

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Shalitha Ross , individually, as Independent	§
Executrix of the Succession of Aquantis	§
Griffin, and as natural guardian of K.F., a	§
minor, and	§
Ariel Griffin ,	§
	§
Plaintiffs,	§
	§
v.	§
	§
Joseph Cast ,	§
Wesley Devries ,	§
Justin Halbach ,	§
Stephen Johnson ,	§
Alberto Martinez ,	§
Daniel Mathis ,	§
Joseph Moran ,	§
Christopher Salacki , and	§
the City of Austin ,	§
	§
Defendants.	§
	§
	§
	§

CIVIL ACTION NO. 1:20-cv-00856

JURY TRIAL DEMANDED

Plaintiffs' Original Complaint and Jury Demand

To the Honorable Court:

This is a lawsuit for damages from personal injuries suffered by Aquantis Griffin, his mother, and his two younger sisters, and for Aquantis Griffin's wrongful death.

Aquantis, who was known as Ajay, died on August 17, 2018 after being shot 30 times in a hail of gratuitously excessive gunfire from eight Austin Police officers. Ajay's family shows the Court and the jury the following information in support of their claims:

I. Parties

1. Ajay's mother, Plaintiff Shalitha Ross, is a resident of Louisiana. Ms. Ross appears in three capacities in this lawsuit: (1) on behalf of her late son's Estate, (2) on behalf of her minor daughter and Ajay's youngest sister, K.F., and (3) on behalf of herself.

2. Ms. Ross was appointed the Independent Executrix of her son's Estate on November 15, 2018 by the 19th Judicial District Court in the Parish of East Baton Rouge, Louisiana, case no. P-105474-26.

3. Ajay's other sister, Plaintiff Ariel Griffin, is a resident of Louisiana.

4. The eight individual Defendants are Austin Police Officers. Plaintiffs bring this lawsuit against Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki in their individual and official capacities.

5. The ninth Defendant is the City of Austin, a Texas municipal corporation located within the Austin Division of the Western District of Texas.

II. Jurisdiction

6. This Court has federal question subject matter jurisdiction over this lawsuit under 28 U.S.C. § 1331 because it is brought pursuant to 42 U.S.C. § 1983.

7. This Court has general personal jurisdiction over each of the nine individual Defendants because they each work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

8. This Court has specific personal jurisdiction over each of the individual Defendants and the City of Austin because this case arises out of conduct that occurred in Texas.

III. Venue

9. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred this federal district.

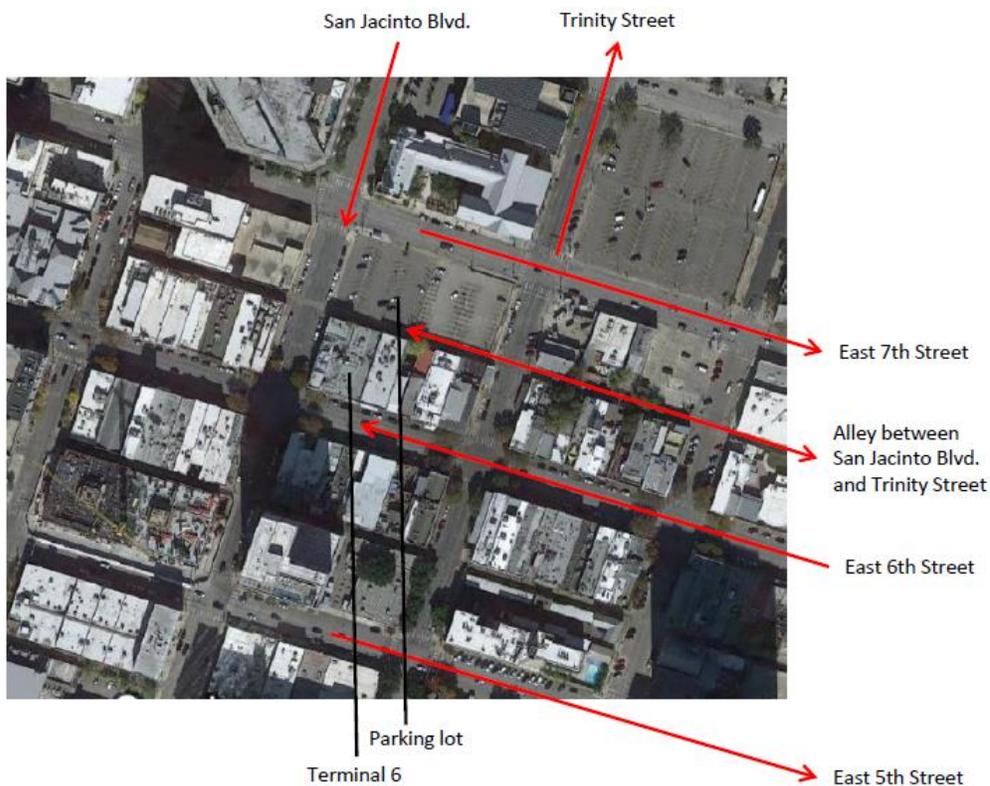
IV. Facts

A. Eight Austin police officers peppered Ajay Griffin with 42 bullets and continued shooting him even after he was gravely injured and prone on the pavement.

10. On Thursday, August 16, 2018, Aquantis Griffin, known as Ajay, a 21-year-old Black man from Baton Rouge was visiting Austin with friends to attend a concert by his childhood friend Kentrell DeSean Gauden, known professionally as YoungBoy Never Broke Again. The YoungBoy concert was at Terminal 6 on East Sixth Street in downtown Austin. It was the beginning of the 2018 school year and Sixth Street was crowded with young people enjoying the nightlife.

11. At approx. midnight, during the concert, a fight broke out inside Terminal 6. Calls were made to the police that there was a fight at the club.

12. Several people involved in this dispute, including Ajay, left Terminal 6 out the back door into the alley between San Jacinto Blvd. and Trinity Street. Ajay was wearing loose pants and boxer shorts. He did not have a weapon or a shirt.



13. The group moved into the middle of San Jacinto Blvd. next to a large parking lot behind Terminal 6. As the dispute continued, Ajay extended his arms, put his palms together, pointed his index fingers forward, and pointed his thumbs up, mimicking a handgun. While Ajay did not actually brandish a gun, the gesture resulted in people running away from him.

14. Jordan Seguin ran away from Ajay's gesture to a car in the parking lot behind Terminal 6. Seguin opened the car door to his car and while leaning against the side of the open car, fired multiple rounds above the heads of the crowd including Ajay. Seguin then immediately fled the scene in his car.

15. Austin Police officers were dispatched to the area in response to 911 calls about the fight in the club and about the gunshots fired by Jordan Seguin. One group of officers congregated on the corner of East Sixth Street and San Jacinto Blvd. Another group of officers, including the eight

police officer Defendants—Officers Cast, DeVries, Halbach, Johnson, Martinez, Mathis, Moran, and Salacki—congregated on the corner of East Sixth Street and Trinity Street. All officers wore body cameras equipped for video and audio recording.

16. A few minutes after Jordan Seguin fled the scene in his car, additional shots were heard coming from the same area where Jordan Seguin had fired his weapon. Both groups of police officers immediately began to move toward the gunshots, moving north from Sixth Street toward Seventh Street, one group moving up San Jacinto Blvd. and the other up Trinity Street.

17. Ajay—who now had a gun in his hand—saw the group of police officers moving north up San Jacinto Blvd. and ran East into the alley behind Terminal 6 in the direction of Trinity Street.

18. At the same time, the police officers who had congregated at the corner of Sixth Street and Trinity Street—including the eight officer Defendant—formed a line across Trinity Street just south of the alley. The police line blocked anyone who exited the alley from turning south on Trinity Street toward Sixth Street. Inexplicably, no officers were stationed on Trinity Street north of the alley. Rather, there was an open and clear path heading north on Trinity Street towards Seventh Street.

19. At least one officer readied his Taser. The eight officer Defendants drew guns. Several people exited the alley quickly onto Trinity Street. Multiple officers aggressively shouted confusing commands over each other including commands to “get on the ground”. Each of the people who exited the alley ignored the officers’ shouted commands and instead, moved away from the line of officers, north on Trinity Street toward Seventh Street.

20. Ajay, who was running away from the officers he saw on San Jacinto Blvd., was now approaching the eight Defendant officers to the East on Trinity Street via the alley.

21. Similar to the officers' action when the previous people exited the alley, multiple officers aggressively shouted commands over each other at Ajay including the command to "get on the ground". One officer shouted, "who has a Taser?" Ajay looked up in surprise, clearly not expecting a line of police officers to be stationed right there.

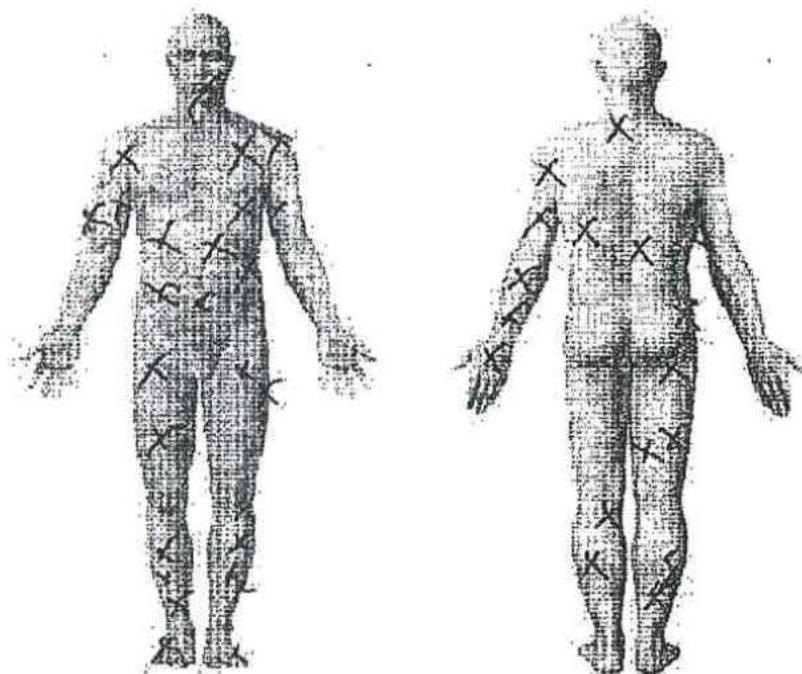
22. Ajay, just like the people exiting the alley before him, made a hard, left turn away from officers to head north on Trinity Street toward Seventh Street. As he turned, Ajay's right hand swung around in an arc with his body, a natural body movement when making a sharp turn while running. Ajay did *not* look directly at the police officers. He did *not* point his gun at the police officers. He did *not* say anything—much less anything threatening—to the officers. Ajay did *not* ever fire his gun.

23. After Ajay began running away from the officers, an officer yelled "stop running!" at Ajay's retreating back. Almost simultaneously, the officer Defendants started shooting. The first shot was fired at Ajay merely three seconds after the officers began their chaotic shouting.

24. The first shots struck Ajay in his back and he immediately fell forward onto his front in the street. As Ajay fell forward, body camera footage from the officers clearly shows Ajay released his gun and it skidded across the pavement to the other side of the street. Ajay fell forward and released his gun approx. one-half second after the first bullet was fired.

25. To be clear: within a half second of the initial shot, Ajay was disarmed, gravely wounded, and lying face-down on the pavement. The eight officer Defendants proceeded to shoot approx. 40 more times over the next three and a half seconds as Ajay lay prone and defenseless in the street.

26. The officer Defendants fired 42 shots and Ajay was stuck with a truly shocking number of bullets. Thirty shots wounded Ajay. The marks indicating Ajay's bullet wounds on this appalling diagram were made by the paramedics who later responded to the scene:



27. After the officer Defendants stopped shooting, an officer attempted to handcuff Ajay, despite dozens of gunshot wounds littered across his body. As Ajay lay in the street dying, he pleaded softly "help me, help me" to the officers. The officer Defendants showed no mercy. For several minutes, as Ajay bled out, the officers just stood around without any attempts to render first aid whatsoever.

28. Paramedics transported Ajay to Dell Seton Medical Center, where he was pronounced dead of gunshot wounds at 1:22 a.m. on Friday, August 17, 2018. Ajay's wounds were so extensive that the emergency room doctor who did the initial assessment could not even list them all but rather was required to mark them on a diagram:

HEAD/FACE	ABDOMEN	EXTREMITIES														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TM'S CLEAR <input type="checkbox"/> RACCOON'S EYES <input type="checkbox"/> LOOSE / BROKEN TEETH <input type="checkbox"/> EAR DRAINAGE CLEAR / BLOODY <input type="checkbox"/> NOSE DRAINAGE CLEAR / BLOODY <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> SOFT/NON-TENDER <input type="checkbox"/> BOWEL SOUNDS PRESENT / ABSENT <input type="checkbox"/> DISTENDED <input type="checkbox"/> TENDER LOCATION _____ <input type="checkbox"/> RIGID LOCATION _____ <input type="checkbox"/> FHT'S _____ BPM <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration <input type="checkbox"/> FAST + / - TIME: _____	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input checked="" type="checkbox"/> PULSES PRESENT / ABSENT <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration														
NECK	GENITO/URINARY	BACK														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TRACHEA MIDLINE / DEVIATED <input type="checkbox"/> POSTERIOR TENDERNESS / PAIN <input type="checkbox"/> DISTENDED NECK VEINS <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> URETHRAL BLOOD <input type="checkbox"/> VAGINAL BLOOD <input type="checkbox"/> PELVIC PAIN WITH PALPATION <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TENDER LOCATION: _____ <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration														
CHEST	RECTAL TONE	INITIAL WARMING MEASURES														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> ABNORMAL BREATH SOUNDS Y / N TYPE RU LU RL LL <input type="checkbox"/> RETRACTIONS <input type="checkbox"/> CREPITUS RT LT <input type="checkbox"/> OPEN / SUCKING WOUND RT LT <input type="checkbox"/> PENETRATING WOUND RT LT <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NORMAL <input type="checkbox"/> DECREASED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> GUIAC NEG <input type="checkbox"/> GUIAC POS <input type="checkbox"/> QC OK	<input type="checkbox"/> ROOM WARMED <input type="checkbox"/> WARM BLANKETS APPLIED <input type="checkbox"/> WARM FLUIDS ADMINISTERED														
<p>* REQUIRES DOCUMENTATION</p> <table border="0"> <tr> <td>1 Laceration</td> <td>8 Open fracture</td> </tr> <tr> <td>2 Abrasion</td> <td>9 Ecchymosis</td> </tr> <tr> <td>3 Hematoma</td> <td>10 Bite mark</td> </tr> <tr> <td>4 Stab wound</td> <td>12 Bruising / Avulsion</td> </tr> <tr> <td>5 Gunshot wound</td> <td>13 Pain</td> </tr> <tr> <td>6 Burn</td> <td>14 Puncture wound</td> </tr> <tr> <td>7 Deformity</td> <td>15 Palpable mass</td> </tr> </table>	1 Laceration	8 Open fracture	2 Abrasion	9 Ecchymosis	3 Hematoma	10 Bite mark	4 Stab wound	12 Bruising / Avulsion	5 Gunshot wound	13 Pain	6 Burn	14 Puncture wound	7 Deformity	15 Palpable mass		
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	<p>Fall Risk Screening</p> <input type="checkbox"/> Low Risk <input type="checkbox"/> High Risk <input type="checkbox"/> Per age specific criteria (Hendricks/PARF)	<p>Fall Risk Interventions Time _____</p> <input checked="" type="checkbox"/> Side rails up X2 <input checked="" type="checkbox"/> Bed in low position <input type="checkbox"/> Yellow Bracelet <input type="checkbox"/> Treaded Slippers <input type="checkbox"/> Fall Reduction Education given to Patient/Family														

The emergency room's final documentation presents a grim picture of the grotesque manner in which the eight officer Defendants' summarily executed Ajay:

Physical Examination

Vital Signs

No qualifying data available (last 24 hrs).

General: Severe distress, Intubated.

Skin: Warm, dry, pink, Penetrating trauma to the left shin, left lower abdomen, left flank, left upper chest, right upper arm, suprapubic area, left upper leg, left forearm, left posterior lower leg, multiple abrasions.

Head: Normocephalic, Large penetrating wound to left lower.

Neck: Penetrating trauma to right neck, palpable bullets left-sided neck.

Eye

Cardiovascular: No palpable pulse.

Respiratory: No spontaneous respirations.

Chest wall: penetrating trauma left chest.

Back: No step-offs.

Musculoskeletal: No deformity.

Gastrointestinal: Multiple penetrating wounds to the abdomen.

B. The Austin Police Dept. has deliberately fostered a racist and violent culture that directly led to Defendants' grisly, cowboy-shootout-style execution of Ajay Griffin.

29. A 2016 report from The Center for Policing Equity found that Austin police officers used more violence in the neighborhoods where Black and Latinx Austinites live than the neighborhoods where White people live. The study adjusted for crime and poverty variable and found that Austin police officers' use of force in those communities was disproportionate and unacceptable. In addition, Austin police were more likely to use *severe* force against Black and Latinx people. Austin police were disproportionately more likely to shoot rather than use their hand-to-hand training or deploy pepper spray when the person subjected to force was a Black person.

30. The Austin City Council made several very troubling findings regarding the Austin Police Department's racist culture on December 5, 2019:

The Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates.

APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers.

APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of Black people at more than twice the rate of either white or Latino residents.

That same 2017 data also showed Black and Latino residents accounted for just under 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population.

That same 2017 data also showed that one out of three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, though usage rates of marijuana are similar across racial groups.

Per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, Black people still comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population.

An anonymous whistle-blower has recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "negro" and "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department.

Attrition rates in recent cadet classes exceeded expectations in at least the last five cadet classes, reaching as high as 49%, suggesting that there exist issues with recruitment and cadet preparedness.

While assessment center panels were recommended as a method to counter the potential bias in written exams for promotion of APD officers, there are concerns that the system does not accomplish this goal and in fact may have the opposite impact.

Patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum.

31. The Austin Office of Police Oversight, Office of Innovation, and Equity Office published a joint report in January 2020 regarding the Austin Police Department's racist policing practices during motor vehicle stops:

Data reveals racial disparities in motor vehicle stops in 2018, with Black/African Americans as the most overrepresented of all racial/ethnic groups in Austin.

In 2018, Black/African Americans made up 8% of the Austin population, 15% of the motor vehicle stops, and 25% of the arrests.

Black/African Americans and Hispanic/Latinos are increasingly overrepresented in motor vehicle stops from 2015-2018. White/Caucasians are increasingly underrepresented during the same time period.

Data from 2018 shows that Black/African Americans are disproportionately overrepresented in cases when their race is known by officers before the stop compared to cases when their race is not known before the stop.

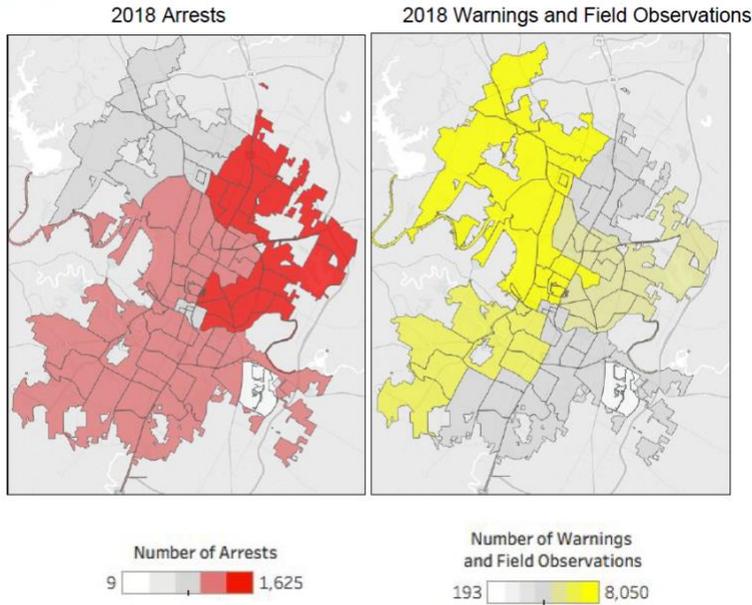
APD classifies motor vehicle stops based on whether the race of the person stopped was known to the officer prior to the stop. In 2018, Black/African Americans are overrepresented in both Race Not Known and Race Known categories. In the Race Not Known category, Black/African Americans make up 14% of stops (this is a 6% overrepresentation compared to their share of the Austin population). Black/African Americans are further overrepresented when their race is known before the stop, making up 17% of stops in the Race Known category and indicating a 9% overrepresentation when compared to their share of the population.

Commuting habits cannot explain the disproportional representation of Black/African Americans in motor vehicle stops. Commuting habits are similar across race.

The joint report included two maps of Austin that snapshot the Austin Police Department's stark racist outcomes. One map shows the location of vehicle stops that resulted in arrests and the other map shows the location of vehicle stops that resulted in only a warning. Austin's East side has higher concentrations of people of color, while Austin's West side is disproportionately white:

Using Maps 2 and 3 below, one can examine visually the distribution of arrests in Austin by APD sector. One notes a concentration of arrests on the east side of the city.

Map 2 and 3: 2018 Motor Vehicle Stops Resulting in Arrests and Warnings and Field Observations



32. On April 16, 2020 the City of Austin released a third-party investigative report regarding the racist culture within the Austin Police Department and the retaliation rained down on those who speak up:

By several accounts, [Assistant Chief] Newsom’s use of racist language was well known throughout the Department as was the use of such language by other officers who were known to be close friends with AC Newsom and used such language openly and often.

Reports came to us, from different ranks, races and genders, advising of the fact that the racist and sexist name calling and use of derogatory terms associated with race and sex persists. Anecdotal history indicated that even members of the executive staff over the years had been known to use racist and sexist language, particularly when around the lower ranks or other subordinates.

We listened to many anecdotes illustrating inappropriate comments over the years through which APD personnel expressed concern about racist behavior, but also sexist behavior, and dissimilar treatment in the handling of officer discipline and those who may be served by APD chaplain services with the denial of marital services to same sex couples. There are some real cultural issues that are in need of attention.

Tatum Law was able to establish that [Austin Police] Chief Manley had reason to inquire as to [Assistant Chief] Newsom's conduct . . . The October 7, 2019, email received by Chief Manley alleging similar facts to those later alleged in the October 30, 2019 complaint about AC Newsom's use of the derogatory term "nigger" in text messages to refer to African Americans provided sufficient information . . . Chief Manley did not send these allegations for review or investigation.

Whether it is about a grievance or misconduct there is an overwhelming sentiment among officers, at or previously involved with the Austin Police Department, and regardless of rank, that an officer, or even civilian staff member, who wishes to right a wrong, complain about improper conduct, or participate in an investigation such as this one, must be prepared in the present climate and culture to face almost certain retaliation, and not necessarily from Chief Manley, directly or solely.

33. The City Council's June 11, 2020 findings regarding the Austin Police Department's racist and violent culture on were equally unequivocal:

The elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities.

The measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past.

34. Journalist Austin Sanders reported in The Austin Chronicle on August 7, 2020 that three not-yet-publicly-released third-party reports criticize the culture at the Austin Police Department's training academy.

V. Claims

A. **The eight officer Defendants used excessive force and violated Ajay Griffin's civil rights when they shot at him 42 times.**

35. Plaintiffs incorporate all previous allegations into this cause of action.

36. The eight officer Defendants are liable to Plaintiffs under 42 U.S.C. § 1983 for killing Ajay Griffin in an unnecessary and horrific storm of gunfire.

37. Defendants Joseph Cast, Wesley DeVries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki were acting under color of law when they shot and killed Ajay Griffin on August 17, 2018.

38. Defendants' unlawful and unjustified use of deadly force against the Ajay Griffin was clearly excessive and was objectively unreasonable in light of established law. Because of this, Defendants Joseph Cast, Wesley DeVries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki violated Ajay Griffin's constitutional rights under the Fourth and Fourteenth Amendments to be free from excessive force unreasonable seizure and to be guaranteed due process of law and equal protection under the law.

39. The force used by the officer Defendants was unnecessary, excessive, and unreasonable under the circumstances because Ajay Griffin did not pose an immediate threat to the safety of the officer Defendants or others. The use of such excessive and deadly force was unnecessary. Ajay Griffin was running away from police officers when the officer Defendants shot him. He had sharply in the opposite direction of the officer Defendants to run away from them. Ajay Griffin did not provoke, threaten, or attempt to harm the officer Defendants in any way.

40. Defendants engaged in a willful, malicious, reckless and outrageous course of conduct that was intended to cause and, in fact, caused Ajay Griffin to suffer extreme and severe mental and emotional distress, agony, anxiety, and death.

41. Defendants' unlawful and unconstitutional use of deadly force against the Ajay Griffin directly and proximately caused his death and Plaintiffs' damages.

B. The City of Austin knowingly trained its police officers to violate the civil rights of Black people.

42. Plaintiffs incorporate all previous allegations into this cause of action.

43. The City of Austin is liable to Plaintiffs under 42 U.S.C. § 1983 because the City failed to adequately train or supervise its police officers. The racially-infused training of Austin police cadets constituted a deliberate indifference to the deprivation of constitutional rights of Black people in Austin. This purposefully and openly racist training was a moving force behind the excessive violence perpetrated against Ajay Griffin by the officer Defendants. Among the many problems at the training academy and the Austin Police Department were:

1. inadequate training for determining and deploying the proper use of force, especially deadly force,
2. inadequate training regarding citizens' constitutional right to be free from racist law enforcement practices,
3. inadequate training regarding procedures for handling armed and fleeing suspects and the proper use of deadly force in such situations,
4. inadequate training on contagious shooting when police officers are in a group setting,
5. inadequate training regarding detention and seizure procedures,
6. inadequate training on the use of non-lethal force and de-escalation tactics,
7. inadequate training on the proper use of cover and pursuit practices, and
8. inadequate supervision over officers regarding each of the above listed policing practices.

44. Austin Police Chief Brian Manley is—and was when the officer Defendants killed Ajay Griffin in 2018—the official policymaker for the Austin Police Department regarding all of policies

that resulted in the deprivation of Ajay Griffin's constitutional rights. Chief Manley is appointed to the position of Chief by the Austin City Manager.

45. The City's policy and practice of failing to train and supervise its officers directly and proximately caused Ajay's death and Plaintiffs' damages.

C. The City of Austin knowingly abets racially discriminatory policies and a racist culture among its police.

46. Plaintiffs incorporate all previous allegations into this cause of action.

47. The City of Austin is liable to Plaintiffs under 42 U.S.C. § 1983 because the City's policies, hiring practices, disciplinary practices, and its established customs and practices constituted a deliberate indifference to the deprivation of constitutional rights of Black people in Austin. These customs and practices were a moving force behind the use of excessive force against Ajay Griffin by the officer Defendants. Among the many problematic policies, customs, and practices were:

1. inadequate hiring policies that failed to screen out officers who presented a plainly obvious risk of abusing their authority and using unwarranted force against Black people in Austin,
2. inadequate hiring policies that failed to screen out officers who presented a plainly obvious risk of committing use of force violations,
3. inadequate policies for preventing use of force violations by its officers,
4. inadequate policies regarding de-escalation,
5. inadequate disciplinary policies that failed to hold officers who used excessive force or committed racist acts accountable,
6. deliberate indifference to the established, if unwritten, custom and practice of racially motivated use of excessive force, and
7. inadequate disciplinary policies that failed to punish officers who violated Black citizens' right to not suffer racially-motivated law enforcement actions.

48. Austin Police Chief Brian Manley is—and was when the officer Defendants killed Ajay Griffin in 2018—the official policymaker for the Austin Police Department regarding all of policies that resulted in the deprivation of Ajay Griffin’s constitutional rights. Chief Manley is appointed to the position of Chief by the Austin City Manager.

49. The City’s policy and practice of failing to train and supervise its officers directly and proximately caused Ajay’s death and Plaintiffs’ damages.

D. Survival Action

50. Plaintiffs incorporate all previous allegations into this cause of action.

51. Ajay Griffin died as a result of the Defendants’ wrongful conduct.

52. Ajay Griffin would have been entitled to bring this action against Defendants if he had lived.

53. Ajay Griffin’s claims against Defendants survive in favor of his heirs.

54. Defendants are liable for Ajay Griffin’s pain and suffering and the violation of his civil rights.

55. Plaintiffs seek compensation as set forth below.

E. Wrongful Death

56. Plaintiffs incorporate all previous allegations into this cause of action.

57. Defendants’ wrongful conduct proximately caused the death of Ajay Griffin.

58. Defendants’ conduct caused his mother and sister to suffer loss of the family relationship, love, support, and services. Plaintiffs have suffered emotional pain and emotional distress because Defendants wrongfully killed Ajay Griffin.

59. Plaintiffs seek compensation as set forth below.

VI. Damages

60. Plaintiffs assert claims under 42 U.S.C. §1983 and the Texas wrongful death and survivorship statutes. Defendants deprived Ajay Griffin of his civil rights under the United States Constitution. Defendants proximately caused and were the moving force behind Ajay's death and Plaintiffs' injuries and damages including but not limited to:

- a. Physical pain and mental anguish suffered by Ajay Griffin prior to his death,
- b. Economic loss,
- c. Funeral and burial expenses,
- d. Past and future mental anguish, and
- e. Past and future loss of companionship, society, services, and affections with their loved one, Ajay Griffin.

VII. Exemplary Damages

61. The officer Defendants' extreme, outrageous, and unjustifiable conduct justifies an award of punitive and exemplary damages. The officer Defendants acted with malice and acted intentionally, recklessly, and with callous indifference to the unlawful deprivation of Ajay Griffin's constitutionally protected rights.

62. The extreme, outrageous, and unjustifiable conduct of the City of Austin justifies an award of punitive and exemplary damages. The City of Austin acted with malice and acted intentionally, recklessly, and with callous indifference to the unlawful deprivation of Ajay Griffin's constitutionally protected rights.

VIII. Attorney's Fees

63. Plaintiffs were forced to hire the services of the undersigned attorneys to represent them in this complex and difficult proceeding. Pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights

Act, Plaintiffs are entitled to recover reasonable and necessary fees incurred by these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim. Plaintiffs are entitled to an award of attorney's fees and costs including, but not limited to, expert witness fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act when they prevail.

IX. Preservation of Evidence

64. Plaintiffs request and demand that Defendants retain, preserve, and protect from loss, damage, discard, or destruction all physical, written or electronic items that are, or may be, evidence of the incident above described, which may form the basis of this Complaint including, but not limited to all video footage from the evening of August 16, 2018 and morning of August 17, 2018 related to, leading up to, and following this incident, any autopsy and/or medical examiner's report of the decedent, all statements of witnesses, including police officers, interviewed as part of the investigation into the matter, whether such statements are written, video-recorded, audio-recorded, or memorialized in any fashion or medium, all electronically stored information that is related to the above described police shooting, all photographs, e-mails, text messages, and personal or official notes made by any of the Defendant officers or the City of Austin, and all other evidence that is related to the shooting death of Ajay Griffin.

X. Jury Demand

65. Pursuant to Federal Rule of Civil Procedure 48, Plaintiffs hereby request a jury trial.

XI. Prayer for Relief

WHEREFORE, Plaintiffs ask that judgment be awarded against Defendants for:

- a. compensatory damages against all Defendants, jointly and severally,
- b. punitive damages as to all Defendants,

- d. attorneys' fees, including reasonable and necessary expenses such as expert fees, pursuant to 42 U.S.C. §1988,;
- e. Court costs,
- f. judgment at the highest rate allowable under the law, and
- g. all other relief to which Plaintiffs are justly entitled.

Respectfully submitted,
HENDLER FLORES LAW, PLLC.



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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Shalitha Ross , individually and as	§	
Independent Executrix of the	§	
Succession of Aquantis Griffin,	§	
Ariel Griffin , and	§	
Keyeara Franklin ,	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 1:20-cv-00856
	§	
v.	§	JURY TRIAL DEMANDED
	§	
Joseph Cast ,	§	
Wesley Devries ,	§	
Justin Halbach ,	§	
Stephen Johnson ,	§	
Alberto Martinez ,	§	
Daniel Mathis ,	§	
Joseph Moran ,	§	
Christopher Salacki , and	§	
the City of Austin ,	§	
	§	
Defendants.	§	

Plaintiffs' First Amended Complaint

To the Honorable Court:

This is a lawsuit for damages from personal injuries suffered by Aquantis Griffin, his mother, and his two younger sisters, and for Aquantis Griffin's wrongful death.

Aquantis, who was known as Ajay, died on August 17, 2018 after being shot 30 times in a hail of gratuitously excessive gunfire from eight Austin Police officers. Ajay's family shows the Court and the jury the following information in support of their claims:

I. Parties

1. Ajay's mother, Plaintiff Shalitha Ross, is a resident of Louisiana. Ms. Ross appears in two capacities in this lawsuit: (1) on behalf of her late son's Estate and (2) on behalf of herself.

2. Ms. Ross was appointed the Independent Executrix of her son's Estate on November 15, 2018 by the 19th Judicial District Court in the Parish of East Baton Rouge, Louisiana, case no. P-105474-26.

3. Ajay's sister and legal heir, Plaintiff Ariel Griffin, is a resident of Louisiana.

4. Ajay's youngest sister and legal heir, Keyeara Franklin, is a resident of Louisiana.

5. The eight individual Defendants are Austin Police Officers. Plaintiffs bring this lawsuit against Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki in their individual and official capacities.

6. The ninth Defendant is the City of Austin, a Texas municipal corporation located within the Austin Division of the Western District of Texas.

II. Jurisdiction

7. This Court has federal question subject matter jurisdiction over this lawsuit under 28 U.S.C. § 1331 because it is brought pursuant to 42 U.S.C. § 1983.

8. This Court has general personal jurisdiction over each of the eight individual Defendants because they each work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

9. This Court has specific personal jurisdiction over each of the individual Defendants and the City of Austin because this case arises out of conduct that occurred in Texas.

III. Venue

10. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred in this federal district.

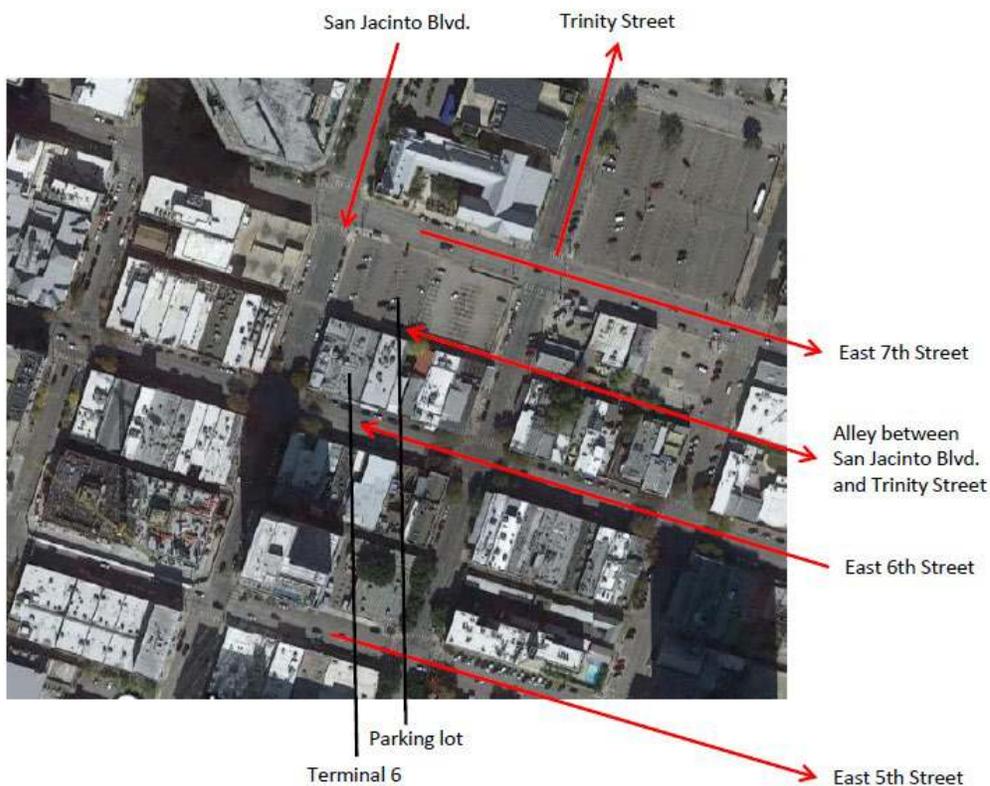
IV. Facts

A. Eight Austin police officers peppered Ajay Griffin with 42 bullets and continued shooting him even after he was gravely injured and prone on the pavement.

11. On Thursday, August 16, 2018, Aquantis Griffin, known as Ajay, a 21-year-old Black man from Baton Rouge was visiting Austin with friends to attend a concert by his childhood friend Kentrell DeSean Gaulden, known professionally as YoungBoy Never Broke Again. The YoungBoy concert was at Terminal 6 on East Sixth Street in downtown Austin. It was the beginning of the 2018 school year and Sixth Street was crowded with young people enjoying the nightlife.

12. At approx. midnight, during the concert, a fight broke out inside Terminal 6. Calls were made to the police that there was a fight at the club.

13. Several people involved in this dispute, including Ajay, left Terminal 6 out the back door into the alley between San Jacinto Blvd. and Trinity Street. Ajay was wearing loose pants and no shirt. Upon information and belief, he did not have a weapon at that time.



14. The group moved into the middle of San Jacinto Blvd. next to a large parking lot behind Terminal 6 where the argument continued.

15. Jordan Seguin, who was part of the group in the confrontation with Ajay, ran to a car in the parking lot behind Terminal 6. Seguin opened the car door to his car and while leaning against the side of the open car, fired multiple rounds above the heads of the crowd including Ajay. Seguin then immediately attempted to flee the scene in his car.

16. Austin Police officers were dispatched to the area in response to 911 calls about the fight in the club and about the gunshots fired by Jordan Seguin. One group of officers congregated on the corner of East Sixth Street and San Jacinto Blvd. Another group of officers, including the eight police officer Defendants—Officers Cast, DeVries, Halbach, Johnson, Martinez, Mathis, Moran,

and Salacki—congregated on the corner of East Sixth Street and Trinity Street. All officers wore body cameras equipped for video and audio recording.

17. A short time after Seguin’s initial shots, additional gunfire was heard coming from the same area where Seguin had fired his weapon. Both groups of police officers began to converge on the area of the gunshots, moving north from Sixth Street toward Seventh Street, one group moving up San Jacinto Blvd. and the other up Trinity Street.

18. Following the second round of gunfire, Ajay—now with a gun in his hand—ran east through the alley behind Terminal 6 in the direction of Trinity Street.

19. At the same time, the police officers who had congregated at the corner of Sixth Street and Trinity Street—including the eight officer Defendants—formed a line across Trinity Street just south of the entrance to the alley. The police line blocked anyone who exited the alley from turning south on Trinity Street toward Sixth Street. Inexplicably, and upon information and belief, due to a lack of proper training in tactics, no officers stationed themselves on Trinity Street north of the alley. Rather, there was an open and clear path out of the alley continuing north on Trinity Street towards Seventh Street.

20. At least one officer readied his Taser. The eight officer Defendants drew guns. Several people exited the alley quickly onto Trinity Street as multiple officers aggressively shouted confusing commands over each other including commands to “get on the ground”. Each of the people who exited the alley ignored the officers’ shouted commands and instead, moved away from the line of officers, north on Trinity Street toward Seventh Street.

21. Ajay, who was running away from the gunfire, was now approaching the exit of the alley onto Trinity where he suddenly encountered the eight officer Defendant to his right on Trinity Street.

22. Just like the people exiting the alley before him, Ajay, in a full run, made a hard left when he first saw officers blocking Trinity to the south. Just like those before him, he turned away from officers to head north on Trinity Street toward Seventh Street.

23. Similar to the officers' action when the previous people exited the alley, multiple officers chaotically shouted conflicting and confusing commands over each other at Ajay including commands to "get on the ground", "stop running", "drop the gun," and "who has a Taser?"

24. At the same moment officers were yelling multiple chaotic commands over each other at Ajay, body camera footage reveals that he began to turn out of the alley and, in what appears to be an attempt to comply with officers' commands to drop the gun he is holding, Ajay moves his right arm away from his body to the right as he turns left at a full run in an apparent attempt to drop the gun, a natural body movement when making a sharp turn in the opposite direction while running.

25. Ajay did *not* look directly at the police officers. He did *not* point his gun at the police officers. He did *not* say anything—much less threaten anything—to the officers. Ajay did *not* ever fire his gun, either before encountering the line of officers with their weapons ready, or during the moment he encountered them.

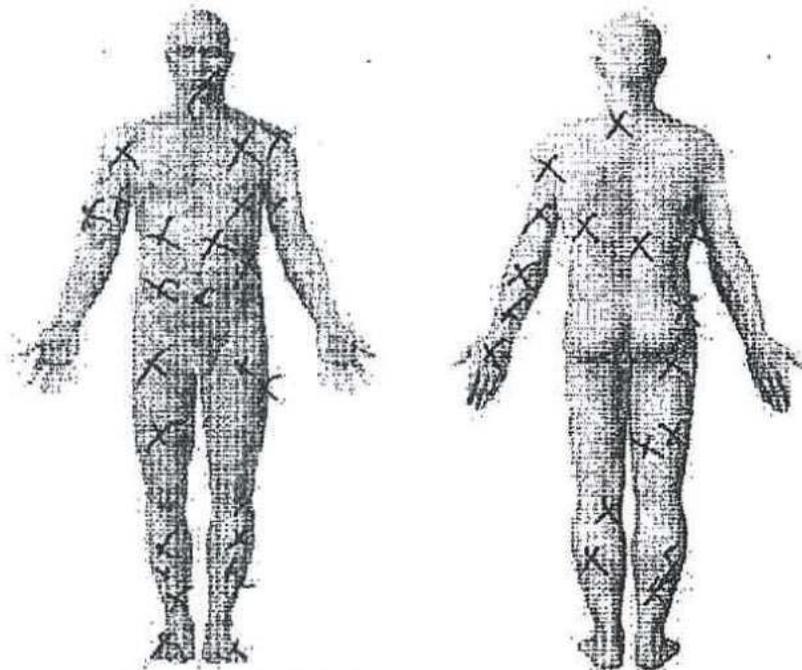
26. Simultaneously with the barrage of commands being yelled by officers, and before Ajay had any reasonable opportunity to fully comply with officers' commands, the officer Defendants opened fire. The officers began firing at Ajay no more than three seconds after they first began

chaotically shouting various commands. There was no coordination among officers as to who should issue the commands, what the commands should be, how to determine if a threat existed, or what tactics to employ if they perceived a threat.

27. Instead, before Ajay could reasonably comply with any command, the officer Defendants opened fire. In the same moment Ajay appears to begin to release the gun by moving it away from his body as he turned away from the officers, the first shots struck Ajay. He immediately fell forward onto his front torso in the street. As Ajay fell forward, body camera footage from the officers shows Ajay released his gun and it skidded across the pavement to the other side of the street. Ajay fell forward and released his gun approx. one-half second after the first bullet was fired.

28. To be clear: within a half second of the initial shots, Ajay was disarmed, gravely wounded, and lying face-down on the pavement. Over the next four seconds, the eight officer Defendants continued to shoot approx. 40 more times hitting him at least 25 more times. They shot at Ajay 40 more times while he lay prone, unarmed, and defenseless in the street.

29. The officer Defendants fired 42 shots striking Ajay a total of 30 times. The marks indicating Ajay's bullet wounds on the diagram below were made by the paramedics who responded to the scene:



30. As Ajay lay in the street dying, he pleaded softly “help me, help me” to the officers who seemed to be at a loss as what to do next. They clearly hesitate to render aid. Not until a bystander medical doctor approached did anyone begin to render aid to the gravely wounded Ajay.

31. Paramedics who responded to the incident transported Ajay to Dell Seton Medical Center, where he was pronounced dead of gunshot wounds at 1:22 a.m. on Friday, August 17, 2018. Ajay’s wounds were so extensive that the emergency room doctor who did the initial assessment could not even list them all but rather was required to mark them on a diagram:

HEAD/FACE	ABDOMEN	EXTREMITIES														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TM'S CLEAR <input type="checkbox"/> RACCOON'S EYES <input type="checkbox"/> LOOSE / BROKEN TEETH <input type="checkbox"/> EAR DRAINAGE CLEAR / BLOODY <input type="checkbox"/> NOSE DRAINAGE CLEAR / BLOODY <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> SOFT/NON-TENDER <input type="checkbox"/> BOWEL SOUNDS PRESENT / ABSENT <input type="checkbox"/> DISTENDED <input type="checkbox"/> TENDER LOCATION _____ <input type="checkbox"/> RIGID LOCATION _____ <input type="checkbox"/> FHT'S _____ BPM <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration <input type="checkbox"/> FAST + / - TIME: _____	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input checked="" type="checkbox"/> PULSES PRESENT / ABSENT <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustrations														
NECK	GENITO/URINARY	BACK														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TRACHEA MIDLINE / DEVIATED <input type="checkbox"/> POSTERIOR TENDERNESS / PAIN <input type="checkbox"/> DISTENDED NECK VEINS <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> URETHRAL BLOOD <input type="checkbox"/> VAGINAL BLOOD <input type="checkbox"/> PELVIC PAIN WITH PALPATION <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> TENDER LOCATION: _____ <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration														
CHEST	RECTAL TONE	INITIAL WARMING MEASURES														
<input type="checkbox"/> NO OBVIOUS ABNORMALITY <input type="checkbox"/> ABNORMAL BREATH SOUNDS Y / N TYPE RU LU RL LL <input type="checkbox"/> RETRACTIONS <input type="checkbox"/> CREPITUS RT LT <input type="checkbox"/> OPEN / SUCKING WOUND RT LT <input checked="" type="checkbox"/> PENETRATING WOUND (RT) (LT) <input checked="" type="checkbox"/> WOUNDS / DEFORMITY* See illustration	<input type="checkbox"/> NORMAL <input type="checkbox"/> DECREASED <input checked="" type="checkbox"/> ABSENT <input type="checkbox"/> GUIAC NEG <input type="checkbox"/> GUIAC POS <input type="checkbox"/> QC OK	<input type="checkbox"/> ROOM WARMED <input type="checkbox"/> WARM BLANKETS APPLIED <input type="checkbox"/> WARM FLUIDS ADMINISTERED														
<p>* REQUIRES DOCUMENTATION</p> <table border="0"> <tr> <td>1 Laceration</td> <td>8 Open fracture</td> </tr> <tr> <td>2 Abrasion</td> <td>9 Ecchymosis</td> </tr> <tr> <td>3 Hematoma</td> <td>10 Bite mark</td> </tr> <tr> <td>4 Stab wound</td> <td>12 Bruising 16 Avulsion</td> </tr> <tr> <td>5 Gunshot wound</td> <td>13 Pain</td> </tr> <tr> <td>6 Burn</td> <td>14 Puncture wound</td> </tr> <tr> <td>7 Deformity</td> <td>15 Palpable mass</td> </tr> </table>	1 Laceration	8 Open fracture	2 Abrasion	9 Ecchymosis	3 Hematoma	10 Bite mark	4 Stab wound	12 Bruising 16 Avulsion	5 Gunshot wound	13 Pain	6 Burn	14 Puncture wound	7 Deformity	15 Palpable mass		
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7 Deformity	15 Palpable mass															
		<p>Fall Risk Screening</p> <input type="checkbox"/> Low Risk <input type="checkbox"/> High Risk <input type="checkbox"/> Per age specific criteria (Hendricks/PARF)														
		<p>Fall Risk Interventions Time _____</p> <input checked="" type="checkbox"/> Side rails up X2 <input checked="" type="checkbox"/> Bed in low position <input type="checkbox"/> Yellow Bracelet <input type="checkbox"/> Treaded Slippers <input type="checkbox"/> Fall Reduction Education given to Patient/Family														

The emergency room's final documentation of Ajay's wounds presents a grim picture of the excessive manner in which the eight officer Defendants' unloaded their weapons at Ajay:

Physical Examination

Vital Signs

No qualifying data available (last 24 hrs).

General: Severe distress, Intubated.

Skin: Warm, dry, pink, Penetrating trauma to the left shin, left lower abdomen, left flank, left upper chest, right upper arm, suprapubic area, left upper leg, left forearm, left posterior lower leg, multiple abrasions.

Head: Normocephalic, Large penetrating wound to left lower.

Neck: Penetrating trauma to right neck, palpable bullets left-sided neck.

Eye

Cardiovascular: No palpable pulse.

Respiratory: No spontaneous respirations.

Chest wall: penetrating trauma left chest.

Back: No step-offs.

Musculoskeletal: No deformity.

Gastrointestinal: Multiple penetrating wounds to the abdomen.

32. Ajay was shot multiple times in the head, face, neck, chest, abdomen, genital area, extremities, and in his back, the majority of which struck him from the rear.

B. The Austin Police Dept. fostered an institutionally racist and violent culture that directly led to Defendants' unjustified killing of Aquantis Griffin.

33. A 2016 report from The Center for Policing Equity found that Austin police officers used more violence in the neighborhoods where African-American and Hispanic Austinites live than in predominantly White neighborhoods. The study adjusted for crime and poverty variables and found that Austin police officers' use of force in those communities was disproportionate and unjustified. In addition, Austin police were more likely to use *severe* force against Black and brown people. Austin police were disproportionately more likely to shoot rather than use their hand-to-hand training or deploy pepper spray when the person subjected to force was Black.

34. On December 5, 2019, the Austin City Council made several troubling findings regarding the Austin Police Department's racist culture:

The Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates.

APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers.

APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of African Americans at more than twice the rate of either White or Latino residents.

That same 2017 data also showed Black and Latino residents accounted for nearly 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population.

That same 2017 data also showed that one out of every three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, while usage rates of marijuana are similar across racial groups.

Per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, African Americans comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population.

An anonymous whistle-blower recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department.

Patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum.

35. These findings constitute an admission that the Austin Police Department's institutional racism, policies, protocols, and training resulted in a disproportionate use of force against members of the Black community that manifested itself in the fusillade of 43 shots that killed a frightened 21-year-old Ajay Griffen.

36. The Austin Office of Police Oversight, Office of Innovation, and Equity Office published a joint report in January 2020 regarding the Austin Police Department's racist policing practices during motor vehicle stops:

Data reveals racial disparities in motor vehicle stops in 2018, with Black/African Americans as the most overrepresented of all racial/ethnic groups in Austin.

In 2018, Black/African Americans made up 8% of the Austin population, 15% of the motor vehicle stops, and 25% of the arrests.

Black/African Americans and Hispanic/Latinos are increasingly overrepresented in motor vehicle stops from 2015-2018. White/Caucasians are increasingly underrepresented during the same time period.

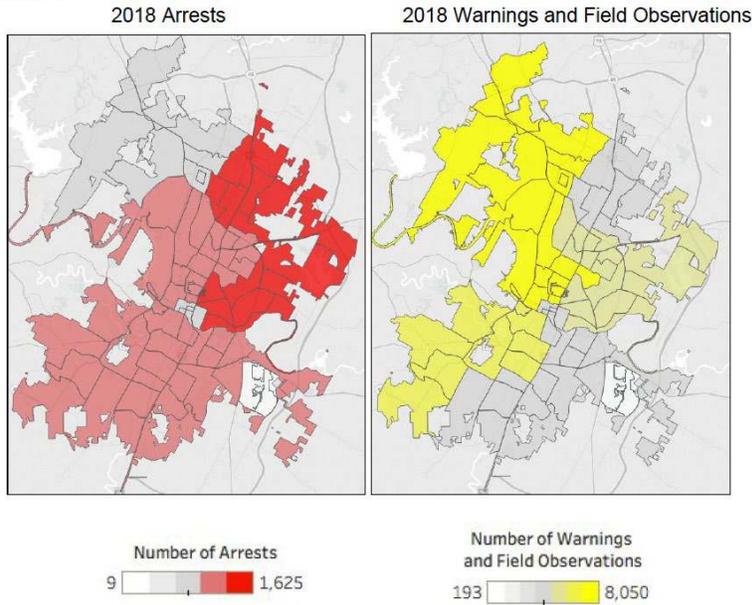
Data from 2018 shows that Black/African Americans are disproportionately overrepresented in cases when their race is known by officers before the stop compared to cases when their race is not known before the stop.

APD classifies motor vehicle stops based on whether the race of the person stopped was known to the officer prior to the stop. In 2018, Black/African Americans are overrepresented in both Race Not Known and Race Known categories. In the Race Not Known category, Black/African Americans make up 14% of stops (this is a 6% overrepresentation compared to their share of the Austin population). Black/African Americans are further overrepresented when their race is known before the stop, making up 17% of stops in the Race Known category and indicating a 9% overrepresentation when compared to their share of the population.

Commuting habits cannot explain the disproportional representation of Black/African Americans in motor vehicle stops. Commuting habits are similar across race.

The joint report included two maps of Austin that snapshot the Austin Police Department's stark racist outcomes. The map with red coloring below shows the location of vehicle stops that resulted in arrests. The map with yellow coloring below shows the location of vehicle stops that resulted in only a warning. Austin's East Side has higher concentrations of people of color, while Austin's West Side is disproportionately white:

Map 2 and 3: 2018 Motor Vehicle Stops Resulting in Arrests and Warnings and Field Observations



37. On April 16, 2020 the City of Austin released a third-party investigative report regarding the racist culture within the Austin Police Department and the retaliation rained down on those who dared to speak up:

By several accounts, [Assistant Chief] Newsom’s use of racist language was well known throughout the Department as was the use of such language by other officers who were known to be close friends with AC Newsom and used such language openly and often.

Reports came to us, from different ranks, races and genders, advising of the fact that the racist and sexist name calling and use of derogatory terms associated with race and sex persists. Anecdotal history indicated that even members of the executive staff over the years had been known to use racist and sexist language, particularly when around the lower ranks or other subordinates.

We listened to many anecdotes illustrating inappropriate comments over the years through which APD personnel expressed concern about racist behavior, but also sexist behavior, and dissimilar treatment in the handling of officer discipline and those who may be served by APD chaplain services with the denial of marital services to same sex couples. There are some real cultural issues that are in need of attention.

Tatum Law was able to establish that [Austin Police] Chief Manley had reason to inquire as to [Assistant Chief] Newsom's conduct . . . The October 7, 2019, email received by Chief Manley alleging similar facts to those later alleged in the October 30, 2019 complaint about AC Newsom's use of the derogatory term "nigger" in text messages to refer to African Americans provided sufficient information . . . Chief Manley did not send these allegations for review or investigation.

Whether it is about a grievance or misconduct there is an overwhelming sentiment among officers, at or previously involved with the Austin Police Department, and regardless of rank, that an officer, or even civilian staff member, who wishes to right a wrong, complain about improper conduct, or participate in an investigation such as this one, must be prepared in the present climate and culture to face almost certain retaliation, and not necessarily from Chief Manley, directly or solely.

38. The City Council's June 11, 2020 findings regarding the Austin Police Department's racist and violent culture were equally unequivocal:

The elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities.

The measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past.

39. This further demonstrates the existence of institutional policies and practices that have led to continuing incidents of excessive use of force against African American citizens, and that resulted in the summary execution of Aquantis Griffen in the early morning hours of August 17, 2018.

V. Claims

A. **The eight officer Defendants used excessive force and violated Ajay Griffin's civil rights when they fired 42 shots, hitting him 30 times.**

40. Plaintiffs incorporate all previous allegations into this cause of action.

41. The eight officer Defendants are liable to Plaintiffs under 42 U.S.C. § 1983 for killing Ajay Griffin in an unnecessary and excessive storm of gunfire that constituted a deprivation of his Fifth and Fourteenth Constitutional right to due process.

42. Defendants Joseph Cast, Wesley DeVries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki were acting under color of law when they shot and killed Ajay Griffin on August 17, 2018.

43. Defendants' unlawful and unjustified use of deadly force against the Ajay Griffin was excessive and was objectively unreasonable in light of established law. Because Griffen was attempting to comply with officers' demands to release his weapon but before he could reasonably comply, Defendants Joseph Cast, Wesley DeVries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, and Christopher Salacki violated Ajay Griffin's constitutional rights under the Fourth and Fourteenth Amendments to be free from excessive force and unreasonable seizure and his rights of due process of law and equal protection under the law. They killed him in a hail of gunfire even though he presented no threat.

44. The force used by the officer Defendants was unnecessary, excessive, and unreasonable under the circumstances because Ajay Griffin did not pose an immediate threat to the safety of the officer Defendants or others. The use of such excessive and deadly force was unnecessary. Ajay Griffin was attempting to release his gun in response to chaotic commands from officers and was attempting to retreat from police officers by turning north, away from where officers stood, when the officer Defendants opened fire, engulfing him in a fusillade of bullets. By turning sharply in the opposite direction of the officer Defendants to retreat, Ajay Griffin did not provoke,

threaten, or attempt to harm the officer Defendants in any way. Griffen posed no threat to officers to justify the use of deadly force and such deadly force was excessive.

45. Defendants engaged in a willful, malicious, and reckless course of conduct that was intended to cause and, in fact, caused Ajay Griffin to suffer extreme and severe mental and emotional distress, agony, anxiety, and death.

46. Defendants' unlawful and unconstitutional use of deadly force against Ajay Griffin directly and proximately caused his death and Plaintiffs' damages.

B. The City of Austin's police training policies, protocols, and practices together with the police department's institutional racist biases led police officers to violate the civil rights of Black people generally and Ajay Griffin in particular.

47. Plaintiffs incorporate all previous allegations into this cause of action.

48. The City of Austin is liable to Plaintiffs under 42 U.S.C. § 1983 because the City failed to adequately train or supervise its police officers. The racially infused training of Austin police cadets constituted deliberate indifference to the deprivation of the constitutional rights of Black people in Austin. This purposefully and openly racist training was a moving force behind the excessive violence perpetrated against Ajay Griffin by the officer Defendants. Among the many problems at the training academy and the Austin Police Department that directly led to Aquantis Griffen's death were:

1. inadequate training for determining and deploying the proper use of force, especially deadly force,
2. inadequate training regarding citizens' constitutional right to be free from racist law enforcement practices, including excessive force and deadly force,
3. inadequate training regarding procedures for handling armed and fleeing suspects and the proper use of deadly force in such situations,

4. inadequate training in tactics and practices for avoiding contagious gunfire when police officers are in a group setting,
5. inadequate training regarding detention and seizure procedures,
6. inadequate training on the use of non-lethal force and de-escalation tactics,
7. inadequate training on the proper use of cover and pursuit practices, and
8. inadequate supervision over officers regarding each of the above listed policing practices.

49. Austin Police Chief Brian Manley is—and was when the officer Defendants killed Ajay Griffin in 2018—the official policymaker for the Austin Police Department regarding all of the policies that resulted in the deprivation of Ajay Griffin’s constitutional rights. Chief Manley is appointed to the position of Chief by the Austin City Manager.

50. The City’s policy and practice of failing to train and supervise its officers was a direct and proximate cause of Ajay’s death at the hands of the Defendant officers and Plaintiffs’ damages.

C. The City of Austin knowingly aids and abets racially discriminatory policies and a racist culture among its police officers.

51. Plaintiffs incorporate all previous allegations into this cause of action.

52. The City of Austin is liable to Plaintiffs under 42 U.S.C. § 1983 because the Austin Police Department’s institutional racist policies, hiring practices, disciplinary practices, and its established customs and practices constitute deliberate indifference to the deprivation of constitutional rights of Black people in Austin and of Ajay Griffen in particular. These customs and practices were a moving force behind the use of excessive force against Ajay Griffin by the officer Defendants that was the direct cause of his pain, suffering, and death. Among the many problematic policies, customs, and practices were:

1. inadequate hiring policies that failed to screen out officers who presented a plainly obvious risk of abusing their authority and using unwarranted force against Black people in Austin,
2. inadequate hiring policies that failed to screen out officers who presented a plainly obvious risk of committing use of force violations,
3. inadequate policies for preventing use of force violations by its officers,
4. inadequate policies regarding de-escalation,
5. inadequate disciplinary policies that failed to hold officers who used excessive force or committed racist acts accountable,
6. deliberate indifference to the established custom and practice of racially motivated use of excessive force, and
7. inadequate disciplinary policies that failed to punish officers who violated Black citizens' rights to be free from racially motivated law enforcement actions.

53. Austin Police Chief Brian Manley is—and was when the officer Defendants killed Ajay Griffin in 2018—the official policymaker for the Austin Police Department regarding all of policies that resulted in the deprivation of Ajay Griffin's constitutional rights. Chief Manley is appointed to the position of Chief by the Austin City Manager.

54. The City's policy and practice of failing to train, supervise, and discipline its officers directly and proximately caused Ajay's death and Plaintiffs' damages.

D. Survival Action

55. Plaintiffs incorporate all previous allegations into this cause of action.

56. Ajay Griffin died because of the Defendants' wrongful conduct.

57. Ajay Griffin would have been entitled to bring this action against Defendants at the time it was filed if he had lived.

58. Ajay Griffin's claims against Defendants survive in favor of his heirs.

59. Defendants are liable for Ajay Griffin's pain and suffering and the violation of his civil rights under 42 U.S.C. § 1983.

60. Plaintiffs seek compensation as set forth below.

E. Wrongful Death

61. Plaintiffs incorporate all previous allegations into this cause of action.

62. Defendants' wrongful conduct proximately caused the death of Ajay Griffin.

63. Defendants' conduct caused the Plaintiffs to suffer the loss of the family relationship, love, support, and services that Ajay Griffen would have provided had he lived. Plaintiffs have suffered emotional pain and emotional distress as a direct result of Defendants' wrongful killing of Ajay Griffin.

64. Plaintiffs seek compensation as set forth below.

VI. Damages

65. Plaintiffs assert claims under 42 U.S.C. §1983 and the Texas wrongful death and survivorship statutes. Defendants deprived Ajay Griffin of his civil rights under the United States Constitution. Defendants proximately caused and were the moving force behind Griffen's death and Plaintiffs' injuries and damages including but not limited to:

- a. Physical pain and mental anguish suffered by Ajay Griffin prior to his death,
- b. Economic loss,
- c. Funeral and burial expenses,
- d. Past and future mental anguish, and
- e. Past and future loss of companionship, society, services, and affections with their loved one, Ajay Griffin.

VII. Exemplary Damages

66. The officer Defendants' extreme, outrageous, and unjustifiable conduct justifies an award of punitive and exemplary damages. The officer Defendants acted with malice and acted intentionally, recklessly, and with callous indifference to the unlawful deprivation of Ajay Griffin's constitutionally protected rights.

67. The extreme, outrageous, and unjustifiable conduct of the City of Austin justifies an award of punitive and exemplary damages. The City of Austin implemented policies, practices, and procedures with malice and intent, acting recklessly and with callous indifference to the unlawful deprivation of Ajay Griffin's constitutionally protected rights.

