

June 22, 2023

The Honorable Merrick B. Garland
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CC: Vanita Gupta
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RE: Civil Rights Investigation of the Kansas City Police Department—*An Addendum*

Attorney General Garland and Assistant Attorney General Clarke:

We have carefully reviewed the Civil Rights Division’s 2017 memorandum on Pattern and Practice Investigations (hereinafter “2017 Memorandum”)¹ and assume, pursuant to the assurances within it and the current DOJ website, that this will be considered a confidential communication to open a preliminary inquiry.

Following a letter sent to your office on July 23, 2021 (the “Previous Letter”)², the DOJ opened an investigation into the employment practices of the Kansas City Police Department (“KCPD”)³. The DOJ investigation is much appreciated, and much needed, but, unfortunately, does not address all the imperative issues within KCPD. As the only major city without control of its own police department, we hope you understand our frustration and appreciate that we do not wish to seek federal intervention, but it is our only hope. Since the date of the Previous Letter, KCPD continues its antics, unabashedly, resulting in more and more constitutional violations.

Kansas City has, and continues to, witness and experience a pattern of systemic constitutional violations, including without limitation, department wide practices of ***targeting black residents to achieve ticket quotas***; unequal/differential policing based on race, gender and sexual orientation; an alarming amount of excessive force violations; interfering with *Brady* and *Giglio* requests/materials, improperly deciding on its own what evidence is relevant to such requests; and

¹ 2017 Memorandum, attached as Exh. 1, at 5–8.

² The Urban Council, July 23, 2021, Letter. Attached as Exh. 2.

³ September 19, 2022, DOJ letter to KCPD, attached as Exh. 3.

failing to investigate or adequately respond to missing black residents, which all result from the department's lack of training, supervision, discipline and/or accountability. Moreover, KCPD's lack of truthfulness, transparency, and intentional conduct limiting public access to non-privileged documents has further led to distrust of the department. KCPD refuses to acknowledge the idea that any problem exists within the department, and since it effectively governs itself, there is no push for accountability or change. The Kansas City Board of Police Commissioners ("BOPC"), the governing board of KCPD, is essentially a rubber stamp for anything the department puts before it. To this point, no amount of public complaints, lawsuits and judgments/settlements have been enough to spark a shred of change.

The facts, as presented in this letter, are not getting easier to digest, and it is clear from the recent national story involving a Kansas City teen, Ralph Yarl, the tensions within the city are frightening. Even so, this need not be situation of gloom and doom, instead, together, we can instill hope and slowly build trust in a community that has been ripped of any credence in KCPD. Bringing the truth to the community, and not allowing KCPD to hide behind badges and lawyers, is the first step toward rebuilding the crucial relationship between citizens and the KCPD. The main intent of requesting a 14141 inquiry into KCPD is to restore and reform a police department that has no interest in properly serving the community; but the Division can also use its inquiry as a case study because of the myriad of issues this department exhibits. The Division is in the best position to address the systemic issues as it has investigative resources and legal tools not otherwise available since the State is in control of KCPD and sees no issues with its operations. Moreover, this is an opportunity to build on, and lament, the standards and applications of the Divisions' inquiries into Maricopa County, Arizona and Missoula, Montana. Additionally, after reviewing the Investigation of the City of Minneapolis Police Department, KCPD exhibits just about every issue highlighted in the DOJ findings.

It is simply a 'when' not 'if' scenario of an eruption of this community. Based on the community's reactions to the shooting of Cameron Lamb (December 3, 2019), and the recent reaction to Ralph Yarl where the community marched upon the street where the shooter lived, it is only a matter of time before Kansas City's frustration and volatility explode. We believe that DOJ intervention could assist in implementing the changes sought and hopefully that would prevent the upheaval and disorder seen in Ferguson, Missouri; Louisville, Kentucky; and Minneapolis, Minnesota.

The signatories to this letter, who all share a common interest in wanting the Civil Rights Division to open a pattern and practice investigation into KCPD, request a meeting at your earliest convenience, hopefully in early July or August of 2023, to make the case that a 14141 inquiry into the KCPD should be undertaken as soon as possible.

In deciding whether to move forward with a pattern and practice investigation we understand the threshold questions are: "[w]ould the allegations, if proven, establish a violation of the Constitution or federal laws?" and, "[w]ould the allegations, if proven, constitute a pattern or practice, as opposed to sporadic or isolated violations of the Constitution or federal laws?" 2017 Memorandum, at 5. Moreover, we understand that the Division "considers whether the [pattern or practice] allegations represent an issue common to many law enforcement agencies as well as whether the allegations represent an emerging or developing issue, such that reforms could have

an impact beyond the primary objective of eliminating constitutional violations in the specific law enforcement agency.”

This matter certainly meets the Division’s threshold questions and considerations.

I. INTRODUCTION

“[A]PPROACH EVERY CAR WITH THE MINDSET TO BE READY TO KILL EVERYBODY IN THE CAR.”⁴ This is the directive KCPD officers are given when approaching minority citizens during a traffic stop; perhaps, more aptly, this is the mindset of officers approaching minority citizens in Kansas City. Perhaps this is the reason KCPD is one of the worst departments in the country when it comes to killing unarmed black men—and perhaps, this alone is enough reason to open pattern and practice investigation.

Notwithstanding, the recent shooting of 16-year-old Ralph Yarl caught national news attention—both for the facts surrounding the situation and the KCPD response. On April 12, 2023, Yarl was shot twice by a white male because he knocked on the wrong door to pick up his siblings. The shooter, Andrew Lester, was released hours after being detained on the night of the shooting. KCPD did not submit the case to the prosecutors until April 17, 2023⁵, four days after the shooting. Additionally, KCPD Chief of Police Stacy Graves found it appropriate to opine on the possibility of the suspect using Missouri’s “stand your ground” law as a defense, even though she is not a lawyer and such affirmative defense is not within KCPD’s duties⁶.

In December of 2022, former Associate General Counsel of KCPD, Ryan McCarty, released a letter⁷ after being terminated calling for both the then Interim Chief of Police Joseph Mabin and General Counsel Holly Dodge to be fired. His letter documents multiple allegations of hostile work environment (in the General Counsel’s Office), retaliation, records violations, corruption and more. One of the most consequential allegations made is that Dodge collects all the records related to *Brady* and *Giglio* requests, and then makes her own decision on what she believes should be sent to prosecutors, effectively taking the decision of what needs to be produced away from prosecutors.

In August of 2000, the Missouri legislature enacted RSMo. § 590.650, which requires the Missouri Attorney General to complete a Vehicle Stops Report, to determine if any law enforcement agencies are engaging in disparate discriminatory treatment regarding traffic stops. The Vehicle Stops Report is supposed to be completed by June 1st of each year. The only police department controlled by the State of Missouri clearly shows disparate treatment every year⁸. Beyond the conclusive statistics, on March 20, 2023, a 21-year veteran of KCPD filed a lawsuit claiming that traffic officers were essentially required to meet illegal ticket quotas by targeting **black people** and

⁴ See *infra* note 58.

⁵ April 17, 2023, Complaint and Request for a Warrant, attached as Exh. 4.

⁶ Jessica McMaster, *Attorney Explains Missouri Home-Defense Laws After Teen is Shot on Doorstep*, KSHB (Apr. 17, 2023, 7:19 PM), <https://www.kshb.com/news/local-news/investigations/attorney-explains-missouri-home-defense-laws-after-teen-is-shot-on-doorstep>.

⁷ December 10, 2022, Ryan McCarty Letter, attached as Exh. 5.

⁸ Vehicle Stops Reports for 2020 and 2021, are attached as Exh. 6 and 7, respectively.

members of other minority communities⁹. Notably, the allegations in the lawsuit state that the orders came from then-Chief of Police for KCPD.

