



February 23, 2019

The Honorable Donald Trump
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

In re: United States of America v. Police Department of Baltimore City, et. al.; Case No.: 1:17-cv-00099-JKB

President Trump,

We, the National Police Association, herein (“NPA”)¹ begin this letter of concern and request for enforcement by the United States Department of Justice, herein (“DOJ”), with the question of, ‘who in the United States of America, under the conditions set-forth in a January 12, 2017, Consent Decree in the above-referenced cause, would ever voluntarily seek employment as a police officer in the City of Baltimore, Maryland?’ This question stems from the behemoth agreement, reduced to a Consent Decree, entered into by the City of Baltimore, herein (the “City” or “Baltimore”), the Baltimore City Police Department, herein (“BPD”), and the Obama-era DOJ, collectively (the “Parties”) and adopted by Judge Bredar of the United States District Court of Maryland, herein (the “Court”).

The NPA was alerted to a growing trend of concerns related to the imposition of this Consent Decree and the inability of BPD police officers and BPD as a law enforcement agency to fully-understand the Consent Decree, adhere to the terms of the Consent Decree and ultimately to perform the functions of law enforcement without fear of insurmountable expectations and/or backlash from non-ascertainable goals. Thus, the purpose of this letter is two-fold – identify the expressed concerns of BPD and why those concerns are properly founded; and to seek the DOJ’s enforcement of those terms that are firmly within the province of the Consent Decree and/or to seek modification of those terms, which are illusory *ab initio*, but nevertheless demanded by the terms of the Consent Decree.

¹ NPA is a 501(C)3 non-profit organization founded to educate supporters of law enforcement in how to help police departments accomplish their goals.

As former United States Senator and United States Attorney General, Jeff Sessions, stated in his public remarks at the Valor Survive and Thrive Conference, held in Chicago, Illinois on September 19, 2018, Baltimore is “one of the most tragic examples” where “good and decent people. . . have also suffered from leadership and politics forcing their police departments to restrict proactive community policing.”² In today’s society, with the polarization of “groups” be it the political left or political right, the rich or everyone else, the emphasis placed back upon race, creed, religion, sex, age or some other identifier, police departments all around this country have been pitted up against the communities that each department respectively serves as one of those “groups” that you are either in favor of or against. This is deeply troubling to NPA as it should be to all Americans.

All too often, everyday citizens of this great country fail to remember and understand that the individuals who serve in law enforcement do so at their own peril – the risks of which seem to be greater today than yesterdays. Further, it seems lost upon the public that these individuals in law enforcement are from diverse backgrounds, races, sexes, religions and ages, each driven by a common character-trait – the willingness to protect and serve at that same individual’s willful and knowing acceptance of the great risks and danger that is inherent to their service of others. The risk and danger undertaken by these law enforcement agents is unique in that virtually no other public servants, save the United States Armed Forces, carry with them anywhere near the degree of immediate risk of harm. Prime examples of such public servants who do not carry with them anywhere near the degree of immediate risk of harm would be those that helped frame the Consent Decree at issue here, i.e. government lawyers, elected officials, government appointees, etc.

Turning to BPD and the impact of the Consent Decree specifically, BPD is comprised of just under three thousand (3,000) brave men and women dedicated to law enforcement in the City.³ However, according to that same source of information, a mere eight hundred nine (809), herein referred to as (“Patrol Officers”) are assigned to sector patrol.⁴ It is these Patrol Officers that NPA fears for the most in light of the conditions set forth by the Consent Decree. The Consent Decree, is a two hundred twenty-seven (227) page document with more than five hundred (500) articulated paragraphs of content (not including “definitions” and Appendix A), further divided by eighteen (18) different sections.⁵ Similar to other consent decrees executed to the detriment of the law-abiding citizens of major cities around this country, the Consent Decree at issue here, places an absurd amount of emphasis on the police department. While the alleged and stated declaratory purpose of this Consent Decree is “to ensure that the City and BPD protect individuals’ statutory and constitutional rights, treat individuals with dignity and respect, and promote public safety in a manner that is fiscally responsible and responsive to community

²<https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-valor-survive-and-thrive-conference>

³ Baltimore Police Department Staffing Study, Aug. 18, 2018, pg. 12, Table 2.

⁴ *Id.*

⁵ *See* Consent Decree, pgs. i-iv.

priorities”⁶ the Consent Decree is nothing more than an omnipotent and proverbial misguided hammer being brought down upon the wrong nail.

