals for implementation of In-Car Video on October 31, 2000.¹³ In 2006 the city council agreed to a plan to install digital video cameras on LAPD patrol cars. The city council gave its "final approval of a \$5 million contract with IBM to install Digital In-Car Video System (DICVS) on LAPD patrol cars in 2008."¹⁴ With the city council's final approval in 2008 and amidst much fanfare "former LAPD Chief William Bratton and former Mayor Antonio Villaraigosa hailed the decision, unveiling the complex digital system before a bank of television cameras."¹⁵

In July 2010 LAPD announced, "under Phase 1 of the project 300 patrol cars will be equipped with Digital In-Car Video System."¹⁶ The project was to be launched in LAPD's South Bureau.

The in-car system captures both video and audio. Audio is recorded remotely via the microphones worn by LAPD officers. The in-car antennas enable audio recording over a range of 1,000 feet. LAPD officials later identified three criteria applicable to any review or audit of in-car video systems:

¹⁰ Office of the Indep. Monitor of the L.A.P.D., Report for the Quarter Ending June 30, 2006 (2006) (reporting that a failure of compliance with seven paragraphs and a withheld determination with an eighth).

¹¹ <http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408>

¹² <http://articles.latimes.com/2010/jan/23/local/la-me-lapdvideo23-2010jan23>

¹³ Letter from William J. Bratton, Chief of Police, LAPD to Public Safety Committee (Apr. 29, 2005).

¹⁴ <http://articles.latimes.com/2010/jan/23/local/la-me-lapdvideo23-2010jan23>

¹⁵ <http://articles.latimes.com/2010/jan/23/local/la-me-lapdvideo23-2010jan23>

¹⁶ <http://www.dailynews.com/20100713/lapd-to-install-video-cameras-in-patrol-cars>

- Assessment of officer performance
- Ensure DICVS equipment is functioning properly
- Ensure equipment is being operated properly

A 2008 report by the LAPD on the in-car video system included a provision on officer misconduct. “If misconduct is identified during an in-car video review/audit, a personnel complaint will be initiated to allow for investigation and corrective action.”¹⁷ Evidence of system tampering was recorded in the very first audit of the in-car video system in South Bureau.¹⁸ For example, the audit found six videos associated with six separate incidents with periods where, “the audio experienced static, contained no audio, or lacked clarity even though officers appeared to be in close range of the patrol vehicle.”¹⁹

On January 29, 2012, the Commanding OSB issued an order meant “to establish the bureau protocol for the Coban Digital In-Car Video System (DICVS) inside police vehicles.”²⁰ This document established officer responsibilities, Area DICVS coordinators’ responsibilities, watch commanders’ responsibilities, training coordinators’ responsibilities, field supervisors’ responsibilities, and area garage supervisors’ responsibilities. Under this protocol, officers are required to “document each malfunction [of the DICVS] on a rolling DICVS Damage Log and **immediately** notify a supervisor of the condition of the equipment.”²¹ It should be noted that the emphasis on the word ‘immediately’ is original to the 2012 document. Most significantly, under Area DICVS Coordinators responsibilities, it is stated:

- In the event officers **tamper with equipment**, create a project and forward it to the OIC or concerned Watch Commander for investigation.
- Provide verbal and written feedback to those officers who both pass or fail an inspection of DICV policy.
- Ensure that all documentation related to the DICVS is properly filed for future reference.²²

It is clear that from the beginning of the DICVS program, the LAPD had a protocol in place to monitor the performance of the system, as well as the officers’ reception to the program.

Sabotaging In-car Video Systems. Sabotaging the Consent Decree

On April 7, 2014 the Los Angeles Times reported that LAPD officers “tampered with voice recording equipment in dozens of patrol cars to avoid being monitored while on duty.”²³ The article further stated that, “LAPD Chief Charlie Beck and top officials learnt of the problem last summer (2013) but chose not to investigate which officers were responsible.”²⁴

LAPD spokesperson Commander Andrew Smith admitted to the *LA Times* that an inspection was conducted of the entire fleet in South East division and other divisions of the South Bureau. The inspection revealed of “a total of 160 antennas installed in the South East division, 72 had been removed,” and, “twenty antennas from cars in other divisions were missing as well.”²⁵ In essence **92** out of **300** patrol cars had been sabotaged! LAPD South Bureau covers Watts, Jordan Downs, Imperial Courts, Nickerson Gardens, and other areas where overwhelming population is poor and working class people of color.

¹⁷ Report by the Los Angeles Police Department in response to Council Action – CF NO. 06-0600-S38 (March 17, 2008).

¹⁸ Digital In-Car Video System Audit from Charlie Beck, Chief of Police, to the Board of Police Commissioners (June 28, 2011) (on file with the City of L.A. Police Comm’n).

¹⁹ Id.

²⁰ Order No. 1 from Commanding Officer, Operations-South Bureau to All Concerned Personnel, Operations-South Bureau (Jan. 29, 2012) (on file with the City of L.A. Police Comm’n).

²¹ Id. Emphasis original.

²² Id.

²³ <http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408>

²⁴ <http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408>

²⁵ <http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408>

Such blatant disregard for police conduct monitoring equipment is clearly a “*pattern or practice of unconstitutional or otherwise unlawful conduct*” similar to that which led to the 2001 consent decree. It is also clear that LAPD officials, and official oversight bodies cannot be trusted to, adhere to best practices and basic respect for the rule of law.

Commission President Soboroff admitted to LA Times that “Chief Beck ... briefed him about the [tampering] in September [2013].”²⁶ September 2013 is a full eight months prior to Soboroff’s *public* acknowledgement of such gross violation of *public* trust. Soboroff failed to bring the in-car antenna tampering to the public’s attention at the same time he launched an aggressive campaign to raise “private money” to equip LAPD officers with body cameras—yet another tool sold to Angelenos as a false sense of true officer accountability.