These situations show that, from the General Counsel's Office, to the Chief's Office, to the Attorney General's Office—there is a complete disregard for the rights and liberties of black people and other minorities. There is a complete disregard for the rule of law from the individuals trusted with enforcing the law. What is worrisome is that we have not touched the surface of the unconstitutional conduct, along with other illegal/unethical/immoral conduct, this department regularly engages in.

Kansas City should be seen as a cautionary tale of what occurs when oversight is ripped from the community and given to individuals outside of the respective city—individuals without a direct interest in the operation of the police department. Without any provision such as receivership that monitors and mandates corrective action, the police essentially oversee themselves which results in findings that officers never do anything wrong, no matter what the issue or subject matter may be. Since KCPD has operated under this system for so long, it would behoove the DOJ to look into KCPD and study the department as other states are seeking to expand control over law enforcement agencies in largely minority communities. *See National Association for the Advancement of Colored People, et al., v. Tate Reeves, et al.*, case number 3:2023cv00272, filed in the United States District Court for the Southern District of Mississippi.

As stated above, we are aware and appreciate that the DOJ has opened an investigation into the employment practices of KCPD. Notwithstanding, we also understand that an investigation into the employment practices differs from a pattern or practice investigation, and decisions to open them are made independently, based on different legal standards. Further, as the Division has stated, “calls to open civil and criminal civil rights investigations can arise from the same instances of police misconduct, particularly when a troubling individual incident galvanizes public attention to or sheds light on systemic problems in a law enforcement agency.” 2017 Memorandum, at 49 (Appendix B). In light of Ralph Yarl, and all the other troubling incidents, that is certainly the case here.

Next is a short summary argument, focusing on some of the major and/or consequential issues and/or incidents involving KCPD, tracking the standards laid out in the 2017 Memorandum and federal case law, as to why a 14141 inquiry into is necessary to bring about reform through a consent decree that no lawsuit or criminal prosecution could accomplish.

II. KCPD'S CONTINUOUS UNCONSTITUTIONAL CONDUCT EXHIBITING A PATTERN AND PRACTICE OF VIOLATING THE CONSTITUTIONAL RIGHTS OF CITIZENS IN KANSAS CITY, MISSOURI.

What follows is simply a snapshot of the problematic conduct present at KCPD as it is impossible to dictate all the organizational issues which have led the community to seek federal assistance. Through litigation, media coverage, Missouri open records requests, and other avenues of

⁹ *Edward Williams v. Kansas City Missouri Police Department A/K/A Board of Police Commissioners*, filed March 20, 2023, Case No. 2316-CV07741, attached as Exh. 8.

discovering information, it is clear that 14141 investigation into KCPD is not only warranted, but necessary.

- a. The lack of accountability enables KCPD to operate however it wants—violating local, state and federal laws and committing constitutional violations—and requires no changes even in the face of constant complaints, officer indictments, and civil litigation.**

KCPD, by and through its governing board, the Kansas City Board of Police Commissioners (“BOPC”), is an agency of the state but funded by Kansas City tax dollars. RSMo. § 84.350 *et seq.*¹⁰ Four individuals that serve on the Kansas City Board of Police Commissioners are appointed by the governor and the mayor of Kansas City is the fifth member. RSMo. § 84.350. Essentially, the mayor is the only person who has any accountability to the citizens of Kansas City as the other Board Members report to the governor, who is located in Jefferson City.

Mayor Quinton Lucas, who currently serves on the BOPC, recently discussed his role on the Board and the lack of any consequential change. “It’s hard to wake up and want to make a difference and go somewhere and know that you won’t ... This (experience) is something I would absolutely never repeat in my life. It’s why I care so much about a better system because this is not good for anybody — our officers, our people, even our department.”¹¹

i. Officer Indictments and Guilty Pleas for Using Excessive Force

The year 2022 was the first year in Kansas City’s history that the state court system found some justice for unlawful action by police officers. On March 07, 2022, former KCPD officer, Eric DeValkenaere, was sentenced to six years in prison for fatally shooting 26-year-old, Cameron Lamb, a black man¹². On October 27, 2022, Matthew Neal, a sergeant and 18-year veteran of KCPD, pled guilty to felony assault charges for excessive force¹³. According to the indictment, in November of 2019, Neal was kneeling a 15-year-old black boy on the back of the head and neck, which forced the boy’s face into the pavement causing broken teeth and a gash to his head¹⁴ (basically, what criminal organizations have referred to as “curb stomping”). Neal had multiple complaints of excessive force against him prior to this incident, but KCPD found no wrongdoing on the part of Neal until a lawsuit against it was all but certain¹⁵. Neal’s partner, Dylan Pifer, who aggressively handcuffed the 15-year-old, previously shot and killed an unarmed black man in an unrelated incident on May 26, 2019¹⁶. Moreover, on November 14, 2022, two KCPD police

¹⁰ In recent years, this has been at the core of disputes between the city of Kansas City and the BOPC, as lawsuits have been filed on behalf of both entities. *E.g.*, *Gwendolyn Grant v. Mark Tolbert, et al.*, case number 2116-CV19592; *Quinton Lucas v. Eric Schmitt, State of Missouri, et al.*, case number 2216-CV18354; and *State of Missouri ex rel. Kansas City Board of Police Commissioners v. Mayor Quinton Lucas, et al.*, case number 2116-CV11556.

¹¹ Josh Merchant, *These Five People Control Kansas City’s \$280 million Police Budget*, The Kansas City Beacon (April 25, 2023), <https://kcbeacon.org/stories/2023/04/25/who-are-kansas-city-police-commissioners/>.

¹² Judgment, *State of Missouri v. Eric J DeValenaere*, attached as Exh. 13.

¹³ Guilty Plea for Matthew Neal, attached as Exh. 11.

¹⁴ Indictment for Matthew Neal, attached as Exh. 12.

¹⁵ KCPD Office of Community Complaints, Complaints against Matthew Neal, attached as Exh. 14.

¹⁶ See *infra* note 19.

officers¹⁷ pled guilty to felony assault for an incident in which they used excessive force against a black transgender woman¹⁸.

ii. Settlements Regarding Excessive Force

In November of 2022, KCPD reached one of its largest settlement yet of \$5 million in a wrongful death lawsuit where a black man was shot and killed by KCPD following a foot chase; **the victim was unarmed**¹⁹. The officer is still on the department and was not charged for this killing. A month earlier, in October of 2022, KCPD settled a wrongful death case where the victim died after he was tackled by a KCPD officer²⁰. Yet another month earlier, in September of 2022, the KCPD settled a wrongful death case for \$1.5 million in which the unarmed victim was being **used as a “human shield”** by another individual and KCPD **shot the victim at least 15 times**²¹. In February of 2022, KCPD agreed to a settlement of \$900,000 to resolve a matter in which it wrongly arrested and **detained a black teenager for three weeks for a crime he did not commit**²². In March of 2022, KCPD settled a case for \$325,000 after three white police officers hit a black teenager more than 10 times and used a stun gun on him.²³ The teenager was then arrested but never charged with a crime.²⁴

iii. Multiple Officers Accused of Excessive Force Multiple Times

KCPD has a pattern and practice of not disciplining officers for using excessive force which often leads to such officers using excessive force again.

- In 2013, **Dakota Merrill** emptied his 16-round clip into a car with an unarmed black man, and again in 2016 Merrill shot into a car nine times at an unarmed black man.²⁵
- Officers **Charles Prichard** and **Matthew Brummett** have been accused of excessive force at least three times.²⁶

¹⁷ These two officers, Matthew Brummett and Charles Prichard, had multiple claims of excessive force. *E.g.*, *Roderick Reed v. Charles Prichard et al.*, case number 2016-CV13147; *Rena M. Childs v. Matthew Brummett et al.*, case number 2016-CV14154; *Troy E. Robertson v. Charles Prichard et al.*, case number 2116-CV07632.