VIII. Attorney's Fees

68. Plaintiffs were forced to hire the services of the undersigned attorneys to represent them in this complex and difficult proceeding. Pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, Plaintiffs are entitled to recover reasonable and necessary fees incurred by these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim. Plaintiffs are entitled to an award of attorney's fees and costs including, but not limited to, expert witness fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act when they prevail.

IX. Preservation of Evidence

69. Plaintiffs request and demand that Defendants retain, preserve, and protect from loss, damage, discard, or destruction all physical, written or electronic items that are, or may be, evidence of the incident above described, which may form the basis of this Complaint including, but not limited to all video footage from the evening of August 16, 2018 and morning of August 17, 2018 related to, leading up to, and following this incident, any autopsy and/or medical

examiner's report of the decedent, all statements of witnesses, including police officers, interviewed as part of the investigation into the matter, whether such statements are written, video-recorded, audio-recorded, or memorialized in any fashion or medium, all electronically stored information that is related to the above described police shooting, all photographs, e-mails, text messages, and personal or official notes made by any of the Defendant officers or the City of Austin, and all other evidence that is related to the shooting death of Aquantis Griffin.

X. Jury Demand

70. Pursuant to Federal Rule of Civil Procedure 48, Plaintiffs hereby request a jury trial.

XI. Prayer for Relief

WHEREFORE, Plaintiffs ask that judgment be awarded against Defendants for:

- a. compensatory damages against all Defendants, jointly and severally,
- b. punitive damages as to all Defendants,
- d. attorneys' fees, including reasonable and necessary expenses such as expert fees, pursuant to 42 U.S.C. §1988,
- e. court costs,
- f. pre and post judgment interest at the highest rate allowable under the law, and
- g. all other relief to which Plaintiffs are justly entitled.

Respectfully submitted,
HENDLER FLORES LAW, PLLC.



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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHALITHA ROSS, individually and as
independent executrix of the
succession of Aquantis Griffin,
ARIEL GRIFFIN, and
KEYEARA FRANKLIN,

§
§
§
§
§
§

Plaintiffs,

§

v.

§

CIVIL ACTION NO. 1:20-CV-00856-LY

THE CITY OF AUSTIN, JOSEPH CAST,
WESLEY DEVRIES, JUSTIN HALBACH,
STEPHEN JOHNSON, DANIEL MATHIS,
ALBERTO MARTINEZ,
JOSEPH MORAN, and
CHRISTOPHER SALACKI,

§
§
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Defendants.

§

OFFICER DEFENDANTS’ MOTION TO DISMISS

Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Daniel Mathis, Alberto Martinez, Joseph Moran, and Christopher Salacki (collectively, the “Officer Defendants”) file this motion to dismiss the claims brought against them by Plaintiffs Shalitha Ross, Ariel Griffin, and Keyeara Franklin.

“If we want to stop mass shootings, we should stop punishing police officers who put their lives on the line to prevent them.” *Winzer v. Kaufman County*, 940 F.3d 900, 901 (5th Cir. 2019) (Ho, J., dissenting from denial of rehearing en banc). As described by their own pleading, Plaintiffs seek to impose Section 1983 liability on the Officer Defendants for their actions in responding to a location of multiple rounds of gunfire and firing rounds at a suspect who ran at them, from the area in which those shots were fired, while displaying a gun in his hand.

Plaintiffs’ allegations do not provide a basis to overcome the Officer Defendants’ immunity from suit. The well-established doctrine of qualified immunity protects the Officer Defendants from suit based on the allegations made by Plaintiffs for two reasons, each of which is an independently sufficient ground for dismissal under FED. R. CIV. P. 12(b)(6). First, at the time of the 2018 incident, the use of deadly force in response to the situation described in Plaintiffs’ First Amended Complaint was not prohibited by clearly established law made available to officers performing their law enforcement and public safety duties. Second, the complaint’s averments—even if they could be proven—do not describe a violation of a constitutional right as required to maintain an excessive force claim under Section 1983. For both of those reasons, the Officer Defendants respectfully request that the Court dismiss the Plaintiffs’ claims against them with prejudice.

BACKGROUND

The First Amended Complaint (Dkt. 4) (“FAC”) provides sufficiently detailed allegations, including averments purportedly made on the basis of police body camera footage, to frame the qualified immunity issue on a motion to dismiss under FED. R. CIV. P. 12(b)(6). The key allegations relevant to the claims made against the Officer Defendants—which are considered to be factually supported for purposes of this motion to dismiss, even if they could ultimately be proven not to be—are set forth below.

According to Plaintiffs’ allegations, near midnight on the morning of August 17, 2018, a fight broke out at a downtown Austin club. FAC ¶ 12. Multiple shots were fired at the scene, and officers were dispatched in response to 9-1-1 calls “about the fight in the club and about the gunshots fired.” FAC ¶¶ 15-16. A second round of gunfire was heard as officers converged on

the scene. FAC ¶ 17. The Officer Defendants formed a defensive line blocking a nearby street, watching an alleyway behind the club with guns drawn. FAC ¶¶ 19-20.

“Several people” emerged from the alleyway, ignored commands to “get on the ground,” and ran up the street away from the police line. FAC ¶ 20. Following those persons fleeing the scene of the shootings, Aquantis Griffin emerged from the alleyway “in a full run.” FAC ¶ 22. Griffin was carrying a gun in his hand. FAC ¶ 24. Officers instructed Griffin to “get on the ground,” “stop running,” and “drop the gun.” FAC ¶ 23. Griffin “made a hard left” and “move[d] his right arm [holding the gun] away from his body to the right.” FAC ¶¶ 24-25. As many as “three seconds” elapsed between the officers’ commands and their gunfire. FAC ¶ 26. Griffin was shot numerous times, and was later pronounced dead after having been transported to the hospital. FAC ¶¶ 27-31.

Plaintiffs filed this lawsuit shortly before the expiration of a two-year limitations period. A few days after filing, the original complaint was amended to remove certain allegations about Griffin’s conduct, including: (1) his involvement in one of the fights at the club; (2) his use of a gesture “mimicking a handgun” causing people to “run[] away from him”; and (3) his decision to flee, with his gun, from police officers he saw approaching from the opposite direction before he encountered the Officer Defendants. *See* Compl. (Dkt. 1), ¶¶ 12-13, 17. It also deleted references to Griffin swinging his right arm with the gun in his right hand “in an arc with his body” in plain sight of the officers. *Compare* Compl. ¶ 22 with FAC ¶ 24.

Plaintiffs assert claims against both the City of Austin and the Officer Defendants individually. This motion challenges the excessive force claim pursuant to 42 U.S.C. § 1983 brought against the Officer Defendants.¹

¹In addition to their constitutional claims, Plaintiffs have also pled a Texas state-law wrongful death claim. As a matter of law, any state-law tort claim pleaded against the Officer Defendants must be

ARGUMENT

I. A Rule 12 motion is a proper vehicle for asserting a defense of qualified immunity.

Federal Rule of Civil Procedure 12(b)(6) “authorizes the filing of motions to dismiss asserting, as a defense, a plaintiff’s ‘failure to state a claim upon which relief can be granted.’” *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) (quoting FED. R. CIV. P 12(b)(6)); *Whitley v. Hanna*, 726 F.3d 631, 638, 649 (5th Cir. 2013) (affirming dismissal based on qualified immunity defense asserted by Rule 12 motion). Qualified immunity may be properly raised as a defense and grounds for dismissal under a Rule 12(b)(6) motion. *Whitley*, 726 F.3d at 649; *see also Lincoln v. Barnes*, 855 F.3d 297, 300-01 (5th Cir. 2017).

Dismissal under Rule 12(b)(6) is appropriate “if the complaint does not contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Inclusive Communities*, 920 F.3d at 899 (internal quotation marks omitted). Plausibility requires more than an allegation of facts “merely consistent with” liability, because a “possibility” that a defendant is liable does not rise to the level of a “plausible” claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678. When reviewing claims under Rule 12(b)(6), the Court “must accept all well-pleaded facts as true.” *Id.* But the Court is not required to “accept as true a legal conclusion couched as a factual allegation,” nor must it accept “naked assertions devoid of further factual enhancement.” *Id.* at 899-900 (internal quotation marks and alterations omitted.)

Section 1983 authorizes claims for injuries caused by persons acting under color of state law whose conduct deprives a person of a federally protected (generally constitutional) right.

dismissed. *See* TEX. CIV. PRAC. & REM. CODE § 101.106(e), (f); *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 657 (Tex. 2008) (“the [Texas] Tort Claims Act’s election scheme is intended to protect governmental employees by favoring their early dismissal when a claim regarding the same subject matter is also made against the governmental employer”).

Martin v. Thomas, 973 F.2d 449, 452-53 (5th Cir. 1992). For an excessive force claim specifically, a plaintiff must adequately allege “(1) an injury that (2) resulted directly and only from the use of force that was excessive to the need and that (3) the force used was objectively unreasonable.” *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004). “A plaintiff seeking to overcome qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm she has alleged and that defeat a qualified immunity defense with equal specificity.” *Lincoln*, 855 F.3d at 301.

II. Qualified immunity protects the Officer Defendants from suit.

“The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”² *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted). Qualified immunity is not a “mere defense to liability.” *Id.* It is a true “immunity from suit.” *Id.* To give full effect to its protections, claims of qualified immunity must be resolved “at the earliest possible stage in litigation,” including “prior to discovery.” *Id.*

The qualified immunity analysis involves “a two-pronged inquiry,” though the prongs may be analyzed in either order and resolution of one may eliminate any need to consider the other entirely. *See Tolan v. Cotton*, 572 U.S. 650, 655-56 (2014). One prong asks whether the plaintiff has established the violation of a federal right, such as a constitutional right to be protected against unreasonable seizures. *Id.* If not, the defendant is entitled to qualified immunity. The other prong asks whether “the right in question was ‘clearly established’ at the time of the violation.” *Id.* If that right was not clearly established, the defendant is entitled to

²A more detailed discussion of the history, purpose, and function of qualified immunity is set forth in *Cole v. Carson*, 935 F.3d 444, 461-62 (5th Cir. 2019) (en banc) (Jones, J., dissenting).

qualified immunity. Taken together, these two prongs ensure that “qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).

Each prong of this analysis leads to the proper conclusion that under the factual allegations raised by Plaintiffs, the Officer Defendants are entitled to qualified immunity on the Section 1983 excessive force claim.

A. No clearly established law in August 2018 prohibited the Officer Defendants’ conduct.

In the deadly force context, the “clearly established” prong of the qualified immunity analysis poses a straightforward, but importantly specific, question: at the time of use of force, “was there law that put [the defendant] on notice that shooting in the situation presented violated the constitution?” *Vann v. City of Southaven, Miss.*, 884 F.3d 307, 310 (5th Cir. 2018). In answering this question, the Supreme Court has repeatedly emphasized that the “law” in question must be framed narrowly, “in light of the specific context of the case, not as a broad general proposition” or at a “high level of generality.” *Mullenix*, 577 U.S. at 12. This specificity “is especially important in the Fourth Amendment context” because of the highly fact-specific nature of the excessive force standard. *Id.*

It is the plaintiff’s burden to prove the existence of a clearly established legal rule, at the time of the incident, that would make the officers’ conduct unlawful. *Vann*, 884 F.3d at 310. This burden necessitates a showing of binding precedent sufficiently similar to the alleged conduct to provide the defendants with the requisite notice. *Winzer v. Kaufman Cnty.*, 916 F.3d 464, 477 (5th Cir. 2019). Although that precedent does not necessarily have to be “directly on point,” it must be similar enough to have “placed the . . . constitutional question beyond debate.” *Id.* “In excessive-force cases, police officers are entitled to qualified immunity unless existing

precedent *squarely governs* the specific facts at issue.” *Garcia v. Blevins*, 957 F.3d 596, 601 (5th Cir. 2020) (internal quotation marks omitted). Plaintiffs here wholly fail to allege the existence of such precedent that would put the Officer Defendants on notice that their conduct with respect to a visibly armed suspect under the circumstances presented to them in the incident as described by Plaintiffs would be unlawful, for good reason. Such precedent did not exist.

The Supreme Court has frequently and powerfully reminded those who would seek to bring Section 1983 excessive force claims of the need to define the clearly established law police officers allegedly contravened with the “great specificity” demanded by the Supreme Court’s jurisprudence. *See Cole v. Carson*, 935 F.3d 444, 473-74 (5th Cir. 2019) (Ho, J., dissenting) (collecting more than a dozen examples). Two recent examples from the Fifth Circuit are instructive. In 2014, the Fifth Circuit denied qualified immunity to an officer who shot a suspect involved in a high-speed chase. *Luna v. Mullenix*, 773 F.3d 712 (5th Cir. 2014). In analyzing the “clearly established” prong, the Fifth Circuit panel defined the relevant rule generally, declaring “it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.” *Id.* at 725. The Supreme Court reversed the Fifth Circuit panel decision, explaining that the “general principle that deadly force requires a sufficient threat” was not specific enough for purposes of the qualified immunity analysis. *Mullenix*, 577 U.S. at 13. Similarly, in 2015, a Fifth Circuit panel partially affirmed a denial of qualified immunity to officers who shot a potentially suicidal suspect wielding a gun. *Cole v. Carson*, 802 F.3d 752 (5th Cir. 2015). The court again relied upon a general principle that deadly force is not justified absent a sufficient threat. *Id.* at 762. The Supreme Court granted certiorari, vacated the Fifth Circuit’s judgment, and remanded in light of the Supreme Court’s opinion in *Mullenix*. *See Hunter v. Cole*, 137 S. Ct. 497 (2016).

These cases and others foreclose any reliance by a Section 1983 plaintiff on a broad, “sufficient threat” type formulation of the qualified immunity question in the deadly force context. *Mullenix*, 577 U.S. at 12. Instead, the applicable “clearly established law” here must be tailored to the situation presented by the facts alleged in Plaintiffs’ Section 1983 claims. In this case, Plaintiffs themselves (notwithstanding the amendments to their original complaint) allege a situation in which officers, while responding to active gunfire, observe an armed suspect run in their direction, command the suspect to drop his gun, and then observe the suspect move the hand holding the gun in their direction. Plaintiffs fail to identify any binding legal precedent in existence as of August 2018 that would have caused *every reasonable officer* to conclude it was unconstitutional to shoot in that scenario. *See Pearson*, 555 U.S. at 231; *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (reversing a denial of qualified immunity where the circuit court “failed to identify a case where an officer acting under similar circumstances as [the defendant] was held to have violated the Fourth Amendment”).

Plaintiffs cannot meet that burden because there is no such precedent. *Cf. Romero v. City of Grapevine, Tex.*, 888 F.3d 170, 178 n.3 (5th Cir. 2018) (affirming award of qualified immunity to officer where there “simply [was] no such authority” governing the specific factual scenario presented by the plaintiff’s claim). Earlier this year, the Fifth Circuit considered a factually similar case in which an officer responding to reports of fights at a restaurant was told someone in the parking lot had a gun. *Garcia*, 957 F.3d at 599. The officer found the suspect, holding a gun, in the parking lot. *Id.* He instructed the suspect to drop the weapon, but the suspect refused. *Id.* The officer shot the suspect multiple times, killing him. *Id.* The Fifth Circuit held the officer was entitled to qualified immunity because no binding precedent squarely held it was unconstitutional to shoot in that situation. *Id.* at 602. Just as in *Garcia*, Plaintiffs

here cannot allege the existence of authority, or support their general allegations with authority, that the Officer Defendants could have been on actual or constructive notice that their response to the dynamic situation on the ground as described by Plaintiffs themselves—involving a visibly armed person running at police from an active shooting scene and displaying a weapon—would be unlawful.

In the absence of precedent establishing “beyond debate” that Plaintiffs’ allegations would support a finding that the Officer Defendants acted in an unconstitutional manner, the Officer Defendants are entitled to qualified immunity from suit on those allegations as a matter of law. Thus, dismissal of Plaintiffs’ claim is the appropriate result.

B. The Officer Defendants did not violate Griffin’s constitutional rights because their use of deadly force was justified under the circumstances they perceived.

The Officer Defendants are also entitled to dismissal of the claim made against them because the Plaintiffs’ allegations in the complaint, even if true, would not support a finding that any of the Officer Defendants used excessive force against Griffin.

The reasonableness of a use of deadly force is judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). The inquiry must account for the fact that officers “are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396. Courts should resist any urge to “second-guess[] a police officer’s assessment, made on the scene, of the danger presented by a particular situation.” *Ryburn v. Huff*, 565 U.S. 469, 477 (2012). The reasonableness inquiry may also take into account “the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officer or others, and

whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396.

First, the Officer Defendants’ actions here were presumptively reasonable. “An officer’s use of deadly force is presumptively reasonable when the officer has reason to believe that the suspect poses a threat of serious harm to the officer or to others.” *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 382 (5th Cir. 2009).

The Plaintiffs’ own factual allegations establish that Plaintiffs have not alleged a situation in which the Officer Defendants’ conduct could be found to be unreasonable. The Officer Defendants were responding to active gunfire. According to Plaintiffs’ allegations, factually correct or not, the Officer Defendants observed unarmed persons fleeing the scene from an alleyway. According to the complaint, the Officer Defendants then observed a man, gun in hand, charging towards them out of that same alleyway, and observed that man moving that weapon in the direction of the Officer Defendants. It is not the law that an officer must wait for a suspect to fire a weapon the suspect points in the officer’s direction before firing, and firing shots in such a situation cannot be the basis of an excessive force claim. Instead, the governing law incorporates the appropriate and understandable deference to officers making split-second, life or death decisions. *Graham*, 490 U.S. at 397. “[W]hen a split second is all you have, waiting itself is a decision—one that may bring disastrous consequences.” *Winzer*, 916 F.3d at 482 (Clement, J., dissenting in part).

The Fifth Circuit’s jurisprudence from cases involving the use of deadly force by officers confirms that Plaintiffs have failed to allege a case in which the Officer Defendants’ conduct could be found to be unreasonable. Most recently, in *Garza v. Briones*, a group of officers responded to a 9-1-1 call alleging a man outside a truck stop had a pistol. 943 F.3d 740, 743 (5th

Cir. 2019). Several officers gathered around the man, drew their weapons, and ordered him to put the gun down. *Id.* at 743. The suspect did not comply, and instead raised the gun in the direction of one of the officers. *Id.* at 744. The officers shot the man, causing his death. *Id.* The Fifth Circuit held the use of deadly force was justified because the officers were “confronting an unpredictable man armed with a dangerous weapon” who pointed the gun in their direction. *Id.* at 745.

In *Ramirez v. Knoulton*, officers were dispatched to confront an armed and suicidal man suspected of sexual assault. 542 F.3d 124, 126-27 (5th Cir. 2008). After a below-speed-limit chase, the man pulled his car over. *Id.* at 127. He eventually exited the car holding a handgun, which he refused to drop. *Id.* He held the gun on the far side of his body, away from the officers and not pointing at them, then brought his hands together in front of his waist. *Id.* One officer shot him in the face, disabling but not killing him. *Id.* The district court denied qualified immunity, but the Fifth Circuit reversed. *Id.* The Fifth Circuit held the use of force was not objectively unreasonable under the circumstances. *Id.* at 131. It also criticized the district court for “employ[ing] 20/20 hindsight” to downplay the threat posed by the suspect and second-guessing the officers’ perceptions of that threat. *Id.* at 129-30.

Both *Garza* and *Ramirez* illustrate the considerable deference given to officers who must respond to dangerous scenarios involving unpredictable suspects armed with deadly weapons. As with the fact patterns of the cases cited above, the Plaintiffs have made allegations that even if proven would not support findings (1) that the Officer Defendants had insufficient reason to perceive a threat given all of the circumstances apparent to them or (2) acted in a manner that the law finds unjustified.³

³Plaintiffs may argue that their allegations about the total number of rounds fired would form the basis of an actionable excessive force claim, even if an initial shot may have been justified. Any such

Plaintiffs may contend the fact pattern they allege could establish a claim on the basis that the Officer Defendants should have given Griffin more time to comply and waited to see if he would stop running, drop his gun, and surrender peacefully. Such an argument would be unavailing here. The Constitution does not require officers to “wait and see” if they will become victims of deadly force before taking action. *Mullenix*, 577 U.S. at 17 (“the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect”); *Colston v. Barnhart*, 130 F.3d 96, 100 (5th Cir. 1997) (granting qualified immunity where officer “had no way to know whether [the suspect] intended to flee or inflict further injury or death on the officers”). In matters of life and death, “action always beats reaction.” *Ontiveros*, 564 F.3d at 384 n.2.

Similarly, Plaintiffs may attempt to argue that their allegation that Griffin “presented no threat” gives rise to an actionable claim of excessive force. This conclusory allegation does not provide such a basis for a valid claim. First, “describing a situation as posing ‘no threat’ is a conclusion,” not a factual allegation. *See Cole*, 935 F.3d at 465 (Jones, J., dissenting). Furthermore, the Plaintiffs’ own factual allegations substantiate the existence of an obvious threat. Second, there is no black-letter rule that deadly force is only justified once a person commits a so-called “*Manis* act,” like pointing a gun at an officer. *See Manis v. Lawson*, 585 F.3d 839 (5th Cir. 2009). The Constitution “does not require police officers to wait until a

argument would be foreclosed by Supreme Court and Fifth Circuit precedent. As the Supreme Court has held, “if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended. . . . [I]f lethal force is justified, officers are taught to keep shooting until the threat is over.” *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (internal quotation marks omitted); *Garza v. Briones*, 943 F.3d 740, 748 (5th Cir. 2019) (holding it was not objectively unreasonable for officers to fire “sixty-one shots in eight seconds” at a suspect). Per the FAC, the shooting here lasted only four or five seconds. *See* FAC ¶ 28. There is no legal authority supporting the idea that a Section 1983 plaintiff could ever establish that it would have been reasonable or possible to require officers justified in using deadly force to stop firing and reappraise the threat in a span of a couple of seconds.

suspect shoots to confirm that a serious threat of harm exists.” *Ramirez*, 542 F.3d at 130 (granting qualified immunity to officers who shot a suspect who “never raised his weapon nor aimed it at the officers”); *see also Salazar-Limon v. City of Houston*, 826 F.3d 272, 279 n.6 (5th Cir. 2016) (“[W]e have never required officers to wait until a defendant turns toward them, with weapon in hand, before applying deadly force to ensure their safety.”).

While a “*Manis* act” can sustain qualified immunity even where no weapon is visible, it is not logical for an additional “act” to be mandated where the officers confront a suspect armed, ready to shoot his pistol, and turning toward them. An officer may be forced into shooting an unarmed suspect by a *Manis* act, and thus obtain qualified immunity. But it is perverse and inconsistent with Fifth Circuit law to hold that the officer has no qualified immunity because she is constitutionally forbidden to shoot an armed suspect in close quarters without either looking down the barrel of the weapon or awaiting his response to her command.

Cole, 935 F.3d at 467 (Jones, J., dissenting).

Because the Plaintiffs have not set forth allegations that, if true, would establish that it was objectively unreasonable for the Officer Defendants to use deadly force to defend themselves and others from the perceived threat posed by a man fleeing the scene of a shootout with a gun in hand, the Officer Defendants are entitled to dismissal of the claims against them on qualified immunity grounds.

CONCLUSION

For the foregoing reasons, the Officer Defendants respectfully request the Court grant their motion to dismiss all claims brought against them with prejudice⁴ and award all other relief to which the Officer Defendants may show themselves entitled.

⁴Plaintiffs may attempt to argue that any dismissal should be with leave to amend. Given the fact that they have already amended their complaint once (to delete factual allegations that actually undercut their claim against the Officer Defendants), and the futility of any further amendment in light of the qualified immunity doctrine, the Officer Defendants would respectfully urge the Court not to grant any such leave to amend. *See Templeton v. Jarmillo*, No. A-19-CV-00848-JRN, 2020 WL 5552619, at *6

Respectfully submitted,

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**ATTORNEYS FOR THE OFFICER
DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2020, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/ Karson Thompson

Karson Thompson

(W.D. Tex. July 8, 2020) (Nowlin, J.) (denying leave to amend in response to assertion of qualified immunity defense, finding any amendment "would be futile"); *Tuft v. Texas*, 544 Fed. App'x 488, 490 (5th Cir. 2013) (unpublished) (affirming denial of motion to amend where the "proposed amendment would be futile in light of the qualified immunity analysis").

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHALITHA ROSS, INDIVIDUALLY,	§	
AND AS INDEPENDENT	§	
EXECUTRIX OF THE SUCCESSION	§	
OF AQUANTIS GRIFFIN, ARIEL	§	
GRIFFIN AND KEYEARA	§	
FRANKLIN	§	
Plaintiffs,	§	CIVIL ACTION NO. 1:20-cv-00856-LY
	§	
v.	§	
	§	
JOSEPH CAST, WESLEY DEVRIES,	§	
JUSTIN HALBACH, STEPHEN	§	
JOHNSON, ALBERTO MARTINEZ,	§	
DANIEL MATHIS, JOSEPH MORAN,	§	
CHRISTOPHER SALACKI AND THE	§	
CITY OF AUSTIN	§	
Defendants.	§	

**DEFENDANT CITY OF AUSTIN’S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs’ First Amended Complaint (Doc. No. 4). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs’ First Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiffs, Defendant expressly denies that averment.¹

¹ Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiffs’ First Amended Complaint.

As to the first two unnumbered paragraphs in Plaintiffs' First Amended Complaint beginning "This is a lawsuit for damages..." and "Aquantis, who was known as Ajay..." this Defendant denies the allegations contained in those paragraphs.

PARTIES

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1 of the First Amended Complaint.
2. Upon information and belief, Defendant admits the allegations contained in Paragraph 2 of the First Amended Complaint.
3. Upon information and belief, Defendant admits the allegations contained in Paragraph 3 of the First Amended Complaint.
4. Upon information and belief, Defendant admits the allegations contained in Paragraph 4 of the First Amended Complaint.
5. Defendant admits the allegations contained in Paragraph 5 of the First Amended Complaint.
6. Defendant admits the allegations contained in Paragraph 6 of the First Amended Complaint.

JURISDICTION

7. Defendant admits the allegations contained in Paragraph 7 of the First Amended Complaint.
8. Defendant admits the allegations contained in Paragraph 8 of the First Amended Complaint.
9. Defendant admits the allegations contained in Paragraph 9 of the First Amended Complaint.

VENUE

10. Defendant admits the allegations contained in Paragraph 10 of the First Amended Complaint.

FACTS

11. Upon information and belief, Defendant admits the allegations contained in Paragraph 11 of the First Amended Complaint.
12. Upon information and belief, Defendant admits the allegations contained in Paragraph 12 of the First Amended Complaint.
13. Defendant denies the allegations contained in Paragraph 13 of the First Amended Complaint.
14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the First Amended Complaint and therefore denies same.
15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the First Amended Complaint and therefore denies same.
16. Upon information and belief, Defendant admits the allegations contained in Paragraph 16 of the First Amended Complaint.
17. Upon information and belief, Defendant admits the allegations contained in Paragraph 17 of the First Amended Complaint.
18. Upon information and belief, Defendant admits the allegations contained in Paragraph 18 of the First Amended Complaint.
19. Defendant denies the allegations contained in Paragraph 19 of the First Amended Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the First Amended Complaint.
21. Defendant denies the allegations contained in Paragraph 21 of the First Amended Complaint.
22. Defendant denies the allegations contained in Paragraph 22 of the First Amended Complaint.
23. Defendant denies the allegations contained in Paragraph 23 of the First Amended Complaint.
24. Defendant denies the allegations contained in Paragraph 24 of the First Amended Complaint.
25. Defendant denies the allegations contained in Paragraph 25 of the First Amended Complaint.
26. Defendant denies the allegations contained in Paragraph 26 of the First Amended Complaint.
27. Defendant denies the allegations contained in Paragraph 27 of the First Amended Complaint.
28. Defendant denies the allegations contained in Paragraph 28 of the First Amended Complaint.
29. Defendant denies the allegations contained in Paragraph 29 of the First Amended Complaint.
30. Defendant denies the allegations contained in Paragraph 30 of the First Amended Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the First Amended Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the First Amended Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the First Amended Complaint.

34. Defendant denies the allegations contained in Paragraph 34 of the First Amended Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the First Amended Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of the First Amended Complaint.

37. Defendant denies the allegations contained in Paragraph 37 of the First Amended Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of the First Amended Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of the First Amended Complaint.

CLAIMS

40. Defendant incorporates its responses to the previous allegations of the First Amended Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the First Amended Complaint.

42. Defendant admits the allegations contained in Paragraph 42 of the First Amended Complaint.
43. Defendant denies the allegations contained in Paragraph 43 of the First Amended Complaint.
44. Defendant denies the allegations contained in Paragraph 44 of the First Amended Complaint.
45. Defendant denies the allegations contained in Paragraph 45 of the First Amended Complaint.
46. Defendant denies the allegations contained in Paragraph 46 of the First Amended Complaint.
47. Defendant incorporates its responses to the previous allegations contained in the First Amended Complaint.
48. Defendant denies the allegations contained in Paragraph 48 of the First Amended Complaint.
49. Defendant admits that Austin Police Chief Brian Manley is the official policymaker for the Austin Police Department and that he is appointed to his position by the Austin City Manager. Defendant denies the remaining allegations contained in Paragraph 49 of the First Amended Complaint.
50. Defendant denies the allegations contained in Paragraph 50 of the First Amended Complaint.
51. Defendant incorporates its responses to the previous allegations contained in the First Amended Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the First Amended Complaint.
53. Defendant admits that Austin Police Chief Brian Manley is the official policymaker for the Austin Police Department and that he is appointed to his position by the Austin City Manager. Defendant denies the remaining allegations contained in Paragraph 53 of the First Amended Complaint.
54. Defendant denies the allegations contained in Paragraph 54 of the First Amended Complaint.
55. Defendant incorporates its responses to the previous allegations contained in the First Amended Complaint.
56. Defendant denies the allegations contained in Paragraph 56 of the First Amended Complaint.
57. Defendant denies the allegations contained in Paragraph 57 of the First Amended Complaint.
58. Defendant denies the allegations contained in Paragraph 58 of the First Amended Complaint.
59. Defendant denies the allegations contained in Paragraph 59 of the First Amended Complaint.
60. Defendant denies the allegations contained in Paragraph 60 of the First Amended Complaint.
61. Defendant incorporates its responses to the previous allegations contained in the First Amended Complaint.

62. Defendant denies the allegations contained in Paragraph 62 of the First Amended Complaint.

63. Defendant denies the allegations contained in Paragraph 63 of the First Amended Complaint.

64. Defendant denies the allegations contained in Paragraph 64 of the First Amended Complaint.

DAMAGES

65. Defendant denies the allegations contained in Paragraph 65 of the First Amended Complaint.

EXEMPLARY DAMAGES

66. Defendant denies the allegations contained in Paragraph 66 of the First Amended Complaint.

67. Defendant denies the allegations contained in Paragraph 67 of the First Amended Complaint.

ATTORNEY'S FEES

68. Defendant denies the allegations contained in Paragraph 68 of the First Amended Complaint.

PRESERVATION OF EVIDENCE

69. Defendant admits the allegations contained in Paragraph 69 of the First Amended Complaint.

JURY DEMAND

70. Defendant denies the allegations contained in Paragraph 70 of the First Amended Complaint.

71. As to the last unnumbered paragraph beginning: “WHEREFORE, Plaintiffs ask that judgment be awarded...” Defendant denies the allegations of that paragraph and specifically denies that Plaintiffs are entitled to any recovery whatsoever of and from this Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983 since it is a political subdivision.
4. Defendant asserts the affirmative defense that Plaintiffs’ claims are barred in whole or in part by Aquantis Griffin’s intentional conduct and/or contributory negligence. Aquantis Griffin, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to his injuries and the damages asserted in this case.
5. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT’S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiffs be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney’s fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III

H. GRAY LAIRD III

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ATTORNEYS FOR DEFENDANT

CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that on the 26th day of October, 2020, I served a copy of *Defendant City of Austin's Answer and Affirmative Defenses to Plaintiffs' First Amended Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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**ATTORNEY FOR DEFENDANT
OFFICERS**

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Shalitha Ross , individually, as Independent	§	
Executrix of the Succession of Aquantis	§	
Griffin, and as natural guardian of K.F., a	§	
minor, and	§	
Ariel Griffin ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 1:20-cv-00856
Joseph Cast, Wesley Devries,	§	
Justin Halbach, Stephen Johnson,	§	
Alberto Martinez, Daniel Mathis,	§	
Joseph Moran, Christopher Salacki, and	§	
the City of Austin ,	§	
	§	
Defendants.	§	

PLAINTIFFS’ RESPONSE TO OFFICER DEFENDANTS’ MOTION TO DISMISS

Officer Defendants, each Austin Police Department Officers, shot and killed twenty-one-year-old Aquantis Griffin, known to his family as Ajay. Plaintiffs are the Estate of Ajay’s mother, Shalitha Ross, and his sisters, Ariel Griffin and Keyeara Franklin. As the material facts, viewed in the light most favorable to Plaintiffs, present a plausible claim that Defendants violated Ajay’s clearly established Fourth Amendment Rights, Defendants motion to dismiss should be denied.

I. Summary of the Response

The Court should deny the Officer Defendants’ motion to dismiss for two reasons:

First, Plaintiffs have established a plausible claim that Defendants used excessive force against Ajay, violating his constitutional right. Ajay died as a direct result of the excessive force used by the Officer Defendants. That force was objectively unreasonable under the circumstances presented in this case. Opening fire on Ajay at all was objectively unreasonable as

he objectively posed no immediate threat as he, with the rest of the innocent crowd, ran from gunfire. Further, Ajay was attempting to comply with officer commands, but was never given the opportunity. After the first half-second of shots, continuing to rain bullets on Ajay as he lay injured and unarmed in the street for *more time* than he was given to comply with officers' orders is also objectively unreasonable.

Second, Defendants are not entitled to qualified immunity. Ajay's right was clearly established such that it would have been clear to a reasonable officer that Defendants conduct at issue was unlawful. Under the circumstances of this case every reasonable officer would conclude it was unconstitutional to shoot and then keep shooting Ajay. Ajay never threatened officers; he never made any threatening acts; he attempted to comply with officers' commands, but was never given the opportunity; he was shot without warning; and continued to be shot at least twenty-five more times while laying prostrate and unarmed.

II. Factual Background

On August 16, 2018, Ajay, a twenty-one-year-old Black man, was visiting Austin from Baton Rouge, Louisiana. First Amended Complaint ("Complaint") [Doc. 4] ¶ 11. Ajay attended a concert with friends for an artist known as YoungBoy. *Id.* The concert took place downtown on a crowded Sixth Street. *Id.* Around midnight, police were called to an altercation at the concert venue. *Id.* ¶12. Several people, including Ajay, left the venue into the back alley. *Id.* ¶13. Ajay did not have a weapon on him at that time. *Id.* ¶ The crowd moved into San Jacinto Blvd next to a large parking lot, when an individual by the name of Jordan Seguin fired multiple rounds from the parking lot above the heads of the crowd, including Ajay. *Id.* ¶14–15. Shortly after, additional gunfire was heard from the area where Seguin had fired his weapon. *Id.* ¶ 17. The Officer

Defendants formed a line across Trinity Street, south of the alley exit and drew their guns. *Id.* ¶ 19–20. Ajay, now with a gun in his hand, followed a crowd of people running from the gun fire. *Id.* ¶ 18–21. Just like the people running before him, Ajay made a hard left when he saw the officers blocking Trinity to the south and headed away from officers, running to safety north on Trinity. *Id.* ¶ 22.

Multiple officers chaotically shouted conflicting and confusing commands over each other at Ajay, including commands to "get on the ground," "stop running," "drop the gun," and "who has a Taser?" *Id.* ¶ 23. At the same moment, Ajay attempted to comply with the officers' commands to drop the gun he was holding. *Id.* ¶ 24. Ajay moved his right arm away from his body to the right as he turned to the left and in an apparent attempt to drop the gun. *Id.*

Ajay did not look directly at the police officers. *Id.* ¶ 25. He did not point his gun at the police officers. *Id.* ¶ 25. He did not say anything—much less anything threatening—to the officers. *Id.* ¶ 25. Ajay did not ever fire his gun, either before encountering the line of officers with their weapons ready, or during the moment he encountered them. *Id.* ¶ 25. Simultaneously with the chaotic shouting, and before Ajay had any reasonable opportunity to comply with the officers' commands, the defendants opened fire. *Id.* ¶ 26.

No more than three second after the officers began shouting various commands, and before Ajay could comply, the officers start shooting Ajay without warning. *Id.* ¶ 27. Within one-half second after the first bullet was fired, Ajay fell forward and released his gun. *Id.* ¶ 27. While Ajay was lying prostrate, injured, and disarmed in the street, the Officer Defendants continued to shoot 40 more times, striking Ajay at least 25 more times on the right side of his body. *Id.* ¶

28. Ajay's fatal injuries were so numerous and extensive that the emergency room physician could not list them all, but rather marked them on a diagram. *Id.* ¶ 31.

III. Argument and Authorities

a. Legal Standard

In considering a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept all well pleaded facts as true and view them in the light most favorable to Plaintiffs. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). The issue is not whether Plaintiffs will prevail but whether Plaintiffs are entitled to pursue their complaint and offer evidence in support of their claims. *Doe v. Hillsborough Indep. Sch. Dist.*, 81 F.3d 1395, 1401 (5th Cir. 1996). Rule 12(b)(6) motions are disfavored and are rarely granted. *Bernal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164 (5th Cir. 1999). In fact, dismissal or judgment should not be granted unless it appears beyond doubt that Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. Moreover, *Ashcroft v. Iqbal*, simply states that a party's complaint must be plausible on its face, must do more than offer labels and conclusion, and must offer some factual basis in support of his claim. 129 S. Ct. 1937, 1949 (2009).

Government officials are not entitled to qualified immunity if they (1) "violated a statutory or constitutional right"; and (2) "the right was clearly established at the time of the challenged conduct." *Turner v. Lt. Driver*, 848 F.3d 678, 685 (5th Cir. 2017). Accordingly, to establish that Ajay's constitutional right was violated, Plaintiffs need only provide sufficient allegations so that the Court may infer that "(1) an injury that (2) resulted directly and only from the use of force that was excessive to the need and that (3) the force used was objectively unreasonable." *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004).

The “dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Hernandez v. Mesa*, 137 S.Ct. 2003, 2007 (2017) (vacating Fifth Circuit decision granting officer qualified immunity). An official can “lose qualified immunity even if there is no reported case ‘directly on point.’” *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1867 (2017). A civil rights plaintiff is not required to show “the very action in question has previously been held unlawful.” *Id.* Officers are simply not entitled to qualified immunity in an “obvious case” – one where the essential constitutional principle is clear. *Newman v. Guedry*, 703 F.3d 757, 764 (5th Cir. 2012). Rather, the purpose of qualified immunity is to only protect officials who “reasonably misapprehend[] the law governing the circumstances” and to provide the official “fair notice that h[is] conduct was unlawful.” *Brousseau v. Haugen*, 543 U.S. 194, 198 (2004). “If a right is clearly established enough to impart fair warning to officers, then their conduct in violating that right cannot be objectively reasonable.” *Bishop v. Arcuri*, 674 F.3d 456, 466 (5th Cir. 2012). Officers are not cloaked in qualified immunity when “in the light of pre-existing law the unlawfulness [of the official’s action] [is] apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Qualified immunity does not protect “the plainly incompetent or those who knowingly violate the law.” *Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015).

b. Officer Defendants Used Excessive Force Against Ajay

To prevail on an excessive force claim, a plaintiff must simply show “(1) an injury that (2) resulted directly and only from the use of force that was excessive to the need and that (3) the force was objectively unreasonable.” *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004).

i. Injury and Causation

There can be no reasonable dispute that Ajay's death was caused "directly and only" by the Officer Defendants' use of deadly force, easily satisfying the first element. The storm of gunfire resulted in Ajay being shot 30 times in the head, face, neck, chest, abdomen, genital area, extremities, and back—most striking from the rear. Complaint ¶ 29, 32.

ii. Clearly Excessive and Unreasonable Use of Force

The second and third elements are properly considered together, as Fifth Circuit precedent "recognizes that inquiries regarding whether a use of force was 'clearly excessive' or 'clearly unreasonable' are often intertwined, and we consider these questions together." *Darden v. City of Ft. Worth, Tex.*, 880 F.3d 722, 728 (5th Cir. 2018). Thus, to evaluate whether the Officer Defendants' use of deadly force was "clearly unreasonable" or "objectively unreasonable," a court considers "the severity of the crime..., whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396 (1985). *See also Darden*, 880 F.3d at 728-29. Under the Fourth Amendment, "it is unreasonable for an officer to seize an unarmed, nondangerous suspect by shooting him dead." *Brosseau*, 543 U.S. at 197. "This reasonableness inquiry is an objective one," and only "consider[s] facts that were 'knowable' to [the officer]." *Zinzer v. Kaufman Cnty., Tex.*, 916 F.3d 464, 474 (5th Cir. 2019) (citing *White v. Pauly*, 137 S.Ct. 548, 550 (2017)). The Court must consider "the totality of the circumstances." *Plumhoff v. Rickard*, 572 U.S. 765, 774 (2012); *see also Darden*, 880 F.3d at 728-29.

Here, Ajay was among a crowd of innocent people who were running from gunfire. Complaint ¶ 20–22. Ajay was not suspected of committing any crime and officers did not observe Ajay committing any crime. Nor was he evading arrest. Among the chaos and shouting, Ajay,

along with the rest of the crowd, was running away from the officers, he had not been detained or placed under arrest. *Id.*

Thus, the focus of the Court's inquiry shifts to "whether [Ajay] pose[d] an *immediate* threat to the safety of the officers or others." *Graham v. Connor*, 490 U.S. 386, 396 (1985) (emphasis added), *see also Darden*, 880 F.3d at 729 (reversing grant of summary judgment when "there is a genuine factual dispute over whether [the deceased] posed an immediate safety threat"). The "inquiry is limited to whether the officer [or others] [were] in danger at the moment of the threat that resulted in the use of force." *Mason v. Lafayette City-Parish Consol. Gov't*, 806 F.3d 268, 276 (5th Cir. 2015) (Owen, J.). "[A]n exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased." *Id.* at 277 (citing *Lytle v. Bexar Cnty., Tex.*, 560 F.3d 404, 413 (5th Cir. 2009)). When circumstances change during a single police encounter—such as Ajay dropping the firearm, or running away from officers—the court must "expressly address whether [the officer's] use of his firearm was justified throughout the encounter." *Id.* (reversing district court that granted officer qualified immunity); *see also Blanford v. Sacramento Cnty., Calif.*, 406 F.3d 1110, 1117-18 (9th Cir. 2005) (analyzing three "volleys" of shots separately).

1. The first volley of shots was not objectively reasonable.

Opening fire on Ajay was objectively unreasonable. Given that Ajay never threatened officers (or anyone else), never pointed the firearm at officers (or anyone else), never fired the firearm, and was running *away* from gunfire and *away* from officers, no reasonable officer would have believed that Ajay posed a threat to anyone. Complaint ¶ 20–25.

The Officer Defendants had their guns drawn before they ever laid eyes on Ajay. Complaint ¶20. As a crowd of innocent people ran to escape gunfire, officers began yelling commands over each other. *Id.* Just like the rest of the fleeing crowd, Ajay exited the alley and ran away from the officers. *Id.* ¶ 21–23. When ordered to “stop running” and to “drop the gun” Ajay attempted to comply. *Id.* ¶23–24.

As the Fifth Circuit has observed, in a case where the suspect acted far more dangerously than Ajay, “[m]erely having a gun in one’s hands does not mean per se that one is dangerous,” not even when the police have been told the suspect engaged in highly threatening behavior shortly before their arrival. *Graves v. Zachary*, 277 Fed. Appx. 344, 348 (5th Cir. 2008) (denying qualified immunity to officers who shot a gunman who was reported to have “put [a small machine] gun in [his ex-girlfriend’s] face,” and “threatened to shoot her in the leg,” before being locked out of her apartment).

Similarly, the video shows that Ajay did not have a reasonable opportunity to comply with the officers’ orders. Complaint ¶23–27. On the contrary, he attempted to comply with the officers’ orders but was given no such opportunity. *Id.* The truth is, there is nothing Ajay could have done in that moment to save himself, as before he could attempt to comply with officer’s orders and less than three seconds after they began shouting, he was shot. *Id.* ¶ 23–27.

Whether a suspect has sufficient time to comply with officers’ orders to “drop the gun” is an issue of material fact. *See Graves*, 277 Fed. Appx. at 349. Here, “[i]t is far from clear that [Ajay] had the opportunity to be deterred by the officers’ warnings or even to register their commands.” *Zinzer*, 916 F.3d at 475 (citing *Trammell v. Fruge*, 868 F.3d 332, 342 (5th Cir. 2017): “The quickness with which the officers resorted to deadly force militates against a finding of reasonableness”).

Here, Ajay was not given a sufficient opportunity to comply with the order and appeared to be attempting to comply with the order to put the gun down when he is shot running away from the officers.

2. Continued gunfire after Ajay was unarmed on the ground was not objectively reasonable.

Within a half second of the first shot, Ajay fell forward and released his gun. Complaint ¶ 27. The gun skidded across the pavement to the other side of the street. *Id.* Ajay was disarmed, gravely wounded, lying face-down and defenseless on the street when the Officer Defendants continued to shoot 40 more times, hitting him at least 25 more times. *Id.* After Ajay was laying disarmed in the street, the Officer Defendants continue to shoot over the next four seconds. *Id.* The Officers barraged Ajay with bullets for *longer* than they gave him to comply with their orders. *Id.* ¶¶26–27. Thus, Ajay no longer “objectively posed an immediate threat” (if he ever did), and it was objectively unreasonable to continue the firestorm of bullets. *Mason*, 806 F.3d at 278.

Instead, Fifth Circuit precedent commands that Ajay was not an “immediate” threat justifying deadly force. Even “[t]he fact that a person has a gun and is behaving in a dangerous manner does not constitute an immediate and serious threat justifying the use of deadly force.” *Cole v. Carson*, 802 F.3d 752, 759 (5th Cir. 2015) (*Cole I*). To justify deadly force against a person holding a handgun, “the victim [must commit] additional threatening ‘Manis’ acts.” *Cole*, 802 F.3d at 759 (citing *Manis v. Lawson*, 585 F.3d 839 (5th Cir. 2009)). *Manis* acts include things that did not happen here – like pointing the gun at other people, failing to comply with orders to drop a gun, or preparing to aim a gun. See *Cole*, 802 F.3d at 759, n. 25 (collecting cases).

Here, the officers did not see a *Manis* act before the Officer Defendants opened fire. To hold otherwise would mean officers have “open season on suspects with guns,” and a license to

kill anyone holding a gun in the State of Texas. *Cole*, 802 F.3d at 760; *see also Graves*, 277 Fed. Appx. at 348; *Sanchez v. Fraley*, 376 Fed. Appx. 449, 452 (5th Cir. 2010) (denying summary judgment to officer who shot double homicide suspect believed to be armed who had ceased fleeing). Ultimately, whether the officers “reasonably perceived a threat ... is a factual question,” which here is “genuinely disputed.” *Cole v. Carson*, 905 F.3d 334, 346 (5th Cir. 2018) (*Cole II*); *see also Schaefer v. Whitted*, 121 F.Supp.3d 701, 716 (W.D. Tex. 2015) (Sparks, J.) (denying qualified immunity where “the threat of physical harm was not immediate because [the deceased] did not actually draw the weapon and point it in [the officer’s] direction”); *Hensley v. Suttles*, 167 F. Supp. 3d 753, 762-64 (W.D.N.C. 2016), *aff’d sub nom. Hensley on behalf of N. Carolina v. Price*, 876 F.3d 573 (4th Cir. 2017) (deceased had “both arms down by his sides and thus was not holding or pointing the firearm in a threatening manner”); *George v. Morris*, 736 F.3d 829, 832 (9th Cir. 2013) (same); *Estate of Lopez v. Gelbaus*, 871 F.3d 998, 1011 (9th Cir. 2017) (deceased holding replica AK-47 pointed down); *Cruz v. Anaheim*, 765 F.3d 1076, 1079-80 (9th Cir. 2014); *Bletz v. Gribble*, 641 F.3d 743, 752 (6th Cir. 2011) (dispute about whether victim pointing gun at officers, or lowering it after hearing commands); *In re Estate of Lee v. City of Washington*, No. 3:09-CV-00016-RLY, 2010 WL 4778725, at *8 (S.D. Ind. Nov. 16, 2010) (“if [the victim] did not point the gun at the officers, then there is an issue of material fact as to whether [he] posed an immediate threat to their safety, thus justifying the use of deadly force”); *Brown v. Newton Cty. Sheriff's Office*, 273 F. Supp. 3d 1142, 1157 (N.D. Ga. 2017).

The Officer Defendants offer two cases as justification for dismissal that are not comparable to the matter at hand. Defendants’ first direct this Court to *Garza v. Briones*. Officer Defendants’ Motion to Dismiss (“Motion”) [Doc. 14] at 10–11. In *Garza*, the suspect had a pistol

and the officers ordered him to put the gun down. *Garza v. Briones*, 943 F.3d 740, 743 (5th Cir. 2019). The suspect, after receiving continued commands to put the gun down, did not comply and instead raised his gun towards the officers. *Id.* at 744. Similarly, the Officer Defendants cite to *Ramirez v. Knoulton*. (Motion) at 11. In *Ramirez*, the suspect did not immediately pull over when officers attempted to get him to stop. 542 F.3d 124, 127 (5th Cir. 2008). When he finally pulled over, the suspect “repeatedly refused the officers’ commands” including their commands to raise his hands, disclose what was in his hands, or drop what was in his hands. *Id.* The suspect was shot as he brought his hands and the gun together in front of him. *Id.* at 127, 131.¹

Unlike the suspects in *Garza* and *Ramirez*, Ajay never pointed or prepared to point the firearm at anyone. Complaint ¶ 20–25. On the contrary, he was putting the gun down and was disarmed as Defendants continued shooting. *Id.* ¶23–27. Additionally, Ajay was not given an opportunity to comply, never mind the opportunity to repeatedly refuse, and as he tried to comply, he was shot down. *Id.* ¶23–27. Defendants are correct in their motion that the Constitution “does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists,” however it does not give officers license to execute people who pose no immediate threat. Motion at 12–13 (quoting *Ramirez v. Knoulton*, 542 F.3d 124, 130 (5th Cir. 2008); see *Graham v. Connor*, 490 U.S. 386, 396 (1985)). Therefore, the Officer Defendants’ conduct was not objectively reasonable and was unlawful.

¹ Incidentally, *Ramirez* is specifically distinguished by both *Cole I* and *Cole II* which are discussed below. See *Cole v. Carson*, 802 F.3d 752, 760 758 (5th Cir. 2015), vacated sub nom. *Hunter v. Cole*, 137 S. Ct. 497, 196 L. Ed. 2d 397 (*Cole I*), and *Cole v. Carson*, 905 F.3d 334, 347 (5th Cir. 2018) (*Cole II*).

c. Defendants are not entitled to qualified immunity.

The Officer Defendants claim that they are entitled to qualified immunity because, even if Ajay's constitutional right was violated that right was not "clearly established" in the situation presented. Motion at 6. However, this argument fails when compared to Fifth Circuit precedent and Plaintiffs have established a plausible claim that circumstances specific to this case would have caused a reasonable officer to conclude it was unconstitutional to shoot and then keep shooting Ajay.

The two cases that the Officer Defendants present as "instructive" are easily distinguished. In *Mullenix v. Luna*, the suspect "had led police on a 25-mile chase at extremely high speeds, was reportedly intoxicated, had twice threatened to shoot officers, and was racing toward an officer's location." 577 U.S. 7, 14 (2015). The Supreme Court held that there was no bright-line rule that "use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others." Instead, the Court held that "this area is one in which the result depends very much on the facts of each case." *Id.* at 13, 16. The facts of this case are quite different from the facts in *Mullenix*. Ajay did not threaten anyone by pointing his gun or making a verbal threat. He was not "racing toward officers" in a car, but rather fleeing from gunfire on foot, and he was attempting to comply with officers' orders but was never given that opportunity. Complaint ¶ 20–27.

The other case cited by Defendants is even more unpersuasive. Motion at 6. As a preliminary matter, Defendants' argument in this section quotes *Cole I* as support, which was vacated and remanded by the Supreme Court in light of the *Mullenix* decision. *Cole*, 802 F.3d at 755-56, 758, vacated sub nom. *Hunter v. Cole*, 137 S. Ct. 497. The Fifth Circuit, in consideration

of *Mullenix*, affirmed the denial of the officers' summary judgment motion for Plaintiffs' excessive-force claims on qualified immunity grounds, finding that the district court did not err in denying the officers qualified immunity at summary judgment. *Cole v. Carson*, 935 F.3d 444, 457 (5th Cir. 2019). Thus, when Defendants' motion cites to this iteration of *Cole*, it is citing to Justice Ho's dissenting opinion. The *Cole* Court cites evidence that the suspect "never pointed a weapon at the Officers," . . . and "never made a threatening or provocative gesture towards [the] Officers," and "provided 'no warning . . . that granted [the suspect] a sufficient time to respond,' such that [the suspect] 'was not given an opportunity to disarm himself before he was shot.'" ²*Id.* at 448–49. Similar to the victim in *Cole*, Ajay had not threatened anyone and was not given the opportunity to comply with the Officer Defendants' orders before being shot. Complaint ¶ 20–27. Here, the Officer Defendants "had time and opportunity to give a warning for [Ajay] to disarm himself. However, the officers provided no warning that granted [Ajay] the opportunity to disarm himself before he was shot." *See Cole*, 935 F.3d at 449.

The Fifth Circuit in *Cole* outlined the relevant analysis from *Baker v. Putal*, holding that it was not shifted by the Supreme Court's decision in *Mullenix*. *Id.* at 453–54

For in *Baker*, members of the public told Officer Michael Putnal, a police officer patrolling a crowded Galveston beach area during spring break, that "someone had entered the crowd with a pistol-gripped shotgun." Minutes later, Officer Putnal heard gunfire and saw the crowd scurrying. There was "a good deal of confusion on the beach." Two people directed the officer to a car in which the gunman was supposedly sitting. Putnal then saw Wendell Baker Jr. and another man sitting in a truck parked on the beach. The parties disputed what happened next. Putnal stated he saw Baker loading a magazine into a handgun, that he warned Baker to freeze or drop the gun, that Baker instead turned the gun upon

² The officers in *Cole* contend that [the suspect] "had threatened to shoot anyone who tried to take his gun"; had refused an order to drop his weapon; and might be headed for [a nearby high school] "to possibly engage in violence," but the Court notes that officers recalled this version of the facts for the first time four years after litigation commenced.

Putnal, at which point Putnal fired, killing Baker. However, witnesses "state[d] that [Baker] took no threatening action . . . as the officer approached the truck," that Putnal issued no warning to Baker, and that "Baker . . . may have barely had an opportunity to see Putnal before [the officer] fired his gun." The parties did not dispute that Putnal had been searching for a gunman, and that a gun had been recovered from Baker's seat, although they disputed whether and how Baker had been holding it, that is, whether he pointed it at Putnal. It was also undisputed that Baker was turning to face Putnal from his seat, although medical reports indicated from "the nature of the wounds . . . that Baker . . . was not facing Putnal when he was shot." Baker's survivors sued the officer, bringing, inter alia, a Fourth Amendment excessive-force claim. The district court granted Putnal qualified immunity, crediting his account that he had fired in response to Baker turning and aiming the gun at him. On appeal, we reversed and remanded the excessive-force claim for trial. Recognizing the dispute as to the officer's warning, Baker's turn, and the position of Baker's gun, we found "simply too many factual issues to permit the Bakers' § 1983 claims to be disposed of on summary judgment." "Chaos on the beach and Baker[']s mere motion to turn and face Putnal are not compelling reasons to find that [the officer's] use of force was not excessive as a matter of law." Viewing the facts and drawing inferences "in the light most favorable to the nonmoving party," we held that "[t]he number of shots and the nature of the wounds raise . . . more of a question of fact than a court may dispose of on summary judgment."

Id.

The facts in *Baker* are remarkably close to the instant case in that chaos on the streets and Ajay's mere presence at the scene are "not compelling reasons to find that [the officers'] use of force was not excessive as a matter of law." See *Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996). Open carry is not a crime in Texas, but for Ajay, a Black man, open carry was a death sentence. The Officer Defendants' actions in the circumstances of this case were a violation of clearly-established law and thus Plaintiffs raise a plausible claim that defendants are not entitled to qualified immunity.

IV. Conclusion

For the foregoing reasons, the Court should deny the Officer Defendants' motion to dismiss.

Dated: November 9, 2020

Respectfully submitted,
HENDLER FLORES LAW, PLLC.



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that Plaintiffs' Response to Officer Defendants' Motion to Dismiss was served on all counsel of record via electronic mail on November 9, 2020.

A handwritten signature in black ink that reads "R Webber". The signature is written in a cursive, slightly slanted style.

Rebecca Ruth Webber

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHALITHA ROSS, individually and as §
independent executrix of the §
succession of Aquantis Griffin, §
ARIEL GRIFFIN, and §
KEYEARA FRANKLIN, §

Plaintiffs, §

v. §

CIVIL ACTION NO. 1:20-CV-00856-LY

THE CITY OF AUSTIN, JOSEPH CAST, §
WESLEY DEVRIES, JUSTIN HALBACH, §
STEPHEN JOHNSON, DANIEL MATHIS, §
ALBERTO MARTINEZ, §
JOSEPH MORAN, and §
CHRISTOPHER SALACKI, §

Defendants. §

OFFICER DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Daniel Mathis, Alberto Martinez, Joseph Moran, and Christopher Salacki (collectively, the “Officer Defendants”) file this reply in support of their motion to dismiss the claims brought against them by Plaintiffs Shalitha Ross, Ariel Griffin, and Keyeara Franklin.

ARGUMENT

I. Plaintiffs failed to meet their burden to prove a violation of “clearly established” law.

As explained in the Officer Defendants’ motion, Plaintiffs bear the burden showing the Officer Defendants’ conduct violated clearly established law. *Vann v. City of Southaven, Miss.*, 884 F.3d 307, 310 (5th Cir. 2018). Plaintiffs have failed to meet that burden.

First, Plaintiffs’ response never articulates the allegedly “clearly established” law they contend was violated with any specificity. At best, Plaintiffs allude to the generic legal principle

that “deadly force requires a sufficient threat,” which is the precise “law” the Supreme Court held *was not specific enough* when it reversed the Fifth Circuit in *Mullenix*. *See Mullenix v. Luna*, 577 U.S. 7, 13 (2015); *see also Hunter v. Cole*, 137 S. Ct. 497 (2016) (reversing another Fifth Circuit case relying on this broad rule to deny qualified immunity); *Garcia v. Blevins*, 957 F.3d 596, 601 (5th Cir. 2020) (holding similar formulation drawn at a “high level of generality cannot clearly establish the relevant law”).

Plaintiffs’ response to *Mullenix* is to distinguish the case factually. But *Mullenix* is not instructive because of a factual similarity. It is instructive because it shows that neither courts nor plaintiffs may rely upon generic pronouncements of the law when conducting the “clearly established” analysis. Plaintiffs ignore the lesson the Supreme Court tried to teach the Fifth Circuit in *Mullenix* and commit the same error that resulted in the Supreme Court reversing in that case.

Second, Plaintiffs posit that *Baker* is “remarkably close” to this case, presumably meaning the case is similar enough to meet Plaintiffs’ burden of proving a violation of a clearly established constitutional right. *See Baker v. Putnal*, 75 F.3d 190 (5th Cir. 1996). But the facts of *Baker* look nothing like this case. There, officers heard gunshots in a crowd and two civilian bystanders pointed to a vehicle and identified the occupants as the shooters. *Id.* at 193. An officer approached the vehicle and saw the passenger turn in his direction. *Id.* The officer shot the passenger and killed him. *Id.* The Fifth Circuit held it was appropriate to deny qualified immunity because the evidence was conflicting on numerous points, including whether the passenger pointed a gun at the officer. *Id.* at 198 (citing “too many factual issues” to decide the case on summary judgment). *Baker* is therefore factually distinguishable *and* legally irrelevant because the case was sent to trial to resolve factual disputes. The case says nothing about

“clearly established law.” *See Cole v. Carson*, 935 F.3d 444, 468 (5th Cir. 2019) (*Cole II*) (Jones, J., dissenting) (distinguishing *Baker* on these grounds); *id.* at 484-85 (Duncan, J., dissenting) (explaining that *Baker* “doesn’t speak clearly” to the situation where a suspect is holding a gun).

Third, to the extent Plaintiffs contend the constitutional violation here presents an “obvious case,” they are wrong. To begin, “the Supreme Court to date has *never* identified an ‘obvious’ case in the excessive force context.” *Cole II*, 935 F.3d at 474 (Ho, J., and Oldham, J., dissenting). Even within the Fifth Circuit, the only so-called “obvious” excessive force case is *Cole II*, on which Plaintiffs rely. *See id.* at 453 (“This is an obvious case.”). But at the time this shooting occurred in August 2018, the original panel opinion in *Cole I* sat vacated by the Supreme Court and no subsequent opinion had issued. *Cole II* therefore provided no guidance to people in the Officer Defendants’ position at the relevant time.

Fourth, the Officer Defendants identified *Garcia* as an example of a factually similar case in which qualified immunity was granted, therefore suggesting *at minimum* that it was not “clearly established” that officers could not constitutionally shoot in these kinds of situations. *See Garcia*, 957 F.3d at 601-02. Plaintiffs’ response does not even cite *Garcia*. Just as the officer involved in that 2015 shooting was entitled to immunity, the Officer Defendants are entitled to immunity here.

II. The Officer Defendants were justified in using deadly force as a matter of law.

A. This is not a summary judgment case. There are no “fact issues” at the Rule 12 stage.

As explained in the Officer Defendants’ motion, binding Fifth Circuit case law confirms that under the factual scenario alleged by Plaintiffs, the Officer Defendants were justified in using deadly force. Plaintiffs’ arguments that Griffin was attempting to comply with commands

to drop his gun and “presented no threat” were anticipated and adequately addressed in the Officer Defendants’ motion. *See* Mot. Dism., at 11-12. The Officer Defendants rely upon binding Supreme Court and Fifth Circuit authority addressing similar factual scenarios. Those cases urge dismissal based on qualified immunity.