While Baltimore Mayor, Catherine Pugh, has called Baltimore a “welcoming city” the NPA has to ask, “to whom?”⁷ It seems clear based upon verifiable data and unbiased motives that Baltimore has a crime problem, more so than any other concern or issue in the present. Yet, the City of Baltimore has decided that its priority is not public safety and fighting crime but rather attacking BPD in the manner in which Patrol Officers perform the functions of their service to the community to the point of threatening Patrol Officers with criminal prosecution. The Consent Decree does little to assist or support officers⁸, but overwhelmingly burdens them with increased level of report-writing⁹, confusing and at times contradictory standards of interaction and policing¹⁰, training that exceeds even the highest amount of training required from legal professionals.¹¹

The imposition of this Consent Decree is a data supported and otherwise verifiable mistake. As former United States Attorney General Sessions correctly indicated,

From 2014 to 2017, the average number of field interviews conducted by police in Baltimore fell by 70 percent. Arrests fell dramatically and arrests on outstanding warrants dropped by half. Meanwhile, homicides in Baltimore increased by 62.5 percent. Rape more than tripled. Car theft and aggravated assault went up by third.¹²

If that data isn’t sufficient enough, the NPA applauds City Councilman Issac “Yitzzy” Schleifer’s survey submitted to BPD, which upon learning of the anonymous responses from those within BPD in responding to the survey lead City Councilman Schleifer to conclude that “[BPD Officers] are afraid.”¹³ While the sample size in responses to that survey is admittedly small.¹⁴ NPA can only assume that based upon those who did respond that the remainder, who chose not to, did so for fear that they were likely in violation of some ambiguous and ridiculous term of the Consent Decree that they too did not fully understand.

Nevertheless, what was clear from the survey, which is echoed by the NPA and other supporters of law enforcement is the following principle issues that need to be addressed by the DOJ: (1) there is insufficient support

⁶ Consent Decree, pg. 1, ¶1.

⁷ <https://www.bizjournals.com/baltimore/news/2017/01/25/pugh-baltimore-is-and-will-be-a-welcoming-city-for.html>

⁸ See *gen.* Consent Decree, §XVIII, *but c.f.*, Consent Decree, §§ I-XVII. Of note, there are five hundred eleven (511) paragraphs to the Consent Decree, but a mere six (6) paragraphs (¶¶ 436-41) dedicated to “officer support and assistance.”

⁹ See Consent Decree, ¶¶ 22, 40-41, 46, 49, 62, 65, 67, 70, 72, 83, 121-22, 124, 140, 169, 173, 201, 211-15, 232, 236, 264, 305, 351 and 408. (Non-exhaustive list).

¹⁰ See *gen., Id.*, §§ III-XIII.

¹¹ See *Id.*, Appendix A, *but c.f.*, Continuing Legal Education (“CLE”) requirements for attorneys licensed to practice in Maryland.

¹² <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-valor-survive-and-thrive-conference>; see also, Baltimore Police Department Staffing Study, Aug. 18, 2018, pg. 14-15, Table 1.1.1.

¹³ <https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-police-survey-20190214-story.html>

¹⁴ A reported 362 of nearly 2,300 officers responded, or roughly 15% of all active officers, to the survey.

from the City and its so-called leaders; (2) there is a reasonable and data-proven fear to intervene in patrolling incidents and arrests by Patrol Officers that is clearly attributable to the opaque, ambiguous and heavily patent use of the *legalese* language throughout the Consent Decree; (3) a complete lack of appropriate training that *actually* assists law enforcement in understanding the Consent Decree, far be it from ever complying with the terms of the Consent Decree; (4) a declining morale due to insufficient staffing, a lowering of hiring standards, and insufficient resources and technology.

As to the first concern of a lack of support from City officials and leadership, including those responsible for the monitoring and oversight of this Consent Decree, it is near impossible to doubt the sentiments of BPD, when those around this matter have made comments such as calling BPD, “a highly dysfunctional organization¹⁵” or that the problem with BPD is a matter of “culture . . . that can’t simply be undone by a personnel change or even a federal consent decree.¹⁶” Or how about when former mayor, Stephanie Rawlings-Blake overhauled the City’s police and fire pension programs, requiring increased contributions on an already low-dollar salary, but increasing the length of service from twenty (20) years to twenty-five (25) years of service prior to vesting in the pension? Even when clear, rational and reasonable arguments are made such as the one posited by the DOJ attorney wherein it was cited that “if police officers work excessive hours on a regular basis, they are less likely to be effective” are met with the response of the Court that the solution is “not about adding extra bodies.¹⁷”

It is clear based upon these explicit expressions and others not cited within this letter, but otherwise readily available to be viewed that BPD is left to fend for itself. The public-at-large, the City leaders and even the Court and Court appointed personnel have made no overt expression – neither tangible or intangible, in support for BPD. It is no wonder that one officer, who likely and correctly summarized the other 68% of similarly-minded officers thoughts, when that officer expressed that “morale won’t rise until [BPD] and its officers receive consistent public support from the Mayor, City Council and State’s Attorney.” That same officer, in which NPA agrees fully therewith, also added, “no one is asking that corruption be tolerated. What [BPD] is asking is that when [BPD] investigate crimes and make arrests or issue citations that our elected leaders support us . . .”