¹⁸ Guilty Plea for Matthew Brummett, attached as Exh. 9; Guilty plea for Charles Prichard, attached as Exh. 10.

¹⁹ Celisa Calacal, *Kansas City Police to Pay \$5 Million Over 2019 Fatal Shooting of Terrence Bridges*, KCUR (Nov. 3, 2022, 12:06 PM), <https://www.kcur.org/news/2022-11-03/kansas-city-police-terrence-bridges-settlement-5-million-kcpd>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Kansas City Police to Pay \$325,000 to Teen After Arrest*, Associated Press (March 30, 2022), <https://apnews.com/article/arrests-lawsuits-kansas-city-35188ace3fbc1ae0dbec86db847c3d5c>.

²⁴ *Id.*

²⁵ Michael Harriot, *How 1 of America's Deadliest Police Forces Get Away With Shooting and Killing Black People*, The Root (Sep. 11, 2017) <https://www.theroot.com/how-one-of-americas-deadliest-police-forces-gets-away-w-1803142042>.

²⁶ Bill Lukitsch, Glenn E. Rice, and Luke Nozicka, *'Police Beat Me' Two Kansas City Officer Accused in Third Excessive Force Complaint*, Unity Southeast in Kansas City (Apr. 6, 2021) <https://unitysoutheastknc.org/blog/2021/7/19/police-beat-me-two-kansas-city-officers-accused-in-third-excessive-force-complaint>.

- On May 2, 2014, KCPD officers **Shannon Hansen** and **Jacob Harris** were caught on dashcam footage using excessive force on two separate individuals within the span of two hours.²⁷
- On May 26, 2019, **Dylan Pifer** shot and killed an unarmed black man, Terrance Bridges, and in November of 2019, he was involved in the incident which led to a black child having broken teeth and a gash to his head.²⁸
- As mentioned above, Pifer’s partner, **Matthew Neal** had multiple complaints against him prior to the incident with the 15-year-old.
- On March 12, 2020, officer **Blayne Newton** shot and killed an unarmed black man, Donnie Sanders; on September 30, 2020, he arrested a pregnant black woman by putting her face down on the ground and placing his knee on her back;²⁹ and on June 9, 2023, Newton killed two people in a shooting that began with Newton discharging his firearm through the driver side window into a vehicle.
- In August of 2020, **Taylor Hall** and **James Oakes** were involved in an arrest where a black man and his daughter were pepper-sprayed for peacefully protesting—the father was also dragged across the pavement; Hall and Oakes were also involved in a shooting in 2016 that left several injured.³⁰

These are just some of the KCPD officers for which public information is available on their multiple excessive force violations. If this information is public, one can assume there is much more information internally, including community complaints, regarding officer misconduct.

iv. Abhorrent Police Statistics

According to Police Scorecard, a nonprofit organization that uses data from state and federal databases, public record requests and media reports, KCPD uses deadly force more than **95% of police departments** in the U.S; KCPD uses **more less-lethal force than 71% of police departments** in the U.S.; KCPD **arrests and kills black people** at a higher rate than any other race; and from 2013 to 2021, KCPD had **2,637 civilian complaints, only 3%** of which were found in favor of civilians (294 use of force complaints, 1% ruled in favor of civilians; 61 reported complaints of police discrimination, 0% ruled in favor of civilians)³¹. Additionally, black people were **2.2 times more likely to be arrested** for a low level, non-violent offense than a white

²⁷ David Hudnall, *One Day, Two Hours, Two KCPD Officers, Two Excessive-Force Arrests Caught on Video*, The Pitch KC (Dec. 20, 2016) <https://www.thepitchkc.com/one-day-two-hours-two-kcpd-officers-two-excessiveforce-arrests-caught-on-video/>.

²⁸ See *supra* note 19.

²⁹ The Associated Press, *Family of Man Shot by Kansas City Police Sues for \$10M*, KCTV5 (Mar. 11, 2022, 2:38 PM) <https://www.kctv5.com/2022/03/11/family-man-shot-by-kansas-city-police-sues-10m/>.

³⁰ Brady List, Citizen Report No. 1632868096 – 1375446908 (May 30, 2020) <https://giglio-bradylist.com/citizen-report-no-1632868096-1375446908>.

³¹ Police Scorecard, <https://policescorecard.org/mo/police-department/kansas-city> (last visited May 8, 2023).

person³². According to Mapping Police Violence, a nonprofit organization tracking police killings, only four cities in the U.S. have a higher police homicide rate than KCPD.³³

b. KCPD Fourth Amendment Violations

KCPD's conduct has resulted in multiple constitutional violations including, but not limited to, violating citizens' right to free of unreasonable searches, seizures, and detentions. The Fourth Amendment also affords citizens due process rights.

KCPD has a pattern and practice of Fourth Amendment violations as it routinely stops, searches, and detains citizens without warrants or probable cause. Particularly, KCPD's pattern and practice of Fourth Amendment violations is focused on black citizens as there is evidence of KCPD directives to target black citizens and the numbers are in support. The specific patterns and practices which violate the Fourth Amendment include, but are not limited to:

- The KCPD's pattern and practice of harassing citizens, specifically black and minority members;
- The KCPD's pattern and practice of stopping, searching, seizing property and detaining citizens without a warrant or probable cause;³⁴
- The KCPD's pattern and practice of exceeding their authority when executing a search pursuant to a warrant or probable cause;³⁵
- The KCPD's pattern and practice of entering on private property without probable cause, a warrant or permission;³⁶

³² *Id.*

³³ Mapping Police Violence, <https://mappingpoliceviolence.us> (last visited May 21, 2023).

³⁴ See *supra* note 22-24; *infra* Exhs. 17-18; Makenzie Koch, *KCPD Detective Says he was Demoted for Reporting Illegal Search: Lawsuit*, FOX4KC, (Aug. 12, 2022, 4:33 PM), <https://fox4kc.com/news/kcpd-detective-says-he-was-demoted-for-reporting-illegal-search-lawsuit/> (a black KCPD detective was demoted for reporting his white colleague had conducted an illegal search); Luke Nozicka, Glenn E. Rice, *Lawsuit Alleges Kansas City Police Kicked in Door and Seized \$20K in Illegal Search*, The Kansas City Star (Apr. 10, 2023), <https://news.yahoo.com/lawsuit-alleges-kansas-city-police-211638457.html> (KCPD conducted an illegal search and seized \$20K).

³⁵ Katie Moore, *KCPD Illegally Seized Man's gun and \$10K, then Prosecutors Used Gun as Leverage: Lawsuit*, AOL (Apr. 17, 2023), https://www.aol.com/news/kcpd-illegally-seized-man-gun-100000696.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAADV18sMUFhRIBATW_IuDq9enIwn_0HO_HYespaMxfKoFcCheYEmkM8pjMC7e76CHooa_duD7io3grtwl3UNba1AEKikK-IlzGlby_Y1j_7Kbos4XRWdqyafsMrl3zucVeC6VcgfS7BtJMsNZA9A931eTj6mrDladgVa9Hyc-Fhw (KCPD exceeded their search warrant and went on a general exploration for evidence which was not listed on the warrant); Billy Binion, *Cops Are Dressing Up Like FedEx Guys and Arresting People for Drugs*, reason (Aug. 26, 2021, 4:26 PM), <https://reason.com/2021/08/26/cops-are-dressing-up-like-fedex-guys-and-arresting-people-for-drugs/> (KCPD officers disregarded the only item they could seize pursuant to the warrant and proceeded to search the entire apartment).

³⁶ Nick Sloan, *Former Kansas City Police Officer Eric DeValkenaere Sentenced in Death of Cameron Lamb*, KCTV5 (Mar. 4, 2022, 4:02 PM) <https://www.kctv5.com/2022/03/04/former-kansas-city-police-officer-sentenced-death-cameron-lamb/> (in the trial whereupon Eric DeValkenaere was found guilty, there was testimony officers did not have proof of a crime, a warrant or permission to be on private property and that a gun and ammunition **may have been planted at the scene**).