In contrast, Plaintiffs rely upon inapplicable “fact issue” cases in arguing deadly force was not justified. Both *Graves* and *Sanchez* are unpublished, non-precedential opinions that do not carry the force of law. *See Graves v. Zachary*, 277 Fed. App’x 344, 348 (5th Cir. 2008) (unpublished); *Sanchez v. Fraley*, 376 Fed. App’x 449, 452 (5th Cir. 2010) (unpublished). They were also decided on the basis that disputed fact issues precluded summary judgment. *Graves*, 277 Fed. App’x at 348-49 (identifying numerous “factual dispute[s]”); *Sanchez*, 376 Fed. App’x at 454 (asserting case presented “a quintessential fact issue”).¹ This is also the posture of the numerous district court and out-of-circuit cases string cited in Plaintiffs’ response. *See* Pls.’ Resp., at 10 (citing, among others, *Schaefer v. Whitted*, 121 F. Supp. 3d 701, 716 (W.D. Tex. 2015) (denying motion to dismiss given “the competing accounts of what occurred”).²

It was also the posture of both *Winzer* (a case also cited by the Officer Defendants) and *Cole II*. In *Winzer*, the Fifth Circuit held that the officer was entitled to qualified immunity because his conduct was not “clearly established” to be unconstitutional. *See Winzer v. Kaufman Cnty.*, 916 F.3d 464, 477 (5th Cir. 2019). That the Fifth Circuit *also* held that a fact issue precluded summary judgment on the “constitutional violation” prong is ultimately irrelevant. *See id.* at 476. Regardless, that case presented a wildly dissimilar scenario in which officers shot

¹Additionally, *Sanchez* commits the same analytical error that caused the Supreme Court to reverse in *Mullenix*. The court in *Sanchez* defined the relevant “clearly established” right at a high level of generality. *See Sanchez*, 376 Fed. App’x at 452-53 (citing the generic “deadly force requires an immediate threat” rule).

²These non-binding authorities are no help on the “clearly established” argument, either, because non-binding cases “cannot clearly establish the law.” *See Garcia*, 957 F.3d at 601.

an unarmed man they had arguably not sufficiently identified as the suspect they were previously pursuing. *Id.* Similarly, *Cole II* turned on the presence of multiple disputed facts including “what actions [the suspect] took before being shot.” *Cole II*, 935 F.3d at 457.

Summary judgment cases turning on the presence of fact issues have no relevance to the Officer Defendants’ motion to dismiss. The Officer Defendants expressly asked the Court to take the allegations in the First Amended Complaint as true, negating the possibility of any fact issues here. Whether Plaintiffs’ allegations state a viable § 1983 claim is a question of law and can be decided in the Rule 12 posture. *Whitley v. Hanna*, 726 F.3d 631, 638, 649 (5th Cir. 2013) (affirming dismissal based on qualified immunity defense asserted by Rule 12 motion); *Lincoln v. Barnes*, 855 F.3d 297, 300-01 (5th Cir. 2017).

B. No “*Manis Act*” is required to justify deadly force in this scenario.

Plaintiffs contend that in order for deadly force to be justified against a person holding a gun, that person must commit a “*Manis act*.” That is not the law in the Fifth Circuit. Carefully compare Plaintiffs’ modified quote from *Cole I* with the actual language the Fifth Circuit used:

Plaintiffs: “To justify deadly force against a person holding a handgun, ‘the victim [must commit] additional threatening ‘*Manis*’ acts.’” *See* Pl.’s Resp., at 9 (quoting, with modifications, *Cole v. Carson*, 802 F.3d 752, 759 (5th Cir. 2015) (*Cole I*), *vacated sub nom. Hunter v. Cole*, 137 S. Ct. 497 (2016)).

Fifth Circuit: “When we have found officers justified for shooting suicidal people who were armed with guns, we have depended on the victim’s *additional* threatening “*Manis*” acts and disobedience of police commands, which elevated the immediacy and severity of the danger.” *Cole I*, 802 F.3d at 759.

Plaintiffs’ “must commit” alteration changes the statement from a description of past cases to an affirmative rule. Plaintiffs also ignore the court’s limitation of this rule to situations involving “suicidal people,” which means that even if this rule exists, it does not apply here. And Plaintiffs ignore that they are relying on language from the original panel opinion in *Cole I*, which was

subsequently vacated by the Supreme Court. Although the Fifth Circuit did ultimately deny qualified immunity in *Cole II*, its final and controlling majority opinion does not contain the quoted “rule” and does not cite *Manis* at all. See *Cole II*, 935 F.3d at 455-56.

The Officer Defendants’ motion explained that the better view of Fifth Circuit case law establishes that officers may respond to deadly force situations by shooting even without the suspect taking an “additional aggressive act.” This Court should not read *Cole I*’s now-vacated and context-limited “suicidal gunmen rule” to require otherwise.

C. Plaintiffs’ “continued gunfire” theory is meritless.

As predicted in the Officer Defendants’ motion, Plaintiffs attempt to divide this five-second incident into multiple parts to support an argument that some portion of the gunshots following the “initial volley” were unconstitutional. See Mot. Dism., at 11 n.3. But Plaintiffs do not distinguish the Supreme Court and Fifth Circuit case law holding it is not unconstitutional for officers to fire multiple rounds over several seconds because the law permits them to “keep shooting until the threat is over.” See *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014); *Garza v. Briones*, 943 F.3d 740, 748 (5th Cir. 2019). Moreover, even if the Court were to determine the “second volley” rounds here potentially violated the Constitution, that violation was not clearly established at the time. Based on *Plumhoff*, reasonable officers in 2018 could have believed they were permitted to fire multiple times over several seconds under the circumstances. No case teaches that officers in deadly force situations must pause between trigger pulls and re-assess the threat in the split-second that has elapsed.

CONCLUSION

For the foregoing reasons, the Officer Defendants respectfully request the Court grant their motion to dismiss all claims brought against them with prejudice and award all other relief to which the Officer Defendants may show themselves entitled.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Karson Thompson

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**ATTORNEYS FOR THE OFFICER
DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2020, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/ Karson Thompson

Karson Thompson

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Shalitha Ross, individually and as	§
Independent Executrix of the Succession of	§
Aquantis Griffin,	§
Ariel Griffin, and	§
Keyeara Franklin,	§
	§
Plaintiffs,	§
	§
v.	§
	§ case no. 1:20-cv-000856-LY
Joseph Cast, Wesley Devries,	§
Justin Halbach, Stephen Johnson,	§
Alberto Martinez, Daniel Mathis,	§
Joseph Moran, Christopher Salacki, and	§
the City of Austin,	§
	§
Defendants.	§

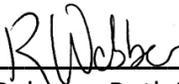
Plaintiffs' Motion for ESI Order

Plaintiff respectfully requests the Court enter the ESI Order attached as Exhibit 1.

The Parties conferred on two occasions regarding the protocols in the proposed order however Defendants have not taken a position regarding the proposed order.

Dated: December 30, 2020

Respectfully submitted,
HENDLER FLORES LAW, PLLC



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Austin, Texas 78705
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Attorneys for Plaintiffs

Certificate of Conference

I certify that I conferred with all counsel regarding the ESI order on several occasions. I emailed all counsel on Oct. 28, 2020 asking to schedule the Rule 26f conference and proposing the following ESI protocols:

ESI

I propose asking the Court to order that email productions be in their native format with some metadata such as date, author, recipient(s) including bcc, transmission info, receipt info.

As far as electronic messages, I propose asking the Court to order production in a searchable format that preserves the features of the original messages (such as emojis or gifs).

Between Oct. 28, the date I first attempted to initiate a conversation about ESI protocols, and Nov. 24, the parties' first Rule 26(f) Conference, I received no comments, feedback, or other response regarding ESI issues. During the Nov. 24 Rule 26(f) Conference, Counsel for the Defendants were not prepared to discuss ESI protocols and issues. I then scheduled a second Rule 26(f) Conference for Dec. 9 and served the proposed ESI Order. Counsel for the Defendants again declined to take any position on the proposed order on Dec. 9.

My colleague Emily Decker followed up on Dec. 21 and received no response or comment. I followed up one more time on Dec. 23 advising counsel that I intended to file the proposed Order the week of Dec. 28 (or *two months after* I first conferred on ESI issues). I received this response from counsel for the Officer Defendants on Dec. 24:

I can't imagine folks have had time in light of the holidays to look at this. I have not. Will get back to you by early January.

I received this response from the City's attorney on Dec. 30:

I will need my paralegal and our IT guys to review it since they are much more familiar with these issues than me. They are out of the office this week so it will be next week before I will be able to respond. Thanks. Gray

I advised counsel that I was unwilling to continue to delay this filing any longer, but that I would include their responses in my Motion to the Court.



Rebecca Ruth Webber

Certificate of Service

I certify that Plaintiffs' motion was served on all counsel of record via email from CM/ECF on Dec. 30, 2020.



Rebecca Ruth Webber

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Shalitha Ross, individually, as	§	
Independent Executrix of the Succession	§	
of Aquantis Griffin, and as natural	§	
guardian of K.F., a minor, and	§	
Ariel Griffin,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 1:20-cv-00856
Joseph Cast, Wesley Devries,	§	
Justin Halbach, Stephen Johnson,	§	
Alberto Martinez, Daniel Mathis,	§	
Joseph Moran, Christopher Salacki, and	§	
the City of Austin,	§	
	§	
Defendants.	§	

ESI ORDER

The Court enters this order regarding production of Electronically Stored Information and hard-copy documents ("Protocol"). The Protocol sets forth the specifications that shall govern document production during discovery in the above-captioned litigation ("Action").

A. SCOPE

1. This Protocol governs the collection and production of computer-generated information or data of any kind, stored in or on any storage media located on computers, file servers, disks, tape or other real or virtualized devices or media ("ESI"), and hard-copy documents (collectively "Data") to be produced electronically in this Action.
2. Nothing herein shall alter the parties' respective responsibility to comply with the applicable Federal Rules of Civil Procedure, Local Rules, and Individual Rules of this Court regarding the collection or production of Data. To the extent additional obligations, restrictions, or rights not addressed in this Protocol arise under the Federal Rules of Civil Procedure or other applicable law or rules, that law or rule shall govern, including the proportionality standard set forth in Rule 26(b)(1) of the Federal Rules of Civil Procedure.
3. Nothing in this Protocol establishes any ruling regarding the subject matter or scope of discovery in this Action, or the relevance, authenticity or admissibility of any Data.

4. Nothing in this Protocol shall be interpreted to require production of Data protected from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable protection or privilege.

5. Nothing in this Protocol requires a party to use unreasonably burdensome or expensive data recovery processes, or to search for information, documents, or other materials in locations where responsive information is not likely to be found, absent a showing of good cause. To the extent a party believes that responsive data is likely to be found on data sources that are not reasonably accessible, the party shall disclose that fact to the other parties.

6. The parties shall cooperate to identify and facilitate access to the contents of encrypted, password-protected, corrupted, or difficult-to access files produced. The parties will work cooperatively to fashion reasonable, precise, and cost-effective search strategies and to agree upon and implement appropriate measures for quality assurance and quality control. Parties shall be transparent about and disclose their use of mechanized tools to cull responsive data and are encouraged to bring technically adept personnel together to resolve e-discovery issues.

7. To promote communication and cooperation between the parties, the parties will designate e-discovery liaisons for purposes of meeting and conferring on ESI topics. The ESI Liaison for Defendant City Austin shall be_____. The ESI Liaison for Officer Defendants shall be _____. The ESI Liaisons for Plaintiff shall be Cody Vaughn and Shahin Amini of Hendler Flores Law, PLLC. The Parties will work in good faith to schedule e-discovery conferences when the ESI Liaisons or their designees are available.

8. Each ESI Liaison will be prepared to participate in the resolution of ESI discovery issues; familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions; knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues; prepared to participate in e-discovery dispute resolutions; know the party's ESI discovery efforts; and have access to those who are familiar with the party's electronic systems and capabilities in order to, as appropriate, answer relevant questions.

B. STANDARD FOR PRESERVATION OF ESI:

1. A party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. In determining what ESI to preserve, parties should apply the following factors listed:

a) Whether the party under a duty to preserve took measures to comply with the duty to preserve that were both reasonable and proportional to what was at issue in known or

reasonably anticipated litigation, taking into consideration the factors listed in Fed. R. Civ. P. 26(b)(2)(C);

(b) Whether the failure to preserve evidence was the result of culpable conduct, and if so, the degree of such culpability;

(c) The relevance of the information that was not preserved; and

(d) The prejudice that the failure to preserve the evidence caused to the requesting party, including the possible consequences under Fed. R. Civ. P. 37(e).

2. In preserving ESI and Data, the parties should also consider the limitations of the preservations format. If the preserved format differs from the original, and a party loses information while preserving, the information lost should be documented and all other parties notified to inform a spoliation analysis.

3. Each party shall produce a list of ESI and Data that were not preserved by the standard in B(1) once the common law obligation for preservation began.

4. In accordance with Section G herein, if the parties have a dispute regarding what ESI to preserve which cannot be resolved between the parties, the parties may present that dispute to the Court for judicial determination including the following considerations:

(a) Whether the requesting party and producing party cooperated with each other regarding the scope of the duty to preserve and the way it was to be accomplished; and

(b) Whether the requesting party and producing party sought prompt resolution.

C. STANDARD FOR ADDRESSING PRIVILEGE:

1. The parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

2. With respect to privileged or attorney work product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

3. To the extent that a document is withheld from production based on attorney–client privilege or the work product doctrine, the producing Party shall produce a rolling privilege log of withheld documents at the same time that the document is withheld.

4. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502. Until a non-waiver order is entered, information that contains privileged matter or attorney work product shall be immediately returned to the producing party (i) if such information appears on its face that it may have been inadvertently produced or (ii) if the producing party provides notice within 15 days of discovery by the producing party of the inadvertent production.

D. GENERAL PRODUCTION PROTOCOLS

1. **TIFFs:** All production images will be provided as single page TIFFS in Group IV format and at least 300 DPI resolution. To the extent reasonably possible, the imaged Data shall retain all attributes of the native or hard-copy file, such as document breaks and original document orientation (i.e. portrait to portrait and landscape to landscape). The following formatting will be applied:

a. Word processing documents will be processed to TIFF format and imaged showing track changes or edits, comments, notes and other similar information;

b. Spreadsheet files with redactions will be imaged un-hiding any hidden rows and/or columns and/or sheets as provided in Section D.2;

c. Presentation files will be processed to TIFF format showing comments, hidden slides, speakers' notes and similar data, where present in the original file. In addition to TIFF images, native presentation files will be provided upon request from a receiving party. The native file will be named as the first Bates number of the respective document. The corresponding load file shall include native file link information for each native file that is produced. original file. In addition to TIFF images, native presentation files will be provided upon request from a receiving party. The native file will be named as the first Bates number of the respective document. The corresponding load file shall include native file link information for each native file that is produced; and

d. Where TIFF images of certain electronic documents are not readable, the parties may produce such documents in native format. Where TIFF images of certain hard-copy documents are not readable, the parties will meet and confer regarding the volume and best method of production prior to producing paper documents in hard copy format. To the extent the Receiving Party obtains through discovery a file or document that the party believes is not adequately represented in TIFF image format, the Receiving Party may request that the file or document be produced in native format by identifying the document by production number, the production of which shall not unreasonably be withheld.

2. **Native Files:** Notwithstanding any provision contained herein, the parties shall produce Microsoft Excel files, .CSV files and other similar spreadsheet files as Native Files. The parties shall further that PowerPoint of similar presentation files shall be produced as Native Files to preserve items such as speaker's notes, transitions, and embedded media. Each of the metadata and coding fields that reasonably can be extracted from an electronic document shall be produced for that document. Fields that are not populated shall be left with null values and not populated with fillers or spaces.

a. To the extent that any file identified for production in native format contains information subject to a claim of privilege or any other applicable protection that requires

redaction, the Producing Party shall convert that file to TIFF format and produce it with the necessary redactions, along with OCR text that reflects such redactions, unless such conversion and redaction is unduly burdensome to the Producing Party. If such conversion is unduly burdensome or renders the document unusable, the Producing Party may produce the document in any reasonably usable form as may be agreed upon by the respective parties.

B. The parties will make reasonable efforts to remove passwords or other security protection from any Native File prior to production. If the security protection cannot be removed from a Native File after reasonable efforts by the Producing Party, a placeholder TIFF image may be produced in place of the Native File indicating that security protection could not be removed from the Data. Upon request from the Requesting Party, the parties shall meet and confer in good faith regarding the reasonable efforts or mechanisms made to remove the security protection from the Native File and/or the production of the available metadata.

3. Redaction: The portion of the redacted text shall be clearly identified on the face of the TIFF image, either by masking the redacted content with electronic highlighting in black or through the use of redaction boxes. The label "Redacted" shall appear on the face of the redacted portion of the TIFF image. If Personally Identifiable Information ("PII"), such as social security numbers are redacted, the label "Redacted - PII" shall appear on the face of the redacted portion. If information is redacted based on the attorney-client privilege or the work product doctrine, the basis for the redaction shall appear on the face of the redacted document. Redactions for privilege and work product, including whether such redactions must be included on a privilege log, are discussed in more detail in Section F below. The redacted TIFF image shall be produced in accordance with the image load file specifications set forth in Section D.7 herein, and any other provisions for production of TIFF images contained herein. Redacted text shall not be included in the text file for that redacted TIFF image. The original unredacted Native File shall be preserved pending conclusion of the Action.

4. Text Files: Each paper document or ESI item produced under this order shall be accompanied by a text file as set out below. All text files shall be provided as a single document level text file for each item, not one text file per page. Each text file shall be named to use the Bates number of the first page of the corresponding production item.

a. OCR: Paper documents will be accompanied by an OCR file. The parties will endeavor to generate accurate OCR and will utilize quality OCR processes and technology. The parties acknowledge, however, that due to poor quality of the originals, not all documents lend themselves to the generation of accurate OCR. OCR text files should indicate page breaks where possible.

b. ESI: Embedded ESI documents (e.g., a spreadsheet embedded within a word processing document) will be extracted, produced as independent document records and related

back to the respective top level parent document (e.g., standalone file, email message, etc.). Related documents will be produced within a continuous Bates range. However, a Producing Party may suppress its logo or v-card embedded in email files.

5. Email: Email messages shall be produced in their native export/backup format (e.g. a “.pst” for Microsoft Outlook) and include metadata such as date; author; recipients in the To:, CC:, and BCC: fields; transmission information; and receipt information. If a party uses Microsoft Outlook, it should follow the process in attached Exhibit A of this Protocol. If a party uses a different email platform, it should use that platform’s equivalent to the process attached Exhibit A.

6. Electronic Messages: Electronic messages (e.g., texts; imessages; chats in applications such as slack, Microsoft Teams, Zoom, Skype, or Webex) shall be produced in their native export/backup formats. Electronic message production should include attachments such as reactions, files, calendar data, and metadata. Because chat platforms back up difference features in different locations (e.g., Microsoft teams backs up various features in Exchange, SharePoint, and OneDrive), each party shall take care to produce each back up file and collate the back up files into folders for each user and label as such.

7. Training Modules: Interactive training models shall be produced in a format so that other parties may engage with the training module as officers would. If this is not possible, the interactive training modules can be produced for video-recorded inspection.

8. Images: Images must be produced in their native format (e.g. .jpeg; .png; .gif).

9. Audio: Audio must be produced in their native format (e.g. .mp3; .wav; .wma).

10. Video: Video must be produced in their native format (e.g. .mpg; .mov; .wmv). If embedded videos cannot be produced in a format playable by the other party (e.g. as part of proprietary software), the other party will be permitted video-recorded inspection.

11. Social Media: Social Media will be produced as each respective sites’ downloadable data files (e.g., .json) or some other format that preserves social media posts’ metadata, engagements (e.g. likes, comments, reactions), and media.

12. Bates Numbering:

a. All images must be assigned a Bates number that must always:

- (1) be unique across the entire document production;
- (2) maintain a constant length (0- padded) across the entire production;
- (3) contain no special characters or embedded spaces; and
- (4) be sequential within a given document.

b. If a Bates number or set of Bates numbers is skipped in a production, the producing party will so note in a cover letter or production log accompanying the production.

c. The producing party will endorse all TIFF images in the lower righthand corner with its corresponding bates number, using a consistent font type and size. The Bates number must not obscure any part of the underlying image. If the placement in the lower right-hand corner will result in obscuring the underlying image, the Bates number should be placed as near to that position as possible while preserving the underlying image.

13. Parent-Child Relationships: Parent-child relationships (the association between an attachment and its parent document) that have been maintained in the ordinary course of business should be preserved. For example, if a party is producing a hard copy printout of an e-mail with its attachments, the attachments should be processed in order behind the e-mail. Each document shall be produced with the production number for the first and last page of that document in the "BegDoc" and "EndDoc" fields of the data load file and with the "BegAttach" and "EndAttach" fields listing the production number for the first and last page in the document family.

14. Load Files: All production items will be provided with a delimited data file or "load file." Acceptable formats for the load file are .log, .opt, .dii .lfp, .txt, .dat, or .csv. Each party will designate its preferred load file format. Parties are encouraged to work in cooperation with one another and each other's respective vendors in exchanging sample load files. The load file must reference each TIFF in the corresponding production. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load files in the production. Each deliverable volume should limit directory contents to approximately 1000 files per folder.

15. De-duplication: To reduce the unnecessary costs of reviewing and producing duplicate documents, each party will make reasonable efforts to remove duplicate Data prior to producing documents. Data will be deduplicated vertically within each custodian and horizontally across custodians (e.g., globally) following industry standard de-duplication algorithms. The ALL_CUSTODIANS field will be populated with all the custodians who had a copy of the document in their files, including BCC recipients.

a. To reduce the volume of entirely duplicative content within email threads, the parties may but are not required to use email thread suppression but shall disclose that they have used email thread suppression.

17. Other Formats:

a. If a Producing Party identifies a particular source or type of responsive Data for which it reasonably believes that application of this Protocol would be unduly burdensome or impractical, the party identifying the source or type of responsive Data shall promptly notify the Requesting Party, explaining in detail the type and source of the Data at issue,

and the reason(s) why the party believes that application of this Protocol would be unduly burdensome or impractical, and proposing reasonable modifications of this Protocol with respect to that source or type of responsive Data. Thereafter, the parties shall meet and confer within 14 calendar days to determine if modification of the Protocol with respect to the Data at issue is appropriate, and if an agreement is not reached, the Producing Party bears the burden of seeking relief from the Court from the requirements of this Protocol.

b. If a response to discovery requires production of ESI contained in a database or comprehensive electronic accounting system, the Producing Party shall meet and confer with the Requesting Party concerning a reasonable method of production. To the extent reasonably available, the Producing Party shall also provide any data dictionary, key, or other information sufficient to provide a reasonable understanding of the contents of the database or accounting system.

18. Full Production: Parties complying with (D. 1., 2., 4.–11.) can choose to turn over all files beyond responsive production. Alternatively, parties may use the search term procedure in (D. 19.) to ensure satisfaction of all responsive discovery.

19. Alternative production through search terms:

a. Parties requesting ESI discovery and parties responding to such requests are expected to cooperate in the development of search methodology and criteria to achieve proportionality in ESI discovery, including appropriate use of computer-assisted search methodology. Parties shall try to reach agreement on appropriate search terms before any query is performed.

b. A producing party shall disclose what search terms, if any, will be used to locate ESI likely to contain discoverable information. If search terms will be used, a party shall disclose the search methodology used to locate ESI likely to contain discoverable information.

c. The cooperation will follow this schedule:

a. The producing party will confer with requesting party within three business days of receiving the discovery request (exclusive of the day of receipt) with proposed search terms or search methodology for each request;

b. The requesting party will reply with objections to the producing party's proposed terms and methodologies within two business days of receiving the proposal (exclusive of the day of receipt);

c. The producing party will send a compromise proposal within two business days of requesting party's reply within two business days (exclusive of the day of receipt);

d. Requesting party will agree to compromise proposal or send final objections and its own proposed terms within one business day (exclusive of the day of receipt);

e. Parties will meet and confer over the proposals in (c.) and (d.). If no agreement is reached, the producing party will file a protective order explaining why the information captured by requesting party's search terms are not discoverable.

E. HARD COPY PRODUCTION FORMAT

1. With respect to documents that exist in hard-copy format ("Hard-Copy Materials"), a Producing Party will image and produce such documents as TIFF images and OCR text in accordance with the specifications delineated above. Where paper scanned images have identification spines, file folder labels, "post-it notes," or any other labels, the information on the label shall be scanned and produced to the extent practicable. In addition, folder labels, box labels, or binder labels (including spines), or other similar top level identifiers, to the extent practicable, shall be manually recorded at the time of scanning and coded in the Binder and/or Folder field. Load files for such productions shall include data relevant to the individual documents, including Bates numbering, custodian, OCR and folder labels and box labels that have been manually recorded.

2. To the extent responsive hard-copy materials are included in a large compilation of documents that is compiled solely for the purposes of storage convenience and not for any purposes related to the litigation and contains irrelevant, non-responsive hard-copy materials, the Producing Party may produce responsive, non-privileged hard-copy materials without also producing non-responsive hard-copy materials.

3. If a Producing Party reasonably believes that production of hard-copy materials as imaged files pursuant to this section is unduly burdensome, the Producing Party shall seek to meet and confer in good faith with the Requesting Party regarding content, volume, and related issues before any production of hard-copy materials. If the parties are unable to reach agreement, any party may seek relief from the Court pursuant to Section G herein.

F. PREVIOUSLY PRODUCED DATA

1. For every production of Data in the Action that was made prior to the adoption of this Protocol, the Producing Party shall provide a metadata overlay as applicable, for the Data in the production to be provided under this Protocol. To the extent a Producing Party is requested or ordered to produce materials that were previously produced in a different action or proceeding, however, the Producing Party shall disclose prior to production how such materials were produced in the previous action. The Producing Party shall produce materials as they were produced in the prior action or proceeding, and no additional metadata overlay need be produced absent a further order from the Court.

G. DISPUTES

1. The parties shall meet and confer in good faith regarding matters related to the production of Data not specifically set forth in this Protocol, related to the interpretation of this Protocol, or related to the parties' obligations thereunder.
2. The parties shall make their best efforts to comply with and resolve any differences concerning compliance with this Protocol. If a Producing Party cannot comply with any material aspect of this Protocol, such party shall inform the Requesting Party in writing at or before the time of production as to why compliance with the Protocol is unreasonable or not possible.
3. If the parties are unable to reach resolution regarding any dispute concerning the interpretation of this Protocol or compliance with same, such disputes may be presented for judicial resolution. No party may seek judicial relief concerning this Protocol unless it first has conferred with the applicable Producing or Requesting Party.
4. If the Court determines that any counsel or party in a case has failed to cooperate and participate in good faith in the meet and confer process, the Court may require additional meet and confer discussions, if appropriate.

Exhibit A

Account Information



Info

Open & Export

Save As

Save Attachments

Print

Office Account

Feedback

Options

Exit

 [Redacted] Microsoft Exchange

+ Add Account


Account Settings ▾

Account Settings

Change settings for this account or set up more connections.

- Access this account on the web.
<https://outlook.office365.com/owa/hendlerlaw.com/>
- [Get the Outlook app for iOS or Android.](#)



[Change](#)


Automatic Replies

Automatic Replies (Out of Office)

Use automatic replies to notify others that you are out of office, on vacation, or not available to respond to email messages.


Tools ▾

Mailbox Settings

Manage the size of your mailbox by emptying Deleted Items and archiving.

- 48.9 GB free of 49.5 GB


Manage Rules & Alerts

Rules and Alerts

Use Rules and Alerts to help organize your incoming email messages, and receive updates when items are added, changed, or removed.


Manage Add-ins

Manage Add-ins

Manage and acquire Web Add-ins for Outlook.



Info

Open & Export

Save As

Save Attachments

Print

Office Account

Feedback

Options

Exit

Open



Open Calendar

Open a calendar file in Outlook (.ics, .vcs).



Open Outlook Data File

Open an Outlook data file (.pst).



Import/Export

Import or export files and settings.



Other User's Folder

Open a folder shared by another user.

Import and Export Wizard



Choose an action to perform:

Export RSS Feeds to an OPML file

Export to a file

Import a VCARD file (.vcf)

Import an iCalendar (.ics) or vCalendar file (.vcs)

Import from another program or file

Import RSS Feeds from an OPML file

Import RSS Feeds from the Common Feed List

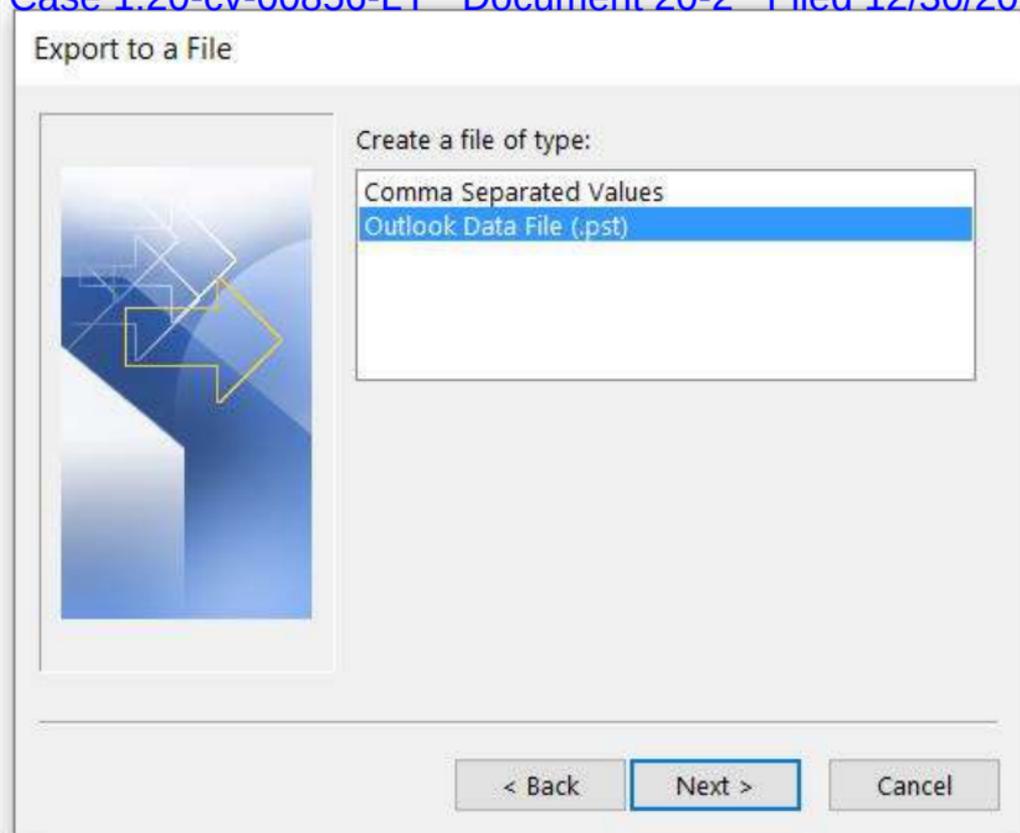
Description

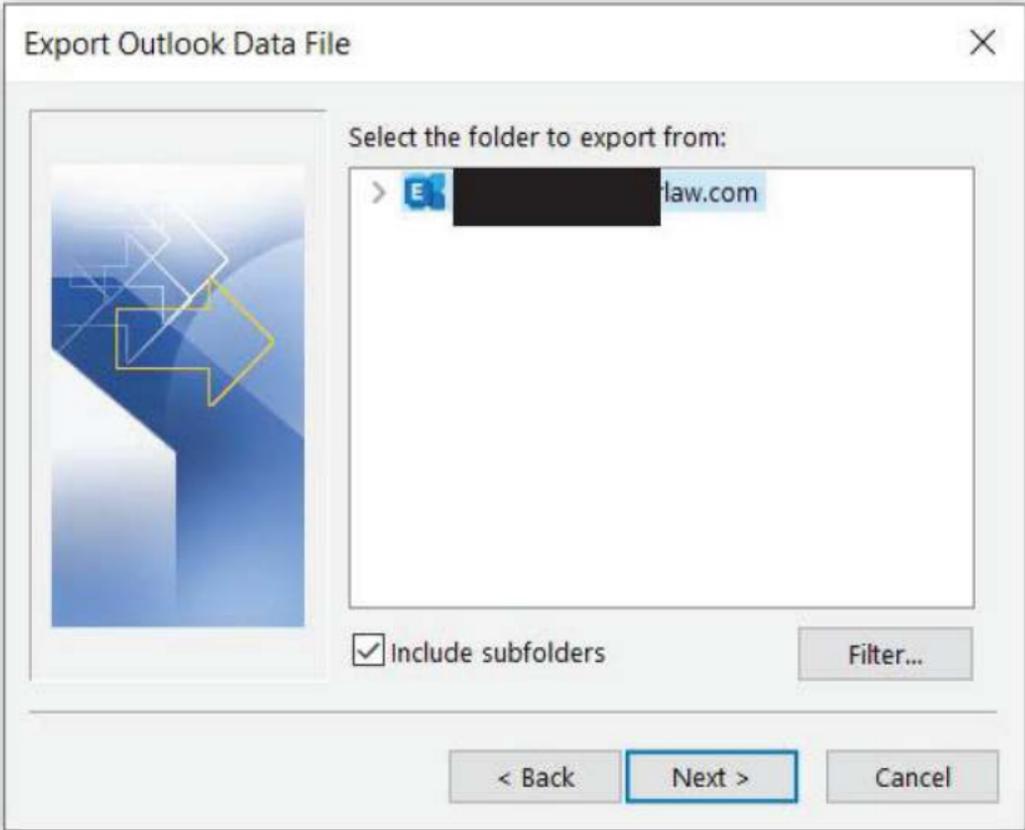
Export Outlook information to a file for use in other programs.

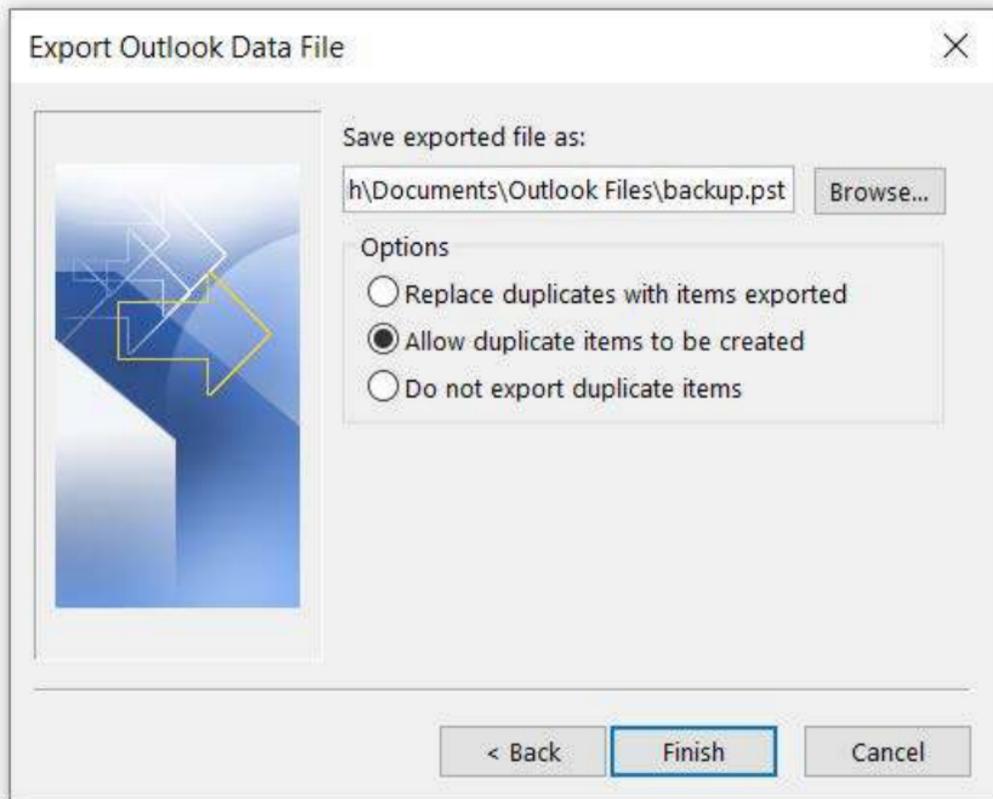
< Back

Next >

Cancel







**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SHALITHA ROSS, INDIVIDUALLY,	§	
AND AS INDEPENDENT	§	
EXECUTRIX OF THE SUCCESSION	§	
OF AQUANTIS GRIFFIN, ARIEL	§	
GRIFFIN AND KEYEARA	§	
FRANKLIN	§	
Plaintiffs,	§	CIVIL ACTION NO. 1:20-cv-00856-LY
	§	
v.	§	
	§	
JOSEPH CAST, WESLEY DEVRIES,	§	
JUSTIN HALBACH, STEPHEN	§	
JOHNSON, ALBERTO MARTINEZ,	§	
DANIEL MATHIS, JOSEPH MORAN,	§	
CHRISTOPHER SALACKI AND THE	§	
CITY OF AUSTIN	§	
Defendants.	§	

**DEFENDANT CITY OF AUSTIN’S RESPONSE TO
PLAINTIFFS’ MOTION FOR ESI ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Response to Plaintiff’s Motion for ESI Order (Doc. 20) as follows:

Plaintiffs’ motion is premature and unnecessary at this stage of the litigation. The parties have not completed the process of conferring on the Plaintiffs’ proposed ESI Protocol. Counsel for the parties have participated in two lengthy Rule 26(f) conferences in which counsel discussed a proposed scheduling order, preliminary discovery issues and, in general terms, the broad ESI protocols contained in Plaintiffs’ counsel’s October 28, 2020 email quoted in Plaintiffs’ motion.

Counsel for the Defendants have advised Plaintiffs’ counsel that they have not had an adequate opportunity to fully review Plaintiffs’ proposed ESI protocol due to the holidays. As

quoted in Plaintiffs' motion, counsel for the officer defendants advised Plaintiffs' counsel that he had not had a chance to review the ESI protocol in light of the holidays and that he would respond in early January. Counsel for the City advised Plaintiffs' counsel that he would like input on the ESI protocol from his paralegal and City IT staff and that since they were out of the office due to the holidays, it would be the first week in January before the City could respond. Instead of waiting another week or two, Plaintiffs filed this motion.

Additionally, in an effort to avoid the need for the Court's involvement in this matter at this stage, counsel for the City requested that Plaintiffs agree to a seven-day extension for Defendants to respond to this motion by email dated January 5, 2021. (Exhibit A) Defense counsel advised that he believed counsel could reach an agreement on many, if not all, of the provisions of the proposed ESI protocol with additional conferences between counsel. (Exhibit A) As of the filing of this response, Plaintiffs' counsel did not respond to the request for extension.

There is more than adequate time for the parties to confer on the ESI protocol and potentially agree on many, if not all, of the provisions without the need for court intervention. This case is in its earliest stage as the parties have yet to submit a proposed scheduling order, have not served written discovery, have not had the initial pretrial conference with the Court and have not served initial disclosures. There is no need for Plaintiffs' unexplained rush to have the Court enter an ESI order. As a result, the City requests that the Court delay ruling on Plaintiff's motion for 30 days so the parties can continue to confer on the ESI protocol and order the parties to file a status report with the Court on the status of the proposed ESI protocol within 30 days.

DEFENDANT’S PRAYER

Defendant City of Austin prays that the Court delay ruling on Plaintiffs’ motion for 30 days and order the parties to file a status report with the Court on the status of the ESI Protocol within 30 days.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III

H. GRAY LAIRD III

State Bar No. 24087054

gray.laird@austintexas.gov

City of Austin – Law Department

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Austin, Texas 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2021, I served a copy of *Defendant City of Austin's Response to Plaintiffs' Motion for ESI Order* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Rebecca Ruth Webber
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**ATTORNEY FOR DEFENDANT
OFFICERS**

Exhibit A

From: [Laird, Gray](#)
To: [Chavez, Priscilla](#)
Subject: FW: Ross; Motion for ESI Order
Date: Wednesday, January 6, 2021 1:33:02 PM

Exhibit A to the response

From: Laird, Gray <gray.laird@austintexas.gov>
Sent: Tuesday, January 05, 2021 3:52 PM
To: Rebecca Webber <rwebber@hendlerlaw.com>
Cc: Eric Nichols <Eric.Nichols@butlersnow.com>; Karson Thompson <Karson.Thompson@butlersnow.com>
Subject: Ross; Motion for ESI Order

Rebecca,

I am in the process of reviewing Plaintiffs' proposed ESI order and although I have some concerns with a few of the provisions of the order, believe that we should be able to confer and reach an agreement on many, if not all, of the provisions of the order. With that in mind, do you have an objection to a 7 day extension of time for the City to file a response to the motion which would make the new deadline January 13? That would give us another week to see if we can agree on some revisions to the order so hopefully we can present an agreed ESI order to the Court or at least narrow the issues we disagree upon. If you have no objection, I will prepare a short unopposed motion for extension and get it filed tomorrow. Thanks for considering this request. Gray

Gray Laird
Assistant City Attorney
City of Austin Law Department
gray.laird@austintexas.gov
512-974-1342 (phone)
512-974-1311 (fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHALITHA ROSS, individually and as §
independent executrix of the §
succession of Aquantis Griffin, §
ARIEL GRIFFIN, and §
KEYEARA FRANKLIN, §

Plaintiffs, §

v. §

CIVIL ACTION NO. 1:20-CV-00856-LY

THE CITY OF AUSTIN, JOSEPH CAST, §
WESLEY DEVRIES, JUSTIN HALBACH, §
STEPHEN JOHNSON, DANIEL MATHIS, §
ALBERTO MARTINEZ, §
JOSEPH MORAN, and §
CHRISTOPHER SALACKI, §

Defendants. §

**OFFICER DEFENDANTS' INITIAL RESPONSE
TO PLAINTIFFS' MOTION FOR ESI ORDER**

Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Daniel Mathis, Alberto Martinez, Joseph Moran, and Christopher Salacki (collectively, the “Officer Defendants”) file this initial response to Plaintiffs’ Motion for ESI Order.

The Officer Defendants join the City of Austin’s (the “City”) response to Plaintiffs’ motion. Although the Officer Defendants are not convinced this case is complex enough to warrant a ten-page, single-spaced order governing production of Electronically Stored Information (“ESI”), the Officer Defendants remain open to reaching agreement on the terms of an order agreeable to all parties, as needed.¹ Given that even if the Officer Defendants remain in the case during discovery, the City will likely possess the vast majority of electronically stored documents produced in the case, the City’s reasonable request for additional time to review and

¹As the Court is aware, the Officer Defendants have filed a Rule 12(b)(6) motion to dismiss Plaintiffs’ claims against them as individuals. The motion has been fully briefed.

discuss Plaintiffs' proposed order is appropriate and makes good sense. Discovery has not even begun in this case and no scheduling order has been entered. The parties have ample time to reach agreement on discovery protocols before the Court needs to involve itself in those issues.

The Officer Defendants respectfully second the City's request that this Court enter an order delaying ruling on Plaintiffs' motion for up to 30 days while the parties confer and submit a status report that sets forth agreements over production of e-discovery and identifies any specific areas of disagreement that may require the Court's attention or intervention.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Eric J.R. Nichols

Eric J.R. Nichols

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Fax: (737) 802-1801

**ATTORNEYS FOR THE OFFICER
DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Eric J.R. Nichols

Eric J.R. Nichols

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Shalitha Ross, individually and as Independent Executrix of the Succession of Aquantis Griffin,	§	
Ariel Griffin, and	§	
Keyeara Franklin,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	Case No. 1:20-cv-000856-LY
Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Alberto Martinez,	§	
Daniel Mathis, Joseph Moran, Christopher Salacki, and the City of Austin,	§	
	§	
Defendants.	§	

Plaintiffs’ Reply in Support of Their Motion for ESI Order

The expeditious way forward is for the Court adopt the proposed ESI Order (Doc. 20-1).

Despite Federal Rule of Civil Procedure 26(f)(3)(C) requiring a discovery plan to address “any issues about disclosure, discovery, or preservation of electronically stored information”, Defendants were not prepared to discuss ESI protocols at two separate 26(f) conferences. Beyond Rule 26(f)’s text, they had notice of Plaintiffs’ desire to settle the ESI topic in October. Now 77 days later, Defendants want another 30 days to confer on what they have been so-far unwilling to discuss. Only then, after that discussion, will Defendants agree to voice their disagreements on what Plaintiffs are already entitled to under Fed. R. Civ. P. 26(b) and 34(b)—however long that will take.

The Court can head off further delay by adopting the proposed ESI order. If the Court adopts the ESI, all 26(f) responsibilities are complete. The parties can then submit their past due

26(f) report and proposed scheduling as ordered under Local Court Rule CV-16(c) and Fed. R. Civ. P. 16(b)(2).

The parties are at an impasse almost three months in the making and not at all attributable to Plaintiffs' counsel. In October, Plaintiffs emailed Defendants suggesting particular ESI procedures and asking to schedule the Rule 26(f) conference. "Rule 26(f)(3)(C) explicitly directs the parties to discuss the form or forms in which electronically stored information might be produced," it is "important for counsel to become familiar with those systems *before* the conference." *Rule 26 Advisory Committee Notes on 2006 Amendments, Notes on subdivision (f)* (emphasis added).

Instead of preparing to discuss the matters in 26(f), at the November 26(f) conference, Defendants refused to discuss the ESI protocols that Plaintiffs had already proposed. So we tabled ESI protocols for the December meeting to give Defendants time to prepare. Then at the December conference, Defendants remained unwilling to discuss the Plaintiffs' proposed ESI order. In that conference, Defendants refused to discuss any 26(f) issues, even though it was a 26(f) meeting. They denied that this Court requires a 26(f) report.

The rules are the best place to start with ESI best practices. See BUTLER SNOW, *ESI Discovery Best Practices Part 1 — Start with the Rules*, Sept. 23, 2013.¹ Rule 26(f)(2)² makes clear the "attorneys of record . . . are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan."

Even after I read Rule 26(f) out loud to defense counsel over the phone, they denied ESI protocols or 26(f) reports were required by this Court. Defense counsel were surprisingly hostile going so far as to sarcastically offer to school me in Con Law 101. Counsel for the officer

¹ <https://www.butlersnow.com/2013/09/esi-discovery-best-practices-part-1-start-with-the-rules/> (last accessed Jan. 13, 2021).

² The Federal Rules of Civil Procedure are promulgated by the Supreme Court, authorized by Congress's rulemaking authority, via the Rules Enabling Act, 28 U.S.C. §§ 2071–72. See *Burlington N. R. Co. v. Woods*, 480 U.S. 1, 5, 5 n. 3. So a District Court cannot unilaterally amend the Federal Rules of Civil Procedure. This alone should have alerted Defendants that a 26(f) conference report is indeed required.

defendants repeatedly refused to give their clients' availability for the depositions that I proposed would happen in March 2021.

Eventually and to my utter mortification, I had to ask my co-counsel Scott Hendler to join the conference because I could not prevail on defense counsel to budge off their position that Plaintiffs' counsel was not entitled to hear their positions on the matters in Rule 26(f). After Mr. Hendler joined the conference, Defense counsel took on a defensive but more amicable tone and it was at least agreed that Plaintiffs' counsel would notice the Officer Defendants' deposition for dates in March and defense counsel had every right to move to quash the notices if they had reasons to believe the pending grand jury process would interfere with discovery in this case.³ In perfect candor, after waiting three more weeks after the second 26(f) and following up three more times in writing, I filed the ESI motion because I was at a loss for how to proceed with counsel who refuse to acknowledge the Rules, let alone confer on how to follow them.

Now, in their response, Defendants list all the items left undone to explain why there is no need to finish our Rule 26(f) duties. (Doc. 22 at 2, Doc. 23 at 2). But this again reveals they misunderstand the rules. One of the requirements of 26(f) is to "state the parties' views and proposals on any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced." Rule 26(f)(3)(C).

Plaintiffs have stated their view without Defendants providing their view—not even in their responses. *See generally* Doc. 22 and Doc. 23. And so the parties have not finished their 26(f) duties nor their 26(f) report, which is needed for a proposed scheduling order. Fed. R. Civ. P. 16 (b)(1)(A);⁴ *see also* Local Court Rule CV-16(c) ("The parties first shall confer as required by

³ The District Attorney recently announced that the Officer Defendants' conduct will be considered by a grand jury in early summer 2021:

DECEDENT: AQUINTIS GRIFFIN/SUBJECT OFFICERS: ALBERT MARTINEZ; CHRISTOPHER SALACKI; DANIEL MATHIS; JOSEPH CAST; JOSEPH MORAN; JUSTIN HALBACH; LEWIS HOLLAND; STEPHEN JOHNSON & WESLEY DEVRIES (Date of Incident: 08/18/2018): Mr. Aquantis Griffin died as a result of multiple gunshot wounds fired by Austin Police Department officers on August 18, 2018.

We expect that this case will be presented to a grand jury in early summer 2021.

https://www.traviscountytx.gov/images/district_attorney/docs/Press_Releases/2021/pr-210114-case-summaries.pdf.

⁴ Unless the Court would prefer to have a scheduling conference. Fed. R. Civ. P. 16(b)(1)(B).

Rule 26(f).”). A proposed scheduling order under Local Court Rule CV-16(c) and Fed. R. Civ. P. 16(b) are already past due.

Defendants also avail that discovery has not started (although the Parties have exchanged initial disclosures). This defense again ignores Rules that explicitly prevent discovery before the Rule 26(f) conference is complete. Rule 26(d)(1): “A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).” This discovery moratorium also includes interrogatories, requests for production, and requests for admission. *See Riley v. Walgreen Co.*, 233 F.R.D. 496, 499 (S.D. Tex. 2005); *see also Notes of Advisory Committee on 2007 Amendments* for Rules 33(a), 34(b), 36(a) (discussing removing the redundant cross-reference to Rule 26(d)’s discovery moratorium). Also Rule 30(a)(2)(A)(iii) requires parties to seek leave of court to take a deposition before the Rule 26(f) conference. And Rule 26(f) and its Advisory Committee Notes encourage parties to settle ESI protocols before serving any discovery to ensure compliance with Rule 34(b)’s “reasonably usable” format requirement. Defendants’ delay is keeping discovery, the 26(f) report, the required scheduling order, and the rest of the case from moving forward.

Plaintiffs expect most of their discovery requests to the officer defendants will be for ESI. So even if any discovery were permitted, it would implicate the issues settled by a ESI protocol. And because ESI would be so prevalent, Plaintiffs took care to craft an ESI that would comply with Rules 26(b), 26(f), and 34(b). Rule 26(f) was amended specifically for parties to settle ESI issues present in 26(b) and 34(b). *See Rule 26’s Notes on Advisory Committee on 2006 Amendments, Notes to Subdivision (f)*. Almost all the ESI will be requested its native format—“as they are kept in the usual course of business.” Rule 34(b)(2)(E)(i); *see also McKinney/Pearl Rest, L.P. v. Metro. Life Ins. Co.*, 322 F.R.D. 235, 248–50 (N.D. Tex. 2016) (surveying courts’ practices then concluding producing in the native format ensures complying with Rule 34(b)(2)(E)(i)’s requirements).

As for Rule 26(b), producing in the native format also should also be the easiest and least burdensome way to produce the requested data because the producing party will only need to collect, package (usually compress), and send the data, rather than spending any time converting.

The native format with a chain of custody also preserves metadata and does not alter the information. See BUTLER SNOW, *ESI Discovery Best Practices Part 3: You've identified ESI, now how do you go about collecting it?* (June 12, 2014).⁵ But where a native format is unwieldy, there are TIFFs, which have been in use for more than a decade and are “a ‘reasonably usable form’ of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii), *The Sedona Principles*, Third Edition, 19 SEDONA CONF. J. 1, 172–73 (2018).

Plaintiffs recognize that the parties are jointly responsible for developing the ESI protocol as a 26(f) matter. See Rule 26(f)(2). And that joint responsibility, along with the failure to file the 26(f) report and proposed scheduling order, is borne by all parties.

For these reasons, Plaintiffs respectfully renew their request that the Court enter the proposed ESI order. Alternatively, while Plaintiffs believe they are entitled to their proposed order given their repeated, if unsuccessful, efforts to confer with defense counsel, if the Court is willing to permit the parties further leeway in scheduling, Plaintiffs are certainly willing to continue to confer in good faith once the City is prepared. Then, the parties can quickly comply with their obligation to file the 26(f) report and proposed scheduling order.

Dated: January 19, 2021

Respectfully submitted,

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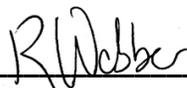
Facsimile: 512-439-3201

Attorneys for Plaintiffs

⁵ <https://www.butlersnow.com/2014/06/esi-discovery-best-practices-part-3-youve-identified-esi-now-go-collecting/> (last accessed Jan. 13, 2021).

Certificate of Service

I certify that Plaintiffs' motion was served on all counsel of record via email from CM/ECF on Jan. 19, 2021.



Rebecca Ruth Webber

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSS, ET AL.

v.

CAST, ET AL.

§
§
§
§
§

1-20-CV-856-LY

ORDER

Before the Court is the Plaintiffs' Motion for ESI Order (Dkt. No. 20) and the parties' respective response and reply briefs. On January 4, 2021, Judge Yeakel referred the motion to the undersigned for disposition. Having considered the motion, the record, and the circumstances pointed out in the response and reply, the Plaintiffs' Motion for ESI Order (Dkt. No. 20) is **DENIED WITHOUT PREJUDICE** to the matter being re-urged in the event the parties' efforts at resolution are unsuccessful.

SIGNED this 21st day of January, 2021.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE

FILED

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: 

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHALITHA ROSS, INDIVIDUALLY, AS §
INDEPENDENT EXECUTRIX OF THE §
SUCCESSION OF AQUANTIS GRIFFIN, §
AND AS NATURAL GUARDIAN OF K.F., §
A MINOR; ARIEL GRIFFIN; AND §
KEYEARA FRANKLIN, §

PLAINTIFFS, §

V. §

CAUSE NO. 1:20-CV-856-LY

JOSEPH CAST; WESLEY DEVRIES; §
JUSTIN HALBACH; STEPHEN §
JOHNSON; ALBERTO MARTINEZ; §
DANIEL MATHIS; JOSEPH MORAN; §
CHRISTOPHER SALACKI; AND §
THE CITY OF AUSTIN, §

DEFENDANTS. §

ORDER

Plaintiffs bring this lawsuit against eight individual police officers in their individual and official capacities and their employer, the City of Austin, for the death of Aquantis Griffin (“Griffin”) on August 17, 2018, and for damages sustained by Aquantis Griffin’s mother Shalitha Ross and his two younger sisters Ariel Griffin and Keyeara Franklin. Before the court is the motion to dismiss filed by Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Daniel Mathis, Alberto Martinez, Joseph Moran, and Christopher Salacki (collectively, the “Officer Defendants”). In rendering this order, the court has reviewed Plaintiffs’ amended complaint (Doc. 4), the Officer Defendants’ motion to dismiss (Doc. 14), as well as Plaintiffs’ response to said motion (Doc. 16), and Defendants’ reply in further support of said motion (Doc. 17).

LEGAL STANDARD

When evaluating whether to dismiss a complaint for failure to state a claim, a well-known “tenet [is] that a court must accept as true all of the factual allegations contained in a complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 589 (2007); Fed. R. Civ. P. 12(b)(6), 8(a). But this tenet “is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Additionally, “only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

FACTUAL BACKGROUND

On Thursday, August 16, 2018, Griffin was attending a concert at “Terminal 6” on Sixth Street in downtown Austin, Texas. Griffin was wearing loose pants but no shirt; he was not carrying a weapon. During the concert, at approximately midnight, a dispute broke out inside Terminal 6. Individuals involved in this dispute—including Griffin, Jordan Seguin (“Seguin”), and several others—exited Terminal 6 through a back door that led to the alley between Trinity Street and San Jacinto Boulevard and then moved to the middle of San Jacinto Boulevard next to a parking lot behind Terminal 6 where the dispute continued.

Seguin opened a car door and fired multiple gunshots above the heads of those around him, which included Griffin, before attempting to flee the area. Police officers were dispatched to the area in response to 911 calls about the dispute inside Terminal 6 and the gunshots outside of it. One group of officers congregated on the corner of Sixth Street and San Jacinto Boulevard. Another group of officers, including the eight Officer Defendants, congregated on the corner of Sixth Street and Trinity Street. All officers wore body cameras equipped for video and audio recording.

A second round of gunshots was heard from the area where Seguin first fired his weapon. Both groups of police officers began to converge on the area. Following this second round of gunshots, Griffin now had a gun in his hand. He started running east through the alley behind Terminal 6 in the direction of Trinity Street.

The Officer Defendants formed a line across Trinity Street, blocking anyone who exited the alley from turning south on Trinity Street toward Sixth Street, but failing to block anyone who continued north on Trinity Street toward Seventh Street.

The Officer Defendants drew guns. Several of the Officer Defendants instructed individuals fleeing the scene to “get on the ground,” among other simultaneous commands. Instead, these individuals turned north on Trinity Street toward Seventh Street. When Griffin encountered the Officer Defendants, he likewise ignored instructions to “get on the ground” and instead turned north on Trinity Street toward Seventh Street.

As he turned left, Griffin’s right arm moved to the right of his body. Griffin did not otherwise look at, point his gun at, or speak to the Officer Defendants. The Officer Defendants then opened fire; this occurred within three seconds of instructing Griffin to “get on the ground.”

Gunshots struck Griffin, who fell forward onto his front torso in the street. Body camera footage shows that he then released his gun, which skidded across the pavement. Griffin released his gun approximately one-half second after the Officer Defendants first opened fire. Overall, the Officer Defendants fired 42 shots for at least four seconds, 30 of which struck Griffin.

Paramedics who responded to the incident transported Griffin to Dell Seton Medical Center, where he was pronounced dead of gunshot wounds at 1:22 a.m. the next day. The majority of the gunshot wounds struck Griffin from the rear.

ANALYSIS

Plaintiffs sue the Officer Defendants in their official and individual capacities.

I. Official-Capacity Claims

The court's analysis is straightforward, where Plaintiffs have sued the Officer Defendants in their "official" capacities. The Supreme Court stated in *Monell v. Department of Social Services*, and later specifically held in *Brandon v. Holt*, that a suit against a city officer in the officer's official capacity is tantamount to a suit against the city itself. 436 U.S. 658 (1978); 469 U.S. 464 (1985). Because "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity," it is irrelevant whether the plaintiff brings suit against an appropriate officer in the officer's official capacity or against the entity itself. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). In other words, because a claim against a city officer is akin to a claim against the city, it is not necessary to sue both. *Id.* at 167 n.14. It is "not uncommon" for a civil-rights complainant to name both the city and the officer, due to a misunderstanding of the law or "an effort to 'personalize' the otherwise faceless [city] being sued." *Daskalea v. D.C.*, 227 F.3d 433, 448 (D.C. Cir. 2000). Where the plaintiff chooses to sue both the city and the city officer in the officer's official capacity, courts dismiss the official-capacity claim as duplicative or redundant of the claim against the city. *See, e.g., Jones v. Dallas Cnty.*, 47 F. Supp. 3d 469 (N.D. Tex. 2014) (dismissing official-capacity claims as redundant of claims against county) (citing *Monell*, 436 U.S. at 690 n. 55; *Graham*, 473 U.S. at 166).

Here, Plaintiffs have sued the Officer Defendants in their official capacities. Because Plaintiffs have also sued the City of Austin, the court will dismiss Plaintiffs' official-capacity claims against the Officer Defendants as redundant of their claims against the City of Austin.

II. Individual-Capacity Claims

In all, Plaintiffs bring three federal-law claims against the Officer Defendants under 42 U.S.C. § 1983—for (1) using excessive force, (2) failing to train, and (3) having an unlawful policy or practice—as well as one state-law claim for causing wrongful death.

A. Wrongful-Death Claim

Plaintiffs state-law claim for wrongful death is barred as a matter of law. Any state-law claim under the Texas Tort Claims Act against governmental employees such as the Officer Defendants must be dismissed when, as here, “a claim regarding the same subject matter is also made against the governmental employer.” *Mission Consol. ISD v. Garcia*, 253 S.W.3d 653, 657 (Tex. 2008) (“[T]he [Texas] Tort Claims Act’s election[-of-remedies] scheme is intended to protect governmental employees by favoring their early dismissal when a claim regarding the same subject matter is also made against the governmental employer.”); TEX. CIV. PRAC. & REM. CODE § 101.106(e), (f). Plaintiffs do not appear to dispute this.

B. Section-1983 Claims

The Officer Defendants argue that Plaintiffs’ remaining federal-law claims are barred by qualified immunity. “The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted). The doctrine is therefore a “two-pronged inquiry,” asking not only whether defendants violated a federal right, but also whether the federal right was “clearly established,” putting defendants on fair notice that their conduct was unlawful. *Tolan v. Cotton*, 572 U.S. 650, 655–656 (2014); *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004).

Here, Plaintiffs bear the burden of showing the Officer Defendants violated clearly established law. *Vann v. City of Southaven, Miss.*, 884 F.3d 307, 310 (5th Cir. 2018). It is not enough to argue that the Officer Defendants violated a federal right, which Plaintiffs do at length. Plaintiffs must also show that the federal right was clearly established at the time of the use of force. *Id.* To do so, Plaintiffs must identify binding precedent sufficiently similar to the alleged conduct. *Winzer v. Kaufman Cty.*, 916 F.3d 464, 477 (5th Cir. 2019). Precedent need not be “directly on point, but it must be sufficiently similar to place the “constitutional question beyond debate.” *Id.*

Plaintiffs have not met this burden. Plaintiffs assert the Officer Defendants are not entitled to qualified immunity “when compared to Fifth Circuit precedent and Plaintiffs[’] . . . plausible claim that circumstances specific to this case would have caused a reasonable officer to conclude it was unconstitutional to shoot and then keep shooting” Griffin. However, Plaintiffs do not identify this “Fifth Circuit precedent” with any specificity. Rather than identifying binding precedent sufficiently similar to the Officer Defendants’ conduct or articulating any clearly established law that the Officer Defendants’ conduct violated, Plaintiffs primarily distinguish two cases that the Officer Defendants present as instructive.

At best, Plaintiffs state that the facts of this case are “remarkably close” to the facts of *Baker v. Putnal*, which, Plaintiffs suggest, stands for the proposition that “mere presence at the scene” is not a compelling reason to use excessive force. 75 F.3d 190, 198 (5th Cir. 1996). However, *Baker* does not stand for that proposition; the Fifth Circuit remanded the case to the trial court, finding it had “too many factual issues” to be resolved on summary judgment. *Id.* Additionally, Griffin was not merely present at the scene, and the facts of *Baker* are not otherwise sufficiently similar to the facts at hand. The decedent in *Baker* was sitting in the passenger seat of a parked car after having

been identified by civilians as one of the shooters. *Id.* at 193. In contrast, Griffin was actively running away from officers and failing to comply with instructions to “get on the ground” and visibly carrying a weapon before his right arm moved to the right of his body. Finally, Plaintiffs’ conclusory statements—that this is an “obvious case” with facts “remarkably close” to another—do not satisfy Plaintiffs’ burden. *Vann*, 884 F.3d at 311 (“Plaintiff, Vann’s representative, cited nary a pre-existing or precedential case. That alone dooms his case here.”) Plaintiffs cannot defeat qualified immunity by defining the law at a “high level of generality.” *Id.* at 310 (internal quotation marks and citations omitted).