It is important to hold the LAPD accountable for the antenna tampering. It is also important to hold all oversight bodies accountable for their lack of response to early indications of tampering.

When the antenna-tampering story first broke, Chief Beck and other LAPD top officials attempted to downplay the severity of the problem and its relevance to the LAPD’s newfound accountability. The antenna tampering is indicative of a larger problem within the LAPD. Long before the consent decree, the LAPD lived a culture of silence. The consent decree reforms were designed to eliminate this culture of silence by implementing levels of accountability and oversight. The antenna tampering is either a failure of the levels of accountability or a failure of oversight. At the very worst, it is indicative of a complete failure of both accountability and oversight and all the consent represents.

Therefore, the antenna tampering must be viewed as the proverbial tip of the proverbial iceberg. The LAPD must be held accountable to the consent decree, not as a relic of a corrupt past but as a contemporaneous guide to best practices. If necessary, the citizens of Los Angeles, the City of Los Angeles, and the DOJ must seek judicial intervention to reactivate the 2001 consent decree.

Resumption of the consent decree

When a consent decree is lifted and a federal judge releases jurisdiction, the mandated reforms of the consent decree are not dissolved. Lifting of a consent decree “simply place[s] the case on inactive status and end[s] the court’s supervision of the implementation process.”²⁷ So-called “final” orders from district court judges have been found to “merely relieve the [institution] of its obligation to file periodic compliance reports.”²⁸

There are two options available to plaintiffs who wish to reactivate a consent decree in order to address material violations of all or part of agreement. The plaintiff in the original case may seek to reopen the original case.²⁹ If the plaintiff wishes to raise new claims, or claims that are beyond the scope of the original decree, they may seek to file a new suit.³⁰

Conclusion

The Stop LAPD Spying Coalition joins communities across the United States against racist police brutality and systems of oppression that foster state violence, and the continuing marginalization and murders of black and brown people. The country and the city of Los Angeles are at a critical juncture in history. Increasingly

²⁶<http://articles.latimes.com/2014/apr/07/local/la-me-lapd-tamper-20140408/2>

²⁷ Lloyd C. Anderson, *Release and Resumption of Jurisdiction over Consent Decrees in Structural Reform Litigation*, 42 U. Miami L. Rev. 401 (Nov. 1987).

²⁸ *Vaughns v. Bd. of Educ. of Prince George’s Cnty.*, 758 F.2d 983, 989 (4th Cir. 1985).

²⁹ *Consumer Advisory Bd. v. Glover*, 989 F.2d 65 (1st Cir. 1993) (“Eventually the court may withdraw from active involvement, and the case may even be “closed” in official records. Yet the decree may live on as a legal obligation. If so, the court’s authority to enforce it is always capable of being reawakened.”); *In re Pearsson*, 990 F.2d 652, 657 (1st Cir. 1993) (“[W]hen ... an injunction entered pursuant to a consent decree has ongoing effects, the issuing court retains authority to enforce it.”); *Hook v. Arizona*, 972 F.2d 1012, 1014 (9th Cir. 1992) (“A district court retains jurisdiction to enforce its judgments, including consent decrees.”).

³⁰ *See, e.g., Lovell v. Brennan*, 566 F. Aupp 672 (D. Me. 1983), *aff’d*, 728 F.2d 650 (1st Cir. 1984).

people are feeling frustrated, angry, and disillusioned by the façade of civilian oversight and bodies such as the Los Angeles Board of Police Commissioners.

Federal Consent Decrees are imposed on institutions such as the Los Angeles Police Department after they are deemed incapable of self-governance. In the case of LAPD, beside the city, the LA Board of Police Commissioners was also deemed incapable of providing oversight, maintaining transparency, and holding the department accountable.

Superficial reforms such as body cameras, training, and diversity will not radically change an institution whose flaws are built in by design; institutions rooted in the use of violence to preserve a social order based upon exploitation and conquest. Los Angeles' communities must determine how they will be "*protected and served.*"

We respectfully request that the Civil Rights Division and Attorney General re-open the City of Los Angeles Consent Decree. We do not believe that the LAPD is capable of adhering to best practices or mandated reforms without the constant direction of an independent oversight body. The Stop LAPD Spying Coalition is prepared to offer evidence and testimony of the many violations of LAPD officers.

We look forward to hearing back from you within two weeks with a clear action plan that addresses the demands outlined in this letter. Should you have any questions please feel free to email at stoplapdspying@gmail.com or call at (562) 230-4578.

Sincerely,



Hamid Khan
Stop LAPD Spying Coalition

Cc:

Eric Holder – Attorney General, US Department of Justice

Vinita Gupta – Acting Assistant Attorney General, Civil Rights Division, US Department of Justice

Honorable Judge Gary A. Feess (Retired)

Commissioner President Steve Soboroff – Los Angeles Board of Police Commissioners

Commissioner Vice-President Paula Madison – Los Angeles Board of Police Commissioners

Commissioner Sandra Figueroa-Villa – Los Angeles Board of Police Commissioners

Commissioner Kathleen Kim - Los Angeles Board of Police Commissioners

Commissioner Robert Saltzman – Los Angeles Board of Police Commissioners

Richard Tefank – Executive Director, Los Angeles Board of Police Commissioners

Alex Bustamante – Inspector General, Los Angeles Police Department

Charlie Beck – Chief, Los Angeles Police Department

Eric Garcetti – Mayor, City of Los Angeles

Ana Guerrero – Chief of Staff, Mayor of Los Angeles

Mike Feuer – City Attorney, City of Los Angeles