- The KCPD’s pattern and practice of using evidence known to be false and/or illegally obtained to prosecute and convict citizens;³⁷
- The KCPD’s pattern and practice of not addressing constitutional violations and not disciplining officers that commit Fourth Amendment violations.

i. Retaliation for DeValkenaere Judgment and the “Unspoken Policy”

Eric DeValkenaere’s guilty judgment largely centered around whether he had the legal right to be on private property when he shot and killed Cameron Lamb—the judge ruled that he did not have such legal right. It must be noted, when DeValkenaere shot and killed Cameron Lamb, he was dressed in plain clothes and the crime KCPD accused Cameron Lamb of had ended prior to him pulling into this home and prior to when DeValkenaere approached him. Since that judgment, there have been multiple instances of KCPD instituting an “unspoken policy” which precludes them from entering private property without a warrant, even when **a crime is actively being committed**.³⁸ In fact, a captain of KCPD left a voicemail with a Kansas City resident specifically detailing the new policy:

*You posted something on Twitter begging for attention, so I was calling you back to try to explain to you our procedures our limitations that have been placed upon us since the 4th amendment ruling concerning Eric DeValkenaere that was passed down like last year that strictly limited our ability to go on private property without owner consent or without vast knowledge on something happening like someone screaming for help inside. We no longer search abandoned houses without a warrant from a judge to go in, it strictly limited our ability to provide the public with safety and that’s something you citizens need to know. That ruling had a direct impact on what we can do. Which is affecting you and I don’t agree with it, we should be able to meet your need. We should be able to go into a house that’s next to you to keep you safe but we no longer do that because if we go in there and somebody is in there that belongs in there for some reason ya know maybe one of the college students is back and he aims a gun and we shoot at him then we are gonna be brought up on charges so we have to be very careful on how we proceed on those things. I’m sorry you had that experience, but many citizens are going to have that same experience but it’s kind of out of the police’s hands until that judgment is overturned on appeal so that we can go back to our business to keep citizens safe, you take care buh-bye.*³⁹

This was in response to call that someone had broken into the resident’s neighbor’s home and police showed up but did not go inside the home.⁴⁰

³⁷ See *supra* notes 33-35.

³⁸ Megan Abundis, *Kansas City Police Refute Claims of Policy Changes after Federal Lawsuit*, KSHB (Aug. 16, 2022, 5:54 PM) <https://www.kshb.com/news/local-news/kansas-city-police-refute-claims-of-policy-changes-after-federal-lawsuit>.

³⁹ *Id.*

⁴⁰ *Id.*

On or around January 15, 2022, a 911 call to KCPD was made from Mackenzie Hopkins', a 24-year-old mother, phone, and the dispatcher could hear sounds of a disturbance, struggle and fighting.⁴¹ Ms. Hopkins' family was later informed that whoever dialed 911 did not terminate the call. Police stopped at the home, knocked on the door, and did nothing else.⁴² Ms. Hopkins was found dead—beaten ruthlessly and submerged in the bathtub.⁴³ Her daughter was also brutally beaten and had to fight for her life.⁴⁴ The family was told by KCPD detectives that a policy which came in the wake of DeValenaere being found guilty precluded the officers who responded to the call from entering the home.⁴⁵

While KCPD denies any such policy change, these are just two stories, that we know of, where citizens who had made 911 calls were informed that a policy change did not allow KCPD officers to enter a residence while a crime was in progress. Interestingly, KCPD's policy on forced entry, which is available on its website, is redacted.⁴⁶ Citizens are now paying the price, i.e., having to live in an environment less safe because a KCPD officer violated the Fourth Amendment and was found guilty of using excessive force in the line of duty.

ii. Poor Organizational Decisions Leading to Fourth Amendment Violations

Around 2019 and/or 2020, KCPD had made the decision to no longer use the Regional Justice Information Service (“REJIS”) and utilize a different system.⁴⁷ Prior to KCPD ending its relationship with REJIS, the Kansas City Municipal Court informed KCPD that the switch could result in KCPD not having the most up to date information on warrant status, etc.⁴⁸ Yet, KCPD was so eager to leave REJIS it completely ignored the Court's warning of the potential issues.⁴⁹ A year and a half later, because of the hasty transition and refusal to listen to reason, KCPD was **falsely arresting** and/or detaining individuals who had **already cleared their warrants** because KCPD's new system did not have the most current information as was available in REJIS.⁵⁰ Essentially, **KCPD was systemically violating constitutional rights** because of a poorly executed system transition—and, the potential of such constitutional violations was brought to the attention of KCPD **prior** to the transition being implemented. KCPD knew the potential consequences and did not care.

c. Fourteenth Amendment Violations

⁴¹ Bill Lukitsch, *Mother and Child Under Brutal Attack Called 911. Why Did Kansas City Police Walk Away?*, The Kansas City Star (May 9, 2023, 5:30 AM), <https://www.kansascity.com/news/local/crime/article273848580.html>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ KCPD Policy, Forced Entry, <https://www.kcpd.org/media/4157/pi-22-05.pdf>.

⁴⁷ KCPD REJIS emails, attached as Exh. 18.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

The facts herein also show a clear violation of the Fourteenth Amendment, which includes due process and equal protection under the law.

i. **Equal Protection Based on Race**

Herb Robinson

On March 11, 2021, Herb Robinson of the KCPD, a black sergeant, was followed by two fellow KCPD officers out of their jurisdiction into Raytown, Missouri, a neighboring city⁵¹. Robinson had not violated any laws, and the officers had no grounds to pull him over—especially considering they were no longer within the confines of Kansas City, Missouri⁵². Not deterred, the officers stopped Robinson, and according to Robinson/supported by dash camera footage, made racially hostile and derogatory remarks all while yelling and cursing at him⁵³. Notably, Robinson was still in uniform and outranked both officers⁵⁴. After the stop, Robinson reported the stop and the encounter to his superiors at KCPD, **but no action was taken**⁵⁵. KCPD officers not only feel comfortable stopping one of their own, if that officer happens to be black, but they also feel comfortable throwing around racially motivated language to black officers who outrank them. And why should KCPD not feel so comfortable?—they know no action will be taken against them.

Targeting Minorities

Unfortunately, Sgt. Robinson is just one example of how KCPD specifically **TARGETS MINORITIES** when making traffic stops. On March 20, 2023, Edward Williams, a **WHITE** 21-year veteran officer of KCPD, filed a lawsuit alleging then KCPD Chief Richard Smith ordered that Williams and his fellow officers fulfill a ticket quota (ticket quotas are illegal under Missouri law⁵⁶)⁵⁷. Williams also alleges that leadership directed officers to **go to minority neighborhoods and issue traffic tickets**, and to **“APPROACH EVERY CAR WITH THE MINDSET TO BE READY TO KILL EVERYBODY IN THE CAR.”**⁵⁸ What’s more, the lawsuit claims that a former department captain directed officers to **ONLY RESPOND TO CALLS FROM WHITE NEIGHBORHOODS** because “those are the folks who are actually paying for the police.”⁵⁹

Stops Reports

Additionally, while the Missouri Attorney General has not produced a new Stops Report, as required by Missouri law, the Stops Reports from 2020 and 2021 readily show the disparity in traffic stops between black citizens and white citizens, even though white citizens make up much more of the population in Kansas City.⁶⁰

⁵¹ *Robinson v. Kansas City Board of Police Commissioners, et al.*, attached as Exh. 16.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ RSMo. 304.125.

⁵⁷ *Williams v. Kansas City Board of Police Commissioners*, attached as Exh. 17.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See* Exh. 6 and 7, respectively.