CONCLUSION

It is **ORDERED** that Defendants’ Motion to Dismiss (Doc. 14) is **GRANTED**. The claims against the Officer Defendants are hereby **DISMISSED WITH PREJUDICE**.

SIGNED this 3rd day of August, 2021.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SHALITHA ROSS, INDIVIDUALLY,	§	
AND AS INDEPENDENT	§	
EXECUTRIX OF THE SUCCESSION	§	
OF AQUANTIS GRIFFIN, ARIEL	§	
GRIFFIN AND KEYEARA	§	
FRANKLIN	§	
Plaintiffs,	§	CIVIL ACTION NO. 1:20-cv-00856-LY
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
Defendant.	§	
	§	

**DEFENDANT CITY OF AUSTIN’S MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Motion to Dismiss Plaintiffs’ First Amended Complaint pursuant to Rule 12(c) of the Federal Rules of Civil Procedure as follows:

I. NATURE OF THE LAWSUIT

Plaintiffs brings this civil rights action as a result of injuries and damages they allege they sustained as the result of the death of Aquantis Griffin during an officer-involved shooting on or near Trinity Street in downtown Austin, Texas on August 16, 2018. Plaintiffs filed their First Amended Complaint against the City and several officers of the Austin Police Department alleging various constitutional violations under 42 U.S.C. §1983. (Doc. 4). In particular, Plaintiff alleges that the Austin Police Department’s “institutionally racist and violent culture” and policies led to Ramos’s death. Plaintiff also asserts that the City’s inadequate training, supervision, and discipline constituted a deliberate indifference to a deprivation of constitutional rights in this case.

This Court previously granted the motion to dismiss filed by the officers named as

individual defendants and thus dismissed Plaintiffs' excessive force claims asserted against the officers. (Doc. 30) For the reasons set forth below, the Court should dismiss all of Plaintiff's claims against the City since Plaintiff's allegations fail to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(c).

II. MOTION TO DISMISS PURSUANT TO RULE 12(c)

“A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6).’ Thus, the inquiry focuses on the allegations in the pleadings’ and not on whether the ‘plaintiff actually has sufficient evidence to succeed on the merits.’” *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 209 (5th Cir. 2009). In reviewing a motion to dismiss, the “court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotes and citations omitted). To overcome a motion to dismiss, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *see also Culberson v. Lykos*, 790 F.3d 608, 616 (5th Cir. 2015). A plaintiff’s lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief “above the speculative level,” even if the facts are viewed in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 555. “[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Fernandez–Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993)).

III. PLAINTIFFS' SECTION 1983 CLAIMS AGAINST THE CITY SHOULD BE DISMISSED.

A. Insufficient Facts to Establish a Policy or Practice

Contrary to federal pleading requirements, Plaintiffs failed to plead an express policy of the Austin Police Department that led to any of the alleged constitutional violations. It is well-settled that to bring a Section 1983 suit against a city, a plaintiff must allege the implementation or execution of a policy or custom that was officially adopted by the city. Specifically, “[a] plaintiff must identify: ‘(1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose ‘moving force’ is that policy or custom.’” *Valle v. City of Houston*, 613 F.3d 536, 541-42 (5th Cir. 2010) (quoting *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002)). Liability can attach only through “acts directly attributed to it through some official action or imprimatur.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001)) (internal quotations removed). *Respondeat superior* liability is insufficient to establish constitutional liability against a city. *See Monell v. Dep’t of Social Service of City of New York*, 436 U.S. 658 (1978).

Moreover, the Fifth Circuit has recently confirmed that to survive a motion to dismiss, a plaintiff’s *Monell* pleadings “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ratliff v. Aransas County*, 948 F.3d 281, 285 (5th Cir. 2020), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In *Ratliff*, the Fifth Circuit affirmed the dismissal of the plaintiff’s *Monell* claim when the complaint failed to establish an official custom or policy of excessive force because the only facts the plaintiff alleged with any specificity related to the incident which was the subject of the lawsuit. *Id.* “[T]o plead a practice so persistent and widespread as to practically have the force of law, [the plaintiff] must do more than describe the

incident that gave rise to his injury.” *Id.*, quoting *Pena v. Rio Grande City*, 879 F.3d 613, 622 (5th Cir. 2018).

Plaintiff cites to investigative reports regarding alleged racist behavior of individuals within the Austin Police Department and the Austin City Council’s criticism of department leadership’s alleged inadequate implementation of measures to eradicate police bias and racism. (Doc. 4, ¶¶ 36-38). Any argument that the findings of these investigative reports constitute a pattern tantamount to official policy fails. A plaintiff may show a “persistent, widespread practice of City officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Piotrowski*, 237 F.3d at 579 (quoting *Webster v. City of Houston*, 735 F.2d 838, (5th Cir. 1984) (en banc)). However, “[a]ctions of officers or employees of a municipality do not render the municipality liable under section 1983 unless they execute official policy as above defined.” *Id.*

Plaintiff’s First Amended Complaint does not contain sufficient factual allegations to sustain such a claim. “A pattern requires similarity and specificity; ‘[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.”” *Peterson v. City of Fort Worth*, 588 F.3d 838, 851-52 (5th Cir. 2009)(quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). A pattern sufficient to support a *Monell* claim cannot be established by previous bad acts of the municipality unless those bad acts are specific and similar to the violation in question. *Id.*; see also *Crawford v. Caddo Parish Coroner’s Office*, 2019 WL 943411, Feb. 25, 2019 (W.D. Louisiana)(Rule 12(b)(6) motion granted when plaintiff failed to allege specific facts to demonstrate policy or pattern of depriving African-Americans of fair and unbiased criminal procedures).

Here, Plaintiffs' allegation of a pattern or custom of a "racist and violent policing culture" consists of an investigative report's documentation of a former assistant police chief's use of racist language and "anecdotal history" of other racist or sexist language of APD personnel. (Doc. 4, ¶¶ 34-37) None of these prior bad acts are specific and similar to the alleged violation in this case, i.e., officers' use of deadly force on Griffin. Plaintiffs make no allegations that any alleged pattern or practice of APD consisted of prior bad acts which were specific and similar to the officers' use of deadly force. Plaintiff's First Amended Complaint fails to allege non-conclusory facts sufficient to establish an actual policy or custom of the Austin Police Department. As a result, this claim fails as a matter of law.

B. Insufficient Facts to Establish Moving Force Causation

Plaintiffs' First Amended Complaint alleges unconstitutional conduct by the officers, and the First Amended Complaint is filled with general conclusions that the officers acted pursuant to policies, practices, and customs of the City. The First Amended Complaint contains a number of specific factual allegations regarding the incident itself and the actions of the officers along with detailed facts about Griffin's death. The Plaintiffs also assert that the City fostered an "institutionally racist and violent policing culture." The First Amended Complaint, however, does not contain any specific non-conclusory facts to support the Plaintiffs' claim that the alleged "policing culture" was the moving force of the alleged constitutional violations committed by the officers.

Plaintiffs allege that the "institutionally racist and violent policing culture" is demonstrated by several studies and reports that concluded that Austin police officers used more violence in minority neighborhoods and that African-Americans and Hispanics were more likely to be searched and arrested by APD officers during traffic stops. (Doc. 4, ¶¶ 34-36) However, the facts of this

incident as alleged in the First Amended Complaint did not involve a traffic stop or the search of a minority suspect during a traffic stop. Instead, as set forth in the First Amended Complaint, this incident arose out of the Austin Police Department's response to 911 calls about a fight at a nightclub and gunshots in the area. (Doc. 4, ¶¶ 12-19)

In order to hold a municipality liable under Section 1983 for the misconduct of one of its employees, a plaintiff must initially allege that an official policy or custom "was a cause in fact of the deprivation of rights inflicted. *Spiller v. City of Texas City, Police Dept.*, 130 F.3d 162, 167 (5th Cir. 1997), quoting *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 525 (5th Cir. 1994). The description of a policy or custom and its relationship to the underlying constitutional violation, moreover, cannot be conclusory, it must contain specific facts. *Spiller*, 130 F.3d at 167.

In *Spiller*, the Fifth Circuit affirmed the trial court's dismissal under Fed. R. Civ. P. 12 (b)(6) of a plaintiff's §1983 claim against a municipality for the alleged wrongful arrest of the plaintiff for disorderly conduct. *Spiller*, 130 F.3d at 167. The plaintiff contended that the police department had policies of operating "in a manner of total disregard for the rights of African American citizens" and "engag[ing] in conduct toward African American citizens without regard to probable cause to arrest." *Id.* The Fifth Circuit found that the plaintiff's complaint failed to allege specific non-conclusory facts to demonstrate how these alleged policies were causally connected to the officer's alleged misconduct. *Id.*

The Plaintiffs in this case likewise fail to allege specific non-conclusory facts that demonstrate that the officers' alleged constitutional violation was caused by the City's alleged policy or custom of racially disproportionate traffic stops. Plaintiffs' conclusory allegations of moving force causation are clearly insufficient to support a *Monell* claim. Plaintiffs make the conclusory allegation that Griffin's death "is a direct result of the racism that has permeated policing

in Austin,” but offers no specific facts to support a claim that the alleged racism was the moving force of Griffin’s death.

The Plaintiffs’ only other factual allegations regarding the City’s alleged policies and customs are citations to investigative reports regarding alleged racist behavior of individuals within the Austin Police Department and the Austin City Council’s criticism of Department leadership’s alleged inadequate implementation of measures to eradicate police bias and racism. (Doc. 4, ¶¶ 34-38). Yet, again, Plaintiffs allege no specific, non-conclusory facts which demonstrate that bias or racism played any role in this incident much less was the moving force of the death of Griffin. Plaintiff’s First Amended Complaint points to no actions or statements of the officers or others that demonstrates that any “racist culture” of the Austin Police Department was the moving force of the officers’ decisions to use deadly force on Griffin. As a result, Plaintiffs’ claim against the City fails as a matter of law.

C. Inadequate Training and Supervision Policies.

Plaintiffs also allege that the City failed to adequately train or supervise its police officers. (Doc. 4, ¶ 48) “A municipality’s culpability for a deprivation of right is at its most tenuous where the claim turns upon a failure to train.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Failure-to-train claims require sufficient factual allegations to allow the court to draw the reasonable inference that: (1) the municipality’s training procedures were inadequate; (2) the municipality was deliberately indifferent in adopting its training policy; and (3) the inadequate training policy directly caused the constitutional violation. *See Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). Further, a failure to train claim cannot be based upon a single incident. Rather, a plaintiff must demonstrate “at least a pattern of similar incidents in which the citizens were injured . . . to establish the official policy requisite to municipal liability under section 1983.”

Snyder v. Trepagier, 142 F.3d 791, 798 (5th Cir. 1998) (quoting *Rodrigues*, 871 F.2d at 554-55).

For liability to attach based upon an inadequate training claim, the plaintiff “must allege with specificity how a particular training program is defective.” *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). With either a failure to train or failure to supervise claim, the plaintiff must show: “(1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff’s rights; and (3) the failure to train or supervise amounts to deliberate indifference.” *Goodman v. Harris County*, 571 F.3d 388, 395 (5th Cir. 2009); *Waters v. City of Hearne*, 2015 WL 10767483, (W.D. Tex. January 14, 2015)(insufficient allegations of inadequate training or policy of racially profiling ethnic minorities for purpose of investigative stops).

Here, Plaintiffs have not included any specific, non-conclusory facts which support a claim for either failure to train or supervise. The First Amended Complaint fails to identify an actual, specific training policy, describe any training procedures, and fails to provide *any* factual support to show a plausible conclusion that the City was indifferent to unconstitutional police action. Plaintiffs’ First Amended Complaint contains no factual allegations regarding the City’s existing training policies or the training or supervision provided to the officers involved in this incident. Similarly, the First Amended Complaint contains no facts regarding deliberate indifference in adopting its policies, and no non-conclusory facts that show that any such training or supervision directly caused the alleged constitutional violation. Therefore, this claim should be dismissed.

D. Inadequate Disciplinary Policies

Plaintiffs allege that the City had inadequate disciplinary policies that “failed to punish officers who violated Black citizens’ rights to be free from racially motivated law enforcement

actions.” (Doc. 4, ¶48). Again, Plaintiffs’ First Amended Complaint provides only conclusory allegations with no specific factual allegations about the City’s disciplinary policies. Plaintiffs have not alleged any prior complaints against the individual defendants or any pattern of complaints by other citizens. Plaintiffs have not presented non-conclusory factual allegations about deliberate indifference in adopting the disciplinary policies. Absent these kinds of allegations, Plaintiffs fail to state a claim upon which relief can be granted. *See Piotrowski*, 237 F.3d at 581-82. Finally, there are no non-conclusory factual allegations to show that the alleged inadequate disciplinary or investigatory policies were the moving force behind Plaintiffs’ alleged constitutional injuries. As a result, this claim should be dismissed.

IV. PLAINTIFFS’ WRONGFUL DEATH CLAIM SHOULD BE DISMISSED.

Plaintiffs assert a state law wrongful death claim asserting that “Defendants’ wrongful conduct proximately caused the death of Ajay Griffin.” (Doc. 4, ¶62) Plaintiffs’ state law wrongful death claim against the City is futile since the Texas Tort Claim Act clearly establishes that the state has not waived immunity for intentional torts, and Plaintiff cannot establish any other exception to immunity under the TTCA. The Texas Tort Claims Act does not waive a governmental unit’s immunity for a claim arising from assault, battery or any other intentional tort. *Tex. Civ. Prac. & Rem. Code* §101.057(2).

Here, the gravamen of Plaintiffs’ Amended Complaint is that Austin police officers wrongfully shot Griffin, which is clearly an intentional tort, and thus Plaintiffs’ claim against the City is barred by governmental immunity. *See Harris Cty., Tex. v. Cabazos*, 177 S.W.3d 105, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.)(immunity not waived for claim arising out of deliberate shooting by deputy sheriff). As a result, the City is immune from Plaintiffs’ state law wrongful death claim and this claim should be dismissed.

PRAYER

Defendant City of Austin respectfully requests that the Court grant its Motion to Dismiss and dismiss all claims against the City of Austin with prejudice and with all costs assessed to the Plaintiffs.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 22nd day of June, 2022.

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II. Argument and Authorities

A. Legal standards applicable to Defendant's Rule 12(c) motion to dismiss.

“A motion brought pursuant to Rule 12(c) is designed to dispose of cases *where the material facts are not in dispute* and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts.” *Hale v. Metrex Research Corp.*, 963 F.3d 424, 427 (5th Cir. 2020) (emphasis added) (quoting *Machete Prods., L.L.C. v. Page*, 809 F.3d 281, 287 (5th Cir. 2015)).

Defendant's motion to dismiss correctly notes that the “standard for dismissal under Rule 12(c) is the same as that under Rule 12(b)(6).” *Hale*, 963 F.3d at 427. In reviewing a Rule 12(c) motion, the court must “accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the nonmovant.” *Machete Prods.*, 809 F.3d at 287. “In considering a motion for judgment on the pleadings under Rule 12(c), the court is generally limited to the contents of the pleadings, including attachments thereto.” *Bosarge v. Miss. Bureau of Narcotics*, 796 F.3d 435, 440 (5th Cir. 2015) (internal quotes omitted).

The Federal Rules of Civil Procedure merely require that a plaintiff's complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible* on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678.

The Fifth Circuit has recognized a “strong framework of policy considerations that militate against granting motions to dismiss for failure to state a claim” *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982) (citing Wright & Miller, *Federal Practice and Procedure: Civil* §1357 at 599-605 (1969)). Under Fifth Circuit precedent, a motion to dismiss “is viewed with disfavor and is rarely granted.” *Iberiabank Corp. v. Ill. Union Ins. Co.*, 953 F.3d 339, 345 (5th Cir. 2020) (quoting *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011)). *See also Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 231 (5th Cir. 2009); *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005).

B. Plaintiffs’ First Amended Complaint sufficiently alleges all elements of a *Monell* claim against the City of Austin.

Although a municipality does not have *respondeat superior* liability for all its employees’ violations of 42 U.S.C. §1983, the Supreme Court has held that a municipality may be held liable for §1983 violations that are attributable to the municipality’s own conduct. *See Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). In its motion to dismiss, Defendant correctly recites the elements of a §1983 *Monell* claim against a municipality. “A plaintiff must identify: (1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose moving force is that policy or custom.” *Valle v. City of Houston*, 613 F.3d 536, 541-42 (5th Cir. 2010) (internal quotes omitted).

1. Plaintiffs sufficiently allege a constitutional violation for excessive force. Defendant’s motion does not contest this aspect of the complaint.

Although the existence of a constitutional violation is part of the third enumerated element of a *Monell* claim, it is often helpful for the court to begin its analysis with a consideration of the nature of the alleged constitutional violation. *See, e.g., Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616, 623 (5th Cir. 2018) (“That the alleged facts demonstrate a constitutional violation is presently undisputed. A brief discussion of *why* the alleged search was unconstitutional, however,

will nonetheless prove helpful.”) (emphasis in original). Here, Defendant’s motion to dismiss does not challenge the sufficiency of Plaintiffs’ allegations that the named City of Austin police officers violated Aquantis Griffin’s constitutional rights when they shot him at least 30 times and killed him.¹

The relevant allegations are set forth at ¶¶11-32 of Plaintiffs’ First Amended Complaint. [Dkt. No. 4] To summarize, the complaint alleges that on August 16, 2018 Griffin (a 21-year old Black man) attended a concert at Terminal 6 in Austin. During the concert, a fight broke out inside the Terminal 6 club that spilled out into the streets of downtown Austin. Griffin did not possess a gun while he was in Terminal 6 nor when he exited the club following the altercation. Another person involved in the fight, Jordan Seguin, retrieved a gun from his car and fired multiple shots into the air before attempting to flee the scene. Bystanders later heard a second round of gunshots in the area. Multiple Austin police officers responded to reports of the Terminal 6 altercation and subsequent gunshots. (First Amended Complaint ¶¶11-32).

Griffin, now with a gun in his hand, ran east through the alley behind Terminal 6 in the direction of Trinity Street. Griffin encountered a line of eight Austin police officers who, without hesitation, fired 42 shots at Griffin and hit him 30 times. The complaint alleges the following further details, each of which must be assumed true for purposes of this motion:

- Multiple officers chaotically shouted conflicting and confusing commands at Griffin. (First Amended Complaint ¶23);

¹ The court previously granted the Officer Defendants’ motion to dismiss on grounds of qualified immunity, finding that Plaintiffs had not shown that the officers had violated a constitutional requirement that was “clearly established.” *See* Dkt. 30 at 6-7. As a municipality, however, the City of Austin is not entitled to a qualified immunity defense. *See Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (holding that a “municipality may not assert the good faith of its officers or agents as a defense to liability under §1983.”). Even if the officers enjoyed qualified immunity because the legal rule was not clearly established, this does not negate the existence of a constitutional violation that can serve as the basis for the City’s *Monell* liability. *See, e.g. Heffernan v. City of Paterson*, 578 U.S. 266, 270-73 (2016).

- Griffin reacted by attempting to comply with the officers' commands by moving his right arm away from his body in an apparent attempt to drop the gun he was holding. (*Id.* at ¶24);
- Griffin did not look directly at the police officers He did not point his gun at the police officers. He did not say anything to the police officers or do anything to threaten them. (*Id.* at ¶25);
- The officers opened fire *before Griffin had an opportunity to comply* with the officers' commands. (*Id.* at ¶¶26-27);
- The initial shots from the officers disarmed Griffin within one-half of one second. He immediately fell to the ground, and the gun skidded across the pavement out of his reach. (*Id.* at ¶27);
- *After Griffin was disarmed*, the group of officers continued to shoot at Griffin's helpless and defenseless body, collectively firing 40 additional shots at Griffin, striking him at least 25 more times. (*Id.* at ¶28); and
- The group of officers completely neglected to render aid to Griffin after they stopped firing at him. No one rendered aid to Griffin until a bystander medical doctor approached the scene. (*Id.* at ¶30).

Despite being shot at least 30 times, Griffin was not pronounced dead at the scene. Instead, he was transported to Dell Seaton Medical Center where he was later pronounced dead at 1:22 a.m. on Friday, August 17, 2018. (First Amended Complaint ¶31).

The complaint alleges that these facts amount to a claim for excessive force in violation of Griffin's Fourth Amendment and Fourteenth Amendment constitutional rights. As stated in the complaint, the officers "killed him in a hail of gunfire even though he presented no threat." (*Id.* at

¶43). Griffin was attempting to comply with the officers' commands, but he was shot and killed before he had a reasonably opportunity to do so. (*Id.* at ¶¶43-44). "The force used by the officer Defendants was unnecessary, excessive, and unreasonable under the circumstances because [] Griffin did not pose an immediate threat to the safety of the officer Defendants or others." (*Id.* at ¶44). This is particularly true for the 40 additional shots fired *after* Griffin was disarmed. The officers were not content with merely disarming Griffin and diffusing the situation. Instead, their actions show that the officers unleashed an overwhelming barrage of lethal force to ensure that Griffin was not merely wounded, but dead.

Defendant's motion to dismiss does not contest that these facts sufficiently allege the officers' use of excessive force in violation of Griffin's constitutional rights under the Fourth and Fourteenth Amendments. Plaintiffs' allegations of a constitutional violation are well-grounded in law. *See, e.g. Tennessee v. Garner*, 471 U.S. 1, 2 (1985) ("Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so."). *See also, e.g., Mason v. Lafayette City-Parish Consol. Gov't*, 806 F.3d 268, 277 (5th Cir. 2015) (finding fact dispute on excessive force claim where officer continued to fire weapon at suspect on the ground after first shots disabled the suspect).

2. Plaintiffs made sufficient allegations regarding the existence of City of Austin policies and customs.

a. Plaintiffs' allegations are sufficiently detailed, not conclusory.

Plaintiffs' First Amended Complaint alleges two sets of City of Austin policies and customs that work together in tandem. The complaint first alleges a set of inadequate training policies regarding officer use of force and excessive force. (First Amended Complaint at ¶¶47-50). The complaint next alleges a set of policies that foster a racist policing culture that serve to particularly direct excessive force at persons of color. (*Id.* at ¶¶51-54).

Plaintiffs' First Amended complaint does not make generic or conclusory allegations of inadequate police training by the City of Austin. Instead, the complaint identifies specific aspects of police training that are alleged to be inadequate. The complaint identifies, *inter alia*: "inadequate training for determining and deploying the proper use of force, especially deadly force"; "inadequate training regarding procedures for handling armed and fleeing suspects and the proper use of deadly force in such situations"; "inadequate training in tactics and practices for avoiding contagious gunfire when police officers are in a group setting"; "inadequate training on the use of non-lethal force and de-escalation tactics"; and "inadequate training on the proper use of cover and pursuit practices." (*Id.* at ¶48, emphasis added).

The First Amended Complaint's allegations of racist policing policies are similarly detailed. The complaint alleges, *inter alia*: "inadequate hiring policies that failed to screen out officers who presented a plainly obvious risk of abusing their authority and using unwarranted force against Black people in Austin"; "inadequate disciplinary policies that failed to hold officers who used excessive force or committed racist acts accountable"; "deliberate indifference to the established custom and practice of racially motivated use of excessive force"; and "inadequate disciplinary policies that failed to punish officers who violated Black citizens' rights to be free from racially motivated law enforcement actions." (*Id.* at ¶52, emphasis added).

Defendant's motion argues that Plaintiffs failed to provide sufficiently detailed allegations of a City of Austin policy, practice or custom, citing *Ratliff v. Aransas County*, 948 F.3d 281 (5th Cir. 2020). *See* Motion to Dismiss at 3-5. But the *Ratliff* case is easily distinguishable because (as Defendant acknowledges in its motion), the plaintiff in *Ratliff* alleged nothing more than the facts of the excessive force incident itself as being the municipal policy. *See Ratliff*, 948 F.3d at 285. *See also* Motion to Dismiss at 3 ("In *Ratliff* . . . the only facts plaintiff alleged with any specificity

related to the incident which was the subject of the lawsuit.”). By contrast, in this case Plaintiffs have made detailed allegations of inadequate training policies and racist policing policies that are not limited to the facts of the excessive force incident against Griffin.

b. Plaintiffs sufficiently alleged that the policies or customs were pervasive and widespread.

Defendant’s motion further argues that Plaintiffs fail to allege that the identified policies and customs were sufficiently persistent or widespread. *See* Motion to Dismiss at 4-5. This is incorrect. Plaintiffs’ complaint incorporates by reference a 2016 report from the Center for Policing Equity that found disproportionate use of force and lethal force against Black residents was a widespread and pervasive practice within the Austin Police Department. (First Amended Complaint ¶33).

A copy of the 2016 CPE Report is attached hereto as Exhibit A. The 2016 CPE Report finds the following:

- “The raw data point to a disparity of treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.” (Exhibit A, page 2 of 18);
- “Racial disparities are evident when comparing the racial/ethnic composition of APD’s use-of-force incidents to the racial/ethnic composition of the Austin MSA [metropolitan statistical area].” (Exhibit A, page 11 of 18);
- “Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin’s neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood *were statistically significant positive predictors of police use of force.*” (Exhibit A, page 12 of 18, emphasis added); and
- “[A]nalyzes of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of

use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.” (Exhibit A, page 15 of 18, emphasis in original).

The Complaint further alleges that the Austin City Council endorsed and adopted the relevant findings of the 2016 CPE Report via a Council resolution passed on December 5, 2019. (*Id.* at ¶34). A copy of “Resolution 66,” which is incorporated by reference into the Complaint, is attached hereto as Exhibit B. Resolution 66 plainly states: “[T]he City of Austin acknowledges the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy.” (Exhibit B, page 1 of 12).

For illustrative purposes only,² Plaintiffs submit additional internal City of Austin documents that demonstrate Plaintiffs will be able to show that the alleged policies and customs were persistent and widespread. Exhibit C³ is an internal report that finds “[The] APD Training Academy operates under a paramilitary training format” (Exhibit C, page 7 of 18). “The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime. . . . The warrior mindset, and the fear that drives it, must

² Plaintiffs’ submission of additional exhibits that are not specifically referenced in the complaint is for illustrative purposes only, to demonstrate what facts Plaintiffs expect to be able to show in support of the allegations of the complaint. “Although a party moving for dismissal ordinarily converts a Rule 12 motion into a Rule 56 motion for summary judgment by attaching extrinsic materials to its motion, a party opposing a Rule 12 motion has much more flexibility, and [] the district court may consider the additional materials as long as they are consistent with the pleadings. . . . In fact, . . . a plaintiff who is opposing a Rule 12(b)(6) or Rule 12(c) motion and who can provide such illustration may find it prudent to do so.” *Bishop v. Air Line Pilots Ass’n*, 900 F.3d 388, 399 fn.28 (7th Cir. 2018). *See also Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 557 (4th Cir. 2013); *Miller v. Redwood Toxicology Lab.*, 688 F.3d 928, 931 (8th Cir. 2012); *Rivera v. Centro Medica de Turabo, Inc.*, 575 F.3d 10, 15 (1st Cir. 2009); Wright & Miller, *Federal Practice and Procedure: Civil* §1357 fn.1 (3d ed.).

³ Exhibit C is a report delivered by Dr. Sara Villanueva delivered to then-Chief Brian Manley on May 22, 2020. At that time, Dr. Villanueva was the Organizational Development and Training Manager at the Austin Police Department.

change.” (*Id.* page 10 of 18). Exhibit D⁴ provides additional internal reports that confirm the findings of a widespread “culture of violence” promoted throughout the APD Training Academy. *See* Exhibit D, page 18 of 152, footnote 8 (“The term *culture of violence* describes institutionally imposed conditions that ‘can be used to justify or legitimize direct or structural violence.’ . . . [T]he qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied [for the APD Training Academy].” (emphasis in original). Interviews with former cadets revealed that “the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation.” *Id.* at page 18-19 of 152. “According to interview respondents, many of the academy’s trainers rely overwhelmingly on ‘violent’, ‘brutal’, ‘traumatizing’ practices designed to ‘manufacture soldiers’ rather than produce community-driven law enforcement professionals adept at de-escalation.” *Id.* at page 20 of 152.

Exhibit E is a Community Report prepared by a panel of Austin community members (with the authorization of the Austin City Council) providing a comprehensive review of training videos that had for many years been used by the APD Training Academy. The Community Report found that “[o]verall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity” Exhibit E, page 6 of 26. “One of the more pervasive biases we observed is the us-versus-them mindset. *This bias existed at a fundamental, pervasive level*, further informing other biases with respect to race, ethnicity, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers.” *Id.* at page 14 of 26

⁴ Exhibit D is a memorandum prepared by Austin Chief Equity Officer Brion Oaks on December 29, 2020 (the “Oaks Memorandum”). The Oaks Memorandum attaches two bodies of work documenting racial inequities within the Austin Police Department: (1) a series of evaluations prepared by third-party evaluator The Peace Mill Research and Communications, and (2) a report prepared by third-party evaluator Joyce James Consulting. The Peace Mill Evaluations and the Joyce James Report each were prepared at the direction and authorization of the Austin City Council. The Oaks Memorandum was prepared and delivered within the scope of Brion Oaks authority as an employee of the City of Austin.

(emphasis added). The Community Report found that APD Training Academy videos consistently promoted an “us-versus-them” warrior mentality among officers that encouraged them to perceive community members as being akin to enemy combatants in a war zone. *See id.* at pp. 14-18 of 26. “[O]fficers are trained to view every encounter as potentially life-threatening. . . . The training . . . definitely emphasized the safety of the officer above all else.” *Id.* at page 17 of 26. The Community Report found APD training “reinforces the us-versus-them dichotomy in ways that tend toward *escalation and grievous mistakes in judgment.*” *Id.* at page 18 of 26 (emphasis added).

The Community Report also documented a persistent bias in APD training with respect to the escalation of force against Black and Brown community members. *See Exhibit E* at pp. 4-8, 10 of 26. “[B]y far the most alarming pattern we witnessed [in the training videos] was the harmful stereotypes perpetuated against Black and Brown communities.” *Id.* at page 4 of 26. “Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded.” *Id.* at page 6 of 26. “We witnessed again and again *Black men dying within minutes, sometimes within seconds, of an interaction with police.*” *Id.* (emphasis added). *See also id.* at page 8 of 26 (discussing a “clear pattern” of training materials with a racial bias); *id.* at page 10 of 26 (discussing a “very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats.”).

In light of the foregoing, Plaintiffs have provided sufficient allegations that the identified City of Austin policies and customs were persistent and widespread. Defendant is simply wrong to assert in its motion to dismiss that “None of these prior bad acts are specific and similar to the alleged violation in this case, i.e., officers’ use of deadly force on Griffin.” Motion to Dismiss at 5.

Defendant separately asserts that Plaintiffs failed to adequately plead the allegations of inadequate training and supervision policies. *See* Motion to Dismiss at 7-8. But Defendant’s argument is simply that “Plaintiffs have not included any specific, non-conclusory facts which support a claim for either failure to train or supervise.” *Id.* at 8. This is simply inaccurate. Plaintiffs’ detailed factual allegations regarding inadequate training are recited and discussed above.

Defendant also separately asserts that Plaintiffs failed to adequately plead the allegations of inadequate disciplinary policies. *See* Motion to Dismiss at 8-9. Again, Defendant’s argument is simply that “Plaintiffs’ First Amended Complaint provides only conclusory allegations with no specific factual allegations about the City’s disciplinary policies.” *Id.* at 9. But this argument simply ignores the allegations contained within the complaint. *See* First Amended Complaint at ¶37 (discussing retaliation against complainants regarding racist policing practices); ¶52 (alleging “inadequate disciplinary policies that failed to punish officers who violated Black citizens’ rights to be free from racially motivated law enforcement actions.”).

3. Plaintiffs sufficiently alleged that a City of Austin policymaker had actual or constructive notice of the identified policies and customs.

Plaintiffs’ First Amended Complaint alleges that former Austin Police Chief Brian Manley was the relevant official policymaker for the City of Austin regarding each of the identified policies or customs. *See* First Amended Complaint ¶¶49, 53. Defendant’s motion to dismiss does not challenge this aspect of the complaint.

Defendant twice argues in its motion to dismiss that Plaintiffs failed to allege that the City of Austin had actual or constructive knowledge of the identified policies or customs. *See* Motion to Dismiss at 8 (“The First Amended Complaint . . . fails to provide *any* factual support to show a plausible conclusion that the City was indifferent to unconstitutional police action”); *id.* at 9 (“Plaintiffs have not presented non-conclusory factual allegations about deliberate indifference in

adopting the disciplinary policies.”). In both instances, Defendant’s argument itself is conclusory, consisting of a single sentence without explanation.

“[W]hen city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens’ constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (citing *Bd. Of the Cnty. Comm’rs v. Brown*, 520 U.S. 397, 410 (1997)). “The city’s policy of inaction in light of notice that its program will cause constitutional violations is the functional equivalent of a decision by the city itself to violate the Constitution.” *Connick*, 563 U.S. at 61-62 (internal quotes omitted) (quoting *City of Canton v. Harris*, 489 U.S. 378, 395 (1989)).

Plaintiffs’ complaint adequately alleges deliberate indifference by the City of Austin by alleging that the City had actual and constructive notice that the identified policies were creating widespread and pervasive constitutional violations, yet chose to do nothing. The CPE Report identified pervasive disproportionate use of lethal force against Black residents of Austin as early as 2016. *See* First Amended Complaint ¶33. The Austin City Council acknowledged and adopted these findings in a formal City Council resolution. *See id.* at ¶34. Yet, in June 2020 the Austin City Council unequivocally admitted that the relevant policymakers had failed to make necessary changes to the City’s policies and customs:

[T]he elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities. [T]he measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past.

See First Amended Complaint at ¶38 (quoting June 11, 2020 Austin City Council resolution, attached hereto as Exhibit F). Plaintiffs' First Amended Complaint contains additional allegations of deliberate indifference at ¶¶39, 48, and 52.

As can be seen, Plaintiffs adequately pled that the City of Austin had actual and constructive knowledge that the identified policies and customs were causing deprivations of constitutional rights, yet chose to do nothing to change these policies and customs. Plaintiffs' allegations squarely meet the test for deliberate indifference—knowledge plus inaction—as stated by the Supreme Court in *Connick*.

4. Plaintiffs made sufficient allegations regarding “moving force causation.”

Defendant's motion to dismiss makes three separate arguments for why Plaintiffs' allegations of “moving force causation” are insufficient. First, Defendant argues that Plaintiffs do not provide sufficient factual allegation that the alleged “institutionally racist and violent policing culture” was the moving force cause of Griffin's constitutional injuries. See Motion to Dismiss at 5-7. Second, Defendant separately argues (in a single sentence) that Plaintiffs failed to allege that identified training and supervision policies were the moving force cause of Griffin's constitutional injuries. See *id.* at 8. Third, Defendant again separately argues that Plaintiffs failed to allege that the identified inadequate disciplinary policies were the moving force cause of Griffin's constitutional injuries. See *id.* at 9. Defendant's arguments as to moving force causation are wrongheaded in two fundamental ways.

First, Defendants confuse the *effects* of the identified policies (the “institutionally racist and violent policing culture”) with the identified policies themselves that created the racist policing culture. As discussed in Section II(B)(2)(a), *supra*, Plaintiffs did not make conclusory allegations regarding the identified policies and customs. Instead, Plaintiffs identified specific policies, such as inadequate training regarding use of lethal force, inadequate training regarding fleeing suspects,

inadequate training on contagious gunfire, and inadequate disciplinary procedures for complaints of racist policing, etc. Defendant's attempt to generalize the specifically identified policies and customs into a generic notion of a racist policing culture oversimplifies the complaint and fails to capture the causal connection between the specific policies identified and Griffin's particular constitutional injuries, as alleged in the complaint.

Second, Defendant's attempt to parse the various policies and customs identified in the complaint is improper. Under Fifth Circuit precedent, it is error for the court to consider each identified policy or custom in isolation to determine if it is the moving force cause of the constitutional violation. *See M.D. v. Abbott*, 907 F.3d 237, 253-55 (5th Cir. 2018). In *Abbott* the Fifth Circuit held:

In sum, the §1983 causation component requires that the plaintiffs identify, with particularity, the policies or practices they allege cause the constitutional violation, and demonstrate a "direct causal link." *We do not, however, read our precedent to require the court to consider each policy or practice in a vacuum.* The court may properly consider how individual policies or practices interact with one another within the larger system.

Id. at 255 (internal citations omitted, emphasis added). Reviewing prior case law, the Fifth Circuit further held that its prior §1983 precedent does not "suggest[] a plaintiff is required to demonstrate that a challenged policy or practice is the *exclusive* cause of the constitutional deprivation." *Id.* at 254. "Requiring plaintiffs to identify with specificity the policies they allege directly cause constitutional harm is not irreconcilable with the idea that, in assessing the harm caused by a particular policy, the court may consider how other policies or practices exacerbate or ameliorate its effect." *Id.*

As discussed above, Plaintiffs alleged a plurality of specific policies related to training, supervision, and discipline that, taken together, created a culture of violence and racist policing. The APD training emphasized a warrior mentality and an us-against-them approach to policing

that trained the police to identify community members as enemy combatants and inherent threats. The training also emphasized racist approaches to policing encounters, for example with videos that showed a quick escalation of force against persons of color, often resulting in death of the person of color within moments of a police encounter. *See* Section II(B)(2)(b), *supra*.

This is exactly what happened to Griffin when he was shot and killed. The policies and customs identified by Plaintiffs show that the officers were trained to do exactly what they in fact did. Just as they were trained, the officers immediately treated Griffin, a Black man, as if he was an enemy combatant on a battlefield. The officers shot him dead in an overwhelming and excessive barrage of gunfire, with no attempts to deescalate the situation and without giving Griffin an opportunity to comply with their commands, even though he posed no immediate harm to the officers or anyone else. It is difficult to see how Plaintiffs could more specifically allege “moving force” causation than to allege that the officers were trained in specific ways and then acted exactly in accordance with that training. When considered in conjunction with Plaintiffs’ other identified policies (such as failure to discipline such behavior), Plaintiffs’ allegations meet the standard for alleging moving force causation.

Defendant relies upon *Spiller v. City of Texas City, Police Dept.*, 130 F.3d 162 (5th Cir. 1997) to argue that Plaintiffs’ moving force causation allegations are insufficient. *See* Motion to Dismiss at 6. But *Spiller* is not on point and is easily distinguishable. In *Spiller*, the district court dismissed the plaintiff’s *Monell* claim against a municipality because the plaintiff made only conclusory allegations of policies or customs. *See Spiller*, 130 F.3d at 167 (finding that each of three policies identified by the plaintiff was “conclusory”). The *Spiller* court noted that the plaintiff also had made conclusory causation allegations, but that was not the basis for the district court’s dismissal of the *Monell* claim or the Fifth Circuit’s affirmance of the dismissal. *See id. Spiller*

therefore provides no guidance for this case, where Plaintiffs have made specific, non-conclusory allegations of specific policies and customs, coupled with causation allegations that show the constitutional injury coincides directly with the identified policies and customs.

C. Plaintiffs' allegations adequately support a claim for wrongful death damages for the City of Austin's violation of 42 U.S.C. §1983.

Defendant's motion to dismiss argues that Plaintiffs are barred from recovering wrongful death damages by the Texas Tort Claims Act, Tex. Civ. Prac. & Rem Code §101.057(2), which does not waive governmental immunity for intentional torts. *See* Motion to Dismiss at 9-10. Defendant's argument is wrong in two fundamental respects.

First, Defendants have confused a wrongful death *cause of action* that itself arises under the Texas wrongful death statute (Tex. Civ. Pr. & Rem. Code §71.004(a)), versus wrongful death *damages* that may be recovered by a plaintiff on a cause of action that arises under 42 U.S.C. §1983. In this case, Plaintiffs' legal cause of action arises under §1983, and Plaintiffs merely seek wrongful death damages that resulted from Defendant's violation of §1983.⁵ Under Fifth Circuit and federal common law of §1983 damages, wrongful death damages are available to a prevailing plaintiff if wrongful death damages are recoverable under the applicable state's tort law. *See DePaz Gonzalez v. Duane*, 858 Fed. Appx. 734, 737 (5th Cir. 2021). In this context, federal common law looks to state law under "§1988 and its gap filling provision which provides that state law, when not inconsistent with the Constitution or federal law, can be extended to civil rights actions when the civil rights statutes are deficient in providing an adequate remedy." *Id.* (citing *Brazier v. Cherry*, 293 F.2d 401, 402 (5th Cir. 1961) and *Rhyne v. Henderson City*, 973 F.2d 386, 388 (5th Cir. 1992)). Defendant cites no authority for the notion that the Texas Tort Claims Act has any

⁵ Plaintiffs do not object to an order from the Court clarifying that Plaintiffs do not assert a claim arising under the Texas wrongful death statute, but instead that Plaintiffs seek wrongful death damages for Defendant's violation of 42 U.S.C. §1983.

applicability to a claim arising under 42 U.S.C. §1983. Indeed, the implication of Defendant's argument is that a plaintiff could *never* recover wrongful death damages for an excessive force lethal shooting under §1983. That most certainly is not the law. *See, e.g. DePaz Gonzalez*, 858 Fed. Appx. at 737.

Second, Defendant's motion is premised upon the assertion that "the gravamen of Plaintiffs' Amended Complaint is that the Austin police officers wrongfully shot Griffin, which is clearly an intentional tort" Motion to Dismiss at 9. But Defendants have invented this characterization of Plaintiffs' claims from whole cloth. Plaintiffs' Amended Complaint itself makes no allegation that the officers wrongful conduct was intentional, and Defendant cites no authority suggesting this is a proper characterization of Plaintiffs' claims. To the contrary, intentional conduct is *not* a required element of an excessive force claim under 42 U.S.C. §1983. *See, e.g. Graham v. Connor*, 490 U.S. 386, 397 ("[T]he 'reasonableness' inquiry in an excessive force case is an objective one . . . without regard to [the officer's] underlying intent or motivation. . . . An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." (internal citations omitted)).

Thus, Defendants have not shown that the Texas Tort Claims Act bars Plaintiffs from seeking wrongful death damages for a violation of §1983.

III. Conclusion

Defendants have not met their burden to show that they are entitled to judgment on the pleadings under Rule 12(c). Plaintiffs' allegations from the First Amended Complaint are sufficient to state a plausible entitlement to relief. For the foregoing reasons, Defendant's Motion to Dismiss [Dkt. No. 43] should be denied.

Dated: July 20, 2022

**Respectfully submitted,
HENDLER FLORES LAW, PLLC**

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on July 20, 2022 which will serve all counsel of record.

/s/ Donald Puckett
Donald Puckett

RESPONSE EXHIBIT A



The Science of Policing Equity

Measuring Fairness in the Austin Police Department

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Public trust in law enforcement is alarmingly low in many communities nationwide, particularly in those experiencing violent crime coupled with intensive police presence. Research shows that positive police-community relationships are crucial for safer communities: citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.¹ Yet many community members perceive law enforcement activities to be targeted toward—and biased against—nonwhite people.

Communities wracked by highly publicized shootings of unarmed people of color have called for both greater transparency and accountability on the part of the police. Likewise, law enforcement executives desire hard metrics on current practices and a way to measure changes in response to policies aimed at reducing bias and improving police-community relations.

This brief aims to address the needs of both communities through collaboration between two initiatives: The Center for Policing Equity's [National Justice Database](#) (NJD) and the White House's [Police Data Initiative](#) (PDI; see text box). Both NJD and PDI emphasize the importance of collecting and making transparent police data to measure fairness and improve policing equity. NJD also emphasizes applying a rigorous analytic framework to examination of that data.

This brief applies the NJD analytic framework to publicly available PDI data. It focuses on the Austin Police Department (APD) in Texas, one of the first agencies to make its data available through PDI. Importantly, analyses were conducted *independent of any law enforcement agency funding*. In this research brief we present empirical documentation of the degree of racial and ethnic disparities in Austin's policing practices, as well as possible interpretations of such differences.

Our purpose is to demonstrate what can be learned by thoroughly analyzing democratized data. We empirically document the degree of racial and ethnic differences in Austin's policing practices, as well as possible interpretations of such disparities. We hope the brief provides law enforcement officials

with a road map for greater transparency and accountability in police practices, so they can transform agencies to adopt more just and equitable means of promoting public safety.

Highlights

The pages that follow present analyses of APD traffic stops and searches, as well as APD officers' use of force, for the calendar years 2014 and 2015. For both yearly analyses we isolate race and ethnicity, exploring differences in practices and modeling these outcomes of interest while controlling for competing factors, such as place-specific crime rates. The raw data point to disparate treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.

These findings demonstrate that even in an agency such as the APD, which is instituting reforms aimed at enhancing equity in policing, unwelcome disparities remain, indicating that more work is needed within and beyond law enforcement agencies. Our research also underscores the value of rigorous and impartial analysis of police data—together with public dissemination of the findings—as well as the importance of continual analyses that can help promote and measure change over time.

Collaboration between Two Nationwide Efforts to Increase Policing Equity

Since 2012, the Center for Policing Equity has been working with law enforcement leaders, academics, community advocates, and the Department of Justice to create the **National Justice Database** (NJD), a National Science Foundation-supported effort to compile national-level statistics about police behavior and develop a rigorous analytic road map for examining police data. NJD's goal is to independently help police and communities learn about disparities in law enforcement and hold departments accountable to them. To date, NJD has received commitments from police departments nationwide, serving 25 percent of the United States population; the data, however, have yet to be made public.

Against this backdrop, President Obama's Task Force on 21st Century Policing launched in May 2015 the **Police Data Initiative** (PDI), calling on law enforcement agencies across the country to make data publicly available and partner with researchers and technologists to disseminate it. The Police Foundation makes PDI data available through a portal on its website (<https://publicsafetydataportal.org/>). Through such transparency, PDI aims to rebuild trust between communities and police and, ultimately, to reduce crime. Thus far, over 100 law enforcement agencies have committed to release data files on police actions such as stops, searches, arrests, and uses of force. While dozens of agencies and members of the public have accessed these data, few people have analyzed the data.

Through a collaboration between these two nationwide efforts, this brief demonstrates how the NJD analytic framework can be applied to PDI data to identify the presence (or absence) of unwarranted racial disparities in officer stops, searches, uses of force, and so forth. This brief also shows how the availability of additional police data, advocated by NJD, can increase public knowledge about how to improve policing equity nationwide.

The NJD Analytic Framework

The Austin-specific findings embodied in this brief are an example of the types of questions the NJD analytic framework is designed to answer. The framework aims to distinguish among possible explanations for racial disparities in policing, of which there are three broad classes:

1. **Disparities that arise from community characteristics.** For instance, high crime rates or poverty within a community may draw increased police attention. Individuals within the community may place disproportionately more calls for service to police.
2. **Disparities that arise from police characteristics.** For instance, police may patrol some neighborhoods with less commitment to the dignity of those who live there. Or, deploying more officers to high-crime neighborhoods may produce disproportionately more interactions between police and nonwhite communities.
3. **Disparities that arise from the relationships between communities and police.** For instance, mistrust of law enforcement may incite some communities to flee approaching officers or resist arrest more than other communities do. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the truth likely incorporates elements of each of these explanations, the NJD framework allows departments to learn about how all three contribute to racial disparities. By combining police administrative data with population data (e.g., income, education, racial demographics), police department climate surveys, and community surveys, we can credibly examine the role that each explanation plays in the disparities that both police departments and communities want to reduce.

However, because NJD data on police behavior are neither publicly accessible nor integrated into the PDI rubric, this brief carefully analyzes the role that community-level factors play in racial disparities—that is, explanation 1. The resulting analyses can be used to steer community engagement, relationship building, and continued department reform. Importantly, the persuasive power of analytics grows substantially the longer a department measures and analyzes important indicators. As a result, we encourage the APD, the people of Austin, and all PDI-participating communities to see these analyses as a *first benchmark* against which progress can be measured. With many departments set to receive similar briefs in the coming years, we hope this analytic framework can be a road map for police and communities—establishing where they are now and charting a path toward a more just future.

In fairness, no police department in the country currently collects all the data recommended in the NJD analytic framework (though several departments collect each element of non-survey data). CPE and Urban chose the APD as our partners for this brief because its use-of-force dataset is among the most comprehensive in the country and is the single most comprehensive *publicly available* use-of-force dataset. In addition to its use-of-force dataset, the APD publishes a dataset on citations and arrests resulting from vehicle stops.

The APD does not publish any officer-level data because of officer privacy considerations; police departments rarely make these data public. As a result, we are unable to analyze how much racial disparities are attributable to individual officers (compared to the department or the region). The APD also does not publish data on complaints against officers, so we are unable to examine racial disparities

in complaints using PDI data (Austin's Office of the Police Monitor publishes an annual report on citizen complaints, but these data are not in the PDI portal and thus not subject to analysis here). Additionally, though the APD does make its disciplinary matrix and general orders available to the public, these are not in the PDI portal, so we do not explore questions about policy comprehensiveness in our analyses.

The APD documents, but does not publish data on, pedestrian stops or vehicle stops not resulting in citation or arrest. As a result, we are unable to ask questions about racial disparities in pedestrian stops, and our ability to ask questions about the source of disparities in vehicle stops is limited. We encourage the APD to begin data collection of these fields while noting that new data collections are time consuming, may lower morale in the short term, and require technical infrastructure to aggregate and analyze.

The above description of APD's data holding and publicly available data is offered to demonstrate the tremendous opportunity for greater clarity on fairness in policing that could be afforded by further democratization of policing data. These opportunities are not for the APD alone but for law enforcement agencies nationwide.

The dashboard on the next page illustrates the types of data that could—and arguably should—be collected and disseminated through the PDI portal, whether Austin currently has these data publicly available, and how analyses of these data can answer critical questions that can help move the needle in reducing racial and ethnicity-based bias in policing and enhancing trust between community members and the police. The dashboard is designed to articulate the questions that can be asked of police departments using their data as well as community survey data (while the City of Austin conducts an annual police satisfaction survey of residents, it is not representative of communities most likely to experience violent crime and heavy police presence). The dashboard underscores that because certain data are not currently published through the PDI portal several questions in the NJD analytic framework cannot be posed and answered.

Austin Police Department Data

The Austin Police Department embodies 1,900 officers serving the 11th-largest city in the United States, with 930,000 residents as of 2015. The population of the Austin greater metropolitan statistical area (MSA) is more than double that of the city: 2 million residents, many of whom commute into Austin daily.

In this brief, we focus on two types of Austin police data made available through the PDI portal: vehicle stops that resulted in citation or arrest in 2015, and incidents involving police use of force in 2014. We show total counts of vehicle stops and use-of-force incidents and counts by white, black, and Hispanic race and ethnicity. Over half of Austin MSA's residents are non-Hispanic white (53 percent), nearly a third are Hispanic (32 percent), and less than one-tenth are non-Hispanic black (7 percent). Because urban centers such as Austin experience an



Austin, Texas

Availability of Austin PD Data to Answer NJD Analytic Questions

	Are there racial disparities?	How much are disparities attributable to officers?	How well do officer-level psychologies predict disparities?	What accounts for disparities?	How healthy are officers?	How comprehensive are departmental policies?
Administrative datasets						
Vehicle stops	Moderate data	Not in PDI	Not in PDI			
Pedestrian stops	Not in PDI	Not in PDI	Not in PDI			
Use-of-force	Rich data	Not in PDI	Not in PDI			
Complaints	Not in PDI	Not in PDI	Not in PDI			
Crime/calls				Rich data		
Officer discretion				Moderate data		
Neighborhood				Rich data		
Police climate surveys						
Psychological health					Not in PDI	
Physical health					Not in PDI	
Job health					Not in PDI	
Policy analyses						
Racial equity						Not in PDI
Trust						Not in PDI
Reduce force						Not in PDI
Thorough						Not in PDI
Effective						Not in PDI

influx of regional residents who visit the city for work and recreation, MSA population figures are more appropriate measures to adjust police data counts for exposure to different citizens. Racial and ethnic differences in police data must also be contextualized with other contributing factors, including level of illegal activity, something we model in the use-of-force analysis by using census tract level Part I crimes as a proxy.

Vehicle Stops and Searches

Over time, the volume of vehicle stops in Austin resulting in a citation remained fairly constant, at approximately 10,000 stops a month, with one sharp drop during September 2015. The number of

FIGURE 1

Vehicle Stops Resulting in a Citation, 2015

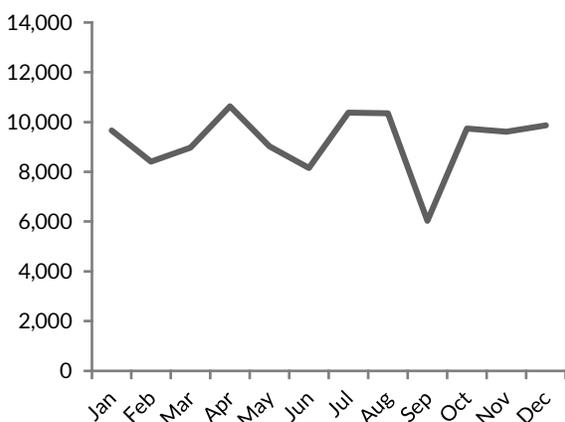
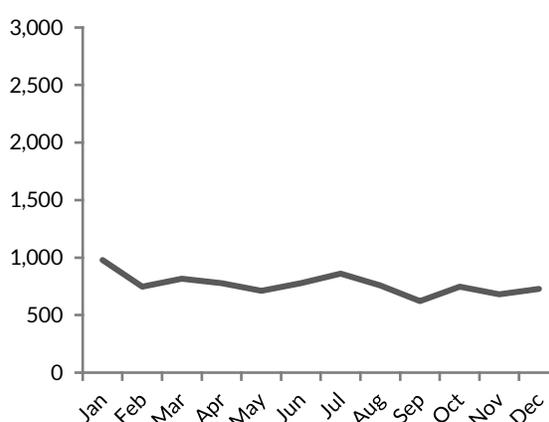


FIGURE 2

Vehicle Stops Resulting in an Arrest, 2015



vehicle stops resulting in an arrest was much lower, averaging 750 a month and remaining fairly constant across time after peaking in January 2015.

VEHICLE STOPS BY RACE OR ETHNICITY

In total, Austin police stopped more white and Hispanic than black drivers in each month of 2015, an expected pattern given the higher share of white and Hispanic residents in the Austin metropolitan area. However, among stops resulting in a citation, more white than Hispanic drivers were stopped each month, while the opposite was true for stops resulting in an arrest. Each month of 2015, a higher number of stopped Hispanic drivers were arrested than either white or black stopped drivers. These counts are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 3

Vehicle Stops Resulting in a Citation by Race or Ethnicity, 2015

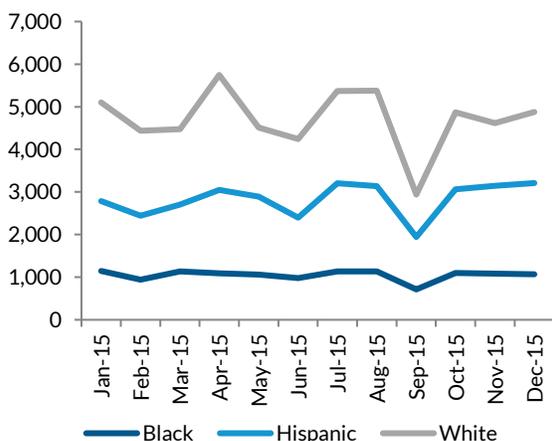
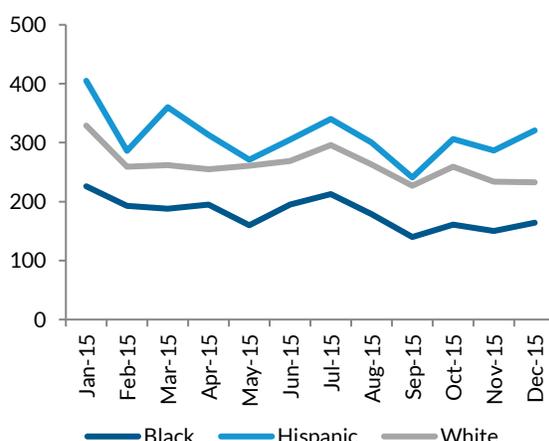


FIGURE 4

Vehicle Stops Resulting in an Arrest by Race or Ethnicity, 2015



When accounting for underlying population, however, we see that rates of vehicle stops resulting in citation or arrest were highest for black drivers throughout the year. In other words, while the fewest number of vehicle stops occurred for black drivers, a higher proportion of black people was stopped than Hispanic or white people. Similar proportions of white and Hispanic drivers experienced vehicle stops resulting in citations, but stop rates resulting in arrests were twice as high among Hispanic drivers as white drivers. Again, these rates are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 5

Per Capita Stops Resulting in a Citation by Race or Ethnicity, 2015

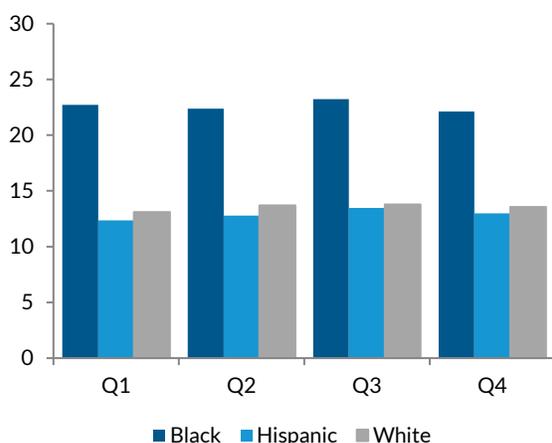
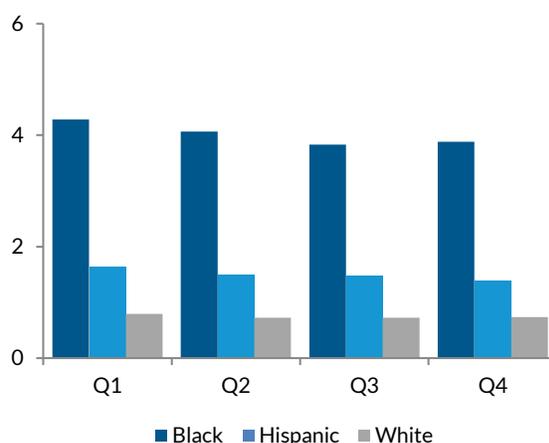


FIGURE 6

Per Capita Stops Resulting in an Arrest by Race or Ethnicity, 2015



VEHICLE SEARCHES BY RACE OR ETHNICITY

Vehicle stops may result in a search following arrest and may precede arrest if reasonably necessary for officer protection (e.g., weapons search), there is probable cause of evidence of crime, or upon the driver's consent. Because only 2 percent of APD's vehicle stops that resulted in a citation involved searches, this section focuses on vehicle stops resulting in arrest.

Three-quarters (76 percent) of APD's arrest stops involved a vehicle search; of those searches, 77 percent were described as occurring for reasons "incidental to arrest." Following *Arizona v. Gant*, 556 U.S. 332 (2009), searches performed incidental to arrest are conducted after an arrest has been made to address continuing safety threats or preserve criminal evidence. Searches performed for other reasons not incidental to arrest, including for "probable cause," as a "frisk for safety," or by driver's "consent," are assumed to have been conducted before arrest and were subjected to greater officer discretion. We focus analysis on these latter searches, which made up 23 percent of those conducted in 2015.

Focusing on searches *not* incidental to arrest, **figure 7** shows the percentage of vehicle stops resulting in a search, broken down by drivers' race/ethnicity. In general, search rates were highest for stopped black drivers and lowest for stopped Hispanic and white drivers. The search rate for black drivers peaked early in 2015 at 32 percent, meaning 1 in 3 stops of black drivers involved a search, and was lowest at the end of 2015, when one in six stops (16 percent) of black drivers resulted in a search.

Search rates for Hispanic and white drivers were generally similar, averaging 16 percent and 14 percent respectively, across the time period. By the end of 2015, the racial gap in percentage of drivers searched by race/ethnicity had closed somewhat.

The APD also records whether contraband (drugs, weapons, cash, alcohol, and “other items”) was recovered from vehicle searches. One in three (32 percent) vehicle searches yielded contraband, compared with almost half (48 percent) of nonincidental vehicle searches. **Figure 8** shows the search “hit” rates, or percentage of nonincidental searches resulting in contraband discovery, by race/ethnicity. Although hit rates vary, few discernible patterns of differences by race/ethnicity are evident; hit rates average 47 percent for Hispanic drivers, 49 percent for black drivers, and 50 percent for white drivers.

This lack of hit rate differences can typically be interpreted as evidence of lack of bias in decisions to stop or search,² but in this case, because the data include only cases in which arrests were made, we do not know the rates at which different groups were searched and contraband was *not* found. Consequently, we cannot draw any conclusions about bias from hit rates among arrest stops. Regardless, APD’s hit rates are very high and may be explained, at least in part, by the fact that APD has one of the strictest consent search requirements in the country, for which officers must have probable cause to conduct a search. These hit rates also appear high because they are limited to stops resulting in arrest; other jurisdictions looking at *all vehicle stops* have found hit rates ranging from 7 percent to 34 percent.³

FIGURE 7
Share of Drivers Subject to Nonincidental Searches by Race or Ethnicity, 2015

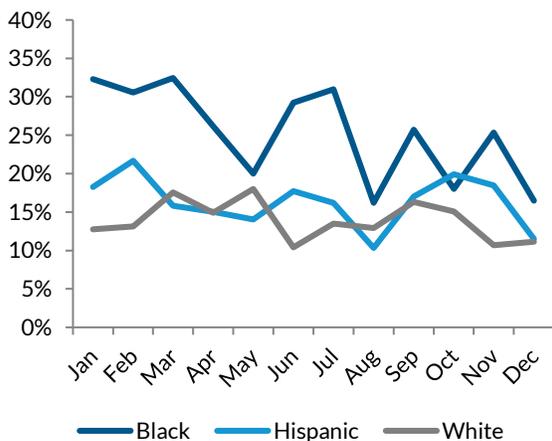
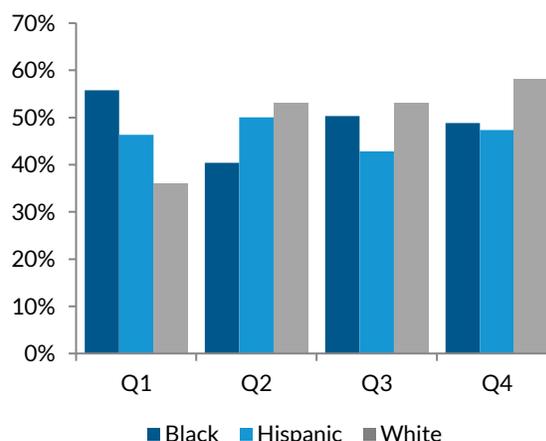


FIGURE 8
Nonincidental Search “Hit” Rates by Race or Ethnicity, 2015



MODELING OFFICER DISCRETION IN VEHICLE STOPS AND SEARCHES

In this section, we present analyses that help us explore whether racial disparities in vehicle stops that lead to citations and arrests are potentially warranted or unwarranted. First, we examine the role of officer discretion in deciding whether to make a stop; second, we model the decision to search a vehicle once a stop is made.