However, this leads to the second major concern addressed in the survey – the fear of officers to intervene, investigate or otherwise interact in the performance of their duties. Several officers voiced their concern on this issue.¹⁸ As clearly evidenced *supra*, Baltimore has a crime problem, which is reasonably foreseeable to get even worse as time passes with this Consent Decree in place. Fleeting expressions by those responsible for the

¹⁵ Kenneth Thompson, Monitor of Consent Decree.

¹⁶ Ray Kelly, Community Oversight Task Force, chairman.

¹⁷ Judge Bredar, Maryland District Court Judge, presiding over the Consent Decree.

¹⁸ According to the survey results, Officers reported that “they don’t even feel comfortable intervening in incidents and making arrests without having been called to the scene.” Other officers (43%) were not “comfortable making self-initiated arrests.” A super-majority (74%) made claim that they “feel restricted by the consent decree.”

monitoring of this Consent Decree that “officers should not feel that the Consent Decree restricts them” but rather “the Consent Decree gives [BPD] the tools and resources to do their job *but in a constitutional way*¹⁹” does little to assuage the realities of the situation placed upon BPD by the goliath Consent Decree.

The claim that the Consent Decree gives tools and resources to officers to do their jobs is laughable. If anything, the Consent Decree substitutes itself for the law and the state and federal constitutions, by never yielding a single requirement under the terms of the Consent Decree to prevailing case law, statutory law or either the Maryland Constitution or the United States Constitution. Instead, the Consent Decree selectively picks and chooses which areas of law it prefers, adopts them within the confines of the Consent Decree and thereby mandates them to be followed with strict adherence, without consideration of other legally authorized and constitutionally permitted practices.

Furthermore, with a categorical change to the policies and procedures in dealing with real-world situations encountered by Patrol Officers through the lens and thought processes of abstract-realism engineered by the hands of attorneys, BPD is forced to attain full-compliance with requirements that even the most optimistic amongst us could never dream of achieving. If these requirements were even aspirational, there would be some hesitancy by BPD. However, these are not aspirational goals and policy changes, these are court mandated requirements issued by those in ivory-tower office rooms that likely have no real-world experience in handling the interactions that law enforcement officials are being ordered to overhaul. Failure by these officers to utilize these purported “tools and resources” as mandated by the Consent Decree are met with a heavy stick – a multi-tiered, supervised and super-supervised disciplinary process, community oversight and public shaming system invented by the Consent Decree.

Turning to the issue of training, probably more appropriately framed as a lack thereof, the Consent Order clearly mandates a boatload of training. As mentioned previously in this letter the amount of annual training that BPD must undergo on various topics and at various levels of BPD supervision exceeds the equivalent amount of Continuing Legal Education that the lawyers who participated in the drafting of this Consent Decree must complete on an annual basis. Let alone that there is additional vague language as to just how much additional training is required per the Consent Decree in several of these new policy areas.²⁰ However, what is clear based upon the survey responses is that BPD is not receiving adequate training in understanding the requirements

¹⁹<https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-police-survey-20190214-story.html> (quoting, Kenneth Thompson)(emphasis added).

²⁰ See Consent Decree, Appendix A (“As determined by the Monitoring Plan, in conformance with the terms of the Agreement”)

mandated by the Consent Decree.²¹ The Consent Decree explicitly acknowledges the need for clear sound policies not requiring formal legal training as stated below:

The Parties recognize that sound, clear, and fair policies and procedures are the foundation of constitutional policing. The Parties further recognize that officers rely on clear, accessible, and feasible policies in order to effectively do their jobs and preserve public safety. BPD policies must be developed, distributed, and updated in a manner that incorporates public and officer input.

Any and all new policies or policy revisions required by this Agreement will be plainly written, logically organized, and use terms that are clearly defined, and written in language that is accessible to officers and community members without formal legal training.

Consent Decree, pg. 97, §XIII(A), ¶¶279-80.

However, the results of this Consent Decree are so burdensome and complex that BPD officers in the performance of their official duties will need to have “access to a readily usable electronic format of all the policies (e.g., accessible through an electronic device within department vehicles or carried on the officer’s person).²² Curious still is just how proper or effective any training could actually be in the performance of an officer’s duties.