Ralph Yarl

The shooting of 16-year-old Ralph Yarl, which was felt across the country, is yet another example how KCPD treats minorities different. On April 12, 2023, Ralph was asked by a parent to go pick up his younger siblings from an address on N. 115th Terrace; Ralph mistakenly went to N. 115th Street.⁶¹ Upon knocking on the door, the owner of the house shot Ralph twice, once in the head and once again in the arm after Ralph fell to the ground.⁶² KCPD took the shooter into custody on the same day, but soon released him after less than **TWO HOURS**.⁶³ KCPD allowed the shooter to remain free until April 17, 2023, when it finally handed over charging documents to prosecutors.

Stacy Graves, KCPD Chief of Police, claimed that it needed to collect further forensic evidence and a statement from the victim before the case could be turned over to prosecutors.⁶⁴ Further, Graves claimed that investigators will consider whether the shooter was protected by “Stand Your Ground” laws.⁶⁵ This issue is, if a black male shot an unarmed white 16-year-old, this is not how the situation would have played out. KCPD could have found probable cause for a host of different crimes but decided that a white male who had just tried to murder a black teenager was safe in the community. KCPD retrieved the weapon used, and yet claimed it needed to speak with the black teenager before it could turn the case over to prosecutors as if shooting an unarmed teenager is not enough grounds. Moreover, Chief Graves decided it was proper to go outside her role and duties and apply a potential legal defense to the crime by informing the public investigators would consider “Stand Your Ground” laws.

If the threshold questions of a pattern and practice investigation are: “[w]ould the allegations, if proven, establish a violation of the Constitution or federal laws?” and, “[w]ould the allegations, if proven, constitute a pattern or practice, as opposed to sporadic or isolated violations of the Constitution or federal laws?”—then the inquiry can end here. Targeting minorities for traffic violations is undoubtedly a **violation of the Equal Protection Clause and the Due Process Clause** under the Fourteenth Amendment. More importantly, directing officers to be prepared to “**kill everybody in the car**” when conducting a traffic stop of a minority is not only unconstitutional, inhumane, unconscionable, and generally against everything our society and country stand for, it is exactly the type of conduct pattern and practice investigations were meant to address. In fact, it is not some covert pattern, or a result of some seemingly non-discriminatory policy, it is a **specific directive given to all KCPD traffic officers**.

⁶¹ Anna Sporre, *Ralph Yarl Shooting: Prosecutor Awaits Criminal Referral from Kansas City Police*, The Kansas City Star via yahoo! News (Apr. 17, 2023), <https://news.yahoo.com/ralph-yarl-shooting-prosecutor-awaits-153530849.html>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Lily O’Shea Becker, *KCPD Assures Public ‘Thorough’ Investigation Underway of Teen’s Shooting in Clay County*, KSHB (Apr. 16, 2023, 5:19 PM), <https://www.kshb.com/news/local-news/kcpd-assures-public-thorough-investigation-underway-of-teens-shooting-in-clay-county>.

⁶⁵ *Kansas City Police Probe Shooting of Black Teen Who Went to Wrong House to Pick Up his Younger Brothers*, CBS News (April 17, 2023, 4:54 PM), <https://www.cbsnews.com/news/ralph-yarl-kansas-city-teen-shooting-wrong-house/>.

ii. Equal Protection—Underenforcement Based on Gender/Sexual Orientation

During the Maricopa County investigation in 2011, then Assistant Attorney General Thomas E. Perez made clear that “[g]ender ... bias by failing to adequately investigate sex crimes” was an area that greatly concerned DOJ.⁶⁶ More pointedly, Mr. Perez noted, “[a] deliberate failure to provide policing services, or a deliberate indifference to public safety needs of certain communities, implicates important constitutional protections and can compromise public safety and undermine public confidence in [the department]. It does not matter for the purposes of the Constitution and federal laws whether it is an act of commission or omission.”⁶⁷

Moreover, when the DOJ issued its findings resulting from the 14141 investigation into Missoula, Montana, the first investigation solely concentrating on discriminatory policing of sex crimes, Deputy Attorney General Vanita Gupta stated:

[A]s a result of these reforms, the women of Missoula are safer, more trusting of the criminal justice system, and subject to more fair and respectful treatment by local law enforcement. Missoula's police department had the courage and leadership to acknowledge that it had a problem and to address it, and as a result, is poised to become a model for communities struggling with these issues around the country.⁶⁸

The women and LGBTQ+ of Kansas City deserve the same opportunity to feel safe, secure, and trusting of law enforcement within their community.

1. Refusal to Investigate Missing Black Women

KCPD has continuously denied and declined to investigate missing black women. In September of 2022, KCPD had been made aware of concerns a serial killer was targeting black women and in response stated such stories were false⁶⁹. Yet, on October 7, 2022, a black woman escaped from a home in Excelsior Springs, Missouri, a nearby suburb of Kansas City⁷⁰. She claims she was abducted in Kansas City, Missouri, taken to Excelsior Springs where she was restrained, beaten, tortured, raped, and held for over a month⁷¹. Further, she claims that there were additional victims

⁶⁶ See Letter, Re: United States’ Investigation of the Maricopa County Sheriff’s Office, from Thomas E. Perez, Assistant Attorney General, to Bill Montgomery, Maricopa County, County Attorney (December 15, 2011) https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁶⁷ *Id.* at 15.

⁶⁸ Deborah Tuerkheimer, *Underenforcement As Unequal Protection*, 57 B.C. L. Rev. 1287, 1324 (2016).

⁶⁹ Tia Johnson, *Kansas City Police Address Concerns, Rumors of Missing Black Women*, FOX4KC (Oct. 25, 2022, 5:46 PM), <https://fox4kc.com/news/kansas-city-police-address-concerns-rumors-of-missing-black-women/>.

⁷⁰ Mili Mansaray, *As Black Women Go Missing in Kansas City, Black Community Looks to Itself for Solutions*, The Kansas City Beacon (December 20, 2022), <https://kcbeacon.org/stories/2022/12/20/kansas-city-residents-search-for-missing-black-women/>.

⁷¹ *Id.*

who did not survive⁷². The issue is not just this single incident, but KCPD's procedure and requirements for filing a missing person report are difficult for both adults and juveniles⁷³.

2. LGBTQ+ Issues with the Police

As mentioned above, in May of 2019, two of the officers who plead guilty to assault (Prichard and Brummett) horrifically beat up a black transgender woman, Brianna "BB" Hill. In fact, the video and beating were so appalling it caught national media attention.⁷⁴ Prior to being taken to the hospital for her readily apparent injuries, she was booked, and it was the officers working in the detention center that informed Prichard and Brummett she needed medical attention. But for Ms. Hill's brutal beating being caught on video, the public may have never known what occurred and the officers never would have been held accountable. Additionally, when the prosecutor's office decided to prosecute Prichard and Brummett, KCPD refused to provide the prosecutor's office with essential documents, such as the probable cause statement.⁷⁵

d. Unconstitutional Failure to Supervise and Discipline

KCPD regularly fails to supervise officers and fails to discipline/train its officers after misconduct. In fact, in July of 2021, while five (5) KCPD officers were facing criminal charges, they still had their jobs and remained on duty.⁷⁶ Below are some examples of KCPD's failures (for additional failures, please see the Prior Letter, attached hereto):

- Officer Eric DeValkenaere, who was charged with manslaughter and armed criminal actions for the 2019 shooting of a black man, was employed by KCPD until January 24, 2022.⁷⁷ DeValkenaere was found guilty on November 19, 2021, and at that time was suspended without pay.⁷⁸ After the shooting, DeValkenaere was suspended with pay, but returned to work weeks after the incident occurred.⁷⁹ KCPD has a policy mandating officers be suspended when they are charged with a crime relating to their use of a department firearm, but KCPD chose not to apply that policy to DeValkenaere.⁸⁰

⁷² *Id.*

⁷³ Mili Mansaray, *Spotlight is on Kansas City and its Problem of Missing Black Women*, Missouri Independent (October 21, 2022, 7:00 AM), <https://missouriindependent.com/2022/10/21/kansas-city-missing-black-women/>.