Officer Discretion. To understand whether racial disparities in officer-initiated (discretionary) stops exceed racial disparities in nondiscretionary stops, such as those initiated by citizens through calls for service and commission of felony or misdemeanor, we compute the officer discretionary index (ODI) as follows:

$$ODI = \frac{\text{Officer Initiated Stops of B/H/W}}{\text{All Officer Initiated Stops}} - \frac{\text{Citizen Initiated Stops of B/H/W}}{\text{All Citizen Initiated Stops}}$$

The ODI compares the proportion of officer discretionary stops of blacks (*B*), Hispanics (*H*), and whites (*W*) with the proportion of citizen-initiated stops of the same racial/ethnic group. If a racial group's proportion among officer discretionary stops differs from that among nondiscretionary stops, there may be indication of racial bias. **A positive (or negative) ODI indicates that officers are initiating a higher (or lower) share of stops of that racial or ethnic group than are citizens.** A null result (0) indicates that officer discretion judgment is on pace with that of citizens.

For the Austin police data, we examined the reason recorded for making a stop to distinguish between officer-initiated (discretionary) and citizen-initiated (nondiscretionary) stops. Discretionary stops were defined as those of a "suspicious person," while nondiscretionary stops were defined as those stemming from calls for service or violations of Texas penal code, Austin city ordinance, or the Texas water safety act.⁴

Table 1 shows the ODIs calculated for blacks, Hispanics, and whites in Austin, based on vehicle stops resulting in citation or arrest for 2015. As shown, there is no evidence of racial bias in stops of Hispanic drivers. By contrast, among stops resulting in citation or arrest, a higher share of officer-initiated stops of black drivers was present than citizen-initiated stops of black drivers (the difference is higher among stops resulting in arrest). An equivalently lower share of officer-initiated stops of white drivers was present than citizen-initiated stops of white drivers.

TABLE 1

Officer Discretionary Indices, 2015

	Stops Resulting in Citations			Stops Resulting in Arrests		
	% discretionary	% non-discretionary	ODI	% discretionary	% non-discretionary	ODI
Blacks	21	13	0.09	31	19	0.12
Hispanics	41	41	0.01	38	38	0.00
Whites	38	47	-0.09	31	43	-0.12

Note: Discretionary stops are initiated by police officers; nondiscretionary stops are initiated by citizens.

Decision to Search. To understand officers' decision to search a vehicle following a stop, we examined four possibly predictive factors available in the Austin police data, simultaneously in a logistic regression model: driver's race or ethnicity (black, Hispanic, white), driver's gender (male, female), driver's age, and whether the officer indicated he or she knew the driver's race or ethnicity before making the stop.⁵ We also tested the possibility that these factors interacted to predict a decision to search.

For this model, we again focused on vehicle stops resulting in arrest and on searches that were not described as incidental to that arrest. Overall, 23 percent of the arrest stops resulted in a search for which the recorded reason was either “probable cause” (18 percent), “frisk for safety” (4 percent), “contraband in plain view” (0.5 percent), or driver’s “consent” (0.3 percent).

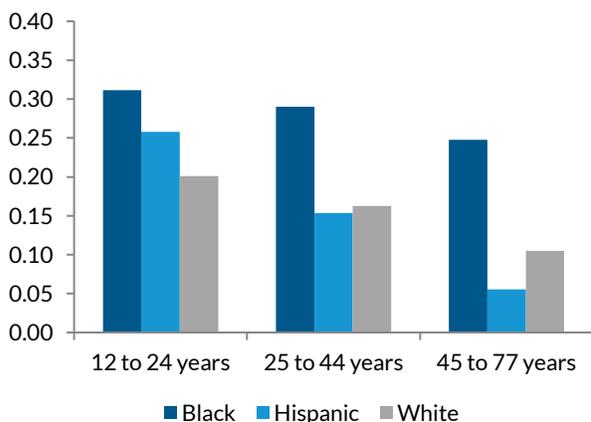
In the regression model, drivers’ race/ethnicity and age interacted to predict Austin police officers’ decisions to conduct searches on stopped vehicles. This finding remained true after adjusting for driver’s gender, whether driver’s race was known before the stop, and an interaction between driver’s gender and age. **Figure 9** graphs the model-estimated probabilities that a vehicle would be searched by drivers’ race/ethnicity and age. Three findings are noteworthy:

- Stopped black drivers of all ages had the highest probabilities of vehicle search.
- Stopped, young Hispanic drivers had the second-highest probability (0.26) of vehicle search, at a rate comparable to that of older black drivers (0.25).
- Age-related reductions in the probabilities of vehicle search were greater for stopped white and Hispanic drivers than for black drivers.

We also noted (but did not graph) that the estimated probabilities of vehicle search were higher when the driver’s race was known before a stop (0.30 compared with 0.19) and for younger male (0.28) than older female drivers (0.15). These findings were included as controls in the model.

FIGURE 9

Probability of Vehicle Search by Age and Race or Ethnicity, 2015



Source: Logistic regression model predicting vehicle search, among 7,870 APD vehicle stops ending in arrest in 2015.

Note: Model included drivers’ race, age, gender, whether race was known before the stop, and interactions between race and age and between age and gender.

This model provides insight into the relative importance of different factors in predicting Austin officers’ decision to conduct a vehicle search on stops ending in arrest, but is unable to control for drivers’ differential involvement in illegal activity or exposure to police.

Use-of-Force Incidents

Next, we examined APD's 2014 data on recorded use of officer force against citizens, made public for the PDI and the most comprehensive, publicly available use-of-force dataset. Use-of-force incidents included a range of physical responses to citizens' failure to comply with officers' verbal commands.

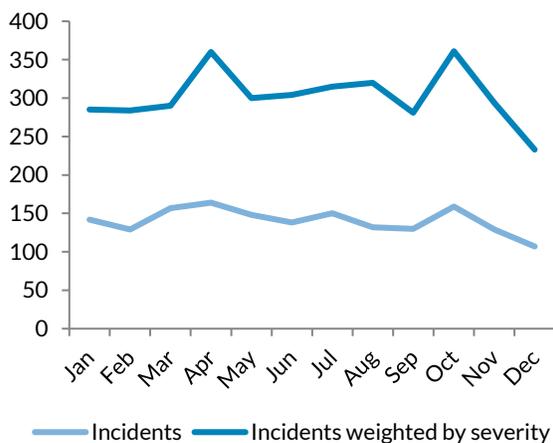
Six general categories of force were distinguishable in the APD data: (1) weaponless use of hands or feet to target pressure points; (2) use of an impact weapon such as a baton; (3) use of a chemical agent such as pepper spray; (4) canine bites; (5) use of a conducted energy device (Taser) or less-lethal impact weapon, such as beanbag/rubber bullets; and (6) lethal firearm use. By far, the largest category of force used was (1), which accounted for over two-thirds of force incidents.

Following the NJD analytic framework, we applied a weighted severity scale to these force incident categories so use of a firearm, for example, was weighted more severely than use of a baton. Accordingly, the severity weighting consisted of a 6-point scale aligned with the six categories of force above (e.g., 1 = hands/body, 2 = impact weapon, 3 = pepper spray, 4 = canine, 5 = Taser/less-lethal weapon, 6 = lethal firearm). Higher scores corresponded with more severe levels of force.

Throughout this section, we analyzed both the *counts* of force incidents as well as the *severity* of force incidents. As shown in **figure 10**, both the counts and severity of APD force incidents remained fairly constant over time from January to December 2014.⁶ This finding is similar to that for the counts of APD vehicle stops in 2015.

FIGURE 10

Use-of-Force Incidents, 2014



USE OF FORCE BY RACE OR ETHNICITY

Figure 11 and **figure 12** display the counts and severity of force incident rates by citizen's race or ethnicity (per 1,000 citizens). Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA. However, this descriptive analysis of differential exposure to use of force provides no insight on the

complex factors and characteristics that might give rise to such disparities. To explore those factors, more advanced statistical modeling was necessary, as advocated by the NJD analytic framework.

FIGURE 11

Use-of-Force Rates by Citizen Race or Ethnicity, 2014

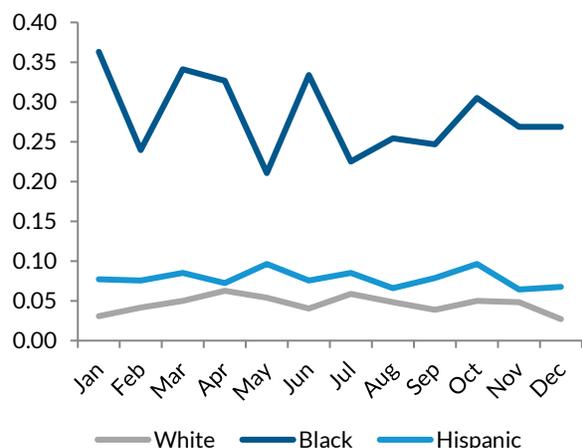
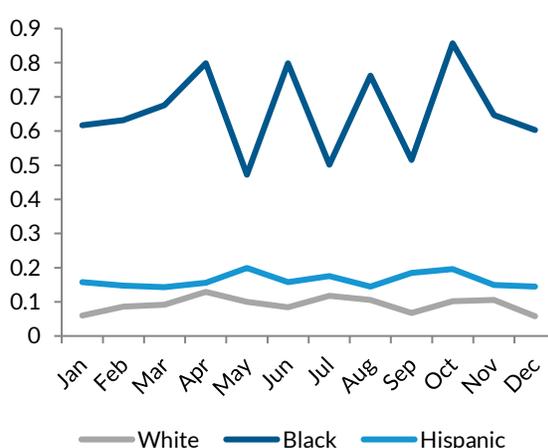


FIGURE 12

Use-of-Force Severity Rates by Citizen Race or Ethnicity, 2014



MODELING USE OF FORCE

To better understand apparent disparities in APD’s citywide use of force, we tested the effect of neighborhood-level characteristics on the number of use-of-force incidents that occurred within a census tract, as well as the cumulative severity of force used in those same events.⁷

For these two analyses, we aggregated use-of-force events/severity to the tract level, estimating the independent effects of six neighborhood and demographic characteristics on police use of force: Part I crime rate, median household income, percentage of college-educated residents, homeownership rate, percentage of black residents, and percentage of Hispanic residents.⁸ The first four of these characteristics represent theoretically relevant predictors of police use of force, and so they function as control variables in our models. The percentages of black and Hispanic residents help test whether disparities in police use of force persisted after controlling for those community characteristics.

Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin’s neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood were statistically significant positive predictors of police use of force. The percentage of black residents in a neighborhood had a larger effect than percentage of Hispanic residents in both models.

Median household income and crime rate were also impactful and statistically significant predictors of police use of force. The results of the use-of-force incidents model and the use-of-force severity model were largely the same. The statistically significant predictors—median household income, Part I crime rate, percentage of black residents, and percentage of Hispanic residents—were identical

between models. As one would expect, estimated effect sizes were larger for the force severity model because of the multiplicative severity-weighting procedure.

According to the model of use-of-force incidents, a one-point rise in the percentage of black residents increased the expected number of use-of-force incidents by 2.6 percent, holding all other variables constant. The percentage of Hispanic residents had a smaller effect: a one-point rise in the percentage of Hispanic residents increased the expected number of use-of-force incidents by 1.1 percent.

Comparing effect sizes across all independent variables was challenging because the variables were measured in vastly different units. Using standard deviation units, we compared the estimated percentage change in use-of-force incidents uniformly. Increasing the percentage of black residents in a tract by a standard deviation—about 8 percent—led to a 24 percent increase in expected use-of-force incidents. By contrast, a standard deviation increase in the percentage of Hispanic residents—almost 22 percent—led to a 27 percent increase in expected use-of-force incidents.

A standard deviation increase in a tract’s Part I crime rate—an upswing of 50 crimes per 1,000 residents—increased the expected number of use-of-force incidents by 92 percent. A standard deviation increase in median household income—a rise of \$28,000—decreased the expected number of use-of-force incidents by 33 percent.

FIGURE 13
Estimated Percentage Change in Use-of-Force Incidents Resulting from a Percentage-Point Increase by Race and Ethnicity

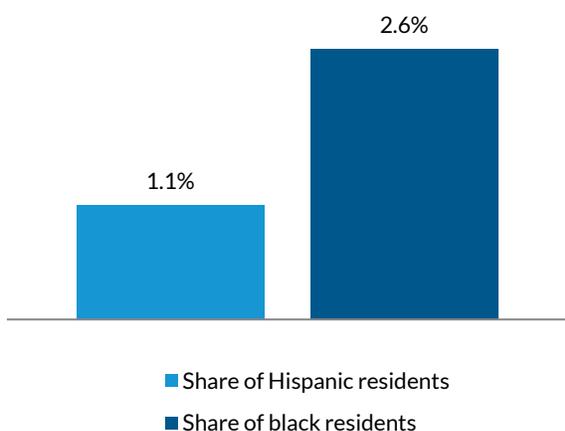
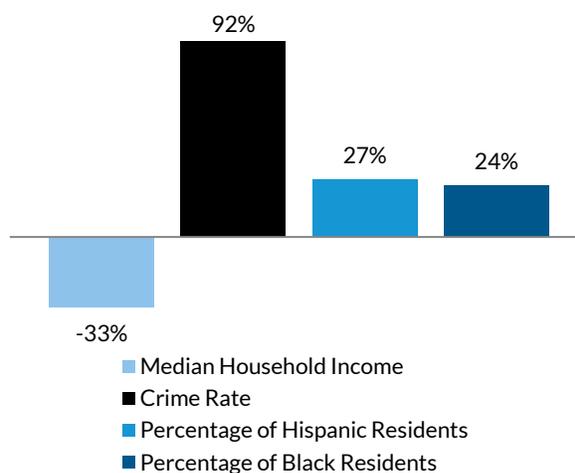


FIGURE 14
Estimated Percentage Change in Use-of-Force Incidents Resulting from a Standard Deviation Increase by Income, Crime, Race, and Ethnicity



Lessons Learned

This report is the first to apply NJD's independent analytic framework to police data made available through the White House's PDI. Although several limitations applied to the findings, as noted throughout, the analyses are encouraging because they represent the start of a more comprehensive and transparent effort to understand—and help correct—the degree of racial and ethnic disparities in policing practices. The information presented is beneficial to both community members and policing executives alike.

As described earlier, the NJD analytic framework identifies three categories of explanation for racial disparities in policing: community level, police level, and relationship level. Given the limited availability of publicly available APD data, and that which is housed on the PDI portal, our analyses are only able to examine community-level explanations. Specifically, this brief analyzes racial disparities in APD police vehicle stops and use of force. The results are mixed.

Analyses of vehicle stop data reveal three important findings.

First, APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time. While this result may stem in part from APD's unusually stringent policy on consent searches, which require probable cause, it also may be the result of missing data. Given that APD does not publish data on all vehicle stops, an unknown number of vehicle stops and searches did not result in arrest. *To address this omission, APD Chief Acevedo has instructed the department to collect and publish data on both pedestrian and vehicle stops that do not result in citation or arrest by January 2017.*⁹ Presumably fewer of those searches end in arrest given the lack of contraband found. Still, the relatively high hit rate should be a goal of law enforcement, and APD's available data suggest reasons for optimism.

Second, there are racial disparities in the decision to stop and search a suspect. Both our models of decisionmaking around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race. The ODI revealed that, for vehicle stops ending in citation or arrest, stopped black motorists made up a higher share of officer-discretionary stops than of stops mandated by citizen complaints or by statutes requiring officers to stop a citizen. Similarly, the ODI revealed that stopped white motorists made up a lower share of officer-discretionary stops. Finally, a model of the decision to search revealed that blacks and Hispanics, once stopped, were more likely to be searched than would be indicated by their representation among those stopped. These findings, however, are qualified by our final finding.

Third, an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. Previous research demonstrates that this is not proof of the absence of bias.¹⁰

The takeaway from these findings is that community-level explanations appear to account for a sizable amount in observed racial disparities. We encourage the APD to continue monitoring these issues and to collect data on all its vehicle stops to assess the equity of officer behavior even more accurately.

By contrast, analyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained**. In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.

Still, these discrepancies are not direct evidence of racial prejudice. Rather, they suggest that police-level and/or relationship-level explanations of use-of-force incidents are also implicated. In other words, we advise APD to focus on police-level and relationship-level concerns to reduce racially disparate use of force.

Common police-directed interventions to minimize racially disparate policing include trainings, particularly ones on how to identify and disarm unintended forms of bias (e.g., identity traps and/or implicit bias), policy reviews conducted by external auditors, and collaborative policy reviews with communities. Relationship-directed interventions highlight principles of procedural justice, particularly issues of community voice and police transparency.

Importantly, the APD has recently attempted to promote transparency by instituting a policy governing the use of body-worn cameras. That someone may be terminated immediately if his or her camera is not activated during a deadly force incident (without appropriate justification) is a strong accountability metric. Similarly, new additions to APD's disciplinary matrix on failure to report complaints (with termination recommended after a second infraction) are strong signals of accountability. APD has also stated that [effective January 2017](#) it will include a form on the back of citations that affords citizens an avenue for both complaints and positive feedback following interactions with officers. Finally, APD's leadership on issues of data transparency also signals a willingness to receive criticism and reform in line with the shared values of police and communities—of particular importance given recent concerns about nonreporting in Texas.¹¹

We recommend that APD continue each of these initiatives as well as engage the broader communities of Austin in collaborative efforts to reform and implement policies that reflect their shared values. We also encourage police and community collaboration to design metrics of accountability that are easily understood by the community and leveraged for change both inside the APD and in the Austin metropolitan area.

The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts.¹² We encourage further pursuit of those collaborations and the use of these analyses as benchmarks for both racial equity and progress toward that goal.

Notes

1. See Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).
2. See Nicola Persico and Petra Todd, "Generalising the Hit Rates Test for Racial Bias in Law Enforcement, with an Application to Vehicle Searches in Wichita," *Economic Journal* 116, no. 515 (2006): F351–67.
3. Persico and Todd, "Generalising the Hit Rates Test."
4. Austin has a three-square-mile lake within the city limits.
5. Although officers' recording of whether a driver's race was known before a vehicle stop was missing for 13 percent of cases, including the variable did not alter the substantive effects of other factors in the model, and it was a significant predictor of vehicle search, so it was retained. Regarding the trustworthiness of the variable's values, we note that officers' were half as likely to indicate race was known (7 percent versus 15 percent) during nighttime (9:00 p.m.–2:00 a.m.) vehicle stops as during other hours of the day, and APD policies specified strict guidelines and consequences for failure to record accurate information for this variable.
6. Use-of-force incidents are coded at the citizen level, meaning that an event consisting of two officers using force against one citizen, for example, is counted as a single use-of-force incident. Conversely, an event that consists of one officer using force on two citizens would be counted as two use-of-force incidents.
7. Use-of-force incidents were weighted using the same schema as used previously.
8. Those characteristics are taken from the 2010–14 American Community Survey five-year estimates.
9. Chase Hoffberger, "APD to Collect More Data," *Austin Chronicle*, April 8, 2016, <http://www.austinchronicle.com/news/2016-04-08/apd-to-collect-more-data/>.
10. Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," *Review of Economics and Statistics* 91, no. 1 (2009): 163–77.
11. Lise Olsen, "In Texas and California, Policy Fail to Report Use-of-Force Fatalities from 2005–2015," *Houston Chronicle*, October 9, 2016, <http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php>.
12. Tyler, *Why People Obey the Law*.

Errata

This brief was updated in May 2017 to clarify the titles of figures 13 and 14 on page 13, make language on pages 5 and 14 more consistent, and correct a typographical error on page 15.

About the Authors

Phillip Atiba Goff is the cofounder and president of the Center for Policing Equity and the Franklin A. Thomas Professor in Policing Equity at the John Jay College of Criminal Justice. Dr. Goff is an expert in contemporary forms of racial bias and discrimination, as well as the intersections of race and gender.

Dean Obermark is a research associate in the Urban Institute's Justice Policy Center and, previously, an operations analyst in the St. Louis Metropolitan Police Department. He has expertise in conducting research analyses of police data and operations, including using GIS for data visualization and spatial analysis.

Nancy La Vigne is director of the Justice Policy Center at the Urban Institute. She manages a staff of over 50 scholars and conducts her own research on policing, criminal justice technologies, and reentry from incarceration.

Jennifer Yahner is a senior research associate in the Urban Institute's Justice Policy Center with over 15 years of experience conducting criminal justice research on the needs and experiences of vulnerable populations, including justice-involved individuals and victims of crime.

Amanda Geller is a clinical associate professor of sociology and director of applied quantitative research at New York University. Dr. Geller's research examines the interactions between criminal justice policy and socioeconomic disadvantage and their joint effects on urban neighborhoods, families, and individuals.

Acknowledgments

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ABOUT THE CENTER FOR POLICING EQUITY

Created in 2008 by a collaborative effort of Dr. Phillip Atiba Goff and then-Denver Police Department Commander Dr. Tracie L. Keesee, the Center for Policing Equity is a research and action think tank that works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve. Using evidence-based approaches to social justice, we use data to create levers for social, cultural, and policy change.

The Center for Policing Equity is also the home of the National Justice Database, a National Science Foundation effort to standardize national-level data on police behavior. Principal investigators on the National Justice Database are Phillip Atiba Goff, Jack Glaser, Amanda Geller, and Steven Raphael.



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ABOUT THE URBAN INSTITUTE

The nonprofit Urban Institute is dedicated to elevating the debate on social and economic policy. For nearly five decades, Urban scholars have conducted research and offered evidence-based solutions that improve lives and strengthen communities across a rapidly urbanizing world. Their objective research helps expand opportunities for all, reduce hardship among the most vulnerable, and strengthen the effectiveness of the public sector.

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RESPONSE

EXHIBIT B

RESOLUTION NO. 20191205-066

WHEREAS, the City of Austin is committed to undoing its racist past and combatting and denouncing racism in present-day Austin; and

WHEREAS, the City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy; and

WHEREAS, the Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates; and

WHEREAS, the APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers; and

WHEREAS, APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of Black people at more than twice the rate of either white or Latino residents; and

WHEREAS, that same 2017 data also showed Black and Latino residents accounted for just under 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population; and

WHEREAS, that same 2017 data also showed that one out of three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, though usage rates of marijuana are similar across racial groups; and

WHEREAS, per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, Black people still comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population; and

WHEREAS, an anonymous whistle-blower has recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "negro" and "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department; and

WHEREAS, following the public release of the anonymous complaint and subsequent resignation of the Assistant Chief named in the complaint, the City Manager announced on November 7, 2019 a third-party investigation into the allegations that the

use of racial slurs and epithets lasted over a period of many years with the knowledge of other leadership at APD; and

WHEREAS, the Mayor's Task Force on Institutional Racism and Systemic Inequity recommends that the City of Austin create protocols to ensure the cultural competency of all personnel, and that the City of Austin's law enforcement agencies engage in continuous diversity and inclusion training, with special attention to implicit bias training; and

WHEREAS, in 2018, the Office of Police Oversight was created to augment accountability and transparency at APD, and that the department could benefit from expanded access and resources; and

WHEREAS, the Austin Police Department presented a training plan during the City of Austin FY2019-20 budget deliberations indicating its intention to graduate almost 200 new cadets in Academy classes scheduled to start in February 2020; and

WHEREAS, attrition rates in recent cadet classes exceeded expectations in at least the last five cadet classes, reaching as high as 49%, suggesting that there exist issues with recruitment and cadet preparedness; and

WHEREAS, while assessment center panels were recommended as a method to counter the potential bias in written exams for promotion of APD officers, there are concerns that the system does not accomplish this goal and in fact may have the opposite impact; and

WHEREAS, patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council supports the investigation initiated by the City Manager into the allegations against a former APD Assistant Chief. The City Manager is directed to provide an update and publicize resulting findings to Council by January 23, 2020.

BE IT FURTHER RESOLVED:

Effective on January 23, 2020, the City Manager is directed to initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department. To the extent to which they are present, this investigation and evaluation shall document the impacts these individual and systemic biases have had on hiring, professional ranking, and treatment of personnel within APD, as well as police interactions with people of color and other marginalized groups in Austin.

The investigation should begin with an immediate focus on patterns of prejudiced behavior and institutionalized bigotry in the following high-priority areas:

1. Officer and supervisor communications, including all public posts on social media platforms that are available to the investigator, City email, and text messages and instant message communications on City devices within the last 5 years; and
2. Recruitment practices and protocols, efforts to ensure ethnic and gender diversity and inclusion in recruitment, and assessment of academic resources available to cadets.

Investigation of these high-priority areas of focus should result in an interim report that includes analysis of expressed behavior and patterns, and any immediate recommendations for reform presented publicly to the Council no later than December 7, 2020.

Investigation into and analysis of the following areas of focus should begin concurrently:

3. APD's compliance with state and federal law with regard to racial and sex discrimination in employment;
4. The basis for the weighting of assessment center panel scores in the professional ranking and promotion of APD officers, including the degree to which the use of assessment centers counters potential bias or disparate impact in the promotion process, if at all, and best practices for the transparency and use of assessment

centers in ranking, and the appropriate weights for promotion consideration at each officer level;

5. All use-of-force incident reports from June 2019 to November 2019, analyzing them by location, any resulting charges, the outcome of each incident, and demographic information including race, ethnicity, and language spoken of all persons involved;
6. Aggregate data on every recorded interaction from June 2019 to November 2019 with any member of the public, including type of interaction and its outcome (search, arrest with charges, citation with charges) and an evaluation on whether there are racial and/or ethnic or other disparities in searches, arrests, charges and citations;
7. Complaints made against officers and executives accused of bias and/or discrimination, including complaints that did not result in disciplinary action and the reason that no disciplinary action was taken in each case, for the last 10 years; and
8. Incidents leading to lawsuits for alleged police misconduct, and analysis of the outcomes and subsequent settlements of those lawsuits, including the amount of each settlement, over the last 10 years.

The evaluating entity will issue a final report no later than December 6, 2021, that details any patterns of systemic racism, racist behavior, and other forms of

discrimination found in all the above areas of focus, to include recommendations to remedy and prevent patterns of bias, remedy and prevent patterns of bias, including but not limited to:

- An actionable plan, measurable benchmarks, and appropriate timeline for eliminating racial disparities in APD stops, searches, arrests, and use-of-force incidents;
- A framework for regularly recurring reporting to the Public Safety Commission and Council on APD's progress towards achieving the fair administration of justice, an indicator in the Council-adopted five-year strategic plan;
- Reporting to the Public Safety Commission and Council on the plan to address and remedy any weaknesses and threats for APD as may be identified in the Equity Office's equity assessment tool;
- Continuing education for active APD personnel as part of the required biennial recertification process on topics including implicit bias, racial and ethnic bias, gender bias, de-escalation, the history of policing and its intersection with race in our community, cultural competency, and other topics as recommended by the Equity Office and Office of Police Oversight;
- Reputable leadership training that would benefit APD organizational culture;
- Establishing clear, published standards as it relates to the qualifications required for appointment to Assistant Chief as consistent with state law;

- Creating measurable benchmarks for enhancing diversity at all levels of the department;
- Improving background checks and screening of incoming cadets as well as active officers being considered for promotion as it relates to topics such as explicit and implicit bias, racism, homophobia, gender bias and other forms of discrimination; and
- Creating a regular reporting structure to Council detailing cadet academy class sizes, attrition rates and demographics as well as active officer attrition rates and demographics.

The report to Council should include options for a mechanism to incorporate the aforementioned recommendations and accountability metrics into the performance standards for the APD executive team.

The City Manager is directed to work with and incorporate results from any relevant work that has been conducted or is being conducted by the Equity Office, the Office of Police Oversight, and the Innovation Office as it relates to APD.

BE IT FURTHER RESOLVED:

The independent investigation and examination shall be conducted by an independent third party with substantial experience in the evaluation and investigation of police misconduct, bias, and claims in employment law and Title VII violations, as

well as in assessing systemic conditions that engender civil rights violations, including both organizational decision-making and greater policy-making rules and patterns.

The City Manager shall develop the scope of work and qualifications for the solicitation of the evaluating entity with input from the Joint Inclusion Committee, the Public Safety Commission, and community organizations that advocate for racial justice, equity, and criminal justice reform as allowable by the City's purchasing rules. The City Manager shall determine the appropriate funding sources when recommending the contract for Council approval.

The City Manager is also directed to collaborate with the Equity Office and the Office of Police Oversight in a joint oversight capacity regarding the selection and supervision of the independent investigating entity, to the extent allowed by the City's procurement policies.

BE IT FURTHER RESOLVED:

Separately from the independent third-party investigation that is to be completed no later than December 6, 2021, the City Manager shall initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking

persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols. The City Manager may work with and incorporate results from any review of APD hiring and training protocols that has been conducted or is being conducted by the APD's training specialist, the Equity Office, the Office of Police Oversight, and the Innovation Office.

The City Manager is directed to update or revise training materials for APD to the extent necessary to remedy any findings from the audit. This process should be as transparent as possible, ensuring that the public has access to view training materials on the topics of bias, racism, and cultural competency in policing. The audit is to be completed and reported to Council no later than June 1, 2020.

During this process, the City Manager will track and report on the following milestones:

- Training conducted at the Austin Police Academy related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability;

- Recruiting and retention and practices and procedures with a focus on whether those practices and procedures could be improved to retain ethnic and gender diversity in cadet classes, and whether those practices and procedures, including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity, etc.;
- Current training priorities based on hours on each topic and the overall balance of training with a focus on whether training should be re-balanced to reduce bias, increase use of de-escalation techniques, and improve culturally effective communication, and trauma-informed policing;
- Cadet training scenarios with a focus on reviewing whether the scenarios teach officers to use all strategies to de-escalate and communicate effectively in the situations statistically most likely to occur on their shifts;
- Identify police academies that have successfully revised training resulting in reduced force incidents and improved communication with diverse communities, including police Academies in Cambridge, Washington (Washington State Criminal Justice Training Commission) and Minneapolis, Minnesota and conduct site visits and review training reforms; and
- Improvements in training should be finalized with the input and participation of community groups representing those disproportionately affected by policing,

including those representing non-white residents and populations, non-English speaking residents and populations, LGTBQIA+ residents and populations, and residents and persons with disabilities.

Following the start of the cadet class scheduled to begin in February 2020, the City Manager shall ensure that no new cadet classes are to be initiated until this audit is completed, revisions to the curricula per the milestones above and new training materials, if necessary, are implemented, in order to resume cadet classes no later than September 2020. If the aforementioned revisions have not been implemented at least 30 days ahead of the start date for the anticipated June 2020 cadet class, the cadet class may be rescheduled as deemed appropriate by APD so long as the revisions have been implemented by the new start date. When classes resume, space will be made available for an independent party to audit classes and instruction.

BE IT FURTHER RESOLVED:

The City Manager shall issue biannual updates on the progress of the independent third-party investigation, to include relevant updates on the solicitation process and anticipated timelines for the investigation to proceed.

ADOPTED: December 5, 2019

ATTEST:



Jannette S. Goodall
City Clerk

RESPONSE

EXHIBIT C



Memorandum

Austin Police Department
Headquarters Bureau/Training Division

To: Chief Brian Manley
From: Dr. Sara Villanueva
Date: May 22, 2020
Subject: APD Training Academy Review and Strategic Plan

This memo provides the background and context necessary for a full understanding of the review analysis and strategic plan that follow. In September 2019, I began my second career as the inaugural Organizational Development and Training Manager at the Austin Police Department, specifically focusing on the Training Academy. With over fifteen years of leadership experience in academia, I came to APD with significant proficiency in curriculum development, teaching and learning methods, and Diversity, Equity, and Inclusion work.

While getting acclimated in the first months, my initial priority at the Training Academy was to conduct a needs assessment. Soon thereafter, I decided instead to conduct a more comprehensive SWOT analysis to create a developmental pathway to organizational and academic success for academy instructors, cadets, and leadership. After the initial report was drafted, I was informed by APD leadership that the full and final report would be included in APD's official response to [Resolution No. 20191205-066](#). To that end, what follows is the final report which includes the SWOT analysis, followed by a strategic training plan draft that will require review and approval from the Chief of Police and the APD Executive Team.

The creation of this document has been an iterative process. The initial draft was based on observations made early on in my tenure at APD. The final report incorporates those early observations as well as recent, more comprehensive professional experiences. It is important to note that although I am employed by APD, and although I did, on occasion, seek out consultation from colleagues in academia with expertise in specific fields, the work outlined in this report is independent, objective, and supported by research wherever possible. As such, a reference page is included as an addendum for further review.

Respectfully,

A handwritten signature in black ink, appearing to be 'Sara Villanueva'.

Sara Villanueva, Ph.D.

vi

2020

AUSTIN POLICE DEPARTMENT TRAINING ACADEMY

SARA VILLANUEVA, PH.D.

ORGANIZATIONAL DEVELOPMENT & TRAINING MANAGER | May, 2020.





Austin Police Department
 CADET TRAINING ACADEMY
REVIEW ANALYSIS

This analysis was completed with the understanding that the reviewer’s perspective can and will change with more time, experience, and insight at the Austin Police Department Training Academy. It should be noted that despite some overlaps in instruction, the following assessment primarily focuses on the academic programming, also known as the cadet side of the training academy, and not necessarily on the Learning Skills or Continuing Education areas.

The method of review is based on conducting a SWOT analysis, which is an organizational/planning tool used to understand the Strengths, Weaknesses, Opportunities, and Threats involved in running an organization. SWOT analysis aims to identify key internal and external factors seen as important to achieving an objective. SWOT analysis groups key pieces of information into two main categories:

Internal factors — the strengths and weaknesses internal to the organization

- What do you do well?
- What unique resources can you draw on?
- What could be improved?
- Where do you have fewer resources?

External factors — the opportunities and threats presented by the environment external to the organization

- What opportunities are open to you?
- What trends could you take advantage of?
- How can strengths be turned into opportunities?
- What threats do your weaknesses expose you to?

SWOT analysis is typically used as part of a strategic planning process, and in this case is being utilized to understand what works, what doesn’t, and guide the organization in creating a strategic plan for the Austin Police Department Training Academy.

<u>S</u>trengths	must be maintained, built upon or leveraged.
<u>W</u>eaknesses	must be remedied, changed or stopped.
<u>O</u>pportunities	must be prioritized, captured, built on and optimized.
<u>T</u>hreats	must be countered or minimized and managed.

Strengths

Information gathering stage of analysis. Reviewer has had numerous formal and informal meetings and discussions with the training commander, training leadership, staff, several instructors, and a few patrol officers. Further, reviewer has conducted class observations and participated in numerous departmental and academy leadership meetings. This collection of qualitative data yielded the following observed strengths that have been organized into potential areas of strategic focus. Note that this is an assessment as of the present time (i.e., snapshot), and does not reflect any historical context or institutional memory on the part of the reviewer.

Organizational Structure

- Excellent leadership. The training academy Commander is very organized, responsive, and consistently communicates very well with leadership at the training academy. Commander holds weekly briefing meetings with leadership, systematically reviewing progress of cadets in academics, learned skills, personal issues, etc. Very thorough, very informative. Through the chain of command, academy leadership and instructors all work collaboratively to keep one another informed of any changes in status for each and every cadet.
- Hierarchical structure in place lends stability and consistency in the ability to effectively communicate and direct information up and down the chain of command.
- All members of academy leadership are well informed and keenly aware of TCOLE and BPOC standards and remain vigilant about compliance. After numerous meetings with leadership who directly oversee academy courses and instructors (Sergeant and Corporal over cadet training), it is clear that training academy curriculum carefully adheres to three regulatory areas: TCOLE, BPOC, and Austin Police Department, and has, over time, incorporated/added courses in response to legislative mandates.
- Structure of Instructor Departments, POCs of those departments, and which classes are taught by which department/instructor is documented and stored on network drives.

Culture

- While still supporting the paramilitary structure, academy staff all contribute to a relaxed and family-like atmosphere. The work environment is such that people are respectful, encouraging, and supportive of one another. These daily behaviors create a cultural milieu that is extremely important because it appears to lead to mutual trust, collective efficacy, and confidence in the academy.
- Instructors informally gather during lunch to communicate any relevant information regarding cadets or classes, but more importantly, to check in with one another, decompress, and build a shared community. This comradery is vital to morale, job satisfaction, and productivity.
- Ethnic and racial diversity in academy leadership is excellent. Despite being securely set in a chain of command, diversity of thought, perspective, gender, etc. is actively sought out and thoughtfully considered when making decisions at the weekly academy leadership team meeting. If the objective is to have a police force that reflects the community they protect, APD Recruiting has made great strides in efforts to increase the number of female recruits. It is similarly important to be inclusive of *all* diverse groups and perspectives: transgender and non-binary, diverse religious beliefs, etc. An excellent example of APD Training inclusion, which also incorporates community input, is a series of Informa training modules on Transgender issues and the use of a gender-neutral affidavit. Sgt.

Michael Crumrine and training academy instructor Ofc. Greg Abbink have included subject matter experts in the community as part of this important project. Clearly, being deliberate in the awareness of individuals' experiences is an ongoing goal for everyone. That said, increased diversity in the faculty would be beneficial, as they are the ones with whom cadets interact and are influenced by most. More on this later in the Weaknesses section under Diversity, Equity, and Inclusion.

Curriculum

Note that a complete and comprehensive review of the entire curriculum will take significant time, and in my opinion, should be an ongoing, iterative process. This said, the curriculum review process is currently underway. The following observations are based on the initial review:

- When considering the length of the curriculum (8-month academy), it is understood that the most recent revision of the BPOC resulted in many (8) of the classes currently taught at the Academy as Intermediate level now be considered part of the BPOC. Continuing work in this review will examine potential opportunities for efficiencies and possible consolidations.
- Training leadership, specifically the Sergeant and Corporal over cadet training work diligently, and go to almost extreme lengths to ensure complicated and ongoing schedule of courses for academies (regular and modified) meet expected regulatory standards. They also go to great lengths to manually overlap concurrent class schedule to ensure that all required courses are included and look for potential conflicts in schedules. This too is an iterative and tedious effort. This point will be further discussed in **Weaknesses** section.
- Sequencing of courses in academy curriculum is normally considered when new cadet classes are scheduled, particularly when classes begin to overlap. While preparing this document, effects of the national pandemic COVID-19 took hold and required training to be moved online. In doing so, the priority with respect to sequencing was to move all 'cognitive' courses online, while pushing all experiential/hands-on courses (i.e., firearms, defensive tactics) toward the end of the schedule, when cadets are expected to return to campus.
- In preparation for Cadet Class #143, instructors were tasked with conducting a new review of individual lesson plans for their respective courses to ensure compliance with new BPOC standards; and further, to assess time required to teach each course to meet each BPOC module time requirement. In addition to this general time assessment, particular attention was paid to those subjects/courses in which APD actual hours taught far exceed the minimum hours required by BPOC again to look for possible efficiencies.
- Overall curriculum is in compliance of TCOLE standards, and is continually monitored for compliance when updates are made to any regulations. Further, leadership work with instructors to review curricula to ensure TCOLE/BPOC requirements are met.

Teaching Effectiveness

- With few exceptions, the majority of instructors that I have observed are well prepared in the course content outlined using TCOLE lesson plans. It is clear that most faculty have excellent command of experiential knowledge as it relates to the topic they teach.
- In general, instructors are well-organized, run classes efficiently, and begin and end on schedule.
- Of the instructors observed, teaching methods and styles vary significantly. Some due to personality, some to teaching experience, and some due to the teaching methods to which they are accustomed or trained. It is clear that some instructors are more comfortable and at ease in the classroom than others. *The possible influence of a class observer on teaching should be considered.*

The vast majority of academic classes observed thus far present content material on Power Point slide presentation format, but have varying degrees of interactive learning.

- Overall, instructors do a fine job of checking for understanding, and generally being open to questions after each section/class.
- All instructors who have been observed have expressed being open to feedback and suggestions to improve teaching.
- Most recently, the abrupt necessity to move courses online due to COVID-19 has challenged instructors to transition to online teaching, which is no easy task. Based on my observations of the online courses thus far, I have been impressed by the work that has been done by instructors to make this unexpected transition. Again, I have witnessed significant variability in the ease in which the transition has been made as well as with the teaching methods and learning strategies employed by instructors; but overall, instructors have risen to the challenge done an outstanding job during these unprecedented and difficult times.

Weaknesses

Based on initial observations, individual interviews/meetings, baseline information-gathering for context purposes (reading TCOLE, BPOC, President's Report, Community Policing, ICAT, and Matrix), and more recently attendance at the inaugural National Symposium on Police Academies and Training and the 2019 TCOLE Conference, items below are identified not simply as *weaknesses* in the Academy, but as *challenges* for potential future strengths in the overall objective to maximize organizational development and teaching effectiveness.

Organizational Structure: Process Improvement

One of the most pressing challenges pertains to systematic and reliable processes that must be put into place in order to ensure consistency, reliability, and efficiency. Although significant daily efforts are made by staff to keep the training academy running effectively, having consistent and reliable processes in place would contribute to running it effectively *and* efficiently. It would also lead to programmatic sustainability and security, given staff changes across time. Current challenges identified thus far in this category include:

- Process around communication and relevant/important dates and notices within the Academy involving leadership/ instructor/cadets. Presenting relying primarily on email and verbal messaging.
- Processes around and organization of course material for instructors - in addition to the ability to post announcements or communicate with entire class or individual student cadets (versus email). Presently all material saved to the network. Organization of the network folders is unclear, with several files being outdated or empty, and little consistency in classification or naming structure.
- Process of scheduling academy classes (overall – excel sheet with dates of academy cadet classes across years), and specific course schedules for each cadet class (i.e., #141, 142m, 143). At present, there is a clear overreliance on Excel to create academy schedules – primarily because it is the only tool available; secondarily because it is the way it has always been done, thus default.
- Consistent and ongoing/sustainable process of tracking BPOC/Academy course alignment and hours. Currently, all scheduling is done manually using Excel spreadsheets to create weeks 1- 32 populated by module/topic, printing out, manually manipulating the printed weeks on a table, then

going back to Excel to make modifications. The current system of scheduling, course alignment, and tracking is inefficient, time consuming and leaves significant room for human error. Because it is all done without the use of any scheduling software, the chances for error are high, thus creating the need for a reliable process. Because it is well understood that staff turnover is a reality, a clear process must be put in place to ensure consistency, reliability, and sustainability regardless of staff turnover.

- Process of systematic and consistent organization of all training academy related documents, including but not limited to documentation required and tracked by TCOLE: currently all held on the network Drive. Note that documents referred to in this section are separate from instructor teaching material. A process that involves a clear and systematic file naming structure, classification, or taxonomy is needed.

Culture

- Paramilitary culture
 - APD Training Academy operates under a paramilitary training format with strict adherence to chain of command and employs 'behaviorist instructional methodologies' which rely on the assumption that learning occurs primarily through the use of reinforcement schedules, behavior modifications, and other behavioral approaches (Birzer, 2003; Birzer and Tanneill, 2001, 2004).
 - Although the paramilitary-based training format may build camaraderie, research has shown that it tends to be associated with high dropout rates (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), as it fails to acknowledge individual differences in learning styles, personalities, and interpersonal skills in cadets as well as instructors.
 - There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships (Chan, Devery, & Doran, 2003; Chappell & Lanza-Kaduce, 2010; Conti, 2011).
 - This model also overrides and perhaps even neglects basic principles of adult-learning theory (andragogy).
- Diversity, Equity, Inclusion
 - Diversity amongst the faculty is paramount for any learning institution. For decades, researchers, social scientists, and teaching & learning scholars have argued the various merits of not only having a diversified student body, but just as importantly, a diverse faculty. With respect to teaching, mentoring, and training, there is also significant evidence showing links between institutions having diversity in the faculty and various indicators of achievement in students from diverse backgrounds.
 - The good news is that there has been an increase in diversity (gender and ethnicity) when it comes to cadets recruited and accepted into the APD Training Academy. And despite recent increases in diversity amongst leadership at the training academy, the not-so-good news is that the faculty teaching those cadets are still primarily White males. Moreover, the cultural ethos at the academy is still securely grounded in patriarchal belief systems and practices, with some concerning indicators being subtle or subliminal and others more obvious.
- Wellness

- Instructors' physical wellness is attended to and evidenced by routine individual and group workouts. However, mental and psychological wellness should be similarly encouraged and supported, particularly as it relates to the stressors associated with back to back teaching.
- Building psychological and emotional wellness in cadets should also be a priority that is embedded into the curriculum. The current curriculum includes some coverage of stress management and mindfulness at the beginning of the academy, but this is an issue that should be reinforced throughout the entire 32-week academy.

Curriculum

- As part of the internal audit mandated by Resolution 66, specific courses in the existing curriculum are currently being reviewed. Recommendations regarding assessment of those courses as well as evidence-based recommendations will be included in a review summary report.
- The 32-week academy contains courses that include the Basic Police Officer Courses, and in addition, intermediate certification courses as well as APD specific courses. In accordance with the Texas Commission on Law Enforcement regulations, BPOC courses cannot be eliminated or modified; however, the value add of other courses should be assessed to eliminate any courses that are not as relevant or impactful as in the past, and perhaps include new courses that fall in line with updated, innovative curriculums being used in other training academies across the country.

Teaching Effectiveness

Current challenges include:

- A major area with opportunities for development relates to Instructor Preparedness, Training, and Evaluation. The following observations and subsequent suggestions are based on the fact that effective instruction is at the core of what we do at the APD Training Academy.
 - Instructor Job Description, Expectations, and Evaluation: Under *Duties and Responsibilities*, the current job description for Cadet Training Instructor does not explicitly include any descriptions or expectations of teaching or pedagogical training if hired. The job description is essentially a lengthy list of items. The inclusion of listed items such as "Ability to write legibly and to read" communicates a very low academic standard, particularly given the position as an educator.
 - Regarding performance evaluations, the instructor evaluation form (SSPR) must also incorporate corresponding teaching/pedagogical expectations reflecting those detailed in Cadet Instructor job description. In sum, instructors must be appropriately trained and developed as professional educators, with subsequent evaluation of their teaching effectiveness.
 - Instructor Training: Cadet Training Instructors do not receive any formal preparation or training on how to teach effectively. The Basic Instructor Course (BIC) offers TCOLE mandated basic information regarding logistical issues around teaching, but does not go into more nuanced, yet highly impactful teaching strategies and considerations, particularly as they relate to adult learning theory. After the BIC, new instructors receive guidance on following the processes already in place, and are expected to shadow current instructors in preparing lesson plans and teaching. However, there is no formalized onboarding process in place to determine when they have sufficiently

- prepared to begin teaching independently, other than existing instructor discretion. A more formalized professional development plan should be created and utilized.
- Instructor Teaching Resources: Both incoming and existing instructors have very little resources regarding effective teaching methods that focus on adult learning theory or teaching in the context of continually changing cohorts.
 - Instructor responsibilities on Course Content. In conducting numerous informal class observations, and in reviewing lesson plans and Power Point presentations, it is clear that there is considerable variability in quality and understanding of content material being presented. It is clear that TCOLE provides the essential material to be covered via pre-prepared lesson plans. That said, it is the responsibility of each instructor to learn the material, conduct further research for understanding and context, and obtain a firm understanding of the course material before teaching the class.
- Another area with opportunities for development relates to exams being created for and given to APD Cadets. Despite other areas of assessment required for successfully completion of the APD Training Academy (PT, Firearms, etc.), exam performance carries substantial weight in the success or failure of academy completion. Due to the policies around number of test failures, and the 80% passing standard, cadets are dismissed, at times, for academic reasons. Thus, a thorough review of testing policies and procedures is warranted, as well as investigations into more current testing platforms. At present, the process of creating exams is adequate, but not optimal, as it is tedious, over-reliant on multiple choice questions (not ideal), and perhaps a bit antiquated.

Opportunities

In the context of SWOT analysis, the section on Opportunities focuses on elements in the larger environment/community that could be used to an advantage for the Austin Police Department. Opportunities must be prioritized, captured, built upon and optimized. Below are considerations for this category.

Organizational Structure: Process Improvement

The vast majority of problematic issues in the previous section would be addressed by simply adopting a secure and reliable Learning Management System with the appropriate capabilities, and establishing a reliable process. After several months spent investigating various platforms that could align with the needs of the academy as well as meet necessary City of Austin security criteria, academy leadership is now considering the adoption of Informa LMS, Scheduler, and Evaluation/Testing bundle. This bundle of services will increase efficiency, organization, security, and in the long term, increase productivity.

A securely managed LMS could not only provide a platform for all Academy/Teaching-related material to be housed in an organized manner, but would also provide more efficiency to leadership in curriculum planning (including any updates or modifications) for current and subsequent cadet classes, save instructor time in course prep and planning, and in general make instructor's lives a bit easier by having a course set up and ready to go, even in the event that any given instructor were required to step in on short notice. Once a course is set up on the LMS, the contents: lesson plans, lecture slides, current/relevant video clips, assignment, class activities, online quizzes or exams, any collaborative work, and gradebooks are all securely housed and easily accessible to anyone with authorized secure

log-in credentials. Courses stored on the LMS would only require updates each term thereafter. Thus, an appropriate LMS can provide efficiency, ease, and save time in course preparation as well as a means by which secure communication, upcoming events, etc. can occur between all constituents at the training academy. Most importantly, it can provide security and ensure accurate BPOC and TCOLE tracking. Based on shared best practices between police training academies across the United States, the use of this type of technology has proven to be a prospective solution for the APD Training Academy.

Culture

Paramilitary culture

Despite many successes in the long-held paramilitary tradition, numerous scholars and community members alike have proposed a shift in the culture that currently exists in the majority of police training academies across the country. The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime. There is no doubt that this warrior mentality can be very useful in addressing certain acute situations, and of course, officer safety must continue to be a priority in training. However, most interactions with community are not acute. Instead, the focus of training should be on nurturing the relationship between police and the community they serve. The warrior mindset, and the fear that drives it, must change (Sanburn, 2016, Stoughton, 2015). It is time to reclaim the wisdom and power of servant leadership where officers are viewed as guardians that serve and protect their community.

Police departments across the nation are responding to this call to action by moving away from a paramilitary model that emphasizes fear-based learning and strict adherence to commands (i.e., the warrior model), toward an adult learning model that instead values high quality instruction and the development of critical thinking skills, effective communication, and better emotional intelligence in cadets' preparation to work collaboratively with the community they serve and protect (i.e., guardian model). Researchers stress the importance of adopting an adult learning model in training recruits to work within a community-oriented policing model (Schlosser, 2013). Using shared innovative practices from other police training academies, the Austin Police Department Training Academy should seriously consider this cultural/paradigm shift by moving beyond behavioral training techniques and integrating the following psychosocial skills into the curriculum to truly 'build and educate the best police officers in the nation':

- Understanding basic human behaviors in the context of policing (basic Applied Psychology course)
- Cognitive skill training (Decision-making/Judgment, Impulse control/Safety, Adaptability/Flexibility)
- Emotional skills training (Emotion regulation/Stress tolerance, Emotional Intelligence)
- Social skills training (Social competence, Teamwork/Collaboration, Assertiveness/Persuasiveness)
- Moral skills training (update and expand current teachings on Integrity & Ethics)

Further, future officers in training should be given the opportunity, while still in the academy, to actively engage with and work in the community, alongside the people that they will serve. Whether this is in the form of ride outs, and/or better yet, participation in community sponsored and community-building events. This shift in emphasis would clearly signal that APD and the training

academy are committed to rebuilding a strong, positive relationship with the Austin community. In sum, modern policing faces increased complexity, which requires officers to respond to difficult and quickly changing challenges of a diverse society in more flexible ways (McGinley, Agnew-Pauley, Thompson, & Belur, 2019). Thus necessitating a greater emphasis on the afore mentioned skills.

Diversity, Equity, Inclusion

The issue of race as it relates to policing is clearly an area of concern for many. Numerous efforts throughout the city and department are currently underway to address citizen concerns. At the training academy, several courses addressing multiple topics around race, culture, and community (i.e., Fair & Impartial Policing, Multiculturalism, Racial Profiling, History of Policing, and others) are currently taught in the existing curriculum. As part of the Resolution 66 internal audit, these courses are currently under substantial review and the subsequent report will offer more insight on making improvements to content and teaching effectiveness. When completed, course reviews, which are based on formative assessments, will result in several recommendations given to not only update the content of the materials to reflect current scholarly research on diversity, equity, and inclusion issues, but will also include pedagogical strategies to promote effective delivery of the material. Further, colleagues at The University of Texas School of Law, in collaboration with the Office of Police Oversight, have created a new course that gives insight into the History of Policing and Race in Austin. By including this course in the curriculum, the training academy ensures diverse perspectives are being presented when learning about police history in context.

To become more diverse and more inclusive, the training academy must examine their own organizational capacity to prepare all cadets for a world that is changing, complex, and already very diverse. APD cannot expect future officers to meet the intricate needs of our community if we cannot meet those needs within our own organization. Any disparities within the academy must be rectified by closely examining cadet recruiting policies and practices, interview and hiring board processes for cadets and instructors, yearly evaluation processes for instructors, and shifting the strategic goals of the organization toward a more inclusive excellence model. The inclusion of unconscious bias assessments into the cadet recruitment process, and cultural competency training for all academy instructors and staff would both be good examples of the training academy's commitment to Diversity, Equity, and Inclusion. Specifically, with respect to the fact that faculty of color and female faculty are underrepresented at the academy, it is worth recognizing that such underrepresentation is detrimental to the success of student cadets of color and female cadets.

As part of a culture shift whereby true inclusion of all diverse perspectives is embraced, another opportunity for APD is to include programming based on the work done by Dr. Glenn Singleton and his colleagues in *Beyond Diversity: Creating Courageous Conversations About Race*. At present, leadership at the APD Training Academy has attended the workshop. However, a formal proposal is being created to include a more comprehensive and sustainable program tailored for APD which includes Leadership Development as well as cadet and current officer education on cultural sensitivity and competencies.

Times have changed and the academy, as well as the department as a whole, must change with it. A genuine cultural shift could increase organizational agility, and would go a long way toward improving

police and community relations in Austin (Kringen, 2019; Kringen & Novich, 2017; Perez McCluskey & McCluskey, 2008; Schuck, 2016; Schuck, 2017; Silvestri, 2019; Todak, 2018).

Wellness

Instructors. To avoid instructor burnout that could lead to low morale, low effort, and low job performance, and to avoid higher turnover rates for instructors at the academy, APD leadership must be mindful of recovery time between cadet classes. At present, when accounting for both regular and modified cadet classes, instructors have very little, if any, time off from teaching between the end of one cadet class and the beginning of the next. Based on first-hand experience as well as a significant body of literature, this is a vital issue that directly impacts job performance and, in this case, teaching effectiveness.

Cadets. It would behoove both current and future officers for the academy to place more emphasis on preparing cadets to successfully cope with the emotional challenges of this profession. APD training has the opportunity to infuse into the existing curriculum comprehensive programming where mental health experts can address officers' emotional regulation and stress tolerance in an effort to build long-term skills that cadets can take into their future work- and life-experiences.

Curriculum

Based on supported arguments made in *New Directions in Police Academy Training* (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), the curriculum should also include previously mentioned courses taught by content experts that focus on the following evidence-based topics: understanding basic human behaviors (i.e., a tailored applied psychology course), social skills (i.e., coping skills to help officers navigate difficult encounters when interacting with community members, as well as coping with the strain that police work places on them, their families, and friends), moral development, and effective communication strategies. These courses, along with those that focus specifically on Diversity, Equity, and Inclusion issues should be solidly grounded in current, empirical research and taught by outside scholars who have expertise in the fields.

Further, because the 32-week academy is already longer than most police training curricula, and because adding more classes without judiciously reviewing the value-add of existing courses, the academy should reconsider including all intermediate level courses as part of the curriculum before graduating new officers. From the reviewer's perspective, it makes sense that only after having some time and experience in the role of police officer should she/he/they then be expected to begin to think about intermediate level courses. The experiences themselves would help new officers make sense of and provide context for the intermediate level courses, thereby leading to more meaningful learning and retention of information.

Teaching Excellence

Make no mistake. Police training academies are institutions of higher learning. There is a nuanced but important difference between training and teaching. Training denotes a hands-on, practical, step 1, step 2 method of conveying information. Teaching seeks to impart knowledge and provide opportunities for deep comprehension and long-term retention of knowledge by relying on learning theories and engaging students using various strategies and methods. In the context of police academies, both training and teaching can go hand in hand. But, when considering the importance of the material being taught by academy instructors in the classroom, the fact that they really are creating

future officers for our community, and the fact that we need new officers to remember what they learned when out on the street, the stakes are high and we should get serious about investing in our instructors.

The reviewer recognizes that the academy is not a college or university, but it is a place of learning nonetheless. And as such, making sure that academy instructors have the training, experience, and resources necessary to reach teaching excellence should be a top priority. Instructors, cadets, officers, and the community as a whole all deserve this.

Regarding comments made in the previous weaknesses section around Instructor preparedness and development, below are reviewer recommendations:

- Revise Cadet Training Instructor job descriptions to include appropriate expectations, duties, and responsibilities around Teaching Effectiveness. Similarly, revisions to the Cadet Training Instructor evaluation (SSPR) are being suggested to ensure that the updated SSPR appropriately reflects the corresponding revisions to the job description.
- Similarly make modifications to Cadet Selection Board materials to incorporate appropriate pedagogical language throughout document. I.e., include terms such as Teaching, Active/Adult Learning, etc., to signify that the position goes beyond the ability to complete a lesson plan template and create power point slides, rather based in serious pedagogical methodology. "Grading" of presentation should also include ratings on teaching methods.
- Review our Basic Instructor Course offered at the training academy to make sure it includes information on
 - Cohort/Generational differences
 - Pedagogy/Teaching Adult Learners
 - Active and Interactive Learning in the Classroom
 - Effective Teaching Methods
- Create a series of Train the Trainer (T3) teacher education online courses that new instructors would be required to take BEFORE teaching independently. Course topics could include the following (see bullets below), and would be offered online so that new (and existing) instructors can complete them while working around their schedules. Note: this could be accomplished via the now accessible LinkedIn Learning tool where specific learning pathways can be developed specifically for academy instructors.
 - Teaching adult learners
 - Innovative teaching techniques: focus on active, interactive, and inclusive models
 - Presentation 2.0: Moving beyond Power Point slides
 - Other topics at suggestion of instructors, training academy leadership, commander
- Provide new instructors a mentor/coach (experienced instructor) for onboarding. Provide mentor instructor a checklist of items to cover with new instructor. After initial probationary period, and once new instructor is teaching independently, mentor should conduct course observations and periodically scan through instructor course material to ensure that that course content and corresponding exam content are regularly updated to reflect current/relevant course content information (including video clips, examples, activities, etc.)

Instructor resources and Professional development:

- Transform the existing training academy website to include a page/tab for instructor access only, specifically dedicated to housing various instructor resources such as empirical articles on

teaching and learning, video clips, sample class activities, instructor cheat sheets on how to keep content updated, etc.

- Create a peer-review program that would utilize class observations to provide individual instructors the opportunity to receive valuable feedback from a senior peer instructor on teaching effectiveness:
 - Class observation: Observer selects, or is assigned a course and instructor to observe.
 - Observer thoroughly reviews lesson plan and informs instructor of pending observation date.
 - Observer sits in on class, and completes a Class Observation rating/feedback form. Form would include sections such as presentation style, rapport and communication with students, content knowledge - and whether content and examples are current, etc.
 - Observer meets with instructor to give feedback on lesson plan and class.
 - Each instructor would have a minimum of one course observation per cadet class. This class observation form could/would be used by supervisor to inform the Instructor's evaluation (SSPR) ratings, as this is an indicator of Teaching Effectiveness.
- As part of the Teaching Excellence program, create incentives for instructors whereby results of various assessments including class observations designate high performers to be publicly recognized. Examples: Instructor of the Year recognition, specific lapel pins for academy instructors, certificates of recognition signed by the Chief, recognition on website.
- Develop yearly Continuing Education credit courses specifically for professional development in Teaching.
- Partner with local colleges/university's Teaching Excellence programs to access Teaching resources, symposia, workshops, etc.

Instructor responsibilities on course content:

- Before teaching any course, instructors should review the course material, investigate any possible updates to course content (including any new legislative changes and/or research findings), and have a firm understanding of content being covered. This is particularly important for any instructor teaching a new course and/or teaching new content. (It is presumed that all instructors will have taken the most current Basic Instructor course, as required by TCOLE).
- After reviewing content, instructors should make any changes and updates necessary to material to be presented (minimum: lesson plans, slides, handouts) based on legislative or research updates. It becomes obvious when instructors use the same Power Point slides, same handouts, same exam questions that have been used and re-used for years. At minimum, even when no legislative or research updates are warranted, instructors should update handouts, slides, video clips to stay current and relevant.
- All instructors should be informed that they will be observed by a peer, and should be shown the evaluation form to be aware of expectations in their teaching in their overall performance review.

Threats

Threats in the context of SWOT analysis refer to elements in the environment that could cause issues for the organization. The elements briefly described below can impede the APD Training Academy's strategic goals. These and others should be considered more thoroughly, but are briefly mentioned here.

- Sociopolitical climate/Political unrest
- Negative police-community relations
- Shortage of recruits
- Economic/Financial/Budgetary constraints
- Internal morale
- Internal discord
- Negative perceptions by public/media
- Lack of real or perceived support

Strategic Plan

Taking all information into consideration, while looking to the future to make the Austin Police Department Training Academy worthy of exemplary status, below is a proposed strategic plan outlined for consideration. Note that this is an initial draft of the plan that with assistance from APD leadership and approval from City Manager, would be fully developed to include a detailed timeline, short- and long-term goals, yearly objectives, action, and assessment plans.

2020 strategic plan

Austin Police Department Training Academy



MISSION

The Austin Police Department Training Academy promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships.



VISION

To build and educate the finest police officers in the nation.

Purpose



Our purpose is to meet the needs of our community by providing the highest quality education to future officers. Contemporary policing requires contemporary training which incorporates Adult Learning (andragogy¹) teaching principles while maintaining and reinforcing the community-oriented police services model.