As further example of the absurdity of these policies when placed into context of real-world application, the Consent Decree places vague social welfare goals ahead of officer and public safety. The Consent Decree mandates an officer make a split-second conclusion of whether a suspect exhibiting a lack of anger control, impulse control, and exhibiting defensiveness, hostility and denial has criminal intent or is motivated by “Behavioral Health Disabilities.” How even a psychologist could make such a determination without an examination, interview and testing of the suspect is not explained and no potential training allowing an officer to make such an evaluation is explained. Yet, what is explained in the Consent Decree is what the officer must do if they determine the suspect has criminal intent.²³

Rather than proactively addressing the threat posed by a hostile and angry suspect the officer is required to let the suspect act out in violence first [waiting out the subject] or sacrifice public safety by retreating [creating distance]. If an officer dares to challenge the Consent Decree to put their safety and public safety first when confronted with a hostile and angry suspect they risk an ever-escalating disciplinary process that can ultimately lead to the officer’s criminal prosecution.²⁴

²¹ According to the survey, a mere 60% of the BPD felt “adequately trained” and that even less – 44% didn’t fully understand the Consent decree.

²² Consent Decree, pg. 99, §XIII(A), ¶288.

²³ *Id.* at ¶¶ 124-25

²⁴ *Id.* at ¶138.

Moreover, another question goes unanswered in this Consent Decree that is worth noting in the concluding aspect of the lack of training being provided to BPD, which is ‘with all these officer requirements for training, which will naturally require officers to not be out in the field for extended periods of time during the year, combined with all of the additional report writing requirements, what is the City and BPD going to do about the vacancies and lack of Patrol Officers actually out on the streets and districts of the City?’

While the last to be addressed in this letter, but certainly of equal importance to each of the prior identified and discussed issues is the massively declining morale of BPD. There is a demand from BPD, which needs to be answered, “invest more in the men and women who do the job . . . if police officers are detailed to patrol for a period of time, have a strategy for them and don’t just use them as scarecrows on street corners.”²⁵ Even further still, which is tied into the question posed previously concerning the need for additional hiring, a BPD detective insightfully noted that “[BPD] [doesn’t] have enough people in [the detective’s] unit. The volume of cases we have is absurd given our manpower. It leads to mistakes, and inadequate follow up investigations which lead to sloppy prosecutions. None of which is for lack of trying.”²⁶ Whatever the Consent Decree might have intended on this issue is clearly not working through its execution.²⁷

When these concerns are compared to the publicly available data, required by the Consent Decree, it is plain to see that these officers’ concerns are well-placed. Already with a shortage of active officers, despite being budgeted for more, there is simply no practical way for these officers, who put their lives on the line each time they adorn the uniforms of BPD, could ever meet the requirements of the Consent Decree. Not only is the current number of active BPD Patrol Officers well-below what is budgeted, the budgeted number of officers, in light of the demands placed upon these officers, grossly underestimates the viable amount of “bodies” now necessary to perform the job. Arguably, to meet the demands of the Consent Decree, the City would have to budget and find enough quality applicants that would triple, if not quadruple, the size of BPD. We all know that the City would never, even making the wrongful assumption that the City would ever, make such accommodations in their budgeting.

If you’ve reached this point of the letter, you’re probably wondering what the upside or ultimate purpose of this letter may be. Well, there is good news. Simply put, while the Consent Decree does a tremendous amount of harm, under the veil of “social justice” and “community reform” there exists within

²⁵ <https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-police-survey-20190214-story.html>

²⁶ *Id.*

²⁷ According to the survey, 78% of the surveyed officers felt that BPD had “lowered” the “hiring standards.”

the Consent Decree several provisions that permit the DOJ to at least attempt to make changes that conform to reality. The DOJ has the authority to seek enforcement of these provisions and further to seek modification of these provisions under certain circumstances.

The NPA suggests that the DOJ consider enforcing the City's obligations to provide the appropriate level of training required by BPD through the appropriate funding provisions contained within the Consent Decree and the reserved authority explicitly provided for by the Consent Decree to the benefit of DOJ.^{28,29} Further, the DOJ, through stipulation with both the City and BPD, has authority to modify the terms of the Consent Decree, subject to Court Approval.³⁰ While it is likely that the City would be disinclined to make any such stipulations, the latter part of that same paragraph in the Consent Decree provides additional basis for seeking modification by the DOJ, including the failure to achieve the purposes intended by the Consent Decree – that is to say and assume that there were actual positive consequences intended by this Consent Decree. While this Consent Decree placates a potential sunset provision at some unforeseeable future date that would resolve this matter permanently, the future ahead of BPD is as bleak as it is for the City if this Consent Decree is not modified and/or enforced appropriately. The DOJ has the authority and should exercise that authority.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ed Hutchison", with a horizontal line extending to the right.

Ed Hutchison
President and CEO

²⁸ See Consent Decree, pg. 100, §XIII(B), ¶292 (“with BPD’s assistance, the City will ensure that BPD’s training program and academy are reasonably funded.”); See also, *Id.* at ¶314 (“The City will ensure BPD has reasonable and cost-effective funding levels to implement and maintain the EIS, including its ongoing hardware and support requirements.”)

²⁹ Consent Decree, pg. 185, §XVIII(M), ¶493.

³⁰ *Id.* at ¶494.