⁷⁴ Dennis Romero, *Officers Charged with Allegedly Slamming Transgender Woman's Face on Ground*, ABC News (May 16, 2020, 6:07 PM) <https://www.nbcnews.com/news/us-news/officers-charged-allegedly-slamming-transgender-woman-s-face-ground-n1208721>.

⁷⁵ Mili Mansaray, *Trans Women of Color and the KCPD's Rocky, Violent History*, The Kansas City Beacon (May 19, 2023), <https://kcbeacon.org/stories/author/mili-mansaray/>.

⁷⁶ *5 Kansas City Officers Charged with Crimes Still on the Job*, The Associated Press (July 11, 2021), <https://apnews.com/article/crime-shootings-michael-brown-kansas-city-fd9a8f99323ae247843e5a335fa9b275>.

⁷⁷ Heidi Schmidt, *DeValkenaere No Longer with Kansas City Police Department*, FOX4KC (Jan. 26, 2022, 8:27 PM), <https://fox4kc.com/news/devalkenaere-no-longer-with-kansas-city-police-department/>.

⁷⁸ Dan Margolies, *Kansas City Police Officer Eric DeValkenaere Found Guilty in Fatal Shooting of a Black man*, KCUR (Nov. 19, 2021, 1:22 PM), <https://www.kcur.org/news/2021-11-19/kansas-city-police-officer-eric-devalkenaere-found-guilty-in-fatal-shooting-of-a-black-man>.

⁷⁹ *Supra* note 36.

⁸⁰ *Id.*

- Sgt. Matthew Neal, who pled guilty to felony assault on October 27, 2022, was employed by KCPD until that date, and further, was allowed to resign.⁸¹ Neal was indicted for assault on August 21, 2020, for kneeling on the back of the neck of a 15-year-old, causing broken teeth and a trip to the emergency room.⁸²
- Dylan Pifer who shot and killed an unarmed black man, was given no discipline or additional training and six months later was involved in the assault of the 15-year-old child above. Additionally, a citizen complaint was lodged against Pifer and even though Internal Affairs substantiated the complaint, the Chief then decided to un-substantiate the complaint, subjecting Pifer to no reprimands, training, or discipline.⁸³
- Officers Matthew Brummett and Charles Prichard were indicted in July of 2020 for assaulting a transgender woman on May 24, 2019. Both officers pled guilty to felony assault on November 14, 2022.⁸⁴ The officers remained on the department until December 16, 2021 and December 27, 2021, respectively.⁸⁵
- On March 12, 2021, officer Nicholas McQuillen was indicted for assault for an incident on May 30, 2020, when he sprayed a juvenile protester in the face with pepper spray approximately **4 inches away**.⁸⁶ The charges against Mr. McQuillen were unexplainably dropped. Mr. McQuillen is still employed by KCPD.
- On February 9, 2023, Mack Nelson filed a lawsuit against 5 KCPD officers alleging the officers threw Mr. Nelson on the ground, held him against his will, and wrote false reports of the incident.⁸⁷ The police report claims Mr. Nelson fell, but a witness video shows Nelson was thrown to the ground and laid there injured for several minutes after the encounter.⁸⁸ Upon information and belief, none of the officers have been disciplined and are still employed by KCPD.
- Sgt. Herb Robinson, a black police officer, was followed into a neighboring city by two KCPD officers, stopped despite the fact he had not committed any infractions, and was

⁸¹ Zoe Brown, *Former KCPD Sergeant Pleads Guilty after Using Excessive Force Against Teen*, KCTV5 (Oct. 27, 2022, 2:01 PM), <https://www.kctv5.com/2022/10/27/former-kcpd-sergeant-pleads-guilty-after-using-excessive-force-against-teen/#>.

⁸² Exh. 12.

⁸³ Dylan Pifer complaint, Internal Affairs Substantiated Complaint, and Chief Un-Substantiated Complaint, attached as Exh. 20.

⁸⁴ Exh. 9 and 10.

⁸⁵ Steve Kaut, *2 KCMO Police Officers Accused of Assault have Left the Department*, KSHB Kansas City (Jan. 6, 2022, 9:15 PM), <https://www.kshb.com/news/crime/2-kcmo-police-officers-accused-of-assault-have-left-the-department>.

⁸⁶ Press Release, Jackson County Prosecutor, Jackson County Grand Jury Indicts Police Officer Related to Country Club Plaza Protest Assault (March 12, 2021 (on file with author).

⁸⁷ Bek Shackelford-Nwanganga, *Man Sues 5 KCPD Officers for Allegedly Throwing him to the Ground and Falsely Imprisoning him*, KCUR (Feb. 16, 2023, 4:00 PM), <https://www.kcur.org/news/2023-02-16/man-sues-5-kcpd-officers-sued-for-allegedly-throwing-him-to-ground-and-false-imprisonment>.

⁸⁸ Jenna Thompson, *Police Report on Excessive Force Claim a 'Flat-Out Lie,' Witness says. KCPD Investigates*, The Kansas City Star (Updated Dec. 14, 2022, 6:30 PM), <https://www.kansascity.com/news/local/article270004777.html>.

subjected to racially motivated remarks.⁸⁹ Robinson reported the incident to his superiors and no discipline or other actions were taken against the officers.

- In February of 2022, a black KCPD detective reported his white counterpart conducted an illegal search. Instead of looking into the allegations of the illegal search, the black KCPD detective was demoted.⁹⁰
- In 2020, KCPD officers kicked in a woman's door and seized \$20,000 during an unlawful search. The theft was reported to the BOPC, and the BOPC acknowledged that the officers' actions were against policy and discipline was needed.⁹¹ Notably, without BOPC intervention, no discipline would have been suggested.
- KCPD does not discipline or otherwise address problematic officers that commit excessive force violations or other constitutional violations and many who stay on the department end up committing another constitutional violation.
- The Kansas City Star did an investigation into KCPD shootings between 2005-2015 and found that seven officers were involved in **TWO SHOOTINGS EACH**.⁹²
- Additionally, the DOJ has found sufficient evidence of disparity in discipline regarding officers of color to warrant an investigation into KCPD.

e. Title VI Violations

KCPD's policies, patterns and practices clearly have a disparate impact on black people, minorities within the LGBTQ+ community, and minorities in general. Clearly, as shown above, KCPD does not treat all people equal, and the Division has the best ability to remedy the situation because of its ability to use Title VI's disparate treatment protection.

f. U Visa and Federal Law Violations

U Visas are used to give victims of certain crimes, who are not citizens of the United States, temporary immigration status. Federal law sets out the requirements for obtaining a U Visa which includes a signed certification from law enforcement. For years, KCPD has not been complying with federal law and denying requests for U Visas based on arbitrary and made-up reasons such as solvability.⁹³ Further, KCPD does not accurately list the charge of the crime in accordance to what

⁸⁹ See *infra* notes 51-55.

⁹⁰ Makenzie Koch, *KCPD Detective Says he was Demoted for Reporting Illegal Search: Lawsuit*, FOX4KC, (Aug. 12, 2022, 4:33 PM), <https://fox4kc.com/news/kcpd-detective-says-he-was-demoted-for-reporting-illegal-search-lawsuit/>.

⁹¹ Luke Nozicka, Glenn E. Rice, *Lawsuit Alleges Kansas City Police Kicked in Door and Seized \$20K in Illegal Search*, The Kansas City Star (Apr. 10, 2023), <https://news.yahoo.com/lawsuit-alleges-kansas-city-police-211638457.html>.