¹ the method and practice of teaching adult learners;

Need #1: transformation of academy to move away from paramilitary training model to education model

Need #2: address community issues around Diversity, Equity, and Inclusion (DEI) concerns in training

Need #3: ensure all resources are available for instructors to reach teaching excellence

A New Environment



Training academies across the country are facing challenges in adapting to changing sociocultural and educational environments. While APD continues to lead the way for other departments, the training academy must make the necessary cultural shifts towards an education model to reinforce solid learning theories, adapt innovative teaching and learning strategies, and meet the demands of the new generation of student cadet.

Goal #1: introduce a cultural/paradigm shift for academy moving forward to reflect new directions in police academy training

Goal #2: provide instructors with effective professional development opportunities, feedback, and accountability plan to reach teaching excellence and include outside academics/civilians as academy instructors for some courses

Goal #3: continually innovate and evaluate to ensure cadets receive best education possible, focusing on critical thinking and problem solving, and preparing them for the challenges of modern, community-based policing

Goal #4: using the community-policing model, prepare cadets to communicate effectively, collaborate with community members, and embrace diverse perspectives when serving the Austin community

Investing in Our Future



While APD is not exempt from negative economic trends in the environment, one thing is certain: the long-term return on investing in the education of our future police officers is huge. By providing the necessary resources, instructors receive top notch professional development, cadets receive the best education resulting in long-term retention of important information, and the community benefits as a result.

Goal #1: increase budget to include upgrades in technology and training

Goal #2: increase investment in professional development programming to include pedagogical²/teaching resources

Goal #3: invest in Diversity, Equity, and Inclusion programming throughout curriculum

² the method and practice of teaching, especially as an academic subject or theoretical

Key Strategic Priorities



The four key themes identified in this Strategic Plan will guide our work for the next several years. These themes were generated inductively, based on operational observations, review of various bodies of literature, and the agility required by modern times to reach our objectives around educating the hearts and minds of future officers.

Cultural shift

Commitment to Diversity, Equity, & Inclusion

Academic Excellence

Resource Development

Strategic Initiatives



Drilling down, these initiatives will allow us to stay focused on the priorities that will guide our work.

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| <ul style="list-style-type: none"> ◦ Transform para-military structure to Education/Adult Learning Model ◦ Emphasize Servant leadership & Guardian Model ◦ Clear & consistent communication/expectations ◦ Community-based curriculum ◦ Emphasize skills in Cognitive, Emotional, & Social areas ◦ Prioritize wellness throughout the curriculum ◦ Modern-day Policing | <ul style="list-style-type: none"> ◦ Cultural competence assessments & development ◦ Incorporate implicit bias evaluations into recruitment process ◦ Infuse DEI programming throughout academy to include training for leadership ◦ Increase diversity in teaching faculty ◦ Implement recommended changes in teaching methods ◦ Implement recommended changes to course content ◦ Include simulations and role plays that pertain to difficult cultural or racial situations | <ul style="list-style-type: none"> ◦ Review and revise Instructor position description evaluation ◦ Establish consistent onboarding process ◦ Regular class observations ◦ Set expectations and provide teaching resources, then hold accountable ◦ Reward excellence: either monetary and/or awards and recognitions ◦ Provide instructors time to develop courses ◦ Professional Development opportunities ◦ Partnership with local colleges/universities Teaching & Learning Excellence programs (attendance at yearly teaching symposium and access to resources) ◦ Civilianize some instructor positions for specific courses that require expertise in field | <ul style="list-style-type: none"> ◦ Higher pay for prior education and incentive pay for instructors ◦ Establish instructor wellness program ◦ Prioritize tech upgrades to include LMS, Scheduling software, internal academy site ◦ Manage teaching load and establish equitable process of work distribution ◦ Select and train stellar Field Training Officers (FTO) to set good examples ◦ Improve cohesiveness between academy and FTO to ensure consistency in training ◦ Establish a Community placement opportunity for cadets to begin building relationships with community |
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RESPONSE

EXHIBIT D



MEMORANDUM

TO: Mayor and City Council

FROM: Brion Oaks, Chief Equity Officer *Brion Oaks*

THRU: Nuria Rivera-Vandermyde, Deputy City Manager *YPR*

DATE: December 29, 2020

SUBJECT: Equity assessment SWOT analyses and report on racial inequities within Austin Police Department

The purpose of this memo is to provide a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD). The first body of work contains a series of evaluations of seven division-level equity assessment responses and the Strengths, Weaknesses, Opportunities, and Threats (SWOT) identified by a third-party evaluator, The Peace Mill Research and Communications.

The second body of work is a report prepared by Joyce James Consulting to help identify racial inequities within APD and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture including selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and collaboration with APD and the Equity Office to develop strategies and objectives based on the findings.

Background

In an effort to address racial inequity in Austin, City Council passed Resolution No. 20150507-027 in May 2015, which directed the City Manager to evaluate the impact of existing City policies and practices on racial equity and develop an Equity Assessment Tool to be used across City departments. The four sections of the Tool are designed to evaluate: Department Culture, Community Engagement, Budget, and Alignment with the Strategic Direction 2023. After a third-party evaluator develops a SWOT analysis based on responses to the Tool, the department reconvenes to develop an action plan with three to four interventions that they can implement within a year. It is designed to be a process of continuous improvement, with departments revisiting the Tool and developing new action plans every cycle.

In 2018, City Manager Spencer Cronk supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, the Equity Office determined that it would benefit the process, the community and the Police Department to directly engage community members and APD employees in a series of dialogues over several months as part of APD's equity assessment process.

In 2019, the Equity Office began engaging in this process with seven (7) divisions within the Austin Police Department. The divisions included in this pilot series were Training, Recruiting, Data Planning, Internal Affairs, Finance, Human Resources, and Victim Services.

After the equity assessment process, APD leadership identified the need for an additional process to dive deeper into the culture of the Department, as well as support identifying potential solutions to address equity concerns. After consultation with the Equity Office, APD identified Joyce James Consulting, who worked in collaboration with the Office to draft and plan a broader cultural assessment and intervention process.

Overview of Equity Assessment Process and SWOTs

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues in 2019, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process.

Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses.

The third-party evaluator analyzed the process to identify promising practices and areas for improvement, interviewed participants from APD and the community, and analyzed all departmental responses through a SWOT analysis.

Some notable findings include:

- Erosion of community trust
- Practices and procedures that contribute to a culture of fear
- Incomplete data collection and analysis
- Failure to codify equity standards
- Lack of institutional and individual understanding among leadership with regard to principles of equity and inclusion

Overview of Report on Racial Inequities and Institutional Racism

The report produced by Joyce James Consulting (JJC) provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. The findings informed the recommendations and beginning road map, that if implemented, have implications for beginning a journey towards creating an APD anti-racist institutional culture.

Some of the recommendations include:

- Develop an understanding of the history of institutionalized racism and its impact on poor communities and communities of color.
- Utilize training defined by anti-racist principles and embed that in cadet academy and leadership development.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress towards antiracism.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.

Next Steps

The Equity Office staff will follow up with APD division leads in January and February to discuss the next steps of the equity assessment process which includes developing an equity action plan with specific interventions to address areas featured in the SWOTs.

If you have any questions, please contact Brion Oaks, Chief Equity Officer, at Brion.Oaks@austintexas.gov or 512-974-7979.

Attachments: Community + APD Equity Assessment Series: Austin Police Department
Training and Recruiting Division
Data Planning Division
Internal Affairs and Professional Standards Division
Finance Division
Human Resources Division
Victim Services Division
Community Engagement Process Evaluation and Recommendations
Racial Inequities and Institutional Racism: A Report Submitted to The City of Austin Equity Office and The Austin Police Department

cc: Spencer Cronk, City Manager
Rey Arellano, Assistant City Manager
Christopher Shorter, Assistant City Manager
Brian Manley, Chief, Austin Police Department
Troy Gay, Assistant Chief, Austin Police Department
Farah Muscadin, Director, Office of Police Oversight
Devin Desai, Chief Labor Relations Officer, Labor Relations Office
Lee Crawford, Division Chief, Law Department

Community + APD Equity Assessment Series:
Austin Police Department, Training and Recruiting Divisions

Research and analysis provided by the Peace Mill

December 28, 2020



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Executive Summary

This report assesses the standards and practices related to diversity, equity, and inclusion at the Austin Police Department Training and Recruiting divisions. In 2015, the City Council directed the City Manager to begin a process that evaluates the impact of City policies, projects, and initiatives on racial equity in Austin.¹ As part of the equity assessment process, an independent researcher is tasked with assessing the departments, responses, collecting supplemental data, conducting interviews, and providing an extensive analysis of each department and division's equity practices to inform any subsequent equity action plans and support the department as it seeks to strengthen its equity practices and standards.

During this assessment, an independent researcher reviewed the APD Training division's self-assessment responses; conducted qualitative interviews with APD division leaders, former training academy cadets, community leaders, and Austin residents; analyzed APD Training division data, including information on recruitment, graduation rates, and injuries; and provided an analysis of the divisions' strengths, weaknesses, opportunities, and threats (SWOT analysis) related to diversity, equity, and inclusion.

This assessment found significant racial and gender disparities in the standards and practices of APD's Training and Recruiting divisions. The Training division's leadership failed to produce any measurable standards for ensuring equitable practices. The division's self-assessment identified one Black employee out of 57. Data provided by APD highlighted further disparities in graduation rates, with 81.6% of white male cadets graduating the academy compared to 48.5% of Black male cadets. Over five years, Black cadets accounted for only 5.19% of all academy graduates and were more likely to leave the academy or sustain an injury than any other racial group. All racial groups, other than white cadets, were underrepresented in graduating cadet classes. While the Recruiting division has taken the recent step of hiring a staff member to address racial disparities in the recruiting process, the number of Black, Latinx, and women cadets recruited into APD's cadet remains glaringly low. The number of cadets from these communities who graduate from the academy is even lower. This holds true for every racial group except for white cadets.

¹ Austin City Council Resolution 20150507-027

Interviews with former cadets revealed an academy culture that prioritizes physical aggression above all else. Multiple cadets stated that training staff subjected them to hours of grueling physical and psychological stress drills, refusing water to dehydrated cadets and engaging in other dangerous practices. This assessment details those practices and provides a complete analysis of APD Training division data. This report recommends that City leaders suspend all cadet classes until APD leadership and Equity Office officials can develop and implement an equity-driven action plan that reforms and rebuilds APD's Training division, including the training academy.

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third-party independent researcher to analyze responses submitted by each APD division during the equity assessment process and make recommendations for strengthening diversity, equity, and inclusion commitments within the department. The researcher employed a series of methods for collecting and analyzing data for this report, including:

- desk research, including the following:
 - reviewing the division's Equity Assessment Tool self-assessment responses
 - equity-related data related to the division's practices, such as race and gender data
 - additional data and evidence as needed and available
- qualitative interviews with a collection of stakeholders, including:
 - APD division leaders
 - Community leaders and residents
 - Former APD academy cadets
- quantitative analysis of APD data on cadet classes

The researcher used these methods to conduct an analysis of diversity, equity, and inclusion (DEI) standards and practices within APD's training division. This report contains those analyses, including an analysis of the division's strengths, weaknesses, opportunities, and threats (SWOT analysis) regarding diversity, equity, and inclusion. The report concludes with a recommendation section and commentary that addresses the training division within the context of broader reform efforts and current events related to policing and DEI reforms.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”² The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide “leadership, guidance, and insight on equity” and “to build and sustain a culture of equity across the city.” Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin’s Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin’s residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office’s partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin’s OGP commitments, OGP’s Independent Reporting Mechanism (IRM) awarded the Equity

² Austin City Council Resolution 20150507-027

Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step toward implementing those principles.

Analysis of APD Data on Training Academy Outcomes

In response to a request from the researcher conducting this assessment, the Austin Police Department provided data on a series of outcomes and other variables of interest related to the APD training academy between 2015 and 2020, including:

- Demographic data on APD cadet classes
- Graduation rates of cadets
- Reasons for voluntary or involuntary termination
- Comprehensive data on injuries sustained by cadets during training

Equity Limitations of APD Demographic Data Collection Methods

For the purposes of conducting an equity assessment, it is encouraging when any public institution collects demographic data. The APD data is helpful for some analysis, but it should be noted that there are several limitations caused by the format of the demographic data that APD collects:

1. Binary gender: APD's intake forms for cadets only allow a binary male/female option. This is an outdated approach to collecting gender data that discriminates against individuals who are non-binary, transgender, gender fluid, or who do not otherwise identify as male or female.
2. Limited categories for race: APD's intake forms allow cadets to identify as one of four races/ethnicities: White, Black, Hispanic, or Asian. This is an incredibly limited and outdated format for collecting race/ethnicity data that omits and discriminates against individuals who identify as Indigenous, Middle Eastern/North African, Latina/Latino (different than Hispanic), bi-racial or multiracial, or who otherwise identify as a race or ethnicity other than the four options provided on APD's intake forms.

Assessment of Data on Graduation Rates

Between 2015 and 2020, at least 638 cadets were recruited into APD's training academy. Of those 638 cadets, 464 (72.73%) graduated from the academy.³ Due to errors in the demographic data provided by APD to the researcher conducting this analysis, data from the 38th cadet class was omitted from some of the demographic analysis in this study (see footnote 2). The sample used for this analysis of graduation rates includes twelve complete cadet classes, including 443 graduating cadets. Of the 443 cadets who graduated from the academy and were included in this equity analysis, 309 (69.75%) were white, 92 (20.77%) were Hispanic, 23 (5.19%) were Black, and 19 (4.29%) were Asian. Of a sample of 148 cadets who did not graduate and left the academy either voluntarily or involuntarily, 89 (60.14%) were white, 31 (20.95%) were Hispanic, 22 (14.86%) were Black, and 6 (4.05%) were Asian. The overall graduation rate for APD training academy cadet classes between 2015 and 2020 was 77%. However, when disaggregated by race and gender, the graduation rates highlight yet another significant inequity in APD's training division. During the same period, the graduation rates for APD cadets, disaggregated by race and gender, were as follows:

Figure 1. APD Training Academy Average Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100% ⁴

Source: APD Data provided upon request by the researcher

³ APD provided graduation data from 2015-2020, from the 130th through the 142nd cadet classes. Errors were discovered in the data for the 138th cadet class, so that data has been omitted from the demographic sections of this analysis. The class size was small and the omitted numbers do not shift the overall quantitative findings of this report. When updated data is provided by APD, this report will be updated to reflect those numbers.

⁴ Over five years, APD only recruited one Asian woman, who successfully completed the academy.

APD's data on its cadet classes illustrates an all-too-common occurrence among municipal police agencies across the US: their ranks do not reflect the makeup of the community they are sworn to serve and protect. According to the U.S. Census Bureau population estimates for 2019, Austin is a "majority minority" city.⁵ 48.3% of Austin's residents are white (non-Hispanic). 34.3% are Hispanic, 7.8% are Black, and 7.3% are Asian. Although APD does not provide more than four racial categories in its data, the census also identifies 0.6% of Austin's population as American Indian and Alaskan Native and 3.3% as two or more races. This data shows that the racial demographics of APD's graduating classes differ starkly from the demographic makeup of Austin as a city.

Assessment of Data on Injuries Sustained by APD Cadets

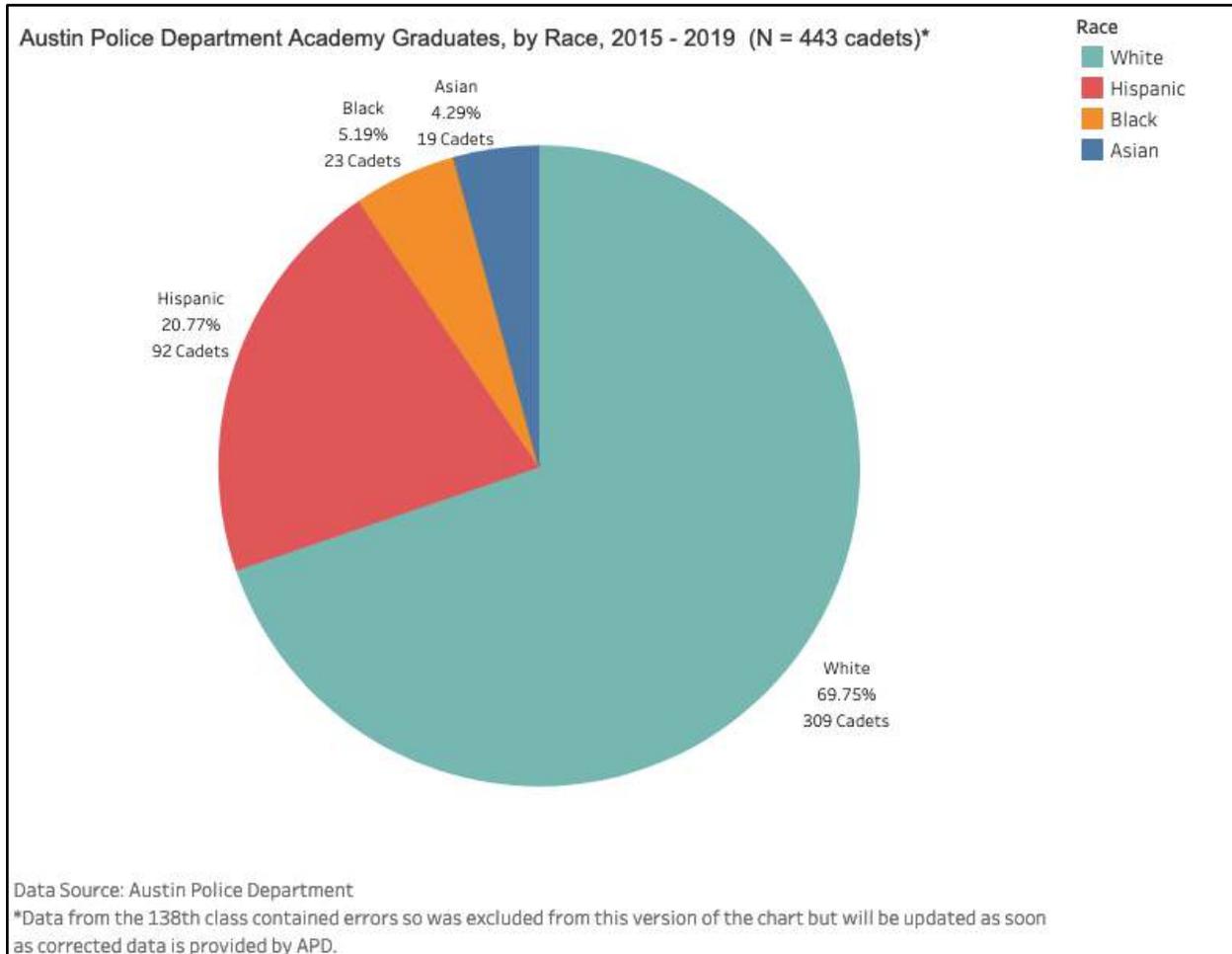
According to data provided by APD, at least 509 injuries occurred during the APD training academy between 2015 and 2020. Of the cadets who were injured and included in this data, 348 (68.37%) were white, 85 (16.7%) were Hispanic, 57 (11.2%) were Black, and 19 (3.73%) were Asian. While the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%). APD's data illustrates inequitable outcomes for Black cadets who enroll in the APD training academy. Black cadets in APD's training academy are underrepresented when compared to the population of Austin, less likely than their peers to graduate from the academy, and more likely to be injured during APD's training academy than any other race.

⁵ While the term "majority-minority" is itself problematic, we employ it here to illustrate that even by an inaccurate and inequitable census bureau's standards, APD's graduating classes do not reflect the city's population; US Census Bureau 2019 population estimates for Austin can be found at <https://www.census.gov/quickfacts/fact/table/au.stincitytexas/LND110210>.

Data Visualizations: APD Graduating Classes by Race and Gender

The following data visualizations illustrate the race and gender of APD’s academy graduates. The data used to construct these visualizations was provided by APD’s Chief Data Officer and contain cadet data for from 2015 to 2020. The data includes the 130th through 142nd APD cadet classes.⁶

Figure 2. APD Academy Graduates by Race



⁶ Errors were discovered in the data from the 138th cadet class. Therefore, that class was omitted from these visualizations. The 138th cadet class was relatively small, and the omission of that data does not alter the quantitative findings of this analysis. The report will be updated when the corrected data is received from APD.

Figure 3. APD Academy Graduates by Race, 2015 - 2020 (Men)

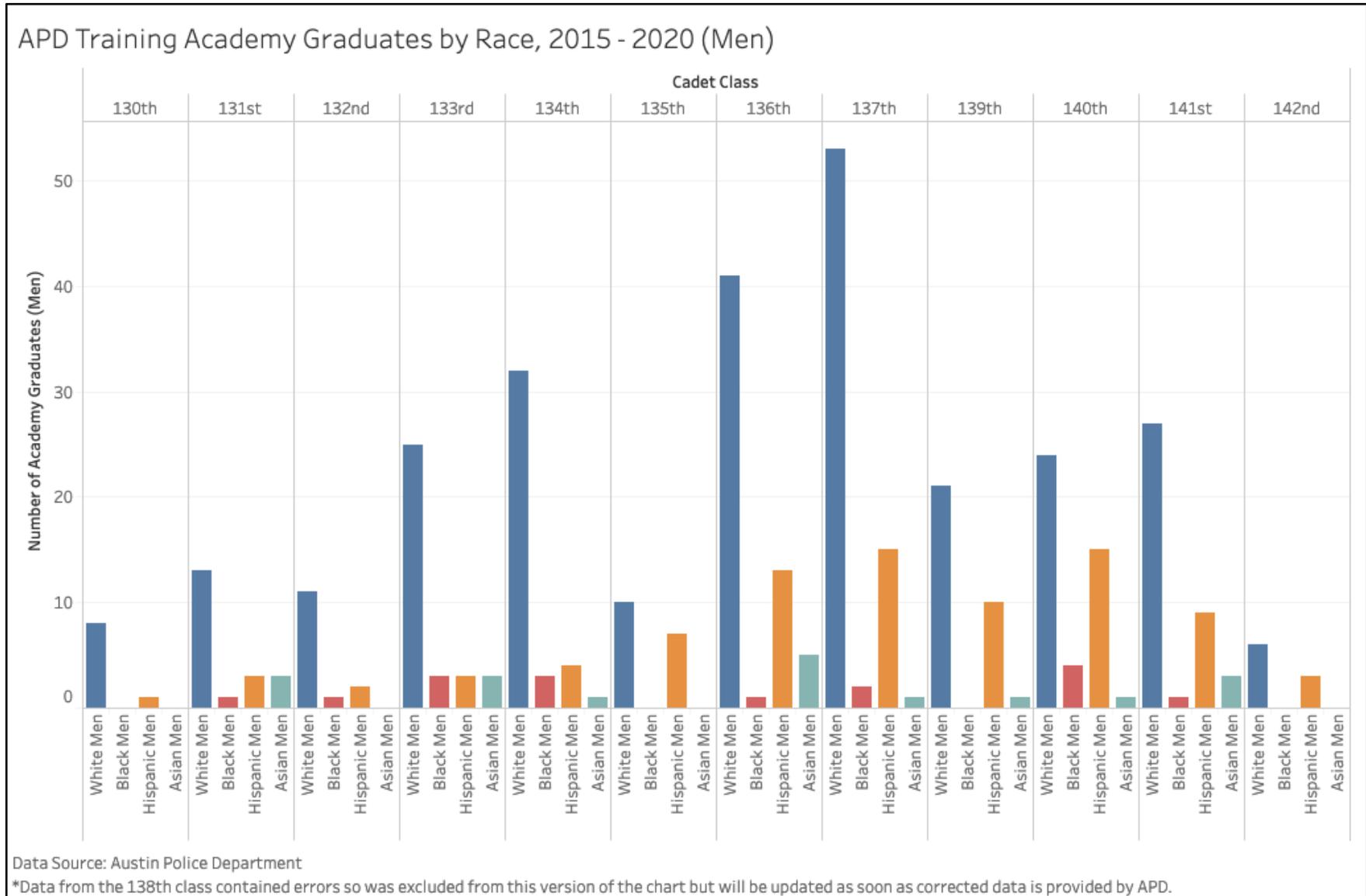
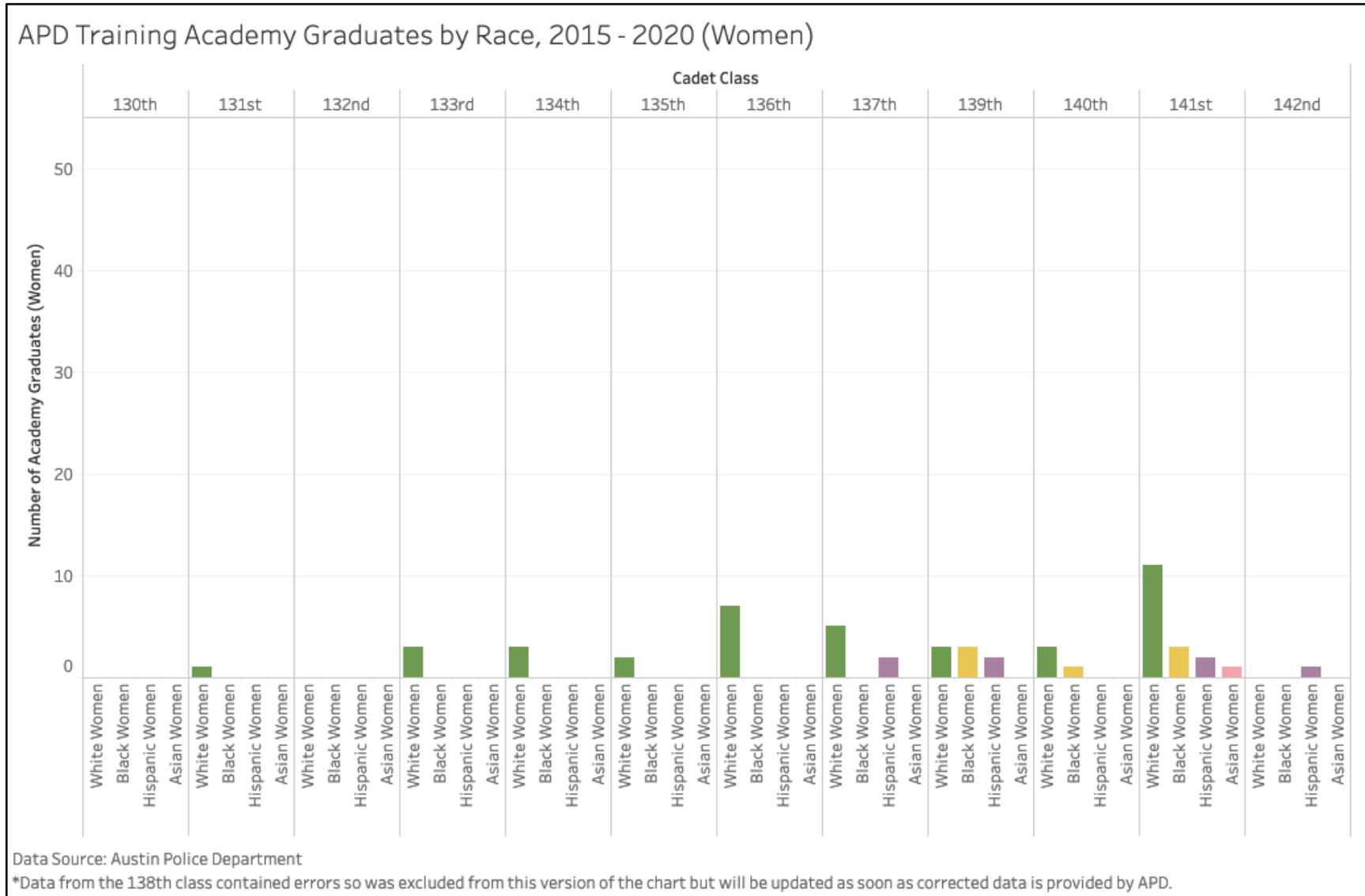


Figure 4. APD Academy Graduates by Race, 2015 - 2020 (Women)



Community Concerns and Response to APD Equity Assessment Results

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During interviews, community members expressed disappointment with the Training division's equity assessment responses. Community members cited many concerns, including the division's general lack of commitment to equity principles, lack of specific goals for improving equitable outcomes and inability to account for underrepresentation of women and communities of color among graduating cadet classes. Community members expressed frustration at de-escalation training materials that included language and images that were insensitive to women and communities of color and inaccurate depictions of the public as increasingly hostile and generally disobedient. Community members expressed overwhelming support for urgent reforms to APD's training standards, as well as department-wide reforms and renewed commitments around equity, diversity, and inclusion.

Lack of Commitment to Equity Principles and Equity Analysis Process

In many interviews with community members who participated in the C+APD meetings, participants expressed frustration at what they perceived as a lack of commitment to equity principles and the equity analysis process in general. Community members perceived APD's training division representatives as defensive when asked questions about race and gender demographics of cadets. Community members perceived the body language, behavior, and responses of training division representatives as defensive as well. These concerns were shared by other APD representatives present at C+APD meetings, who acknowledged in evaluation interviews that some of their APD colleagues were unnecessarily defensive and resistant to community questions about training procedures and materials and equity standards.

Training Materials Create Significant Community Concerns

Community members raised additional concerns at the depiction of an increasingly hostile and aggressive public in APD training materials. Community members expressed concern that this message will only make officers more violent and aggressive when they interact with the community. The APD training curriculum received significant criticism from community members, who expressed outrage at certain segments in APD’s de-escalation training videos that were incredibly offensive to Black women.

Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy

During interviews conducted as part of this assessment, multiple cadets alleged that the APD training academy fosters a dangerous and ineffective learning environment that discourages, degrades and injures highly qualified candidates, many of whom decide to resign for fear of permanent physical or mental injury. According to multiple former cadets who attended recent academies, cadets are subjected to counterproductive and excessive bouts of physical punishment in the form of “smoking sessions.”⁷ Multiple former cadets explained in separate, individual interviews that the academy’s educational elements and academic presentations are regularly interrupted by unscheduled psychological stress drills, making it difficult to absorb important intellectual material and creating an unstable, stressful academic environment.

Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience.⁸ Multiple cadets expressed concern about training staff promoting rhetoric that is antagonistic toward individuals

⁷ Former cadets described “smoking sessions” as extended physical endurance drills that are separate for planned physical exercises. According to multiple interviews, these sessions are unscheduled and designed purely as punishment for a variety of offenses. Multiple former cadets explained that they often were unsure of the cause of each smoking session, but that training staff indicated that the sessions were the result of some individual or collective error.

⁸ The term *culture of violence* describes institutionally imposed conditions that “can be used to justify or legitimize direct or structural violence” (Johan Galtung, “Cultural Violence,” *Journal of Peace Research*, August 1990). In multiple interviews, cadets confirmed the narrative that an APD trainer asked a new cadet why they wanted to be a police officer, interrupting the cadet’s response by saying “If you tell me you want to help people, I will punch you in the face.” Combined with other incidents, including deprivation of water by trainers during physical drills in the summer heat, and other comments from training staff identified during interviews, the qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied.

experiencing homelessness.⁹ The academy’s training staff employ dangerous training tactics that have been described by cadets with military backgrounds as “worse than anything I went through in [US military training].” Multiple former cadets allege that the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation. The Training division’s practices and culture are driving highly qualified candidates to leave the academy, depriving Austin of the diverse, community-driven police force that City leaders and residents envision.

Amid numerous valid concerns over secretive testing practices, unsafe physical tests that violate APD’s own policies, racist and sexist language by instructors, physical abuse by instructors, forced resignations, suspicious injuries, inequitable employment outcomes, and an increasingly toxic training culture driven by a militarized “us versus them” mindset, City and APD leaders should rebuild the training academy and implement sweeping structural reforms to the training division. To honor the City and APD’s commitment to a safer Austin for all Austinites, these reforms should include measurable changes to the culture, curriculum, staffing and leadership in APD’s Training division.

Evidence Supporting the Redesign of APD Training Academy and Training Division

As part of the ongoing equity assessment mandated by Austin’s community leaders, the City Manager and City Council, each division at APD conducted a self-assessment and submitted responses via the City of Austin Equity Assessment Tool. APD’s own responses illustrate a training division devoid of equity standards. At the time of the self-assessment, APD’s training division reported that one (1) of its 72 employees is Black. 70% of the division’s employees were white. Further, the training division’s self-assessment did not identify any codified standards for ensuring equitable hiring practices or decision-making processes.

During this ongoing independent evaluation of APD’s Training division, the researcher has conducted interviews with many former APD academy cadets. These individuals provided a unique perspective on APD’s training methodology and narrated corresponding accounts of

⁹ Multiple former cadets in separate, individual interviews confirmed that training staff made negative comments toward individuals experiencing homelessness and told cadets that if they are “having a slow day,” they could seek out someone experiencing homelessness as an easy target for various citations.

deeply troubling incidents that deserve a transparent and thorough investigation. These allegations and supporting evidence raise concerns that the APD Training division, operating without civilian oversight, is undermining the stated equity goals of the police department, and trainers in the academy are using violent tactics to target and expel the very candidates that the department desires in its ranks. Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing.

The researcher requested APD data through the Equity Office and other City intermediaries on cadet injuries, including the number of injuries sustained during cadet classes, whether those injured cadets resigned or graduated, the type of injury sustained, and the race and gender demographic information for injured candidates. In its own self-assessment, APD's Training division listed race and gender among the demographic data collected on cadets, providing a racial breakdown of current cadet and sworn officer personnel. APD provided the data requested, and an analysis of that information is detailed in a separate section of this report titled "Analysis of APD Data on Training Academy Outcomes."

According to interview respondents, many of the academy's trainers rely overwhelmingly on "violent", "brutal", "traumatizing" practices designed to "manufacture soldiers" rather than produce community-driven law enforcement professionals adept at de-escalation. Trainers place cadets in dangerous, demoralizing, and inhumane exercises with "zero regard for the health and safety of cadets." Multiple cadets stated that they and their colleagues had been screamed at or punished for checking on one another or drinking water during intense physical drills, which last for hours in sweltering summer heat. Multiple cadets confirmed that they were deprived of water during extended physical drills in extreme heat. Data provided by APD confirms that a troubling number of cadets were treated for heat exhaustion and dehydration during the academy. Multiple cadets expressed that even though they hydrated heavily at home, as advised by APD training staff during orientation, it was impossible to avoid dehydration when training staff refused to allow them water during these extended physical drills. Cadets could not identify a plausible real-world scenario during which they would be deprived of access to water in extreme heat for extended periods of time. Multiple cadets expressed that this deprivation was rooted in nothing

more than cruelty and had no basis in the reality faced by police officers. Some narratives, corroborated by multiple respondents, are simply too violent to understand how they were ever allowed to occur, including many cadets being forced to resign or risk serious injury in the face of seemingly endless “hazing” and “abuse.” The descriptions provided during interviews of injuries caused by APD trainers are equally disturbing. Allegations of anti-homeless, racist, and sexist remarks and other forms of targeted harassment toward cadets and others should not be ignored and deserve further investigation.

Recommendation: Reform and Rebuild APD Training Academy and Training Division

City and APD leaders should work together with community leaders to reimagine, redesign and rebuild the APD Training Academy and Training Division. APD is simply not graduating diverse cadet classes. Further, interviews conducted as part of this research and recent media coverage point to a pattern of dangerous practices during cadet classes. Multiple interview respondents pointed to *smoking sessions*, which are unscripted, unscheduled physical and psychological stress drills that instructors instigate without notice. According to multiple interviews, these *smoking sessions* are often used as collective punishment for individual violations, though their use is just as frequently unexplainable. Some respondents indicated that Training division staff seemed to enjoy putting cadets through the stress drills, which often go on for hours during the summer heat. Multiple respondents claimed that cadets are refused water during these stress drills, that instructors punish cadets for looking at one another (even if checking the condition of fellow cadets), and that medical staff are not posted close enough to the cadets to assess symptoms of dehydration or heat stroke. Multiple respondents witnessed instructors refuse water and fail to render aid to cadets who were visibly suffering symptoms of dehydration. It is well-documented that these practices resulted in multiple serious injuries to cadets.

Until this culture of violence is no longer the driving force behind APD's training methodology, the department will not be able to deliver on its promises of equitable service provision to the residents of Austin. What benefit is it to eliminate brilliant candidates for the sake of maintaining a battlefield mindset? How much money is spent recruiting these bright, capable, highly-educated, successful and *diverse* candidates, bringing them through a months-long recruiting process, vetting them intensely, dedicating an unknown number of personnel hours to interviews and investigations -- only to have them driven out of the academy by a culture of brutality, militarism and violence? What benefit is it to subject highly-qualified, diverse, committed cadets to training that is more intense than some military training programs? The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals.

Reforms to the training academy and training division should begin after the Equity Office's evaluation of the police department is complete and any subsequent action plans and reforms have been implemented with strong civilian oversight mechanisms. A recent series of equity assessment meetings between community leaders, residents, City officials and APD division representatives provided an uncommon and unorthodox opportunity for residents and APD leaders to engage with, educate, and learn from one another. The City and APD should use this model to reimagine, reform and rebuild APD's training division and training academy.

Departments, divisions, and actors that engage in discrimination and inequitable practices cannot be corrected or reformed simply by changing a script, adding a slideshow on diversity, or publishing a pamphlet with photos of Black employees on each page. Systemic change implies a full redesign and reconstruction of a failed system. Corresponding accounts by multiple cadets from multiple cadet classes indicate that any recent changes to APD's training curriculum have been, at best, superficial and that systemic flaws persist in the department's training protocols. Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial. Most division leaders received little guidance from APD leadership when engaging with the equity assessment. This means that division leaders, rather than department leaders, are conducting their division's equity analysis using disparate, ad hoc approaches. This renders the equity assessment process useless in divisions where leaders are not adequately equipped to address, or simply do not care about, racial or gender equity.

The City of Austin and APD made a commitment to foster a more diverse, equitable, safer Austin for all Austinites. Equity-focused reforms at the police department must be deep, cultural, universal, and backed with measurable indicators, public accountability mechanisms, and most importantly, community input. City and APD leaders should seize this opportunity to recommit to the principles of equity outlined in Council Resolution 66 and begin the important work of reimagining public safety by beginning where Austin's police officers are shaped: APD's training academy and the training division that administers it.

SWOT Analysis: APD Training Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Collects some demographic data on division staff</p> <p>Collects some demographic data on cadet classes</p>	<p>Lack of diversity among division staff</p> <p>Division does not analyze demographic data on contractors/consultants</p> <p>Division does not collect demographic data on racial disparities among client populations</p> <p>Division does not have strategies in place to ensure racial and ethnic diversity of staff</p> <p>Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide any specific or measurable standards for ensuring equitable practices</p>
OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>Lack of political will among APD leadership at many levels threatens meaningful change</p> <p>High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments</p> <p>Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members</p>

Strengths

Collects some demographic data on division staff

Question 4:

Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.

White (40) 70%

Black (1) 2%

Asian (4) 7%

Latino (12) 21%

2. Collects some demographic data on cadet classes

Question 9:

Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response: HR does not keep race/ethnicity statistics for APD civilian employees other than cadets. The race/ethnic breakdown for sworn and cadets:

TOTAL = 1,901; White - 1,304; Black - 153; Hispanic - 393; Asian - 49; Native American – 2

Weaknesses

Lack of diversity among division staff

Question 4:

Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.

White (40) 70%

Black (1) 2%

Asian (4) 7%

Latino (12) 21%

Division does not analyze demographic data on contractors/consultants

Question 5: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: These data are available through the Purchasing Department.

Does not collect demographic data on racial disparities among client populations

Question 11: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No.

Division does not have strategies in place to ensure racial and thnic diversity of staff

Question 15: Does your department have strategies in place for ensuring racial/ethnic diversity of staff in recruitment and hiring processes?

Division Response: No.

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Question 20: How does your department measure the effectiveness of its training on equity and institutional racism?

Division Response: N/A

Does not provide any specific or measurable standards for ensuring equitable practices

Question 23: Does your department measure the effectiveness of its efforts to improve racial equity?

Division Response: No.

Opportunities

Development of concrete equity standards and assessment processes

Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community

High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments

Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

SWOT Analysis: APD Recruiting Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Collects demographic data on division staff</p> <p>Collects some demographic data on contractors and consultants</p> <p>Collects some demographic data on cadet classes</p> <p>Conducts some test monitoring during cadet testing to prevent observable biases</p> <p>Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets</p>	<p>Incomplete demographic data collection: contractors, consultants</p> <p>Does not collect data on demographic disparities among served population</p> <p>Does not provide specific, measurable processes for ensuring racial/ethnic diversity of staff</p> <p>Does not provide division-specific training, orientation, or onboarding specific to critical race issues</p> <p>Does not provide division-specific equity training, does not collect data or perform assessments on impact of at-large trainings</p> <p>Does not provide any specific or measurable standards for ensuring equitable practices</p>
OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>Lack of political will among APD leadership at many levels threatens meaningful change</p> <p>Failure to codify equity standards and accountability mechanisms makes it difficult to measure progress over time</p> <p>External pressure from political actors weakens community trust in APD commitment to equity principles</p>

Strengths

1. Collects demographic data on division staff (Q4)

Question:

Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response:

The Recruiting Unit currently has 27 employees (up to the rank of Commander). Whites make up 10 employees, African Americans make up 9 employees, and Hispanics make up 8 employees. This can be broken down further into 6 white males, 4 white females, 7 African American males, 2 African American females, 5 Hispanic males, and 3 Hispanic females.

2. Collects some demographic data on contractors and consultants (Q5)

Question:

Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response:

Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

3. Collects demographic data on cadet classes (Q9)

Question:

Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response:

Data for the last two hiring cycles: 140th cycle count: American Indian - 5, Asian - 42, African American - 201, Hispanic - 536, White - 742, Other - 32. 141st cycle count: American Indian - 4, Asian - 34, African American - 91, Hispanic - 287, White - 405, Other - 24

4. Conducts some test monitoring during cadet testing to prevent observable biases (Q22)

Question:

How does your department ensure departmental policies, practices, and programs do not adversely impact communities of color?

Division Response (excerpt):

During testing cycles, test scores of minority and women applicants are closely monitored to ensure that there is no evidence of adverse impact (4/5th's rule).

5. Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets (Q24)

Question:

Describe the methods of measurement used (e.g., surveys) and provide a few examples of measures you track (e.g., Increase outreach to X community by X%)

Division Response:

The Recruiting Unit is always striving to forward cadet classes to the academy that are reflective of Austin's diverse communities. We recently hired a civilian Recruitment Coordinator. Part of her job duties is to keep stats on the ethnic makeup of classes entering in the academy and look for any changes in the data. If any changes are noted, unit leadership looks into this further to see where we are losing minority applicants during the hiring process.

Weaknesses

1. Inconsistent demographic data collection for contractors and consultants (Q5)

Question: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

2. Does not collect data on demographic disparities among served population (Q11, Q12)

Question: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No, the Recruiting Unit does not.

3. Does not provide specific, measurable process for ensuring racial/ethnic staff diversity (Q16)

Question: Provide those strategies, and if applicable, include the venues and organizations where outreach occurs.

Division Response: The Recruiting Unit is always striving to maintain a diverse workforce that reflects the ethnic make-up of APD as well as the citizens of Austin. As evidenced above, the unit is very diverse (almost 1/3 representation per ethnic group). All departmental officers, to include African American, Asian, and Hispanic officers, are encouraged to work with the unit on special assignments to learn about the inner workings of the unit and to participate in Phase 1 testing with the hope they will apply to the unit when a vacancy announcement is posted. Having a diverse workforce in the Recruiting Unit is very important as we work to increase the diversity within APD.

4. Does not provide training, orientation, or onboarding specific to critical race issues (Q18)

Question: Does your department, on-board, orient, or train staff on critical issues related to equity and institutional racism?

Division Response: The Recruiting unit does not as a unit, but the department does offer various trainings on the topic through TCOLE mandated classes.

5. Does not provide division-specific equity training, does not collect data or perform assessments on impact of trainings (Q20)

Question:

How does your department measure the effectiveness of its trainings on equity and institutional racism?

Division Response:

N/A

6. Does not provide any specific or measurable standards for ensuring equitable practices (Q21)

Question: What are your department's greatest equity priorities? If they have not yet been formally established, take time now to think about and identify what equity priorities are most important to your department and include them here.

Division Response: The Recruiting unit strives to ensure that everyone who applies to be a police officer is treated fairly, professionally, impartially, and we are transparent with them throughout the hiring process. Members of the unit ensure that everyone who walks through our front door is treated the same. We are pulling for the applicants throughout the process and want everyone to succeed, as we need more officers on the streets to enhance community policing efforts.

Opportunities

1. Develop concrete equity standards and assessment processes.
2. Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes.
3. Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices.

Threats

1. Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community.
2. Failure to codify equity standards and accountability mechanisms can make it difficult for internal and external evaluators to measure progress over time.
3. External pressure from political actors may threaten equity-driven initiatives and erode community trust in APD commitment to equity principles.

Community Response: Recruiting Division Equity Assessment Responses

The equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher. During interviews, community members expressed concerns over the Recruiting division's equity assessment responses. Community members cited a series of concerns, including the division's general lack of codified equity principles and lack of specific goals for improving equitable outcomes. Community members expressed overwhelming support for urgent reforms to APD's recruiting standards, as well as department-wide reforms and renewed commitments around equity, diversity and inclusion.

Conclusion, Context, and Insights

This report analyzes the responses provided by APD's Training and Recruiting Divisions to the City of Austin's Equity Assessment Tool and supporting evidence to evaluate each division's commitment to principles of equity. APD's Training Division does substantially less than most Austin divisions to advance the principles of equity. In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations. The academy continues to graduate cadet classes that do not reflect the communities most heavily policed by APD. Graduation rates for Black candidates are consistently lower than those of their white counterparts. Every racial group in Austin is underrepresented in APD's graduating cadet classes, except for white cadets, who are overrepresented when compared to the city's demographic makeup.

The lack of equity standards in the APD training division raises serious concerns that must be addressed by Austin city leaders, in consultations with community leaders, before commencing any new cadet classes. This is especially true considering the events that have unfolded in Austin this year, from the death of Mike Ramos to ongoing protests.

It is impossible to deliver this report without reflecting on the events taking place right now in cities across the United States, including Austin, in response to ongoing, systemic inequities and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; and the rapid militarization of local police forces. It is also essential that all parties reflect on the escalating police and military response to those demonstrations. Our communities, their governments, and their police agencies are at an important, historic decision point.

How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is

fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? Why does APD continually fail to graduate diverse cadet classes? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for city leaders committed to building a more just and equitable Austin.

Appendix 1: APD Injury Data**Figure 5. APD Training Academy Injuries, 2015 - 2020**

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	0
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	0
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	0
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	0
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	1
TOTALS:	90	123	77	116	98	5

Source: APD Data provided to the researcher by request

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

**Community + APD Equity Assessment Series:
Austin Police Department, Data Planning Division**

Research and analysis provided by the Peace Mill

December 28, 2020



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Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide “leadership, guidance, and insight on equity” and “to build and sustain a culture of equity across the city.” Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin’s Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin’s residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office’s partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin’s OGP commitments, OGP’s Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

¹ Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Data Planning division has very few, if any, strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's knowledge of the principles of diversity, equity and inclusion. When asked about strategies for ensuring racial equity during the recruiting and hiring process, division leadership responded, "I'd prefer to hire diversity of thinking versus diversity of race," as if the two concepts are mutually exclusive. Division leadership did not provide specific, measurable practices or strategies related to equitable hiring practices. When asked to consider the relationship between the racial makeup of divisional staff and the community served by its work, division leadership responded, "I haven't thought about it to be honest. We do make efforts to have diverse hiring panels." While this intention is helpful and signals a willingness to learn, the division's responses indicate a general absence of specific strategies for ensuring equity in recruitment, hiring processes, community engagement, and other important areas.

The Data Planning division lacks specific strategies for ensuring equitable access to the data that it produces. While the division points to a large number of datasets offered through the City's Open Data Portal, the division's responses to the equity assessment tool indicate an absence of strategies for ensuring that data is accessible and understandable by Austin's residents. When asked about ensuring accessibility and understanding of its data, division leadership responded, "We don't have a process for determining reading level. All of our public facing documents are placed on either APD's public site or the City of Austin's Open Data Portal—I guess we assume since they can get to that, they have the ability to download, read, and consume our documents and datasets." This is precisely the type of assumption that inhibits widespread access and understanding of internal data. Government data is often written in language that is generally inaccessible to individuals without advanced knowledge of complex data, government jargon, and government processes. Division leadership goes on to say, "The number and complexity of our research projects, reports, and datasets has increased steadily over the past three years." This appears to be an admission of the complexity of the very data in question. The APD datasets available through the Open Data Portal contain variables and categories that are often undefined, and when asked during a meeting about a codebook for understanding the variable codings, which is not provided alongside the dataset online, division leadership provided a business card and instructed the researcher to send a request for the codebook directly through email. How is the average resident supposed to know the process for finding such a codebook? This lack of structured accessibility protocol inhibits residents from accessing and understanding the data provided by the division through the open data portal and would fail even the most basic test of transparency. Similarly, when addressing translation of data and reports into languages other

than English, the division fails to provide any evidence of active equity-driven strategies or protocols.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews, community members expressed two primary concerns related to the Data Planning division: access to information and lack of translation. Community members expressed that they were unable to understand the process by which the division selects data for publication and unfamiliar with the process for accessing data on policing. For community members, APD data is difficult to understand, includes unexplained variables, and is written in the internal language of the Police Department, rather than language that is familiar to residents. Community members that participated in interviews believe that the division should make a stronger attempt to make data more accessible to individuals who are not well-versed in the language of the police department. Community members who participated in interviews also expressed frustration that APD data is not readily available in languages other than English. Community members correctly pointed out that negative outcomes related to policing are suffered disproportionately by communities of color, which includes immigrant communities. Community members expressed frustration that individuals whose primary language is not English seem overlooked by division leaders.

Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision

APD's Data Planning division lacks clear and measurable strategies and protocols for achieving equitable outcomes. From hiring to data provision to community engagement, division leadership was unable to provide much evidence for a culture of diversity, equity and inclusion within the division. According to responses to the equity assessment tool, division leadership seems to rely on personal perceptions of diversity, rather than measurable, informed approaches to implementing equity standards. Division leadership should collaborate with the Equity Office

to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues.

SWOT Analysis: APD Data Planning Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Collects demographic data on division staff</p> <p>Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public</p> <p>Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female)</p> <p>Attends and provides information at some community engagement events focused on equity-related issues</p>	<p>Lack of diversity among division staff</p> <p>Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants</p> <p>Division does not provide demographic data on racial disparities among client populations</p> <p>Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff</p> <p>Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide any specific or measurable standards for strengthening or ensuring equitable practices</p> <p>Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color</p> <p>Does not measure the effectiveness of efforts to improve racial equity (including budget)</p> <p>Does not provide translation of public documents, datasets, or other information into languages other than English</p> <p>Does not collect client satisfaction data (including demographic data)</p> <p>Does not provide evidence of efforts to engage specifically with marginalized communities</p>

OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion</p> <p>Lack of coherent plan or evidence of division’s commitment to institutionalizing principles of diversity, equity and inclusion</p> <p>External pressure from political actors weakens community trust in APD commitment to equity principles</p>

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public

Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female)

Attends and provides information at some community engagement events focused on equity-related issues

Weaknesses

Lack of diversity among division staff

Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants

Division does not provide demographic data on racial disparities among client populations

Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices

Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide translation of public documents, datasets, or other information into languages other than English

Does not collect client satisfaction data (including demographic data)

Does not provide evidence of efforts to engage specifically with marginalized communities

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion

Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

**Community + APD Equity Assessment Series:
Austin Police Department
Internal Affairs and Professional Standards Division**

Research and analysis provided by the Peace Mill

December 28, 2020



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Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide “leadership, guidance, and insight on equity” and “to build and sustain a culture of equity across the city.” Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin’s Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin’s residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office’s partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin’s OGP commitments, OGP’s Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable steps toward implementing those principles.

¹ Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion. Unlike other divisions, Internal Affairs and Professional Standards sources its staff from active APD employees, specifically sworn officers. This system of staffing limits leadership's ability to access a diverse candidate pool and binds the division to the outcomes of APD's Recruiting and Training Divisions. If the Training Division, which fails tremendously to implement the principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD.

Division leadership seems aware of the importance of diversity, equity and inclusion, but responses to the equity assessment verify that this awareness is not supported by systemic measures that ensure equitable outcomes. Division leadership points repeatedly to its relationship with the Office of Police Oversight, which should be supported and strengthened. Without internal processes and systemic changes, the partnership between IA and the OPO alone cannot fully address the division's inability to institutionalize the principles of diversity, equity and inclusion.

Community and Staff Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews with community members, respondents expressed concern at the staffing system employed by Internal Affairs and Professional Standards. Similar concerns were expressed by an APD division leader interviewed as part of this evaluation. Respondents are concerned that the practice of rotating officers in and out of Internal Affairs incentivizes officers to "go easy" on their counterparts under investigation, either out of a sense of loyalty or a fear of retaliation. APD staff who expressed concerns over this issue identified the paramilitary nature

of the police department as promoting a culture of loyalty over principle. If officers are incentivized, or intimidated, to embrace loyalty, the department's stated commitment to creating more equitable outcomes will likely fail. Organizations that state commitments to equitable outcomes must prioritize those principles and implement organizational changes that prioritize those commitments and protect their underlying principles.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies that foster a diverse and inclusive environment. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Internal Affairs and Professional Standards division can begin to address its shortcomings and take measurable steps toward building a culture of diversity, equity and inclusion within its ranks.

**SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity
Assessment Responses**

STRENGTHS	WEAKNESSES
<p>Collects demographic data on division staff</p> <p>Collects and provides demographic data on contractors/consultants</p> <p>Division consults with the Office of Police Oversight to provide public documents and data on complaints</p> <p>Consults with Office of Police Oversight to provide translation of some public documents into Spanish</p> <p>Participated in community forums with Office of Police Oversight</p>	<p>Staff diversity does not reflect Austin’s racial makeup (64% of employees are white; fewer than 50% of Austin residents are white)</p> <p>Division does not collect data on racial disparities among client populations</p> <p>Division does not have strategies in place to ensure racial and ethnic diversity of staff</p> <p>Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement</p> <p>Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color</p> <p>Does not measure the effectiveness of efforts to improve racial equity (including budget)</p> <p>Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents</p> <p>Division does not provide evidence of direct efforts to engage specifically with marginalized communities</p> <p>Due to overall lack of diversity at APD, division struggles to diversify staffing</p>

OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff)</p> <p>Lack of clear strategies or evidence of division’s commitment to institutionalizing principles of diversity, equity and inclusion</p> <p>External pressure from political actors weakens community trust in APD commitment to equity principles</p> <p>Structure and staffing model of division may impede fair and equitable investigations</p>

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Collects and provides demographic data on contractors/consultants

Division consults with the Office of Police Oversight to provide public documents and data on complaints

Consults with Office of Police Oversight to provide translation of some public documents into Spanish

Participated in community forums with Office of Police Oversight

Weaknesses

Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white)

Division does not collect data on racial disparities among client populations

Division does have strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement

Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents

Division does not provide evidence of direct efforts to engage specifically with marginalized communities

Due to overall lack of diversity at APD, division struggles to diversify staffing

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff)

Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Structure and staffing model of division may impede fair and equitable investigations, as IA officers are incentivized to protect one another, avoid retaliation by "going easy"

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

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Community + APD Equity Assessment Series: Austin Police Department, Finance Division

Research and analysis provided by the Peace Mill

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Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

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¹ Austin City Council Resolution 20150507-027

Analysis of Division Responses to APD Equity Assessment Results

APD's Finance division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Finance does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The Finance division shares many of the shortcomings of its equity assessment cohort. Finance does not have specific, measurable strategies in place for ensuring equitable hiring or contracting practices. The division does not have a process in place for ensuring the prevention of adverse effects of their programming on marginalized communities. The division also lacks clear community engagement strategies, standards or measures for improving racial equity, strategies for measuring racial disparities among its clients.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During community interviews, respondents' primary concern addressed accessibility and readability of finance data. Community respondents were interested in understanding how APD spends taxpayer dollars, but finance documents are typically written for internal purposes, which can create barriers for those unfamiliar with APD's institutional language. Respondents indicated a need for more accessible documents and reports, written at a reading level that is accessible to larger sections of the general population. This need is reflected in the division's own self-assessment. Division leaders seem to be aware of the need for more accessible information and committed to achieving this goal. Community respondents were also concerned about the general lack of translation, as most APD data is only available in English, including finance data.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Finance division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies to foster a culture of diversity, equity inclusion. The division's notable efforts to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Finance division can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Finance Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Collects demographic data on division staff</p> <p>Division staff diversity reflects diversity of Austin’s residents</p> <p>Division provides demographic data on contractors/consultants</p> <p>Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data)</p> <p>Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole</p> <p>Attends and provides information at some community engagement events focused on equity-related issues</p> <p>Identifies some division programming that make a targeted effort to provide programming in languages other than English</p> <p>Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability</p>	<p>Division does not collect data on racial disparities among client populations</p> <p>Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting</p> <p>Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color</p> <p>Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget)</p> <p>Does not collect client satisfaction data (including demographic data)</p> <p>Does not collect community engagement data that allows for equity analysis</p>

OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>External pressure from political actors weakens community trust in APD commitment to equity principles</p> <p>Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership</p>

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division staff diversity reflects diversity of Austin's residents

Division provides demographic data on contractors/consultants

Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data)

Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole

Attends and provides information at some community engagement events focused on equity-related issues

Identifies some division programming that make a targeted effort to provide programming in languages other than English

Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability

Weaknesses

Division does not collect data on racial disparities among client populations

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting

Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget)

Does not collect client satisfaction data (including demographic data)

Does not collect community engagement data that allows for equity analysis

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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**Community + APD Equity Assessment Series:
Austin Police Department, Human Resources Division**

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Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide “leadership, guidance, and insight on equity” and “to build and sustain a culture of equity across the city.” Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin’s Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin’s residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office’s partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin’s OGP commitments, OGP’s Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

¹ Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Human Resources division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Human Resources does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The division's responses to the equity assessment tool identify a series of opportunities for developing and implementing strategies for improving equitable outcomes. Like many APD divisions, Human Resources lacks division-mandated training on diversity, equity, and inclusion. Available trainings are voluntary. The division does have systems in place for assessing negative impacts of its policies and programs on marginalized communities, especially communities of color. While Human Resources collects impressive amounts of data and provides them in clear and understandable formats in response to the equity analysis tool, the division does not have a clear community engagement strategy, which can leave community stakeholders out of its decision making process and adversely affect communities of color and other marginalized communities.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Human Resources division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of institutional strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division is committed to the *ideas* of diversity, equity, and inclusion, but this is only one step of many. The division's notable effort to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing and implementing a long-term, equity-focused action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Human Resources division

can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Human Resources Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Division collects and provides demographic data on division staff</p> <p>Division collects and provides demographic data on contractors/consultants</p> <p>Division staff diversity reflects diversity of Austin’s residents</p> <p>Division provides strategies for strengthening equitable outcomes in hiring processes</p> <p>Division provides propositions for strengthening equitable outcomes for staff</p> <p>Division provides some translation of public documents, datasets, or other information into languages other than English</p>	<p>Division does not collect demographic data on racial disparities among client populations</p> <p>Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color</p> <p>Does not measure the effectiveness of efforts to improve racial equity (including budget)</p> <p>Division does not currently collaborate with other city departments to advance racial equity in Austin</p> <p>Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process</p> <p>Participation in diversity, equity and inclusion trainings are voluntary for division staff</p>

OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>External pressure from political actors weakens community trust in APD commitment to equity principles</p> <p>Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership</p>

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Division collects and provides demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division staff diversity reflects diversity of Austin's residents

Division provides strategies for strengthening equitable outcomes in hiring processes

Division provides propositions for strengthening equitable outcomes for staff

Division provides some translation of public documents, datasets, or other information into languages other than English

Weaknesses

Division does not collect demographic data on racial disparities among client populations

Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not currently collaborate with other city departments to advance racial equity in Austin

Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process

Participation in diversity, equity and inclusion trainings are voluntary for division staff

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

**Community + APD Equity Assessment Series:
Austin Police Department, Victims Services Division**

Research and analysis provided by the Peace Mill

December 28, 2020



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Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to “provide leadership, guidance, and insight on equity” and “to build and sustain a culture of equity across the city.” Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin’s Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess city departments and projects to ensure equitable outcomes for all of Austin’s residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office’s partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin’s OGP commitments, OGP’s Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

¹ Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Victims Services division performs a critical role and engages with thousands of Austin residents who are predominantly persons of color. With limited resources, the division makes a strong effort to communicate with its clients in multiple languages. Its staff is more diverse than some of its equity assessment cohort divisions, though staffing demographics do not fully reflect the demographic makeup of the division's clients in the community. The division does not have firm strategies in place to ensure a diverse staff or equitable hiring processes.

Like many APD divisions, Victims Services does not mandate division-specific training on diversity, equity and inclusion. Staff do voluntarily attend a wider variety of equity-driven training, mostly through UT's School of Social Work. However, the lack of mandated equity training reflects the wider trend at APD, with most divisions in this equity assessment cohort using ad hoc practices and relying on individual voluntary engagement with these critical learning opportunities.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

Community respondents who participated in qualitative interviews focused primarily on Victims Services' need for expanded translation capabilities. Respondents highlighted the broad diversity of languages spoken by victims of crimes in Austin. Respondents also highlighted the disparate impact that crime has on non-English speaking communities, including refugee and immigrant communities. Community members pointed to these disparities as evidence that APD must prioritize translation services as a high priority in any strategies for improving equitable outcomes created by its community programming. This concern reflects the responses of the division's leadership, highlighting widespread agreement that translation and equitable access must drive decisions and not continue to exist as an institutional afterthought.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Victims Services division's self-assessment, coupled with evidence gathered during qualitative interviews, highlights a unique need to prioritize translation services, access to information, and innovating community engagement strategies. The division's leadership expresses a desire to strengthen diversity among its staff and equity in the services it provides to clients, but like many divisions, Victims Services lacks clear strategies for ensuring equitable practices and outcomes. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, translation services, and other critical issues. By building on the knowledge of equity possessed by many of the division's staff, which includes many social workers, Victims Services can help the department build and sustain a culture of diversity, equity and inclusion that will have positive external effects for other divisions, community clients, and the City of Austin writ large.