⁹² Iam Cummings, Matt Campbell, Glenn E. Rice, *Putting Kansas City Police Shootings Under the Spotlight*, The Kansas City Star (Jan. 11, 2016, 12:03 PM), <https://www.kansascity.com/article52534610.html>.

⁹³ Telephone Interview with Raymond Rico, Immigration Attorney, The Law Office of Raymond Rico, LLC (May 21, 2023).

actually took place, therefore, denying certification on the basis that the crime is not a “Qualifying Crime or Criminal Activity.” Furthermore, the process of obtaining a U Visa is discriminatory as KCPD does not have officers who speak Spanish to assist when someone comes in to report a crime. Lastly, KCPD’s “gatekeeper” or the person who reviews the requests is not an attorney and does not understand the process or the law.

Given all these facts of misconduct, lack in procedures, hasty system roll outs, multiple officers being repeat offenders of excessive force, complaints from the community, and **judgments and guilty pleas by KCPD officers**, there is a clear and present danger to the community. The BOPC has no interest in addressing the myriad of issues, let alone correcting them. No, instead of implementing change like implicit bias training, de-escalation training, hiring more officers of color, hiring officers that live in minority communities, etc., the BOPC has decided to sue Kansas City for more money⁹⁴. Prior to the end of 2022, KCPD spent \$8.3 million on settling lawsuits alleging excessive force⁹⁵. In 2021, KCPD spent \$5.9 million on legal settlements, which was twice the amount budgeted for⁹⁶.

Summarily, program failures, settlements, the judgment and guilty pleas are clear evidence of constitutional violations by KCPD. These situations are not isolated or sporadic—they are continuous and department wide as little to no training and no procedural changes occur after major incidents. Given the amount of money KCPD is spending on lawyers defending excessive force lawsuits, if it believed that its actions were constitutional, it would not agree to six and seven figure settlements. Moreover, the judgment and guilty pleas of KCPD officers speak for themselves. Thus, this widespread conduct shows a pattern and practice of constitutional violations exists at KCPD.

III. KCPD EMPLOYEES, INCLUDING ITS ATTORNEYS, ARE PUBLICLY DISCLOSING ILLEGAL/UNETHICAL CONDUCT WITHIN THE DEPARTMENT.

On December 10, 2022, former KCPD Assistant General Counsel, Ryan McCarty, released a letter “for the sake of accountability, transparency, and the common good.”⁹⁷ In his letter, Mr. McCarty details “corruption, cronyism, and incessant cover-ups” within KCPD⁹⁸. Three specific areas are of great concern: (1) Mr. McCarty’s allegation that the KCPD General Counsel, Holly Dodge, was improperly handling *Brady*⁹⁹ and *Giglio*¹⁰⁰ requests; (2) GC Dodge was also abusing Missouri’s

⁹⁴ BOPC Crossclaim, attached as Exh. 15.

⁹⁵ Kalyn Womack, *Kansas City Police Will Settle Lawsuits Rather than Reform the Department*, The Root (Nov. 8, 2022), <https://www.theroot.com/kansas-city-police-will-settle-lawsuits-rather-than-ref-1849756874>.

⁹⁶ Peggy Lowe, *Kansas City Police will be Fully Funded Next Year – but Legal Settlements may Cost Millions More*, KCUR (Dec. 9, 2021, 2:43 PM), <https://www.kcur.org/news/2021-12-09/kansas-city-police-will-be-fully-funded-next-year-but-legal-settlements-may-cost-millions-more>.

⁹⁷ Exh. 5, at pg. 1.

⁹⁸ *Id.*

⁹⁹ In *Brady v. Maryland*, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

¹⁰⁰ In *Giglio v. U.S.*, the Supreme Court expanded on *Brady*, by stating, “[w]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting credibility falls within this general rule.” *Giglio v. United States*, 405 U.S. 150, 154 (1972).

open record Laws; and (3) KCPD command staff sought to destroy emails as fast as possible. These three concerns all have one common thread—KCPD, through a myriad of different tactics, is actively concealing information related to its operations.

Brady and Giglio

Mr. McCarty alleges that GC Dodge was not providing state and federal prosecutors all documents responsive to *Brady* and *Giglio* requests, and instead, was making her own determinations on what she believed should be provided to defendants¹⁰¹. We do not know if material GC Dodge withheld should have been provided to prosecutors as there is no way for the general public obtain the materials withheld. Further, defendants whose due process rights may have been violated, have no way of knowing if all potentially responsive materials were provided to prosecutors and have no avenue to obtain such information. If material was improperly withheld and not provided to defendants, it is possible that such **due process violations** could result in a plethora of cases having to be thrown out and/or potentially retried.

Record Requests

Similarly to *Brady* and *Giglio* requests, GC Dodge deprived the public of records and information it is entitled to. The KCPD Office of General Counsel handles requests made pursuant to Missouri Sunshine Law (Missouri’s open records act). According to Mr. McCarty, GC Dodge “was consistently, systematically, and unlawfully closing records that should be open[.]”¹⁰² Importantly, the records GC Dodge would improperly close “would or could present KCPD in an unflattering light.”¹⁰³

Email Destruction

Mr. McCarty also details his first Chief’s Chat, which is a weekly meeting of command staff members, wherein there was a discussion of how quickly KCPD could destroy emails.¹⁰⁴ Notwithstanding Missouri Open Record laws and the rules of evidence, the command staff suggested destroying emails after 180 days.¹⁰⁵ GC Dodge did not detail the importance of record retention, for Open Records or potential litigation, but instead, affirmed the proposal of such a practice.¹⁰⁶ Email destruction could also hinder the DOJ in its current investigation of KCPD employment practices.

This clear pattern of hiding and concealing information—information which is required to be disclosed pursuant to multiple laws and statutes—is emblematic of KCPD. The obvious next questions are—what is KCPD hiding and why?—what makes it so easy for KCPD violate the law?—why are so many at KCPD complicit in and with such behavior?—**what else is KCPD concealing?**

¹⁰¹ Exh. 5, at pg. 5.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 2.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

One of the biggest issues this city has, and why an investigation is necessary, is that Kansas City citizens have **no avenue** to obtain answers to these questions. The Board is just as complicit and entangled in this behavior, or has no motivation to inquire and/or change the behavior. And even if the Board decided to get involved and implement corrective policies, the legislature could pass state laws to override it.

IV. CONSENT DECREES WITH THE DOJ CAN PROVIDE SOLUTIONS AND REFORMS THAT CIVIL LAWSUITS BY INDIVIDUAL CITIZENS CANNOT PROVIDE; AND LAWSUITS SO FAR HAVE BEEN INEFFECTIVE AT CHANGING KCPD POLICIES/CONDUCT

As previously stated, the current DOJ investigation into KCPD does not address the issues and concerns detailed herein and is specific to KCPD employment practices. Moreover, the copious number of lawsuits against KCPD have done nothing in terms of changing its conduct or policies. Kansas City needs a robust investigation focused on the policing practices of KCPD and the DOJ is the only entity that can provide that.

a. Title VI Enforcement

Title VI can be a strong tool, and in regard to KCPD, could be vital to the start of restoring faith and trust of the community in KCPD. No private civil action can address disparate treatment discrimination, but the Division can address the issue through Title VI. As you know, that is important as disparate treatment does not require intent, only that the pattern and practice has a disparate impact on a protected class.

b. Redress Specific to Findings of the Investigation

If a private lawsuit were to be brought against KCPD, the outcome wholly depends on the plaintiff's goals. If the past is any indication of what a potential settlement might look like, monetary compensation would likely be the end result. As mentioned above, from 2005-2015, seven KCPD officers killed two or more people, but no inquiry has been done since. DOJ could engage in such an inquiry and address the potentially systemic issues regarding KCPD's use of excessive force and failure to properly train and/or discipline. An inquiry, and hopefully a resulting consent decree, could address the specific problems present within KCPD; and perhaps some of the potential innovative solutions could include:

i. Investigation and Findings of Police Departments without Local Oversight or Control

KCPD has long enjoyed operating without local accountability or oversight as it is "overseen" by the Governor, who resides in Jefferson City, Missouri. In fact, Kansas City is the only major city within the U.S. that does not have local control of its own police department. While the governor appoints a board to oversee KCPD operations, no specific qualifications are required and the Board rarely, if ever, votes down a proposal by KCPD.