SWOT Analysis: APD Victims Services Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
<p>Collects demographic data on division staff</p> <p>Division collects and provides demographic data on contractors/consultants</p> <p>Division collects some demographic data on clients served</p> <p>Division consults with Department of Public Health in equity-based discussions</p> <p>Attends and provides information at some community engagement events focused on equity-related issues</p> <p>Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base</p> <p>Engages in some community engagement events, provides Spanish translation at events</p>	<p>Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color</p> <p>Division does not collect demographic data on racial disparities among client populations</p> <p>Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff</p> <p>Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings</p> <p>Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes)</p> <p>Division does not currently assess reading level of written materials, other information</p> <p>Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color</p> <p>Does not measure the effectiveness of efforts to improve racial equity (including budget)</p> <p>Division does not collect client (community members, crime victims) satisfaction data</p>

OPPORTUNITIES	THREATS
<p>Development of concrete equity standards and assessment processes</p> <p>Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes</p> <p>Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices</p>	<p>External pressure from political actors weakens community trust in APD commitment to equity principles</p> <p>Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership</p> <p>Lack of institutional commitment to adequate translation services at APD threatens division’s specific and tremendous need to communicate in many languages other than English</p>

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division collects some demographic data on clients served

Division consults with Department of Public Health in equity-based discussions

Attends and provides information at some community engagement events focused on equity-related issues

Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base

Engages in some community engagement events, provides Spanish translation at events

Weaknesses

Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color

Division does not collect demographic data on racial disparities among client populations

Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes)

Division does not currently assess reading level of written materials, other information

Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not collect client (community members, crime victims) satisfaction data

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series: Community Engagement Process Evaluation and Recommendations

Research and analysis provided by the Peace Mill

December 28, 2020



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Acronyms

APD: Austin Police Department

C+APD: Community + APD (the informal name of the meetings between community and APD)

COA: City of Austin

EAT: Equity Action Team

SWOT: Strengths, Weaknesses, Opportunities and Threats, a type of analysis framework

Summary

This report assesses the pilot phase of the Community + APD initiative, a series of meetings organized and facilitated by the City of Austin Equity Office as part of its equity assessment of the Austin Police Department. In 2019, the City of Austin's Equity Office engaged the Austin Police Department in an uncommon strategy to address systemic inequities in policing. As local governments across the country struggled to address growing tensions between underserved, overpoliced communities and city police departments, the Equity Office invited the Austin Police Department and collection of community members to a series of important dialogues on equity and policing. This report assesses the strengths and weaknesses of the Community + APD initiative and provides a series of recommendations for improving future meeting series.

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process. While some community participants were associated with the Equity Action Team, others in attendance were unaffiliated residents.

Over the course of many weeks, community members and APD staff and officers engaged in direct, facilitated conversations on hiring practices, victim service provision, data collection, use of force training, and a host of other issues related to equity and policing in Austin. At each meeting, participants sat together over a locally prepared meal, co-created ground rules for the discussions, and proceeded through approximately two hours of facilitated discussion.

Community members led the discussions by asking questions related to each division's Equity Assessment Tool responses. APD division representatives, including sworn and civilian staff, responded to community members' questions in two main formats:

- Rotating small group discussions:
 - Divisions sit at separate tables with 3-5 community members

- Community members ask questions, division representatives respond, dialogue
 - After an allotted time, community members rotate to new division tables
 - Professional facilitator manages process, engages groups at random
- Static large group discussion:
 - Questions are sourced one at a time from assembled community members
 - APD responds to questions one at a time, dialogues with community members
 - Professional facilitator manages process, allocating specific times for APD responses and community followup questions

The report that informed this report includes several measures designed to assess the strengths and weaknesses of the pilot series of Community + APD meetings. To produce this report, the Equity Office engaged a local, third-party researcher to assess the pilot program and make recommendations for improving the process. This research included observation of Community + APD discussions, desk research (project documents, feedback forms and related reports), and a series of in-person, qualitative interviews. Interview respondents included APD staff and officers, community leaders, independent residents, and Equity Office staff.

Respondents were overwhelmingly supportive of the Community + APD initiative. Most offered recommendations for strengthening the program, but all respondents agreed that the Community + APD program was a worthwhile investment of community, City of Austin and APD resources. The Community + APD meetings created an uncommon mechanism for direct resident accountability and the multidimensional meeting structure facilitated a variety of group dynamics. Equity Office staff leveraged the Equity Action Team's deep community roots to recruit a broad spectrum of community participants. Despite a volatile political climate, Community + APD participants gathered each week and honored the contract that they had drafted together, engaging in a constructive and respectful dialogue.

This report's findings indicate a need for increased institutional support for the Community + APD initiative. City leaders should provide expanded resources to address shortcomings identified during the program's pilot phase. Interview respondents from all groups agreed that future participants would benefit from a more in-depth training/onboarding process, including informative sessions on the structure and history of APD, the equity analysis process and other topics that would facilitate more productive discussions. This report also offers a series of detailed recommendations based on the interview responses of Community + APD participants. These recommendations include:

- additional training + onboarding + relationship building sessions
- increased budgetary support
- incentive packages for Community +APD initiative community members
- codified equity assessment standards at APD
- implementation of guidelines for increased cohesion and engagement
- development of equity liaison role within APD to facilitate assessment process

During a time of unprecedented public mobilization and often hostile rhetoric on issues of equity and policing, the Community + APD initiative provides an opportunity for peaceful, constructive dialogue between representatives of the police department and the communities that they are sworn to serve. City leaders should provide increased support to ensure that the Community +APD initiative can play a role in the equity assessment process for all APD divisions. Through increased support for this hopeful initiative and broader institutional backing for equity-driven change across city government, Austin's leaders can take a small step step down the narrow path toward mending the deep wounds caused by decades of systemic oppression and structural directed toward Black, Latinx, Indigenous, immigrant, refugee, LGBTQ+ and other historically marginalized communities who live, work, and worship in Austin.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to “provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community.”¹ The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin’s historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

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¹ Austin City Council Resolution 20150507-027

OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

Community + APD Meeting Series: Background

In 2018, Austin's City Manager supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, Equity Office staff determined that it would benefit the process, the community and the police department to directly engage community members and APD employees in a series of dialogues over several months in 2019 as part of APD's equity assessment process. These meetings were generally referred to as "Community and APD." For the purposes of this report, the meeting series is referred to interchangeably as Community + APD or C+APD.

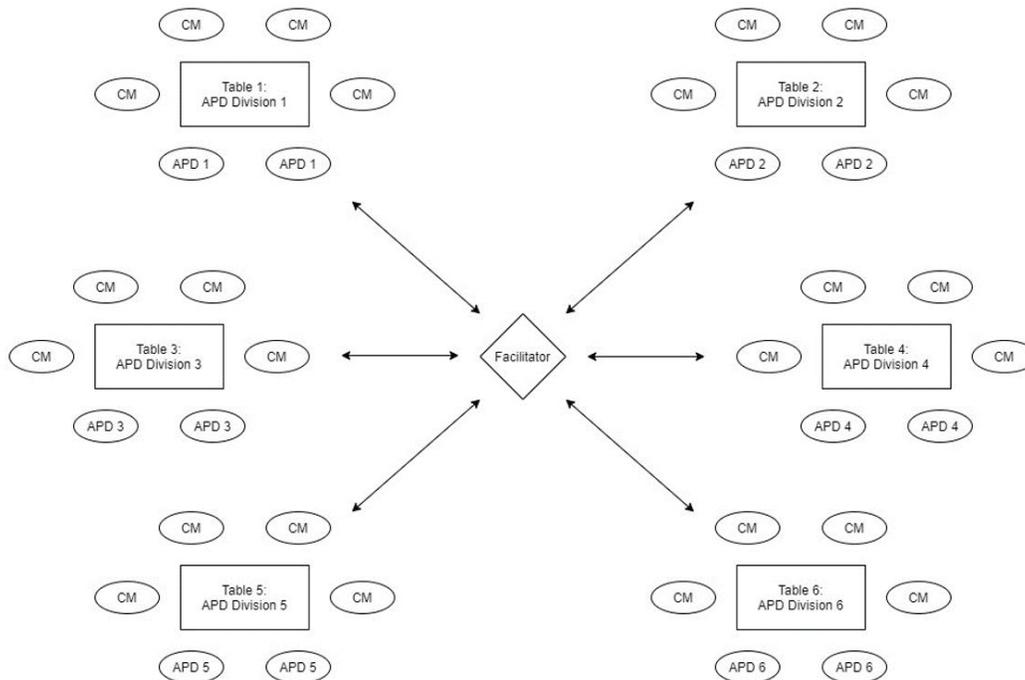
Community + APD Meeting Series - Overview and Structure

The pilot series of C+APD meetings involved seven APD divisions: Recruiting, Training, Finance, Internal Affairs and Professional Standards, Human Resources and Administration, Data Planning, and Victims Services. During the C+APD meeting series, meetings took one of two structures: small group discussions based on division or large format discussions, during which each division presented.

Small Group Format. During the first segment of meetings, participants met in small groups, with several community members gathering around a table with representatives from a single APD division (see Figure 1). Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses. After a period of time, the C+APD

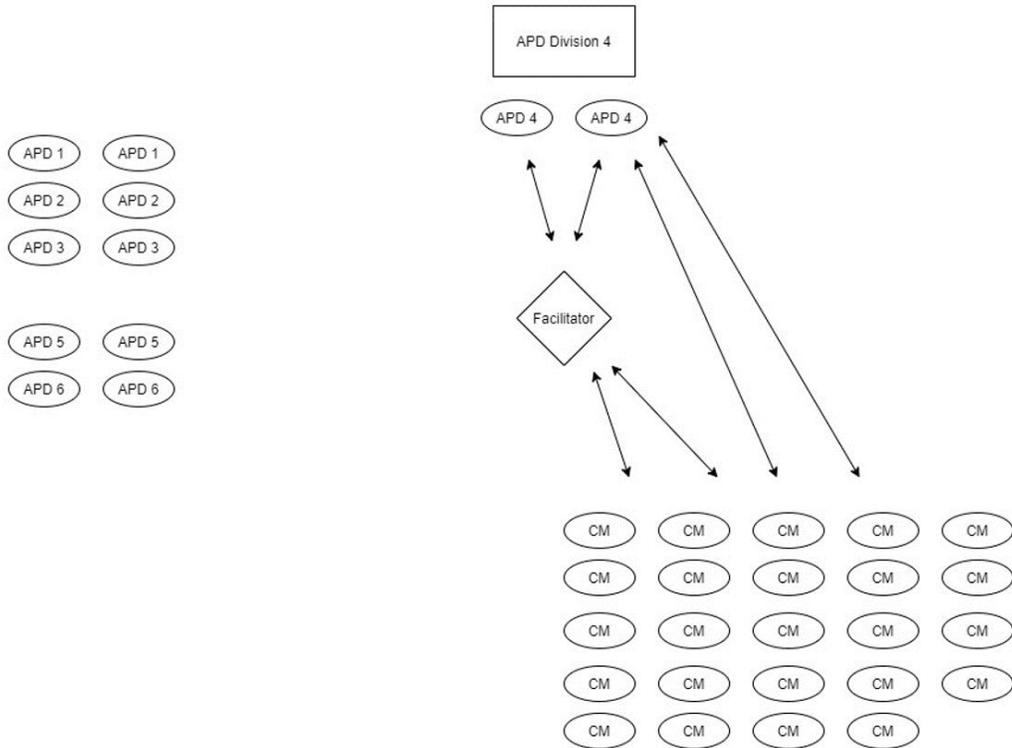
facilitator directed the community groups to rotate and join different division tables, repeating the dialogue process several times until the meeting was concluded.

Figure 1. Discussion Structure 1: Community + APD Equity Assessment Process



Large Group Format. In addition to the roundtable discussions, C+APD participants discussed APD equity assessment responses in a large group format (see Figure 2). Under this arrangement, rather than separating community members into small groups, community members remained gathered in a single, large group. Community questions were presented to APD division leaders one at a time, with an allotted period for discussion afterward. After the allotted time had elapsed, APD divisions rotated and the discussions continued until the meeting was concluded.

Figure 2. Discussion Structure 2: Community + APD Equity Assessment Process



To ensure transparency and accountability, the Equity Office contracted a researcher to attend C+APD meetings, observe interactions between participants, conduct qualitative interviews with participants, and produce recommendations for improving the C+APD equity analysis process.

The goals of this research and purposes of this report are to:

- Identify common themes expressed by participants
- Analyze the C+APD program's strengths, weakness, opportunities and threats
- Generate actionable, evidence-driven recommendations for future meetings

Since August 2019, the researcher tasked with producing this report has completed the following research activities:

- Community + APD meeting attendance and observation
- Desk research
- Semi-structured, qualitative interviews with C+APD participants

This report draws equally from the researcher's observations, background research and interview responses. During C+APD meetings, the researcher observed interactions between participants to identify common themes, obtained direct feedback from participants and documented the meeting structure and other details. Participant interviews included Equity Office/C+APD staff, Austin community members, and APD staff and sworn officers. Interviews were semi-structured and tailored to participant roles. While some questions were posed to all participants, APD staff and officers were asked questions that related directly to their role, work, experiences, and perspectives as members of APD. Similarly, community members were asked questions that related directly to their experience and perspectives as community members.

Interviewees self-selected into the study group. After the C+APD meeting series concluded, Equity Office staff provided the researcher with a contact list of C+APD meeting participants, both community members and APD. The researcher invited all C+APD contacts to participate in

an initial survey. Those who responded to the survey were invited to participate in a longer, qualitative interview. The researcher conducted twelve semi-structured interviews, during which respondents were asked a series of prepared questions. Upon completion of the prepared questions, the researcher asked participants to offer general thoughts, recommendations and general responses to the C+APD experience. Interview participants included APD staff and officers (5), community members (4) and Equity Office staff (2). Due to the sensitive nature of the interviews, concerns about possible retaliation toward respondents, and a desire to create a safe space where respondents could offer their unfiltered perspectives, the researcher anonymized the respondents. To this end and for the purposes of this report, respondents are described as APD employees, community members, or equity office staff. Any language that may indicate the identity of specific respondents has been intentionally omitted from this report.

Results

The organizers and participants of the C+APD undertook a difficult task with relatively little precedent. The pilot series of C+APD meetings provided a strong baseline upon which Equity Office staff can build future meeting series. While interview respondents offered a host of recommendations for improving the experience, each participant expressed overall satisfaction with the program. Equity Office staff increased accountability by engaging a wide range of community perspectives and including an evaluation mechanism. The C+APD facilitator varied the meeting structure, allowing participants to engage with one another in multiple formats, including small group and large presentation settings. City staff successfully recruited community participants with a range of perspectives, and participants honored a contract to engage in respectful, constructive dialogue.

Figure 3. SWOT Analysis of Community + APD Equity Assessment Process

Strengths	Opportunities
Strong buy-in from community, APD staff/officers and city staff	Strengthening citizen oversight mechanisms, reinforcing community dialogues
Direct community engagement provided by meeting structure provided increased transparency and accountability	Development and implementation of C+APD training curriculum
Multi-dimensional meeting structure increased opportunities for dialogue	Increased budgetary support to Equity Office for resources, staffing, translation services
City staff recruited broad spectrum of community participants	Incentive programs to strengthen community participation
City staff and facilitator created a “graceful space” - participants honored group contract	Development of standard equity assessment process within APD
Weaknesses	Threats
Lack of resources and incentives limits engagement	External pressure from political actors and political climate may influence participants
Community members and APD lacked comprehensive training, sufficient preparation	Fear of retaliation, other threats increase attrition and decrease participant engagement
Time constraints limit opportunities to build trust between community and APD	High profile incidents may influence participant engagement
Absence of accountability metrics makes it difficult to measure equity-related outcomes	Systemic, institutional racism threatens to prevent high level changes
Participants did not clearly understand goals or intended outcomes	Failure to codify equity standards and assessment processes weaken institutional memory

Through their discourse during meetings and their survey and interview responses, C+APD participants highlighted a litany of positive experiences, opportunities for improvement, moments of confusion, challenges, frustrations and hopes. This report synthesizes their ideas into an abbreviated SWOT analysis, highlighting the C+APD initiative’s strengths, weaknesses, opportunities, and threats. These are outlined in Figure 3 above and the bulleted lists below.

Strengths

- Strong buy-in from community members, APD and staff
- Direct community engagement and evaluation increase transparency and accountability
- Multi-dimensional meeting structure increased dialogue
- City staff recruited broad spectrum of community perspective
- “Graceful space” - participants honored group contract

Weaknesses

- Lack of resources and incentives limits engagement
- Community members and APD lacked comprehensive training, sufficient preparation
- Time constraints limit opportunities to build trust between community and APD
- Absence of accountability metrics makes it difficult to measure equity-related outcomes
- Participants did not clearly understand goals or intended outcomes

Opportunities

- Strengthening citizen oversight mechanisms, reinforcing community dialogues
- Development and implementation of training curriculum
- Increased budgetary support to Equity Office for resources, staffing, translation services
- Incentive programs to strengthen community participation
- Development of standard equity assessment process within APD

Threats

- External pressure from political actors and political climate may influence participants
- Fear of retaliation, other threats increase attrition and decrease participant engagement
- High profile incidents may influence participant engagement
- Systemic, institutional racism threatens to prevent high level changes
- Failure to codify equity standards and assessment processes weaken institutional memory

General Recommendations

Due to widespread support from community members, APD employees and City officials, the researcher recommends that city officials extend the Community + APD meeting series and include a series of C+APD meetings as part of each cohort of APD divisions' equity analysis process. While the pilot series of meetings accomplished a great deal of progress, the researcher has included the following list of recommendations to improve the C+APD process and the overall experience of C+APD participants. These recommendations are designed to represent participant voices by synthesizing the collective needs expressed during meetings, surveys and interviews.

Recommendation 1: Develop a training workshop that briefs participants on equity principles, equity analysis tool and process, APD systems and C+APD goals

Most interview respondents expressed a general lack of understanding of the overarching goals or intended outcomes of the C+APD process. Equity Office staff should develop and incorporate one full day or two half days of training for all C+APD participants that includes:

- Equity principles and frameworks
- History of Equity Office and equity assessment tool
- Equity assessment process: guidelines for implementation
- APD organizational history, systems, structure and processes
- C+APD process, goals, intended outcomes, and process

Recommendation 2: City officials should reallocate a portion of the public safety budget to the Equity Office to ensure the success and sustainability of future C+APD meeting series.

The Community + APD pilot program achieved remarkable results while operating with significantly constrained resources. City officials should increase budgetary support to the Equity Office to directly support the expansion of the C+APD initiative. The Equity Office should include specific funding for the expansion of C+APD in future budget requests, and City officials should honor these requests as a commitment to the community members engaged in

these critical dialogues. These resources should be reallocated from the public safety budget as an earnest investment and symbol of commitment to improving APD's relationship with the community.

Recommendation 3: To increase participation and mitigate attrition, officials should develop an incentive package for community participants who are attending as independent residents.

Community members struggle to participate in important initiatives such as the C+APD program. Many economic factors, including the cost of transportation and the lack of childcare, prohibit residents from participating in the C+APD initiative. To increase access to meetings and enrich the discussions with the voices and lived experiences of Austin residents, City leaders should fund the development of incentive packages for resident participants. These packages can include:

- Stipends to cover travel and participation costs
- Childcare services for families
- Translation services for non-English speaking participants
- Additional services or incentives that may increase engagement

Recommendation 4: To foster trust, APD officers and staff should attend meetings in business casual or casual "civilian dress" and should arrive at meetings unarmed.

Community members, APD staff and sworn officers all identified a need for increased trust between participants. During interviews, many respondents agreed that the mere presence of a police officer's tactical gear, especially an officer's service weapon, can make community members less likely to engage in a difficult, honest dialogue and generally make community members feel less comfortable. All C+APD participants should take measures to increase trust and foster a comfortable meeting space. APD leadership should direct all armed officers participating in the C+APD program to arrive in casual clothing and to attend meetings unarmed.

Recommendation 5: Officials must codify APD equity standards and assessment processes.

APD division leaders undertook varied approaches when completing the equity assessment process. Some division leaders collaborated with staff to provide comprehensive, quantitative answers to the assessment tool's list of questions. Other division leaders completed the assessment without input from other staff. In interviews, APD staff highlighted a lack of clear direction from APD leadership for completing the equity assessment process. By co-creating equity assessment standards with support from the Equity Office and codifying those standards as department-wide protocol, APD leadership can better support division leaders and ensure assessment results that are measurable, accurate and actionable.

Recommendation 6: Create an equity liaison role, overseen by the Equity Office, to ensure continual support and accountability for all APD divisions as they address inequities.

During interviews, APD participants expressed support for additional guidance during the equity assessment process. Most divisions and division leaders lack the additional time needed to learn and implement the equity tool well. City officials should create and fund an equity assessment liaison, a role housed outside of the police department to ensure independence. This individual would oversee the implementation of a systemic, department-wide equity assessment process. As new cohorts of divisions complete the assessment process, this equity liaison would provide support, guidance, and oversight of division leaders and their teams. The liaison would ensure that each division's equity analysis gathered measurable evidence and produced actionable results. The independence of this role, and of any positioning ensuring accountability to equity standards, is absolutely critical.

A note on Recommendation 6: Many public agencies assume that symbolic hiring will solve issues of organizational racism. Simply creating an equity officer (or similar administrative role) within the police department will not solve the systemic issues facing APD. Creating such a role within the police department would provide the opportunity for current leadership to evade its own obligations to serious reforms. Before any new positions are created within APD, the

agency must address the deep systemic and cultural problems that have been brought to light during recent events and during the C+APD meetings.

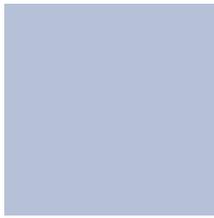
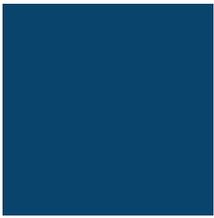
Conclusion, Context, and Insights

This report provides a series of achievable recommendations that comprise a single first step toward a stronger, more equitable relationship between the communities of Austin, Texas, and the privileged individuals who are sworn to serve those communities. These recommendations include increased financial and staffing support for the C+APD community dialogue series, actionable guidelines for APD employees to help build trust with community members, and codified equity standards to ensure deep systemic and cultural change at APD.

It is impossible to deliver this report without reflecting on the demonstrations taking place right now in cities across the United States, including Austin, in response to ongoing, systemic abuse and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; rapid militarization of local police forces; and cultures of racism, sexism, and homophobia among American police agencies. It is also essential to reflect on the ongoing police and military response to those demonstrations. How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for City leaders committed to building a more just and equitable Austin.

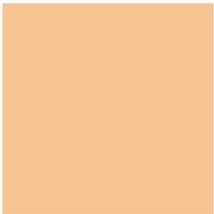
About the Researcher

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Racial Inequities and Institutional Racism:

A Report Submitted to
The City of Austin Equity Office
and
The Austin Police Department



Joyce James Consulting
Equal Treatment Does Not Lead To Equity

November 2020

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ACKNOWLEDGEMENTS

I would like to express my appreciation to the Joyce James Consulting team, for their time and expertise in completing this report. Your contributions were invaluable during the entire process of developing this comprehensive review and analysis of racial inequities for the City of Austin's Office of Equity and the Austin Police Department.

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EXECUTIVE SUMMARY

Introduction

Joyce James Consulting, LLC (JJC) prepared this report for the City of Austin (City) Office of Equity (OOE). The OOE engaged JJC to help identify racial inequities within the Austin Police Department (APD) and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture to include selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and work with the APD and OOE to develop the strategies and objectives based on the findings from the documentation review, interviews, training, and debrief.

The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems. By assisting in the development of organizational cultures that actively engage in sustainable strategies to eliminate racism, JJC works to improve systemic outcomes for all populations.

JJC has decades of unique experience and proven success in reducing systemic racial disproportionality and disparities. Using the Texas Model for addressing racial inequities as an analytical framework and the Groundwater Analysis of Racial Inequities, JJC's work focuses on the intersectionality of racial inequities and deeply rooted institutional and structural racism.

Theories of Action

The success of the Texas Model, pioneered by Joyce James, is attributable to three theories of action: transformative learning, critical race theory (CRT), and adult learning.

Transformative learning is the "process of experiential learning, critical self-reflection, and rational discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Through transformative learning, key leaders and critical stakeholders will develop new learning that constructs and appropriates critical shifts in interpreting quantitative and qualitative data and information on racial inequities (Taylor, 2008).

Relative to transformational learning, key features of the critical race theory will serve to enhance and inform equity strategies. CRT argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged" (DeMatthews, 2016).

Finally, the adult learning theory, in this context, means "making" or building "knowledge construction" in a way that fosters "critical reflection...essential for transformative learning" (Merriam, 2008). Leadership learning must take place using strategies that promote reflection, discussion, and action.

Background

The APD is a quintessential twenty-first century urban law enforcement organization. With more than 2,600 sworn and civilian personnel, the APD operates inside a densely populated city core and citizenry of nearly one million. Like many urban U.S. cities, the APD data show decades of racial disparities. That is, the known differences in how APD officers interact with people in communities of color.

City leadership is demanding change and voice a commitment, "...to implementing policy and cultural changes to address the disproportionate impact of police violence on people of color and other affected communities." To this end, the OOE and APD are working to make institutional and structural racism, which may be invisible to some, consciously aware to all. The ongoing, intentional and deliberate effort now underway by the APD is critical to moving beyond a somewhat singular emphasis on the bias, prejudice, and bigotry of racism at an individual level to a deeper more systemic analysis of the APD policies, practices and procedures that contribute to racial inequities and a culture that may be at work to keep them in place.

Methodology

Documentation Review

The documentation review reflects a national context when appropriate. While the OOE engaged JJC prior to the death of George Floyd and subsequent protests in Austin and across the country, racial strife in our country is not new nor is the racial strain between the police and the citizens (Brown, 2020; also see NPR on History of Policing in America).

The documentation review was inclusive of the following reports and documents:

- *Austin Police Department Independent Investigation Fact Investigation (referred to as the “Tatum Report”)*
- *Analysis of Austin Police Department’s Racial Profiling Report, January 2020*
- *The Science of Policing Equity*
- *Austin Police Department Annual Racial Profiling Report (Years 2006-2017)*
- *Community Policing Advancement in Austin*
- The APD Response to the Joint Report
- APD Training Academy Review and Strategic Plan

Interviews

To further examine the current APD institutional culture, JJC conducted interviews with individuals and small groups of internal and external stakeholders. These groups included civilian and sworn staff, affinity groups, the Office of Police Oversight, the OOE, and community members. It should be noted that throughout this report, where possible, the comments of interviewees are verbatim. However, because sessions were not recorded, some verbiage may have been missed. Additionally, when the interviewee/respondent could be identified by their comments, those comments were summarized to maintain the confidentiality of the process.

APD Climate Assessment Survey

To further assess the current APD culture about race and equity, both civilian and sworn staff completed a racial equity assessment. The entire survey can be found in Appendix A and specific responses are provided in the appropriate sections of this report.

“A Groundwater Analysis of Racial Inequities” Training

JJC conducted a two-day Groundwater Analysis workshop for APD sworn and civilian leadership, representatives of the equity office, and members of the community on September 24-25, 2020 (Appendix C). JJC pre- and post-training surveys and an evaluation were completed by participants. The initial evaluation responses from many participants were that “this is the best training we have ever had” and post-training surveys confirm a significant and positive shift in their understanding of institutional and structural

racism and the impact on the racial inequities that exist within APD culture. Complete analysis of participants’ responses on the surveys and evaluation are provided in Appendix D this report.

Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010)

Developed in 2010, the Texas Model for Addressing Racial Disproportionality and Disparities (Texas Model) has been found to effectively reduce racial inequities and improve outcomes for all populations in Texas (James, et. al., 2020). The Texas Model, described below, serves as the analytical framework for the JJC APD recommendations in this report.

- Data-driven strategies: regularly collect, research, analyze, and evaluate data in line with a racial equity approach
- Leadership development: grow both systems and community leaders that are courageous and grounded in a racial equity approach
- Culturally competent workforce: develop workforce that reviews and examines its work through an anti-racist and humanistic lens
- Community engagement: recognize strengths of grass roots community, hear its ideas, and include it throughout process
- Cross systems collaboration: share data, training, and dialogue with systems, institutions, and agencies that serve the same populations
- Training defined by anti-racist principles: train ourselves and partners in principles that ensure we work at cultural and institutional levels
- An understanding of the history of institutional racism and the impact on poor communities and communities of color: develop common analysis of racism and history that led to current outcomes

Documentation Review—General Conclusions

Tatum Report

Interviews and surveys tended to support the Tatum report allegations of internal negative issues at APD regarding race, gender, and sexual orientation. Interviewees regarded the handling of the report as generating a lack of trust and a view that specific action would not be taken to remediate the problems. Survey data indicated that African Americans were less satisfied

with the workplace climate related to promotion, complaints, and fairness than Hispanics/Latinxs and Whites. Women were more dissatisfied than men along these survey dimensions.

Police Profiling

National and local data indicate that a higher percentage of African Americans, and Latinxs were stopped, cited, arrested, and searched than Whites, even when other factors were considered (e.g., visibility of occupant). It is also on the rise. Three reports responding to the profiling data were reviewed. This, as well as interviews, and survey data on attitudes toward race, gender, and sexual orientation converged to paint a picture of an institutional culture that lacks accountability at the leadership level in responding to repeated complaints about racism, gender, and sexual orientation. Interviews with management indicated their awareness of the report findings as did community members. Survey data on attitudes toward race indicated that African Americans generally were in less agreement with APD's tolerance toward race, institutional and structural racism, non-discriminatory practices, and their ability to raise questions and provide solutions along these lines. The findings were acknowledged by the Chief of Police and his response to the recommendations in the profiling report are elaborated verbatim in Response 3 to the profiling report. We also recommend as part of the data analysis above in the Texas Model that police profiling should contain a thorough verification and clear, transparent reporting of whom they stop, and should require a more comprehensive analysis (e.g., causative factors such as poverty, race community, crime, dispatching, etc.)

Use of Force

The sources of information reviewed converge on use of force being, in part, racial. The 2016 Austin data clearly show that force and force severity is disproportionately used on African Americans, even when other neighborhood demographic characteristics such as poverty and crime are considered. National data on police shootings show that African American men and women, and Latino men and Latina women are far more likely to be killed than White men and women. APD reported twelve cases with Officer involved shootings for the year, with five ending in fatalities. All five were minorities. The survey indicated that most respondents are aware of the police reports contained in this document, including profiling

and the use of force. Interviewees suggested more consistent use of body cameras and training that focuses on examining socialized attitudes and assumptions that have led to fear on the part of the police to communities of color. Recommendations included greater specification of force and shooting incidents in reports (to include the mentally ill) and increased training on de-escalation.

Police Training

The report on training by Dr. Villanueva was consistent with the survey in this report as were the interview comments. These lined up with national information. Weaknesses were found throughout the system and included the structure, culture, curriculum, and teaching effectiveness. The paramilitary format and less attention to different learning styles and community policing were found to lead to greater attrition. Moving from a warrior mindset to a guardian mindset was one of the stronger recommendations as was more diverse recruiting and greater discussion on the criteria for rejection (e.g., credit scores, financial status). These sentiments were echoed in interviews along with the need for resolving complaints by recruits, better mental health and trauma training, improved recruitment of more officers of color and women (national data also reflect this), diversity of instructors and materials presented, more information on institutional/structural racism, mentorship, and developing a better career path for recruits. Recommendations included transformation to an adult learning model, more attention and awareness of racial issues, and community placements for cadets to help build relationships in the community.

Community Policing

National data, local interviews and survey data all confirm that community policing in Austin could be improved. In particular, the information suggests that the community itself should have a much more active role in building a partnership and working in collaboration with the police in their communities. The national data suggest what community policing could be, how it could affect legitimacy, and satisfaction on all participants and even crime. However, there are three obstacles that impede these goals: (1) the lack of time on the part of the police and lack of trust in them, (2) the lack of empowerment of the marginalized communities to have a true partnership with the police, and (3) over-policing these communities. African American survey

respondents were less likely to endorse the current effectiveness of community policing than Whites or Hispanics/Latinxs.

Recommendations

The following JJC recommendations outline the proposed APD strategies to reduce and ultimately eliminate racial inequities, institutional racism, including gender and sexual orientation within its systems and improve outcomes for all populations.

Data Driven Strategies

- Examine data on the attrition rates of Blacks and develop new strategies for recruitment and retention.
- Use data to inform and obtain input from internal and external stakeholders to develop a new and bold out of the box community policing model in a real community engagement process.
- Assess the capacity of new and existing staff to examine old attitudes, assumptions, and stereotypes about race, gender, and sexual orientation.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress.
- Verify that police profiling ensures clear and transparent reporting of whom they stop and undergo a more comprehensive analysis (e.g., causative factors such as poverty, race, community, crime, dispatching, etc.).

Leadership Development

- Demonstrate a higher level of accountability for creating a visible anti-racist institutional culture at all levels of leadership within APD.
- Take steps to create a short-term career ladder to hire/promote a critical mass of African Americans in leadership positions, including Commanders and Assistant Chiefs.
- Require representatives from the executive team, including internal affairs, the union, and all affinity groups to participate in regular and ongoing leadership development sessions to intentionally expand their racial equity lens and build their capacity to contribute to reducing inequities and improving outcomes for all.
- Review employment policies and practices through a racial equity lens, especially as they relate to promotions, transfers,

and hiring disqualifiers. For example, consider allowing second chances for bad credit, eviction, and so forth.

- Include in the field training officers program opportunities to ensure that new officers transfer their academy training to the field regarding racial equity. For example, explore including “ride-alongs” in the community as a part of the academy training.

Culturally Competent Workforce

- Add racial equity training (Groundwater Analysis) to (a) supervisor training class; (b) the 40-hour officer re-certification class; (c) academy instructor training; and (d) existing cadet academy diversity training. **The Groundwater Analysis training is TCOLE approved for credit for diversity training.**
- Utilize the Groundwater Analysis workshop for racial equity training with leadership and staff at all levels that includes a focus on understanding institutional and structural racism that has led to socialized attitudes and assumptions resulting in fear on the part of the police in communities of color and leading to more arrests, shootings, and fatalities.
- Develop a timeline for training all APD staff and special units in the Groundwater Analysis.

Community Engagement: a four staged process

- Implement the JJC Community Engagement Model (Appendix B).
- Develop, in collaboration with APD and TPOA, a mentoring program for African American cadet populations who have been impacted by institutional and structural racism.
- Invite individuals and community groups no longer engaged with APD back to the table.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.
- Develop specific strategies to hear voices from all segments of the community, e.g. homeless, LGBTQ(IA+), inclusive of black trans women.

Cross Systems Collaboration

- Collaborate with City of Austin's departments and other systems that are making decisions that impact APD's work, e.g. education, housing, health/mental health, CPS, and financial institutions.
- Develop strategies that result in optimal collective impact on internal and external communities.
- Convene an information sharing summit that includes

all of the various groups that are working to develop plans that impact APD e.g. Reimagine Austin.

Training Defined by Anti-Racist Principles

- Develop a formalized process for all new cadets to engage with the communities that experience the most disparate treatment in relationships with APD, as part of their training.
- Make it clear on the front end of hiring and throughout the system that there is zero tolerance for racism.
- Examine and remove any materials, videos, etc. that stereotype Black men as being more criminal.

An Understanding of the History of

Institutional Racism and the Impact on Poor

Communities and Communities of Color

- Develop processes during ongoing JJC strategic planning sessions to monitor, measure, evaluate, and make visible, the strategies for addressing the long history of racism that has continued to create and perpetuate less than desirable outcomes for internal and external stakeholders.
- Apply a deeper awareness and sensitivity to Black culture in the hiring process.
- Develop strategies to eliminate excessive use of force while at the same time considering the common goal of APD's desire for officers to go home after every shift, and the community's desire for their loved ones to come home after being stopped by the police.
- Use the true history of policing to raise the awareness of all APD officers and staff about the lingering effects of racism.

Quick Wins

1. Circulate an agency-wide communication from the Chief utilizing the consultant's report as a vehicle for opening lines of internal communication, acknowledging mistakes, and making the commitment to lead the work of creating an anti-racist institutional culture in APD. (This will be ongoing, but it can start right away.)
2. Provide Groundwater Analysis workshop to APD recruiters and training officers in advance of the next cadet class.
3. Based on positive response, prioritize Groundwater Analysis training at all levels of APD, with a specific focus on those areas with the greatest need for immediate training, based on the very

positive response to the recent workshop.

4. Identify in collaboration with APD communications, various opportunities to share and discuss this report with the community and obtain their feedback on the recommended strategies.
5. Begin planning for a specific community engagement initiative with residents of a Patrol Sector to be identified with input from community stakeholders, assigned officers, and Affinity Groups such as TPOA, that will focus on building trust and opportunities for a new and effective model of community policing
6. Incorporate recommended strategies for working with TPOA into this framework to ensure consistency in working from an analysis of institutional racism and through a racial equity lens.
7. Engage and utilize the voices of community members involved in the Groundwater Analysis workshop, debrief, and strategy session to work with APD in regaining the trust of the community and to ensure their ideas do not get lost in the process.



DOCUMENTATION REVIEW AND ANALYSIS

The Tatum Report

Review of the Report

The Tatum Law firm was hired by the City Manager (City of Austin) on November 15, 2019 to conduct an independent investigation as to the validity of allegations of discrimination and misconduct *within* the Austin Police Department. Three of the complaints filed with the Office of Police Oversight were anonymous and two of the allegations were filed by Commander Jason Dusterhoft.

The Tatum Report listed the following complaints and allegations to be investigated:

The first anonymous complaint was filed against Assistant Chief Newsom and Chief Manley. It alleged that Assistant Chief Newsom had been using the “n---” word to describe African Americans for over a decade and his conduct was evidenced by text exchanges which Chief Manley was aware of. There was also an amendment to this anonymous complaint filed alleging that Assistant Chief Newsom was notified of the complaint against him for racist behavior before the investigation began, allowing him to retire and receive full retirement pay. Next, an anonymous complaint was filed regarding an anti-gay environment within APD, alleging Chief Manley supported the anti-gay mindset of Assistant Chief Gay in advocating the use of gay conversion therapy. Last, allegations were raised by Commander Jason Dusterhoft during his arbitration hearing which includes twelve instances of criminal or APD violations (7 allegations and 5 examples of disparate treatment or attempted retaliation) which he states were reported by him directly and to Assistant City Manager Rey Arellano. He also filed a complaint alleging failure to comply with subpoenas issued to Chief Manley, Chief of Staff Gay, Assistant Chief Newsom, and Assistant Chief Chacon for testimony or production of documents related to his arbitration hearing.

Ms. Tatum was not able to substantiate these allegations, and after numerous attempts and interviews, she was unable to obtain documents and evidence pertaining to the complaints under investigation. Some evidence was outside of the 180 Day rule and

therefore not applicable and other documents were not able to be located by APD. Among the 74 interviews performed by Tatum Law, twenty of those individuals asked to be anonymous. There were several conclusions made by Ms. Tatum’s team after conducting these interviews. One, there was a high level of fear of retaliation among active duty officers and unsworn staff. Second, there was an exceptionally low degree of expectation by these individuals that any investigation would reveal the truth based on past experiences. Last, there were doubts to the sincerity of City leadership to enforce changes necessary for APD to improve practices.

The theme of retaliation is evident throughout the interviews. These interviews also exposed how inconsistently complaints and officer misconduct are handled. The current policy allows for these matters to be resolved or dealt with in several different ways by different departments. Currently, the complaints or misconduct have the option to be handled by a direct Supervisor, Assistant Chief, Chief of Police, or Internal Affairs. Tatum Law advised that a “more uniform application of policy would result in more predictable and suitable outcomes.” This will also help to prevent a discriminatory process in relation to disciplinary action. As an alternative, Tatum Law suggests APD address these reports through several avenues, including improved education, training, restructuring, re-assignment, and removal if necessary. In relation to the way officer conduct is handled, Tatum Law identified two policies in need of possible reform, the 180 Day Rule and the Meet and Confer Agreement.

Some other areas for improvement were pointed out through challenges faced by Tatum Law during their investigation. Another area where improvement was needed was with the Department’s file management and retention system. Many documents requested in the investigation were not able to be located by APD. Also, Tatum Law suggests that “further training as it pertains to management training, and unconscious bias, racial, and cultural sensitivity training would be helpful to improve the current culture in the Department.” Also, developing policies around the use of department issued property and equipment is necessary. A good start would be by implementing an electronic communications Code of Conduct and possibly an off duty social media policy. Finally, to provide further insight into the challenges that were presented from this investigation, Tatum

Law suggests it would be useful to gather more information to help identify trends within APD. Tatum Law feels this information “will enable City leadership to continue with a more focused direction of its mission of undoing racism as it pertains to APD.”

Overview of the Report Recommendations

- Reevaluate the 180 Day Rule
- Reevaluate the Meet and Confer Policy
- Train all personnel on awareness of cultural sensitivities and racism
- Improve file management and retention
- Establish an electronic communications code of conduct
- Apply more uniform policies surrounding disciplinary actions

Key Observations/Comments from Interviews

- Through numerous individual and group interviews, JJC confirmed the Tatum report finding that some officers were reluctant to respond to consultants' questions. But others were transparent and forthcoming. Those who spoke freely opined that others were reluctant because they have seen no results after speaking with previous consultants and completing numerous surveys.
- Several high-ranking officers also expressed frustration with the Tatum report because they would have preferred more specific examples and strategies for addressing the disparities described.
- Throughout the Tatum interviews, reports by various ranking officers of different genders and races revealed that racist and sexist name calling, and the use of derogatory terms is persistent within the department. Many also expressed frustration that when reports of discrimination are made, there is no action, or they are held in excess for 180 days and then disregarded. Both officers and civilian staff interviewed expressed concern that complaints filed are handled unfairly and almost certainly comes with retaliation.
- The vast majority of JJC interviewees agreed with the Tatum findings listed above, which resulted in a lack of trust at APD, both internally and in terms of public image in the community. Many cited poor communications among employees as a contributing factor to mistrust. Some also said that employees who talked to the media not only lacked support but were victims of retaliation. In addition, a “code of silence” after the Newsome incident

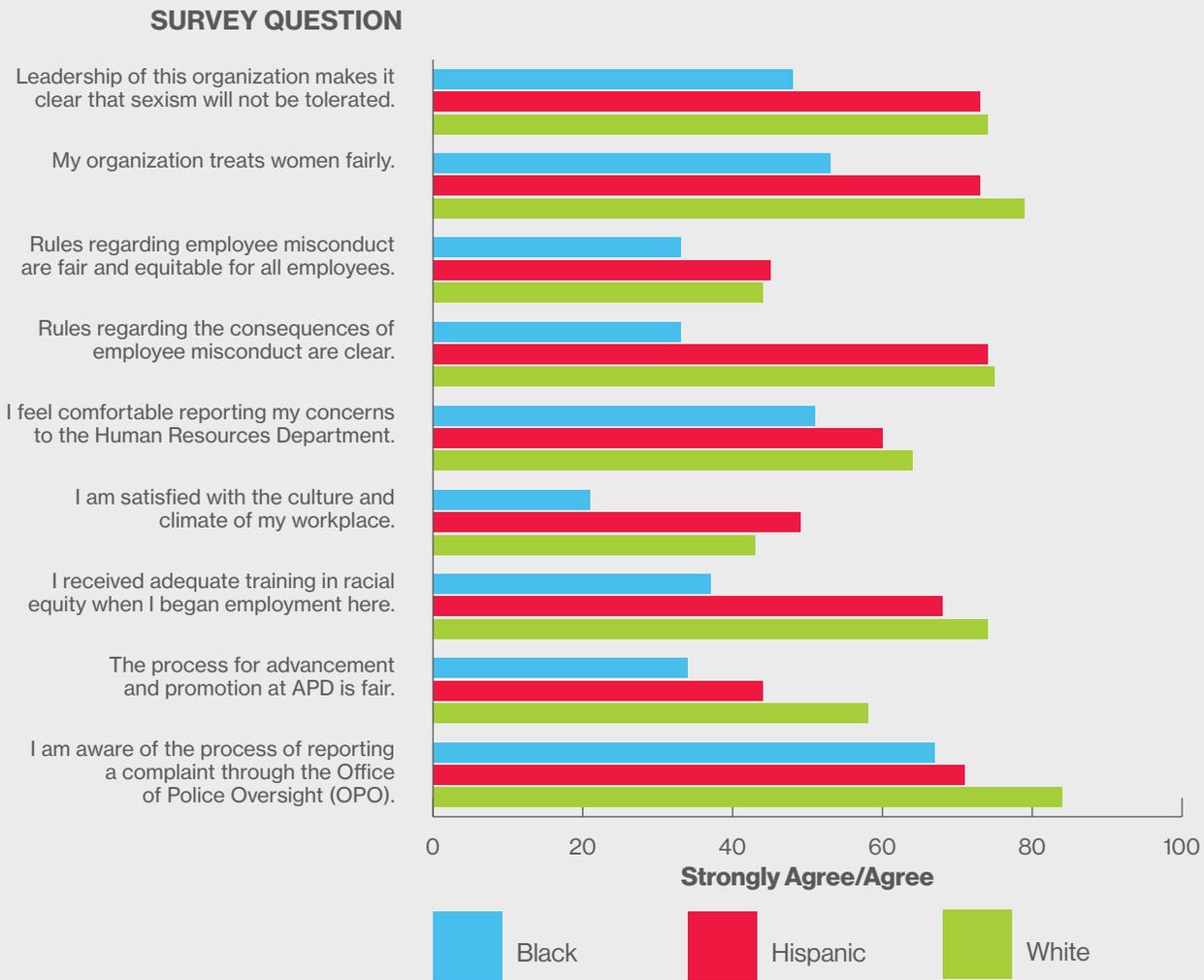
contributed to low morale. This mistrust has led to a view that the “Fifth Floor” supports the Union more than sworn officers.

- The Tatum Report recommended that the Department's file management and retention system be improved.
- When Tatum Law requested documents regarding evidence of disciplinary action, they were told they could not be found. With maintaining a more consistent file system the City could conduct audits assuring compliance with disciplinary policies.
- They felt that racial incidents were “swept under the rug” due to a poor management system. Others noted that the file management system is extremely antiquated; that paper files are kept in filing cabinets, and that files are not separated by race.
- Technology, such as more advanced forensics, is needed and should stay with APD because some aspects are only available to officers.
- Other systems that are automated do not talk to each other, making file retrieval cumbersome and time-consuming at best, especially when files are needed from multiple systems.
- Chief Manley took the lead on responding to the Tatum report, even though many of the charges were against him. The response and recommendations were pushed to the side or forgotten about. They didn't talk to HR.
- To achieve the cultural change necessary in the present climate, APD leadership at the top must have the political acumen, courage, strength, and awareness to get it done.
- The current structure of Human Resources is multilayered and limits effectiveness. One area needing improvement is more of a focus on what an individual should do if treated unfairly. Re-aligning divisions does nothing to address bias and racism.
- The Tatum report noted lack of defined professional development or career path.
- Some indicated that it is difficult for civilians and women in law enforcement.
- Women feel ignored at meetings and left out. As a civilian, they're treated as lower level employees. They feel like they are not part of the team.

Survey Data

There are eight survey questions that address directly or indirectly, issues related to the Tatum report. They are shown in the figure below. The responses range from an average of 2.86 to 4.06 on a five-point scale. (See Appendix A)

Figure 1: Internal Organizational Issues by Race/Ethnicity



Survey responses reflect that the experiences of White and Hispanic men are mostly positive and differ significantly from that of Blacks and Women.

Most notably, shown in Figure 1, Hispanic/Latinx and White respondents report more agreement with the climate of the workplace, equity training, fair advancement and promotion, the process for advancement, comfort reporting complaints and concerns, and the fairness of the rules than African American respondents. It is noteworthy that females do not think the organization treats women fairly compared to males. Moreover, females have somewhat less agreement with all internal organizational issues than men

These difference as they relate to the experiences of women and Blacks in APD, align with the overall findings in this report ..

The Joint Report on Racial Profiling, Responses and National Data Austin Data

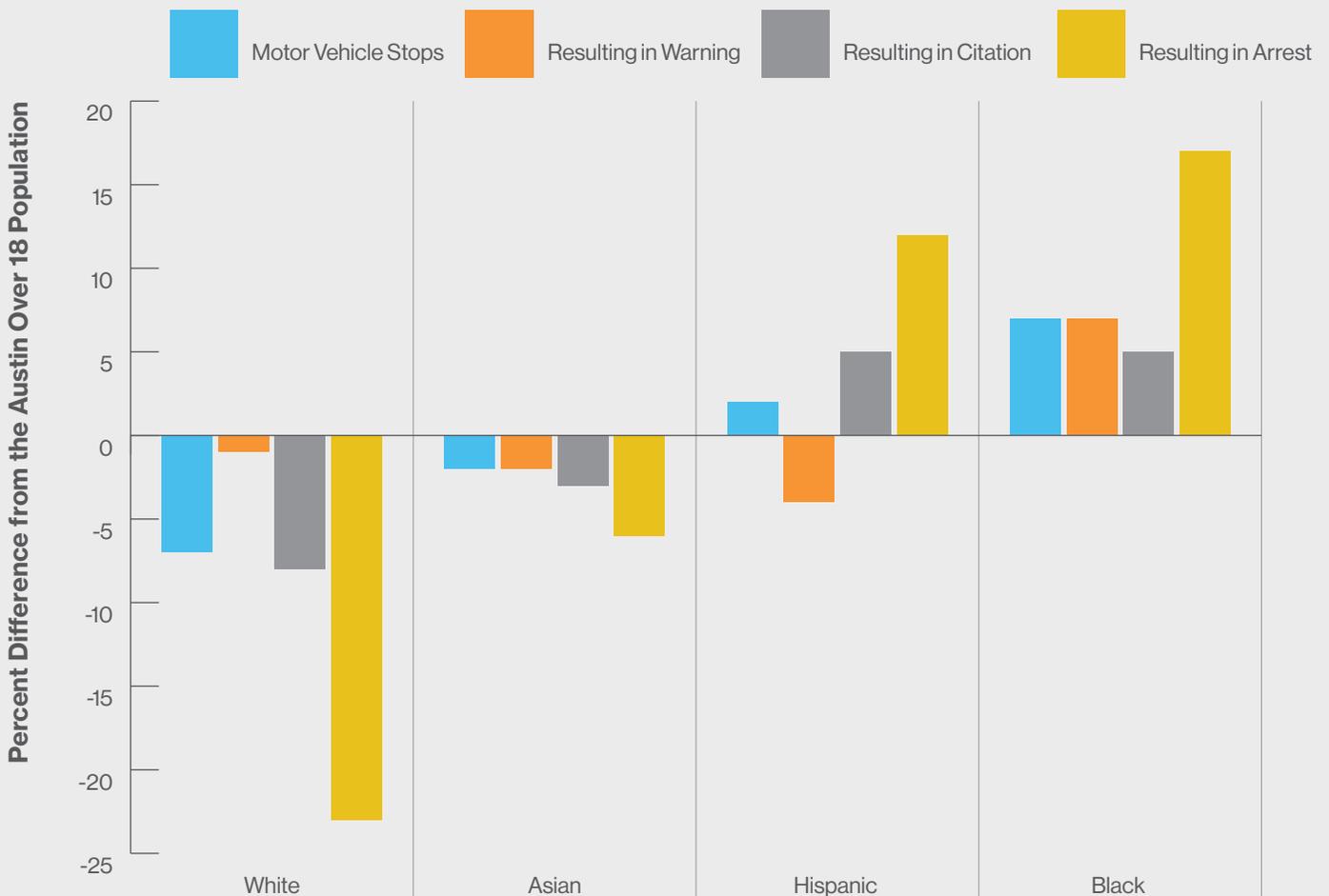
The Office of Police Oversight, the Office of Innovation and Equity Office issued a joint report on racial profiling (2020). That report contained information about motor vehicle stops, arrests, citations, warnings, and searches. The data were broken down by race/ethnicity and for the years 2015 to 2018. The figure above displays a summary of the data for 2018 because, with one exception, (fewer warnings for Hispanics/Latinxs) the pattern over the years is quite similar. Relative to their percentages in the driving age population, a higher percentage of African American drivers receive a higher percentage of stops, warnings, citations, and arrests than White drivers. They are followed by Hispanics/

Latinxs and Asians, relative to Whites. Warnings generally occur more to the West side of Austin and arrests more to the East side.

The telling difference between warnings vs. arrests in West and East Austin could suggest to some, a difference in driving habits of the minority communities on the East side. However, national data on differences in traffic stops at night vs. daytime suggests that the warning data and the very large differences in arrests between African Americans, and Hispanics/Latinxs compared to Whites are race related. The Austin data itself tell a similar story. Discretionary vs. non-discretionary stops resulting in citations or arrest in Austin

suggests racial profiling (Goff, Obermark, LaVigne, Yahner, & Geller, 2016). Findings (shown in "Racial Profiling A") indicate higher officer discretionary stops and arrests for African American than White or Hispanic/Latinx drivers. Finally, data on stops, searches and resulting search/findings suggest race is a significant factor. Findings from APD's Racial Profiling Report indicate that traffic stops resulting in searches are higher for African Americans and Hispanics/Latinxs than Whites, relative to the percent driving age. Further the 4% difference in search/finding rates between African Americans and Whites does not explain the 41% difference in searches. Though less pronounced, the findings are similar for Hispanics/Latinxs vs.

Racial Profiling A: 2018 Percent of Racial/Ethnic Groups Profiled in Relation to Percentage in Population



*Data from Joint Report on Racial Profiling Charts 1, 2, 3 & 4

Whites. In addition, the Austin data from Goff and his colleagues (2016) indicate a higher search rate for African Americans than young Hispanics/Latinxs relative to Whites (more so when the race was known) but similar search/finding rates for the three groups.

As a final note in this profiling section we show below in the figure that traffic stops have risen over the years for African Americans and Hispanics/Latinxs.

Overview of Recommendations

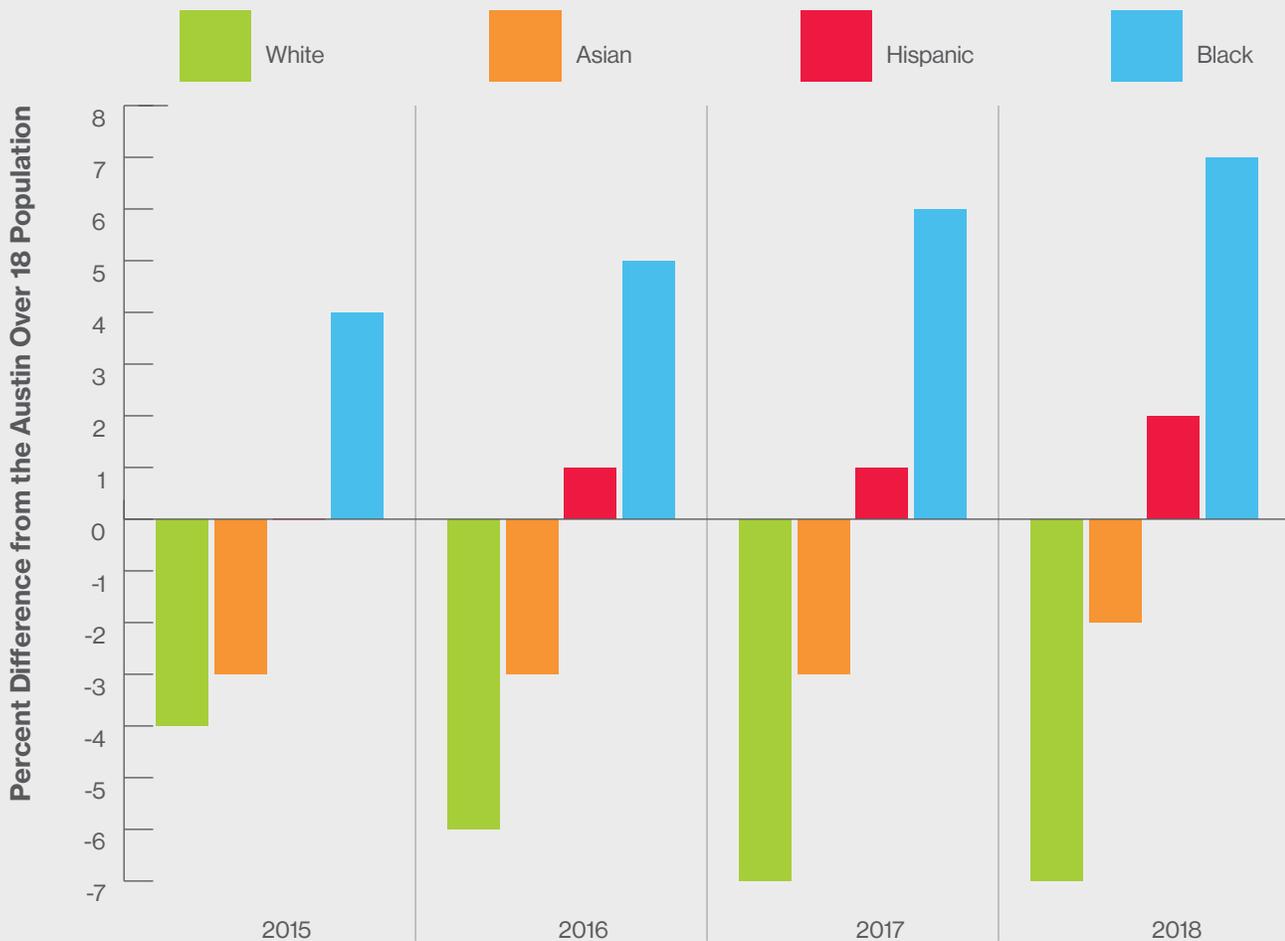
- Acknowledge that racial disparity exists and is worsening.
- Gain community trust and decrease racial disparity in all

aspects of the report (traffic stops, arrests, citations, searches, use of force) yearly to arrive at zero racial disparity by 2023.

National Data

A large nationwide study is consistent with the Austin data and provides more context. Pierson and his colleagues (2020) found that African Americans were more likely to be pulled over for a traffic stop than Whites (over 100 million stops were assessed), yet this difference disappeared at night (the darker the sky, the less the disparity). Further, searches occurred less often for Whites, though they were more likely to be found with drugs than African Americans and Hispanics/Latinxs. Interestingly, where and when marijuana

Racial Profiling B: Traffic Stops by Race/Ethnicity 2015-2018



*Data from Joint Report on Racial Profiling Report Chart 1

had been legalized for recreational use, the search threshold was higher for Whites. Other studies have found similar results for stops, searches, results of searches, and arrests (see references at the end for the original article or the policing and profiling link in a Balco 2020 article in the Washington Post for more information).

Key Observations/Comments from Interviews

- Most executive staff/management at APD are aware of the racial profiling data and acknowledged these disparities existed and are worsening.
- A small number of officers indicated that they had not seen instances of racism at APD and when asked about profiling specifically, thought that officers making traffic stops were doing so appropriately.
- In recruiting, there are those who look for ways to disqualify people. They take pride in ruling them out. They are comfortable making disparaging comments about women and Blacks. This has been going on for a long time.
- See APD Response to Racial Profiling below for citizen responses and more APD responses.

Responses to the Report

Response 1

January 14, 2020, Police Chief Manley submitted to City Manager Cronk, a memorandum that “unequivocally acknowledged that racial disparities are prevalent throughout many aspects of our City, including police enforcement actions.”

This document listed the steps that had been taken to address the disparities within APD’s purview over the last five years. Five of these steps addressed broad categories of collaborative improved analyses of disparity data, the use of available analytic frameworks and technologies (e.g., body cameras), and obtaining feedback from the community. Three addressed training, noting the use of implicit bias training for new recruits, hiring an expert to review the training, and improving diverse recruiting. Four addressed police profiling, improved policies concerning the use of force de-escalation and traffic enforcement. Three steps also addressed publishing an annual profiling report, contracting with an expert on racial profiling, the reduction of discretionary arrests, and the monthly workgroup with community members to explore disparities and enforcement actions.

Response 2

April 2, 2020, City Manager Crook responded to the Director of Police Oversight, Muscadin, Chief Innovation Officer O’Connor, and Chief Equity Officer, Oaks. The Memorandum and Power Point was in regards to gathering community input on the January 2020 Joint Report: Analysis of APD Racial Profiling Data. It was attended by 56 community members, 20 city staff, and 10 APD officers. The event began with a panel and presentation of the report by the authors and Chief Manley in a question and answer format. Following this, attendees were divided into five small groups for a facilitated discussion.

In general, community members were not surprised by the findings in the report because they fit with their experiences with the police in Austin. But they were surprised, discouraged, and saddened by the increasing disparity trend over the years in the report (see Racial Profiling B above). They also asked for additional data to help illuminate the reasons for the outcomes in the report and additional demographic information (a full listing of community feedback can be found by clicking the link on page 1 of the memorandum and by viewing the Power Point presentation associated with it). The community addressed several ways in which they wanted APD accountability: (1) **Acknowledgment** of the problem without being defensive, (2) **Commitment and Action** to make a change in accountability with some urgency, (3) **Structural Change and Community Decision Making**, specifically the need for community involvement in decision making, changing policy, a citizen’s panel, and evaluating individual officers, (4) **APD Organizational Changes** aimed at holding leaders and individual officers accountable by having a monitoring system and real consequences for their actions, (5) **Budget** consequences if steps are not taken to address the racial disparities in the report, and (6) **Increased Transparency** from APD, the Office of Police Oversight, and the City of Austin.

Community members also provided input on training processes, the impact of mental health on the community, the importance of community involvement in decision making, and the need to prioritize the expertise of those who had lived the experience of police profiling. Finally, they requested actionable next steps for implementation and accountability.

This same memorandum requested that APD provide a written public response, acknowledge the existence of racial disparities, and align recommendations with community feedback.

They are as follows (Exploring best practices and training will be addressed in subsequent sections of this report.):

- Acknowledge that racial disparity exists and is worsening.
- Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.
- Acknowledge that race plays a major role in who is stopped by the police, searched, and for whom discretion is used favorably or unfavorably.

Response 3

April 22, 2020, Chief of Police Manley provided a response to recommendations through a detailed memorandum. The responses to recommendations 1-7 regarding racial profiling is reported in full below. The responses to recommendations 8-14 are more related to training and are reported in that section.

The purpose of this memorandum is to provide responses to the recommendations outlined in the joint report, as requested by the members of the Judicial Committee during its meeting on February 10, 2020. The Department's initial response, as well as the studies and reports referenced therein, provides additional context to this memorandum.

- *Recommendation 1: Acknowledge that racial disparity exists and is worsening.*

The Austin Police Department consistently and unequivocally acknowledges that racial disparities exist throughout aspects of our city, including police enforcement actions. Accordingly, the Department has readily taken many steps to address the disparities within APD's purview over the past five years, as detailed in the January 14, 2020 response. Racial disparities have persisted despite these efforts, and the widening of certain gaps has raised additional concerns that demand further attention and analysis.

- *Recommendation 2: Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception*

that a trend of disparity did not exist.

The primary purpose of APD's annual racial profiling report is to comply with state legislative mandates that require the reporting of specific data. Proportionality assessments are not compulsory. However, recognizing the importance of such information, APD collaborated with the Center for Policing Equity to conduct a comprehensive analysis of the racial disparities manifested in the Department's enforcement actions. The report was the first to apply the National Justice Database's independent analytic framework to police data made available through President Obama's Police Data Initiative, Measuring Fairness in the Austin Police Department. That report is posted alongside the Department's racial profiling reports on the City's website.