As noted above, Mississippi is now seeking to exert control over Jackson, Mississippi’s police department and Missouri is seeking to regain control over St. Louis’s police department. The DOJ could use KCPD as a study into the effects of lack of local control and/or lack of proper oversight and how those issues effect policing, crime rates, community engagement, and community trust. Moreover, the DOJ investigation could finally do a legitimate analysis on whether state control over a municipality’s police department is an effective corrective method, and if so, what must be in place for the measure to be successful.

ii. Investigation and Findings of Police-LGBTQ+/Sex Worker Relations

As noted above, the relationship between the KCPD and the LGBTQ+ community has been strained to say the least. In general, transgender people are over four times more likely than cisgender people to be victims of violent crime.¹⁰⁷ Additionally, some transwomen, specifically transwomen of color, resort to sex work as a means to end because of their lack of education due to running away from home, discrimination in the job market as well as other factors.¹⁰⁸ Sex work is particularly dangerous as the workers generally do not have any prior knowledge of who they will be meeting up with and that person’s intentions.

To date, not much data exists on relationships between the police and sex workers—and even less exists on relationships between police and transgender sex workers.¹⁰⁹ From the data we have on relations between police and ciswomen sex workers, it is evident that police abuse ciswomen sex workers and understanding police interactions with LGBTQ+ sex workers could substantially assist in crafting better policing policy. As we know, when a group or community does not feel safe or comfortable around police, they do not report crimes to police nor are they helpful in assisting police investigate crimes committed within their community.

iii. Implicit and Explicit Bias and Diversity Training

Clearly, KCPD has issues when it comes to bias and diversity as black residents make up a disproportionate number of stops, arrests, and victims of police brutality. To date, KCPD has

¹⁰⁷ Press Release, University of Los Angeles School of Law, Williams Institute, Transgender People Over Four Times More Likely than Cisgender People to be Victims of Violent Crime (March 23, 2021) (on file with the author).

¹⁰⁸ Mili Mansaray, *Trans Women of Color and the KCPD’s Rocky, Violent History*, The Kansas City Beacon (May 19, 2023), <https://kcbeacon.org/stories/author/mili-mansaray/>.

¹⁰⁹ In one study of sex workers in Midwestern cities from 2010, 30% of sex workers reported that “police would sexually abuse them, either by demanding sex, assaulting them sexually, trading sex with them in exchange for releasing them or despite having sex.” Christine M. Sloss & Gary W. Harper, *Legal Service Needs and Utilization of Women Who Trade Sex*, 7 Sexuality Research & Soc. Policy 229, 233 (2010). A 2009 study of San Francisco-based sex workers found that 22% of those surveyed had a police officer as a paying customer, 14% were threatened with arrest unless they had sex with the police, and 8% were arrested after refusing sex with police. Alexandra Lutnick & Deborah Cohan, *Criminalization, legalization or decriminalization of sex work: what female sex workers say in San Francisco, USA*, 17 *Reprod. Health Matters* 38, 42 (2009). A 2008 study of Washington, DC-based community members (49% of whom had sex-work experience) found that 17% of those surveyed reported that police asked them for sexual favors and 9% were attacked by police. Alliance for a Safe & Diverse DC, *Move Along: Policing Sex Work in Washington, D.C.*, at 31, 32, 34 (2008). A 2004 study of Chicago-based sex workers held that 24% of sex workers who worked “on the streets” and had been raped, and 30% of exotic dancers who had been raped, had been raped by a police officer. Jody Raphael & Deborah L. Shapiro, *Violence in Indoor and Outdoor Prostitution Venues*, 10 *Violence Against Women* 126, 136 (2004).

shown zero interest in addressing the truth as shown through its own statistics. A DOJ investigation could require KCPD to finally undergo training and review how bias plays a role in organizational decisions, policy making, and general policing.

iv. Implement Proper Policy and Training on Use of Excessive Force

KCPD not only uses excessive force at an alarming rate—a rate much higher than nearly all departments in this country—but it **ALWAYS** defends its officers’ actions when an allegation of excessive force is made. Officers stay on the department despite multiple instances of excessive force; officers stay on the department while being criminally charged; officers are not disciplined after allegations of excessive force; officers violate constitutional rights in conjunction with their unlawful use of force; and KCPD does not turn over charging documents when it comes to its officers using unlawful force.

Black people in Kansas City live in terror of KCPD because of the lack of any accountability. When an officer uses excessive force, the department claims the force was legal, the prosecutor rarely charges officers, and if an individual is lucky, they will get a settlement and KCPD will not make any policy changes. Kansas City spans across three counties, and as shown above, KCPD clearly commits crimes and constitutional violations against citizens, but out of the three counties, only ONE county prosecutor has brought charges against KCPD officers.

v. Community Relations and/or Community Interaction Training

The community lacks trust of KCPD because of the issues and conduct outlined herein. Complaints from the community go largely disregarded. No amount of outrage or lawsuits have deterred KCPD from continuing to conduct business as usual—KCPD knows there is nothing the community can do to hold them accountable for their actions and the state has no interest in adhering to its duty to oversee KCPD operations.

Until the citizens of Kansas City feel heard, until the KCPD begins to actually make changes, until there is accountability and discipline, trust in KCPD will be very minimal. KCPD does everything in its power to hide its tracks and keep from turning over unflattering information to the public. Without public trust and cooperation, more and more crimes will go unsolved and tensions will continue to rise.

V. THE COMMUNITY HAS BEEN TIRELESSLY REQUESTING FOR INTERVENTION INTO KCPD’S OPERATION

The request for DOJ intervention goes beyond the signatories to this letter and the Prior Letter. Recently, a Councilwoman sent a letter to the U.S. Attorney for the Western District of Missouri requesting assistance in the Ralph Yarl investigation because she lacks faith in KCPD.¹¹⁰ Further, we are aware the NAACP sent a letter to the DOJ requesting the same investigation.¹¹¹ The press,

¹¹⁰ Councilwoman Melissa Robinson’s Letter, attached as Exh. 16.

¹¹¹ Press Statement, National Association for the Advancement of Colored People, NAACP Sends Letter to DOJ Demanding Investigation into Shooting of Ralph Yarl (Apr. 20, 2023) (on file with author).

candidates for political office, local entities, local attorneys, and grassroots organization all realize the importance of an investigation into KCPD.

Perhaps more importantly, it is the KCPD victims—the victims with and without a voice—who need this investigation most. Members of minority communities who have lost all hope in KCPD and cannot trust KCPD when a crime has been committed against them, or do not believe KCPD will enter their property when a crime is currently taking place, need federal reassurance that KCPD will change and fulfill the oath it has taken to protect the people of Kansas City. It is high time detestable statistics and behavior end at KCPD so that the people can work together to fight crime, which is on the rise. If Kansas City does not get federal assistance, Kansas City residents are at the mercy of KCPD.

VI. CONCLUSION

The KCPD's misconduct will continue to go unfettered and unchecked until an independent outside agency intervenes—and the federal government is the only independent entity that has the power to intervene. Thus, in light of the facts put before you in this letter, and the facts previously stated in the Prior Letter, along with the community's outcry for truth and change, we renew our request for an imperative 14141 investigation into KCPD and sincerely hope that you will consider meeting with us to discuss such an investigation.