- *Recommendation 3: Acknowledge that race plays a major role in who we stop, search, and for whom we use discretion favorably.*

The Department acknowledges that the outcomes of many police activities result in racial disparities. Additional data and analysis are necessary to determine how officer discretion, Departmental procedures, and societal factors contribute to these disproportionalities.

- *Recommendation 4: To gain community trust, proportional racial disparity in motor vehicle stops, arrests, searches, field observations, warnings, and citations should be zero.*

The Department is committed to reducing racial disparities to zero, particularly disparities that are the result of officer discretion or inefficient police practices.

- *Recommendation 5: The official comprehensive analysis of racial profiling shall be conducted and released by the City of Austin Office of Police Oversight, although state-mandated reporting may continue under the purview of the Chief.*

The Department will continue to release its state-mandated racial profiling report on an annual basis and welcomes the Office of Police Oversight's independent analysis and insight, in the manner the City Manager deems necessary and appropriate.

- *Recommendation 6: In order to uphold data integrity, accuracy, and transparency, officers should verify the racial and ethnic*

identity with people they stop. The verified data should be documented in officer reports and be published in the Racial Profiling data sets on the City's Open Data Portal.

In accordance with departmental procedures, Officers are required to document the race and ethnicity of the individuals they stop. The City has contracted with Dr. Alex Del Carmen, an expert on racial profiling and discrimination, to regularly audit the Department's racial profiling data to ensure accuracy in data collection and reporting. The traffic stop data, which includes race, is published in the racial profiling datasets on the City's Open Data Portal.

- Recommendation 7: Analyze and report on the operational

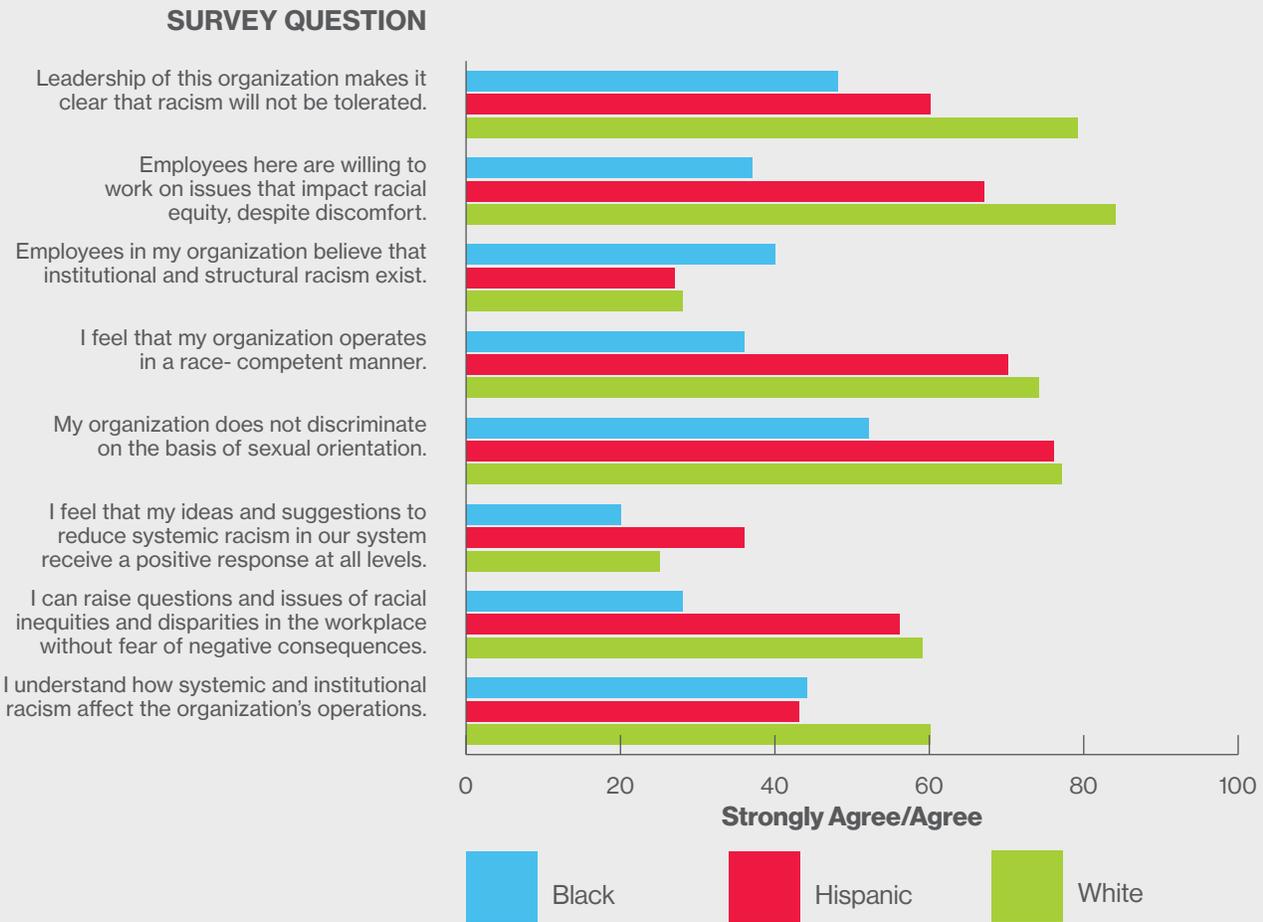
inefficiencies and costs that disproportionate racial disparities create by the second quarter of the fiscal year 2020 and provide to the City Manager and Council.

Currently, the Department is not staffed or equipped to quantify and analyze this data but would readily collaborate with the City Auditor's office or another entity, at the direction of the City Manager.

Survey Data

The results of the questions on attitudes toward race and profiling showed generally positive results (averages ranged from 2.75 to 4.08 on a five-point scale. See Appendix A). However, when broken down by race and ethnicity, differences emerged and are

Figure 2: Attitudes Toward Race by Race/Ethnicity



shown in Figure 2. African Americans, compared to Hispanics/Latinxs and Whites, had the least agreement on every question concerning APD's understanding of how institutional racism affects the organization, feeling free to raise issues concerning racism without consequences, getting a positive response to their ideas and concerns, discrimination on the basis of sexual orientation, the organization operating in a race conscience manner, willingness to work on racial issues, and the tolerance of the organization toward racism. Women showed the same pattern of less agreement relative to men. Here again, these findings for African Americans and Women reflect the overall findings of this Report.

An additional observation from the survey is that across race and ethnicity, a low number of staff felt their ideas and suggestions for reducing systemic racism at APD were received positively. African Americans also responded higher to the question regarding employee beliefs that institutional and structural racism exist in APD.

Police Use of Force and Shootings Austin Data

Goff and his colleagues (2016) also report data on use of force. The data indicate that the incident rate of use of force is greater for African Americans than Hispanics/Latinxs or Whites. The rate per 1,000 citizens ranges between .35 and .25 over the year for African Americans and below .10 for Hispanics/Latinxs and Whites over the year. The findings for the rates of use of force severity are also disparate between African Americans and Hispanics/Latinxs and Whites.

Of even more importance is that these researchers included neighborhood and demographic characteristics, crime rate, income, and percentage of African Americans and Hispanics/Latinxs in these neighborhoods in the models. Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force. The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force

(along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites. Control variables such as crime, poverty and neighborhood were not used. Officer involved shootings (OIS) do not occur frequently within APD (Officer Involved Shooting Report, 2018). In 2018 there were twelve incidents of officer involved shootings. Among the 12 shootings, over half were found to have a mental illness component. Five of the twelve (OIS) incidents resulted in fatalities. All five suspects were African Americans or Hispanics/Latinxs.

National Data

Police shootings and use of force evidence is similar nationally. Edwards, Lee and Esposito (2019) report in the Proceedings of the National Academy of Sciences that the police shooting database indicates...“that between 2013 and 2018, Black men were about 2.5 times more likely than White men to be killed by police, and that Black men have a 1-in-1,000 chance of dying at the hands of police. Black women were 1.4 more times likely to be killed than White women. Latino men were 1.3 to 1.4 times more likely to be killed than White men. Latina women were between 1.2 percent and 2.3 percent less likely to be killed than White women.” Further, several findings in different cities in the U.S. have found that force is more likely to be used against African Americans than Whites.

Key Observations/Comments from Interviews on Use of Force

- No accountability is required for not using body cams.
- The department has an “us versus them” mentality and thinks of some communities as adversarial.

Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight

- Increase the OPO access to OIS shooting incident data.
- Publish annual reports related to OIS incidents.
- APD should acknowledge and address:
 - › Number of OIS incidents involving a mental health component
 - › The fact that only Blacks or Latinxs were the subject of fatalities caused by police
 - › The fact that the majority of OIS incidents involved people from the Hispanic/Latinx community

- › The fact that “less lethal” force was only used in one incident prior to deadly force
- Increase education for patrol officers on de-escalation, response to resistance, and crisis intervention.
- Ensure mental health response training, policies and procedures follow best practices and address shortcomings.

Survey Data

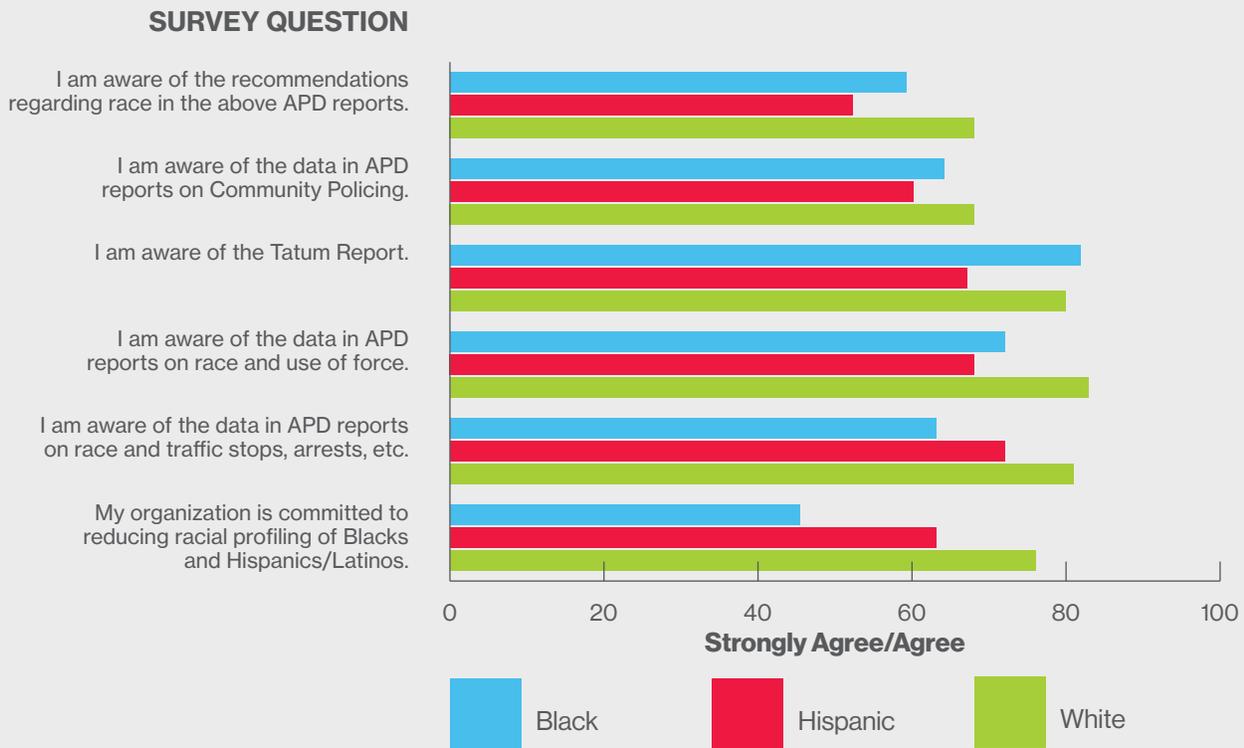
This section of the survey relates to the awareness of APD data in this report. The questions are shown in Figure 3. Generally all participants in the survey report a high level of awareness of the Tatum Report, and similar awareness of community policing. Of note is that African Americans are slightly more aware than Whites of the Tatum Report, which could speak to seeing their concerns documented in the report. They also speak to the overall findings of this Report.

White respondents showed the highest level of awareness of the remaining questions shown in the graph. Finally, civilians were not as aware as sworn employees.

Police Training Austin Data

The Training Academy is eight months long. Dr. Villanueva (2020) provides a review of the Training Academy and a framework for her analysis. It is referred to as a Strengths, Weaknesses, Opportunities and Threat analysis (SWOT). Strengths include organizational leadership, the hierarchical structure producing stability, the culture, though paramilitary, is viewed as none-the-less informal, and the movement toward more ethnic and racial diversity and inclusivity. Parts of the curriculum (currently under review) and teaching effectiveness are considered strengths as well. The diligent adherence to difficult scheduling

Figure 3: Data and Reports Awareness by Race/Ethnicity



and compliance with requirements and standards are listed as strengths. Instructors are viewed as well prepared and organized. Discussed later in this document, some findings do not coincide with the interviews that were conducted for the present report.

Weaknesses were found in the organizational structure, culture, curriculum, and teaching effectiveness as well. Process improvement is needed around a variety of areas of communication, the organization of course material, and the scheduling and course alignment. These were found to be weaknesses of the organizational structure. In the area of culture, weaknesses were noted in the paramilitary training format in that it leads to high drop-out rates, less attention to different learning styles, and inconsistency with a community policing philosophy. Diversity among the faculty and teaching methods were also noted as weaknesses and the current curriculum is being reviewed. Teaching effectiveness weaknesses were noted. Namely, trainers' job descriptions do not include any expectations of training in teaching methods or evaluations of the effectiveness of those methods. Further, resources regarding effective teaching methods are unavailable. Finally, the 80% passing standard along with related practices and procedures should be reviewed.

Opportunities include adopting an adequate Learning Management System, moving away from a paramilitary culture and warrior mindset to a more guardian view that is consistent with community policing and the value "to protect and to serve." Various types of training are suggested along these lines.

The issue of race and ethnicity in policing is regarded as a cause of concern and a number of efforts are underway to address this issue. The courses currently taught are under substantial review about content of teaching, content of materials, current scholarly literature, and effective delivery of the material. Meeting the diverse needs of both the community and the organization are paramount. Noting that women and faculty of color are under-represented in the academy, recruitment will be closely examined.

Since many of the existing courses are mandated by law, courses will be reviewed, and a series of evidenced-based practices will be included to help officers navigate encounters with community members while helping the officers build

emotional regulation and strength tolerance. To that end, academy instructors will need the training, experience, and resources necessary to achieve teaching excellence.

Threats listed are (1) socio/political climate and political unrest, (2) negative police/community relations, (3) shortage of recruits, (4) economic/financial/budgetary constraints, (5) internal morale, (6) internal discord, (7) negative perceptions by the public/media, and (8) lack of real or perceived support.

National Data

The Governing data website provides data on the demographic composition of police departments in the United States. According to the data found in the reports on the site, Whites are overrepresented while African Americans and Hispanics/Latinxs are underrepresented in varying degrees in the majority of larger police departments (race and ethnicity data on this website can be reviewed city by city). Further, according to a survey by Crime and Law Enforcement (2019), women make up only 12.6 % of full-time police officers in the United States. As the President's Task Force on 21st Century Policing (2015) points out, a tolerance and understanding of these racial and ethnic groups as well as the LBGQTQ community is essential to improved training (and of course, recruitment).

Dr. Villanueva Recommendations

- Transform para-military structure to Adult Learning model
- Incorporate implicit bias evaluations into recruitment process
- Increase diversity in teaching faculty
- Include simulations and role plays that pertain to difficult cultural or racial situations
- Establish a community placement opportunity for cadets to begin building relationships with community

Key Observations/Comments from Interviews Regarding Training and Advancement

There is no mechanism for cadets to complain above their Instructor/Counselor (IC) even if the IC is the person who abused them.

- Resignations/firing Black officers after training
- Insufficient mental health training
- Insufficient training on trauma-informed care

- Numerous former cadets stated that they were verbally, psychologically, and physically abused in the academy, and that they observed the same for their classmates.
- Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state.
- The academy curriculum glosses over the subject of diversity, taught by all-White instructors.
- Academy has a high level of attrition of Black cadets
- Some Black cadets are prepared, and some are under-prepared for the academic rigor of the academy. This could be a historical failure of the school educational system, resulting in an achievement gap.
- Choice of videos in training academy promotes warrior mentality
- Cadets suffer “death by Power Point” in academy
- SWOT analysis was conducted by Dr. Villanueva, but staff did not receive feedback
- Lack of community engagement during the academy
- Questionable reasons for disqualifying cadet applications: credit score; smoking weed in high school; hairstyle
- The police department has not done a very good job of awareness of the need for racial and gender equity. Beliefs such as women cannot police have permeated the department since the 1930s.
- Some would prefer officers to be recruited and or trained in psychology and empathetic understanding.
- The academy has no specific mentorship program for African Americans that mirrors the female mentorship program.
- Marketing might attract more recruits of color.
- Most officers take a substantial pay cut to teach in the academy. They lose night shift stipends, and ability to make overtime.
- Support adding the history of policing course to the academy. What APD was doing before was inadequate regarding history of policing. The curriculum is in place for the next cadet class through the University of Texas for an 8-hour class.
- They are planning to use the Beyond Diversity curriculum from the LBJ school for their diversity training (separate from history of policing class.)
- What needs to change is militaristic training
- There is a lack of a clearly defined career path
- One individual thought there was a negative reaction to Undoing Racism training by some
- There is a need to develop a formal mentoring program led by APD for African Americans
- Training for new supervisors includes HR: Policy, Workers Comp, FMLA, Annual Performance Reviews, and so forth.
- 30 sergeants and 20 corporals are currently going through supervisor training. The class is 2 weeks, with an additional accountability class. There is no specific curriculum included on data showing the racial inequities in APD that officers going into leadership positions should be aware of.
- For the academy, the ICs are responsible for academic support if needed.
- Every officer must have 40 hours every 2 years. TCOLE will mandate some, but other hours are at the discretion of the department. Re-certification is required every two years.
- The motto of the academy is, “I am my brother’s keeper.” That culture ought to shift. The highest level of diversity is at the officer level and that needs to be spread throughout the agency.
- African Americans are lacking sufficient numbers in high positions to support what some interviewees called “succession planning” to help them do well on tests for promotion which Whites and Latinos have. Rather, many stated the existence of a “good old boy network” that continues the cycle of promoting White males. For example, there are no Black Commanders and only one Black Assistant Chief.
- The videos that cadets view have a disproportionate number of Black people involved in violent crime, which not only shapes the minds of White officers, but also does something to the psyche of Black and Brown people that their own people are dangerous.
- Interviewees mentioned a lack of awareness of and sensitivity to Black history and culture in the Department. There are too many recruitment disqualifiers as well. For example, they said that Black hairstyles for men and women have been disqualifying factors in the application process. Other disqualifying factors of Black candidates, such as bad credit score; having been evicted, and having smoked weed in high school should be taken into consideration as the result of intergenerational effects of economic exploitation and racial trauma.

Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)

- Include implicit bias testing in the Austin Police Department hiring process.
- For current employees, require implicit bias testing and flag high-scoring officers for appropriate intervention.
- Identify and implement bias-counteracting policies, practices, methods, processes, and standard operating procedures to mitigate bias.
- Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.
- Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.
- Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year) for all staff, sworn and civilian, in the department, annually, during every year of service.

Response 3

(continued from page 8. April 22, 2020, Chief of Police Manley remaining responses to recommendations in the Joint Report on Racial Profiling: these 7 remaining responses are placed here because they relate more to training)

- *Recommendation 8: Explore promising practices from Oakland and Nashville that use a scoring mechanism for disproportional behavior to identify at-risk officers and assign appropriate interventions and use in the determination of promotions.*

The Department agrees the City should invest in sophisticated oversight tools that are more adept at identifying, flagging, and tracking at-risk officers in order to facilitate timely and effective interventions.

- *Recommendation 9: Include implicit bias testing in the Austin Police Department hiring process.*

Based on the best available evidence from subject-matter experts on bias, the Department operates with the understanding

that every applicant will have implicit biases. Therefore, the Department administers training to ensure all employees are aware of their biases, promulgates explicit policies to set clear expectations that bias-based actions are intolerable, and utilizes oversight mechanisms to identify inappropriate behavior.

- *Recommendation 10: For current employees, require Implicit Bias testing and flag high scoring officers for appropriate intervention.*

As stated above, the Department has mechanisms in place to identify and rectify inappropriate behavior. Additionally, the Department is open to exploring proven, evidence-based testing methods that are capable of effectively supplementing current training, policies, procedures, and audits.

- *Recommendation 11: Identify and implement bias-counteracting policies, practices, methods, processes, and standard operating procedures to mitigate bias.*

The Department recommends the City contract with a suitable academic institution to conduct an independent, comprehensive, and evidence-informed assessment of the Department's enforcement practices, cultural norms and customs, training, accountability procedures, and any resulting racial disparities. A similar partnership between the City of Oakland and Stanford University yielded promising results and provided a roadmap for creating community-based strategies aimed at addressing the unique historical and cultural challenges of a city: Data for Change & Strategies for Change.

- *Recommendation 12: Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.*

The Department intends to incorporate the Racial History of Policing training in future cadet class and is determining the best approach and frequency for administering the training to existing officers.

- *Recommendation 13: Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.*

The Department is committed to following the established guidelines for racial equity training and welcomes input from the Equity Office and Office of Police Oversight.

Recommendation 14: Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year for all staff, sworn and civilian, in the department, annually, during every year of service).

The Department is eager to provide additional racial equity training for all employees in an effective, feasible, and sustainable manner. The Department will consider this recommendation as part of the FY21 budget process.

Community Policing Austin Data

One of the goals of community policing involves citizens having an active role in policing. In Austin, that translates to District Representatives and other support positions to enable citizens to have a role in supporting and working with the police: Community meetings and gatherings are attended, foot, bicycle, and horse patrol are used in targeted areas (especially the entertainment district). Currently, that role may shift somewhat with the reallocation of resources.

Two Reports were reviewed that address community policing in Austin. The first, Community Policing Advancement in Austin (2020) was a response to the staffing report needs assessment provided by the Matrix Consulting Group and describes Austin's community policing scope of work. The response provides several recommendations too numerous to list here. However, those related to the nature of the current report are the inclusion of pedestrian stops and field interviews in the yearly police profiling report, developing a marketing plan for community policing, greater funding, developing an evaluation plan, and performance measures.

Additionally, the report recommends developing a recruiting and training plan for community policing, revising job classifications that reflect community policing principles, the creation of neighborhood portfolios, consideration of a field training program, supporting neighborhood events, consideration of non-English speaking populations, and the consideration of officer volunteers and community youth.

Community Policing Matrix Report 2020 Key Recommendations

- Develop Community Policing theme that highlights the philosophy as a major focus of Academy training
- Send exit interviews of cadets and trainees directly to HR
- Explore the use of problem-solving based learning methodology
- Produce a recruiting video more aligned with community policing

Community Policing/Advancement in Austin 2020

APD's response to the Community Policing Matrix Report can be found on pages 31-36 of the report itself. The column on the right indicates which responses have and have not been implemented.

The second report is by the City Auditor (2020), and is entitled, The Impact of Community Policing Efforts. The report provides two types of analyses. The first is an analysis of the time officers have available to engage with the community (Figure 4 below).

As shown in Figure 4 (next page), Officers' uncommitted time when they are not responding to a call can be less than 5 minutes per shift during which they also check e-mail, write reports, read policy updates, and engage in other tasks. Clearly this is not an ideal situation. The second analysis is an employee survey conducted to determine if perceptions had changed since the initial matrix was conducted in 2016. Results were mixed and can be found on pages 13-16 of the report. The percentage change between pre/post is shown on the right side of the page.

National Data

A variety of opinions exist about the value and effectiveness of community policing, dependent in many instances on the makeup of the community. Nationally, the population is 72 percent White, and 13 percent Black. And the US police force is 75 percent White and 12 percent Black. Asians and Latinos have smaller numbers of representation nationally (Vitale, 2018). From a macro perspective, this means that many White officers who live in White communities are patrolling non-White communities, where they don't live. The old school effective models of community policing entailed officers living in the areas where they work and intermingling with their neighbors. For this reason, Vitale (2018) argues that community policing today does little to empower communities, reduce over-policing in marginalized communities, or to reduce crime.

Figure 4: Estimated Available Time Community Policing: City of Austin Audit Report 2020



The President’s Task Force on 21st Century Policing (2015) is favorable toward community policing done correctly. Crowl (2017) provides a review of the evidence surrounding Community Policing over the years. He enlists only studies with quality methods in his results. He notes that although Community Policing has many definitions and objectives, it attempts to address the conditions that enable public safety such as crime, social disorder, and fear of crime (Crowl, 2017), often in poorer communities of color. To accomplish this, it attempts to empower citizens to have an active role in working with the police. In the Crowl (2017) review, he shows that Community Policing has been found to be effective in high quality studies in reducing fear of crime (56.3% of the studies reviewed), citizen satisfaction (66.7% of the studies reviewed), fostering police legitimacy (77.8 % of the studies reviewed), improving job satisfaction (90% of the studies reviewed) and to some degree crime reduction (only 18.6% of the studies reviewed). These two views above are deserving of more attention, considering the comments below.

Key Observations/Comments from Interviews

- Poor communication with the community
- Community Policing not practical with current workload on patrol
- It would be good to have the same spirit of care for fellow officers to be infused into the communities they serve.
- Similar to interviewees, views that communication with the community in general is poor, community engagement during the academy was also lacking. Rather, interviewees said that community representatives spoke in class, and cadets prepared follow-up written reports, without ever actually going to communities.
- A number of interviewees elaborated on their perspective of the shortcomings of Community Policing in Austin. Black and Latinx officers noted that the current climate of mistrust for police in general puts them at a disadvantage with their own people when they are seen with the badge, gun, and blue uniform. Consider an example of parking on the street. Officers of

color who patrol in poor communities of color are aware of the residents saying that they are skeptical of the officer’s sincerity for their well-being when asking them to comply with laws in their communities, when they know that in a nearby White neighborhood, residents are allowed and even encouraged to do the same non legal actions with no consequences, such as parking on the street. Since trust—a prerequisite for the development of a healthy relationship—is lacking in this example and others, trust will need to be restored in advance of effective community policing.

- Assignment to specialty units like community policing is not a fair process for African Americans.
- Community policing should be accomplished through true partnership with the community and a sense of restorative justice. That is, bringing together people harmed, and those responsible for harm and harm prevention in a safe and respectful way.

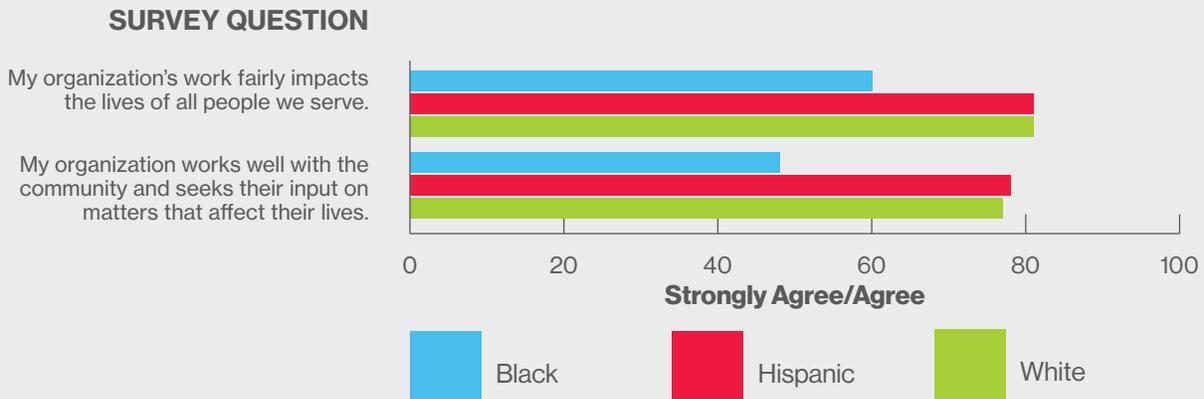
Survey Data

The two questions for this part of the survey are shown in Figure 5 below. Clearly the workforce values the communities they serve (means range from 4.07 to 4.14 on a 5-point scale—Appendix A). Questions were analyzed by race, ethnicity, and gender. Race is shown in the figure. Generally, it shows that a majority of respondents agreed with both statements, though African American are less likely to agree. This is again consistent with the overall findings of this Report.

CONCLUSION

This report provides key findings, recommendations and responses to the JJC team’s review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. Additional information from surveys, interviews with sworn and civilian staff, community members, and participants in the Groundwater Analysis workshop, provide a comprehensive analysis of the trends that speak to a long history of institutional and structural racism in the APD culture. These findings have informed the recommendations and beginning road map, that if implemented, have implication for beginning a journey towards creating an APD anti-racist institutional culture. The review of the reports, interviews and survey data all indicate that change in the Austin Police Department requires an immediate response. The Texas Model serves as the framework for the recommendations outlined in this report. It has proven to be effective in reducing racial inequities and improving outcomes for all populations. This is the ultimate goal of anti-racist work.

Figure 5: Community Policing by Race/Ethnicity



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APPENDIX A: APD Climate Assessment Survey



APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Internal Organization Issues (1,2,3,17,18,20)							
1. I am satisfied with the culture and climate of my workplace.	11.96% (N=100)	29.55% (N=247)	12.92% (N=108)	23.33% (N=195)	22.25% (N=186)	85.13% (N=836)	2.86
2. I received adequate training in racial equity when I began employment here.	44.22% (N=371)	26.10% (N=219)	14.30% (N=120)	10.01% (N=84)	5.36% (N=45)	85.44% (N=839)	3.94
3. The process for advancement and promotion at APD is fair.	22.38% (N=188)	32.62% (N=274)	19.88% (N=167)	15.36% (N=129)	9.76% (N=82)	85.54% (N=840)	3.42
17. I am aware of the process of reporting a complaint through the Office of Police Oversight (OPO).	37.74% (N=314)	41.71% (N=347)	10.70% (N=89)	8.17% (N=68)	1.68% (N=14)	84.73% (N=832)	4.06
18. I feel comfortable reporting my concerns to the Human Resources Department.	28.88% (N=240)	31.41% (N=261)	17.09% (N=142)	13.12% (N=109)	9.51% (N=79)	84.62% (N=831)	3.57
20. Rules regarding employee misconduct are fair and equitable for all employees.	18.03% (N=150)	23.20% (N=193)	15.63% (N=130)	22.72% (N=189)	20.43% (N=170)	84.73% (N=832)	2.96
Attitudes (Gender, Race, Sexual Orientation) 4,5,6,7,8,9,13,14,15,16							
4. My organization treats women fairly.	42.55% (N=357)	32.90% (N=276)	13.35% (N=112)	7.63% (N=64)	3.58% (N=30)	85.44% (N=839)	4.03
5. I understand how systemic and institutional racism affect the organization's operations.	25.12% (N=206)	30.61% (N=251)	28.41% (N=233)	5.98% (N=49)	9.88% (N=81)	83.50% (N=820)	3.55
6. I can raise questions and issues of racial inequities and disparities in the workplace without fear of negative consequences.	26.59% (N=222)	27.54% (N=230)	21.92% (N=183)	14.13% (N=118)	9.82% (N=82)	85.03% (N=835)	3.47
7. I feel that my ideas and suggestions to reduce systemic racism in our system receive a positive response at all levels.	13.78% (N=113)	13.54% (N=111)	57.68% (N=473)	8.90% (N=73)	6.10% (N=50)	83.50% (N=820)	3.2
8. My organization does not discriminate on the basis of sexual orientation.	47.66% (N=397)	27.01% (N=225)	15.37% (N=128)	6.36% (N=53)	3.60% (N=30)	84.83% (N=833)	4.09
9. I feel that my organization operates in a race-competent manner.	37.30% (N=310)	31.41% (N=261)	17.21% (N=143)	9.99% (N=83)	4.09% (N=34)	84.62% (N=831)	3.88
13. Employees in my organization believe that institutional and structural racism exist.	5.90% (N=49)	21.33% (N=177)	34.70% (N=288)	17.95% (N=149)	20.12% (N=167)	84.52% (N=830)	2.75
14. Employees here are willing to work on issues that impact racial equity, despite discomfort.	25.51% (N=211)	41.11% (N=340)	22.61% (N=187)	7.86% (N=65)	2.90% (N=24)	84.22% (N=827)	3.78
15. Leadership of this organization makes it clear that racism will not be tolerated.	41.08% (N=341)	28.80% (N=239)	13.86% (N=115)	9.52% (N=79)	6.75% (N=56)	84.52% (N=830)	3.88
16. Leadership of this organization makes it clear that sexism will not be tolerated.	42.67% (N=355)	29.33% (N=244)	14.66% (N=122)	8.05% (N=67)	5.29% (N=44)	84.73% (N=832)	3.96

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Data & Reports Awareness (10,21,22,23,24,25)							
10. My organization is committed to reducing racial profiling of Blacks and Hispanics/Latinos.	44.65% (N=371)	26.71% (N=222)	20.10% (N=167)	5.78% (N=48)	2.77% (N=23)	84.62% (N=831)	4.05
21. I am aware of the data in APD reports on race and traffic stops, arrests, etc.	36.82% (N=306)	43.56% (N=362)	13.24% (N=110)	5.17% (N=43)	1.20% (N=10)	84.62% (N=831)	4.1
22. I am aware of the data in APD reports on race and use of force.	36.10% (N=300)	42.48% (N=353)	13.96% (N=116)	6.14% (N=51)	1.32% (N=11)	84.62% (N=831)	4.06
23. I am aware of the Tatum report.	29.72% (N=247)	49.58% (N=412)	10.35% (N=86)	6.74% (N=56)	3.61% (N=30)	84.62% (N=831)	3.95
24. I am aware of the data in APD reports on Community Policing.	26.39% (N=219)	39.76% (N=330)	19.16% (N=159)	12.65% (N=105)	2.05% (N=17)	84.52% (N=830)	3.76
25. I am aware of the recommendations regarding race in the above APD reports.	19.61% (N=163)	43.08% (N=358)	22.38% (N=186)	11.79% (N=98)	3.13% (N=26)	84.62% (N=831)	3.64
COMMUNITY (11,12)							
11. My organization works well with the community and seeks their input on matters that affect their lives.	40.38% (N=336)	36.54% (N=304)	14.78% (N=123)	6.37% (N=53)	1.92% (N=16)	84.73% (N=832)	4.07
12. My organization's work fairly impacts the lives of all people we serve.	45.07% (N=375)	34.74% (N=289)	11.18% (N=93)	7.09% (N=59)	1.92% (N=16)	84.73% (N=832)	4.14





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APPENDIX B: Community Engagement Model

APPENDIX B: COMMUNITY ENGAGEMENT MODEL

Community Engagement Four Stages and Steps:

Stage 1: Community Awareness and Engagement

- Making the problem visible
- Sharing the data
- Telling the story
- Enrolling community leaders
- Building local allies

Stage 2: Community Leadership

- Expanding leadership at the community level
- Communities claiming responsibility for solutions
- Community investment in efforts to address the issue
- Community-based decision-making re: strategies
- Community structures (advisory committees, steering committees) through which work is accomplished
- Engaging stakeholders who have been the biggest critics of the system as solution-builders & advocates

Stage 3: Community Organization

- Going to the community, being guided by it to learn what strengths exist, what the needs are, and bringing community members / families and youth / natural community leaders into the process
- Selection of practices that are needed from the community's perspective
- Giving community members the chance for meaningful contributions
- Operating from the premise that the community knows best
- Recognition that communities are resilient
- Grounding the work in these principles:
 - › Analyzing power
 - › Defining racism
 - › Understanding the manifestations of racism
 - › Learning from history
 - › Cultural sharing
 - › Organizing to undo racism

Stage 4: Community Accountability

- Defining and achieving desired outcomes and measurable results
- Everyone is a contributor to what the results should be
- Sustainability is the ultimate goal
- Communities and systems are the owners of the solutions
- Community leaders do not stay silent—they advocate
- Community accountability transcends the work of CPS and other organizations communities must be accountable to people in the community for community wellness
- Communities hold all systems accountable for the oppression they have imposed on communities, their residents, their children
- Accountability must be visible supported through written MOUs and other formal strategies, having formal networks for services

Summary Points

- Highly inclusive process
- Reliant on a facilitative leadership process of committees and other entities
- Cross-systems approach with shared values, shared resources, mutual investment in identified outcomes
- Community leaders are engaged in decisions and the commitment of resources for sustainability
- Community strengths are a strong focus





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APPENDIX C: A Groundwater Analysis of Racial Inequities

APPENDIX C: A GROUNDWATER ANALYSIS OF RACIAL INEQUITIES “Turning the Mirror Inward”

Description

In the absence of a racial equity lens, well-meaning leaders often continue to unconsciously contribute to sustaining and often perpetuating racial inequities in the design and delivery of programs. This workshop will enhance the racial equity awareness of the participants by building a common language and understanding, of the underlying factors that contribute to racial inequities. This increased knowledge can be a catalyst for developing strategies to build more effective programs and for strengthening and transforming the culture of systems towards increased accountability in response to the needs of all populations.

The facilitators are skilled in creating a safe space for participants to discuss institutional and structural racism in the historical and current context, in a way that holds us accountable for “turning the mirror inward” to examine systemic rather than individual factors contributing to poor outcomes. This safe space creates an atmosphere for all to engage in out-of-the-box thinking that can continue to be supported through consultation with JJC, beyond the workshop.

JJC will introduce the Ground water Analysis for examining racial inequities derived from an evaluation of the Texas Model:

- Racial inequities look the same across systems
- Systems contribute significantly to racial inequities
- Racial inequities cannot be attributed to one “bad apple”
- Racial inequities are concentrated in poor communities and communities of color
- Systemic interventions and training can work to reduce disproportionality and disparities and improve overall outcomes for all populations

The workshop is designed to enhance the awareness of well-meaning and committed leaders to strengthen and transform systems and community-based organizations to better respond to the needs of all populations.

The workshop components serve as a basis for analyzing racial inequities that exist and intersect across systems such as housing, education, law enforcement, financial services, healthcare, juvenile justice, child protective services, and employment. The outcomes of services in these systems disproportionately impact poor communities and communities of color in ways that previously may not have been considered. The workshop is designed to promote a clearer understanding of the role of leadership in systems and institutions in working together and in partnership with constituents and community to understand the history of institutional and structural racism, to strengthen our collective capacity to reduce and ultimately eliminate racial inequities in outcomes and in systems responses, both of which are predictable by race, across systems and institutions.

Workshop Objectives

- Examine by race/ethnicity, the data for multiple systems, to broaden knowledge and understanding of the underlying causes of racial inequities in systems and institutions, and the deeper more systemic factors that contribute to poor outcomes for vulnerable populations.
- Increase understanding of the importance of cross systems collaborations and being in partnerships with poor communities and communities of color to examine old attitudes, assumptions, and stereotypes, that shape the lens through which children, families, and communities of color are viewed so that systems begin to work in deliberate and intentional ways to remove the barriers that contribute to racial inequities.
- Introduce new language, skills, and concepts to move toward the development and implementation of more effective interventions that can reduce racial inequities and improve outcomes for all populations served.
- Engage participants in activities and facilitate dialogue designed to help systems be more accountable for “turning the mirror inward,” to examine systemic rather than individual factors of racism, contributing to poor outcomes for poor communities and communities of color.
- Understand how institutional structures and practices impact outcomes for vulnerable populations.
- Engage in a facilitated dialogue to begin to examine commonly held attitudes and assumptions that create

and sustain disproportionate and disparate outcomes for poor communities and communities of color.

- Examine data by race/ethnicity for multiple systems, to broaden knowledge and understanding of the history of institutions, and the deeper more systemic factors that contribute to poor outcome for vulnerable populations.
- Examine the relationships that exists among systems and their collective impact on poor communities and communities of color.
- Begin to develop a common understanding and language that opens the door for conversations that are critical and necessary for undoing racism.
- Discuss the importance of moving from cultural competency to racial equity and developing a common definition and language with which to begin the journey to eliminate institutional and structural racism.
- Begin to develop the language and the skills to move toward the creation and implementation of more effective interventions that will reduce racial inequities and improve outcomes for all populations served.



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APPENDIX D: The Groundwater Analysis Workshop Technical Assistance Report



APPENDIX D: THE GROUNDWATER ANALYSIS WORKSHOP TECHNICAL ASSISTANCE REPORT

City of Austin Police Department

ACKNOWLEDGEMENT

Joyce James Consulting (JJC) would like to thank the City of Austin, Office of Equity (OOE) and Police Department (APD) that helped bring “Groundwater Analysis” training and technical assistance to APD.

The willingness of Chief Bryan Manly, his command team and other sworn and civilian staff to have open and meaningful conversations about institutional and structural racism was invaluable to the open and honest facilitated dialogue. The presence of the OOE was critical to ensuring that all phases were in alignment with the anti-racist principles embedded in that office. The voices of the community members who shared in the workshop, debrief, and strategy sessions were very powerful in shaping the recommendations included in this report. JJC feels confident that in having strong community voices at the table, a higher level of accountability exists for change within APD.

Overview

The City of Austin (City) Austin Police Department looks to transform the department’s culture in ways wholly antithetical to its beginnings as a law enforcement organization. The early history of the APD (as described in the Austin History Center’s Austin Police Department Guide, 2018) recounts its law enforcement beginnings in 1840 with the election of the City’s first marshal. Like other marshals of the day, those in Austin held enormous power. These elected officials picked their own officers, played a part in criminal executions and were chiefly responsible for upholding city law and order including the rules or laws specifically “designed to constrain slaves’ behavior.” One of these laws being slave curfews. The curfews made it unlawful for slaves to be in public or gather at night; responding to the fears of whites of people of color united through their enslavement. In their role as enforcers of the law, marshals and their officers could lash a slave found out in public after curfew with up to 15 lashes.

In 1862, the structure of the APD began to change in ways that reflected different societal norms. City ordinance set up the police department and a chief of police. Then in 1871, the first African American police officers joined the APD police force. Today, the APD workforce, both sworn and civilian, is more diverse. However, internal and independent reporting point to deeply rooted and persistent signs of institutional and systemic racism—that have not and cannot be diminished simply by the passage of time.

Therefore, consistent with the department’s vision for systemic changes within the department, the OOE and APD contracted with Joyce James Consulting (JJC) to provide technical assistance, “A Groundwater Analysis of Racial Inequities” (GWA) workshop and a workshop debrief and strategic planning session. The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems and assist in creating organizational cultures that actively engage in sustainable strategies to eliminate racism.

Background

Three theories of action serve as a foundation for the JJC racial equity workshop and guide the use of pre- and post-surveys: transformative learning, critical race, and adult learning. Transformative learning is the “process of experiential learning, critical self-reflection, and rationale discourse that can be stimulated by people, events, or changes in contexts that challenge the learner’s basic assumptions” (Brown, 2006). Critical race theory argues that “racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged (DeMatthews, 2016).” The adult learning theory focuses on knowledge building in a way that fosters “critical reflection...essential for transformative learning” (Taylor, 2008).

Qualitative Feedback

The GWA workshop facilitated the examination of systemic transformation and participants’ awareness about racial inequities and disproportionality in outcomes across multiple systems serving vulnerable populations and communities of color. In providing the APD with training and technical assistance, JJC used

its pre- and post-surveys to establish a baseline of participants' perceptions of knowledge of institutional racism and racial equity prior to the workshop and identify shifts in participants' perceptions of knowledge of institutional racism and racial equity immediately after workshop participation. Identifying shifts from an organizational standpoint can assist systems in determining where further training and guidance is needed related to addressing disparate and disproportionate systemic outcomes, point to an increase in the number of participants who have developed a common analysis of racism and the history that led to current outcomes, and aid in the analysis of workshop effectiveness.

A key learning from implementation of the Texas Model for addressing disproportionality and disparities in several systems serving vulnerable populations was that when staff at every organizational level understand and value history, culture and the partnership of vulnerable populations and community. Further, changes occur in decision-patterns and interventions that impact systemic outcomes.

Why Undo Institutional Racism

Participants were asked as part of workshop introductions, "why is it important to undo institutional and structural racism in the APD system?" The following responses were captured.

- It's hard to hear men and women talk about unfair promotion and transfers. They feel like they don't have the same opportunities.
- Maybe I had blinders on, but I didn't feel like I was working in a racist organization. Hearing comments over the last twelve months has been disheartening.
- All lives don't matter until Black Lives Matter.
- I want everyone in the Department to feel equal.
- Not to do so is robbing us of opportunities to be the best we can be in terms of talent and opportunity.
- So that people can feel valued regardless of their skin tone.
- We cannot provide service to the community in fair and equitable ways unless we look at ourselves first.
- It's wrong.
- The system needs to be fair and equitable for everyone. Austin is safe, but it's not safe for everyone.
- We've missed opportunities to make changes because people of color haven't been in a better position to have their voices heard.
- It's a matter of life or death for this city. For example, people in certain zip codes have a life expectancy that is ten years less than average.
- It has a diverse impact on society as a whole.
- Because nothing is more destructive of a person's spirit than when they've been singled out for something they can't change, whether skin color, gender, or sexual preference.
- Because the children are watching
- Everybody is not awake.
- If we can't take care of our own people properly internally, how are we going to take care of the people we serve?
- It's our own responsibility to carry out policies and procedures that are fair to everyone.
- I've seen people's self-esteem and careers ruined because of racism.
- As a profession, we haven't been good about teaching our history.
- We can't say we've done what we should have in terms of learning our history. Those who forget history are doomed to repeat it.
- We also have to challenge ourselves and ask: Through whose eyes do we examine history? We need to step outside of ourselves and look at the history of those whose stories have been untold.

Other Comments of Participants

- In addition to accountability, training is needed (education). There needs to be education for everyone because the individual's behavior affects the whole.
- We're not even having a proper conversation about the war on drugs.
- The academy videos continually show black males in violent incidents which shape the way we see Black men. New officers come in with the view that Black men are dangerous.
- Coming out of the academy, we didn't talk about race, but neighborhood. We were told, "when you go to those neighborhoods, take extra precaution." When you expect a bad outcome, what are you going to get?
- Zero tolerance for racism ought to be clear on the front end, but that wasn't clear in orientation from the City or APD. We need to not only make it clear that we don't tolerate discrimination, but we need to market it.

- Our policies and practices have protected certain people in the City. White people have had sub-standard job performance and it was tolerated for months, whereas Black people who have had similar shortcomings have been gone within days. The only difference was race. As gatekeepers, we need to “get in good trouble” when we see this happening. If we say we don’t tolerate this and when it happens nothing is done, it’s perpetuated.
- We need to have a consistent message at the front door about what will not be tolerated, and reiterate the message at multiple levels as well.
- We need to ask, “am I handling this in the least obtrusive means”: both cadets and those who have been here for years.
- We focus so much on the bad apples and not the system.
- We’ll become better as we approach this work from an institutional and structural perspectives.
- I hope that everyone in the Department goes through this program. The approach of other programs that we have attended makes people shut down and think that they’re a bad person.
- This approach is new or unheard of to much of our workforce. They’re not connecting dots with previous bias training. I hope that this training will be lasting.
- It’s important that the enemy is not an individual, but a system. This fits with the motto, “safer together.” It is an uncomfortable conversation that is necessary.
- If we leave a legacy, what legacy do we want to leave?
- I don’t want to be a part of the problem by not moving forward.
- The content and approach used in this training are good.
- We keep trying, but we are not making progress. The way this is framed makes sense. We’ve been focused on the individual and we can’t see the forest for the trees.
- We get so focused on process that we lose focus on vision.
- We see the same percentage of contraband among Whites and Blacks who are stopped, even though Whites are under-represented with respect to the percentage who are stopped.
- The system doesn’t value the voices of people who are impacted by their services.
- There is a disconnect between what we say that believe and accountability. We had racial equity training in all of the years where the data show disparities. That means that those trainings were “one and done.”
- We need to refocus on accountability in systems and away from individual accountability.
- In recruiting, we can make changes to the application on the “front end” “We do not tolerate... xyz. If you agree, you can proceed with the application.”
- We’ve done lots of training but aren’t seeing a different outcome. We definitely need to go to structural.
- The data tell us that something needs to be fixed, but it doesn’t tell us what or how. We need to dig deeper.
- I hope we don’t do things in a cycle. I hope we continue to have diverse representation.
- We have a distinction between sworn and civilian. While we have the right voices at the table, I hope we will allow outside voices.
- Relationships are the basis of the external culture. What we lack is an empathetic lens. We need to create a space to listen and learn, as well as to create a model for the entire nation.
- We have the same training year after year, and the outcomes of traffic stops don’t get better. It is significant that the data are getting worse for African Americans while the percentage of African Americans in Austin is decreasing.
- How do we ensure that we’re building things that will last ten years from now: that people who come after us will sustain what we do.
- From the perspective of data, heart, and mindset, the civilian side has all eyes on how ADP will respond.
- I think we should explore more from the social-emotional aspect and send not only a message of what we won’t tolerate, but the culture that we do want.
- The significance of eyes from the past are important. I think we can’t get enough of the history of Austin.
- How does the community see the department, and how can we bridge that gap?
- I feel that this group is going to do really awesome things and I’m glad to be a part of it.
- People have to be won back to engage: both within and outside the organization. Some think that it’s a hopeless task. Everyone has to pick up the oars and row the boat when some wonder if they even need to be in the boat.
- I think that this is a good way to move the system forward, but all pieces of the system are not here. Those who are not represented here are making decisions about our system, and that’s frustrating.

- I'm excited. I'm ready to get out of the blocks and get moving. In addition to the data, which we know, we have to be able to think outside of the box and try some different things. As we're developing this plan, people are still being impacted within the department and in the community. Nobody has the perfect roadmap, so we have to take some risks. This needs to be something that all of our directors in the City need to hear. For example, someone in another division said that if a plan to address the homeless doesn't work, "we are going to unleash APD."
- If we can get to a point that any interaction can see our humanity, that will be a major step in addressing racism.
- Our efforts can't be departmentalized. It's not only something that only APD can work on. It needs to involve all departments of the City. Our eyes are opening that this discussion involves more than APD, and it can't be an adversarial approach. If we say that the only change involves APD, we're limiting our outcomes.
- Regarding power and purpose, there is a necessity to shift power. The history of this nation has been to "unleash" power on people of color. The pain point has been that power dynamic that people have been so frustrated about. Maybe we need to redefine our mission and purpose.
- In "re-imagining" public safety, what is the relationship with other organizations? That involves a deeper dive into a difficult conversation. How do we bring this into the "re-imagining" conversation.
- Anything that is working for Black people is destroyed, such as Black Wall Street in Tulsa, and Anderson High School in Austin.
- We used to arrest youth because of graffiti until the skateboarders started doing it. Then it became art, and we promoted it.

Participants' Surveys

JJC examined the completed pre- and post-training surveys, feedback from participants on evaluation forms and during debrief and strategic planning. This report summarizes the results of the training surveys and evaluations and JJC's overall recommendations related to strategies that reduce or end racial inequities and disproportionality.

Pre-Surveys

JJC administered the workshop pre-survey immediately before training while the post-survey and evaluation took place immediately after. Participants' completion of surveys and assessment forms were anonymous and voluntary. Participants completing pre- and post-training surveys were asked to rank their agreement with the following seven equity statements using a Likert-type scale of "Strongly Agree," "Agree," "Disagree," "Strongly Disagree," and "N/A Unsure".

1. *I have received training within the past two years that has increased my knowledge and understanding of institutional and structural racism.*
2. *The training that I received contained information that increased my knowledge about the underlying causes of racial inequities in policing.*
3. *I have a clear understanding of what racial inequity and disproportionality means in helping systems.*
4. *I feel that it is important to train leadership and departmental teams to have an analysis and understanding of the history of institutional and structural racism in LE.*
5. *I have received clear training on the impact that institutional racism has on families and communities.*
6. *Institutional and Structural racism impacts the decision-making processes of individuals working within systems.*
7. *Data is critical in identifying racial disproportionality and disparities and in developing appropriate strategies that reduce racial inequities and improve outcomes for all populations.*

Most participants agreed or strongly agreed with all seven racial equity statements before training. At pre-survey, all participants agreed or strongly agreed that racial equity training is important (100%) and describe data as critical to identifying racial inequities (100%) (see Graph 1). Ninety-four (94) percent of participants agreed or strongly agreed institutional racism affect the decision-making within systems (see Graph 1). Eighty-nine (89) percent of participants said that it is important to train leadership and departmental teams about the difference between equality and equity (see Graph 1). Finally, seventy-eight (78) percent of participants said the institutional racism and racial equity training prior to the JJC training increased their knowledge.

Graph 1. APD Pre-Training Survey 09/24/2020 N=18



Post-Surveys

The post-survey asked again the seven equity questions for participants' after training. All participants agreed or strongly agreed

with all seven equity statements (see Graph 2). (One participant joined by phone and did not complete the post-survey or evaluation.)

Graph 2. APD Post-Training Survey 09/25/2020 N=18

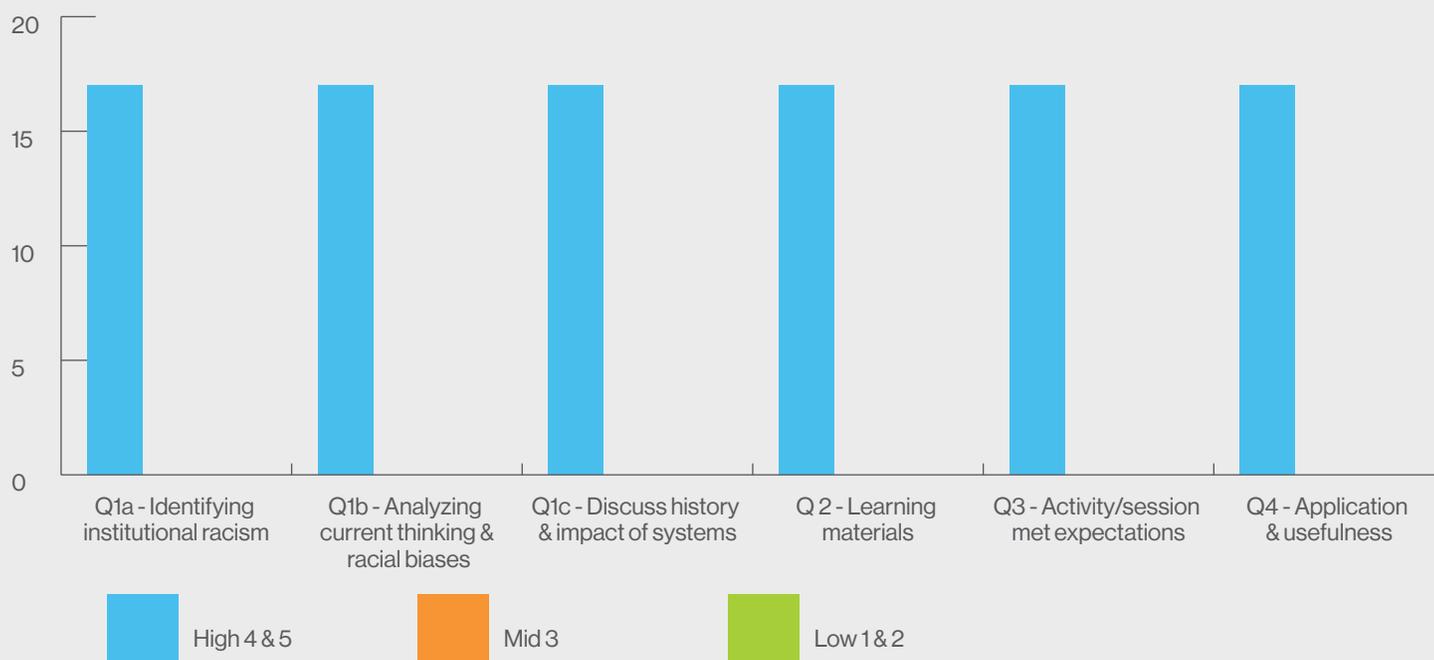


Participants' Evaluation

As part of the evaluation, participants ranked JJC's achievement of the workshop learning objectives and the application and usefulness of content on a Likert-type scale of one through five

- all the examples & dialogue
- explaining the difference of systems-based vs individual based racism. Focus on systems, equality vs. equity graphic
- the background information of the instructors' parallel experience

Graph 3. APD Participant Evaluation – Scaled Responses 09/25/2020 N=17



where “1” was the lowest and “5” was the highest (see Chart 3). All participants ranked all scaled responses at “4” or “5” (see Graph 3).

In addition to the scaled responses, participants provided qualitative feedback based on the following questions.

“What information or activities did you find most impactful?”

- discussion on equality and equity
- deep discussion on systems
- safe sharing environment; analogies
- equity vs. equality “Great” Enjoyed all!
- the statistical analysis of systemic racism
- the equality vs. equity exercise
- definition of structural an institutional racism

& impact on CPS systems to better outcomes for Blacks

- highlighting the differences between individual racism and systemic racism
- equity/equality exercise
- slide presentation/conversation/knowledge
- the chart equity & equality chart
- group discussion and experiences— understanding of systems
- The equality versus equity slide. The discussion and presentation were quite impactful.
- The equality vs. equity

“What aspects of the process will be most helpful to you in your daily life and/or work experience?”

- decision making
- developing strategies

- new understanding of equality v. equity
- ability to identify the barriers!
- understanding and dismantling systemic racism
- understanding the role of systems in outcomes and looking with a new lens
- having this conversation w/non-blacks
- the greater understanding now imprinted on me
- using a systems-based lens to examine issues and develop solutions
- identifying ways to remove fences
- Institutional/structure of racism
- all of it—but who was in the room receiving the training
- the equality vs equity

“How will this process provide an opportunity for you to be more effective in your work?”

- listening with a wider spectrum of knowledge
- developing analysis to think systemically
- understanding equity
- ability to change systems
- looking at the processes through the lens of outcomes
- the opportunity to use a new lens w/data to determine if we are affecting outcomes in a positive way
- helps me too create a safe inclusive environment to have a dialogue about this issue
- it gave me the awareness, tools, and hope I needed to move forward
- providing information I can use to create actionable items
- a framework to use when analyzing current systems & having conversations with coworkers about change outcomes
- creating a group to work together, having been through this training together
- better identify organizational impediments to equity
- the principle understanding we put to use in the department (APD)
- education and challenge to think outside the box
- understanding, enlightenment
- I will be able to clearly articulate how structural racism impacts the implementation of initiatives
- this process has helped me to look at the systems

“What new skill or idea will you implement into your job or practice...a result of attending this educational event?”

- decision making w/equity in mind
- systems thinking
- still a work in progress
- ensure all employees are exposed to this
- evaluating outcomes as systemic indicators
- providing this same lens and understanding to the workforce
- open conversations on race relations
- I will re-evaluate hiring processes specifically disqualifications that may be inequitable. I will add anti-racism in our mission vision.
- looking @ all policies & practices in my area of responsibility
- removing the fence!
- using a systems approach to problem solving
- implement the ideas of this session
- ensure the consideration of applicants based on their particular skills and circumstances
- addressing systemic change

Participants’ Additional Comments

- great!
- truly outstanding & inspirational
- you all are awesome I want to be you
- best training not only on this subject but compared to other topics
- great training!

DEBRIEF

As a follow-up to the GWA workshop, JJC conducted a 3-hour debrief with participants. The purpose of the debrief was to share the data and information collected through participants’ pre- and post-surveys and evaluation and consultants’ observations drawn out from training discussions, provide participants with an opportunity to share their personal insights and awareness after reflection, gather additional feedback on individual training experiences such as how they may have connected with content and activities, and identify any new perspectives and learnings, which might translate to changes in day-to-day practices and strategic planning.

Why important to undo institutional and structural racism

- It’s a birthright.
- Now we have a better definition and now I have a starting point. On both sides, there needs to be an understanding

- of how we want our officers to come home every night.
- Colin Kaepernick was very peaceful, but he was told to stay in his place and was ostracized.
- After Olympic medalists Tommie Smith and John Carlos gave the Black Power salute while the Star-Spangled Banner was playing, their lives/careers were ruined because they didn't stay in their place. (They'd won gold and bronze medals respectively in the 200-meter sprint at the 1968 Summer Games in Mexico City.)
- Law enforcement is often used as the clean-up mechanism for other systems. Unless we address the problems in the whole system, we're still going to tell police to take care of it.
- For the longest time, I thought I knew what institutional racism meant, but I realize that I don't.
- If I go in thinking that there's going to be a bad outcome, there's going to be a bad outcome.
- Teaching cadets racial profiling
- Many cadets say that they grew up in neighborhoods where everyone looked like them, so most of what they learn about Black people is learned on the street.
- In medical school, they dissect bodies to learn more about how to find a cure. The same is true about the history of policing.
- How do we get people to step into the reality of what Black people experience every day? Black people get tired trying to convince White people that this is really happening. It feels like a loop repeating, and it's tiring.
- If we're not conscious of the jobs we do, we can do really bad things. For example, there were people in Nazi Germany who went to work every day and planned transportation of trains to the concentration camp; those in purchase who bought bullets and gas; those who were planners, and so forth.
- As the lightbulb comes on, people need to know about resources that are available. How do we get everyone at the table who needs to be there?
- category offenses that can be reconsidered for civilians.
- Promotions, transfers, and disqualifies in recruiting system.
- Making sure everyone has an opportunity to succeed and advance. Inclusion across the board.
- FTO program needs to be re-examined where FTO tells new officers to forget what they've learned in the academy. Can ride-alongs be a part of cadet training in the future?
- Communication throughout the department from the time a recruit steps into the academy and some of the comments within and externally from the community reveal communication issues.
- TPOA has a document with a whole list of items. They are being written up more formally. This information will be shared and may impact Women, Hispanics, and Union as well. Don't want to leave out any group.
- Commitment from leadership that is communicated both internally and externally that we are going to make this change at every level.
- Commitment to leaning into the fences and acknowledging the fences.
- Fence around community trust. Figure out strategy to restore that trust. On the community side, there are people who don't want APD at the table, but they need to be at the table in order to re-imagine public safety.
- Resources. If all 50 or 100 managers throughout APD were involved in this discussion, we would have so much more input into what the fences are.
- In the recruiting process, we should consider allowing second chances for bad credit, eviction, and so forth.
- Assure that we don't rebuild the fence with protectionism in efforts to rebuild trust within the community. For example, it's true that police want officers to come home every night. How can everyone sit at the table and be respectful of the culture from the community's viewpoint? **JJC:** Maybe go to the group and ask, "what would it take to be invited back to the table?"
- How do you repair trust when some of the messaging is not community oriented? **JJC:** Through communication, the community needs to know what APD is doing. How do you message it in a way that says this is what the APD is doing?
- Some people who don't represent the community go through the back door and say that they do. There has to be reciprocal communication.

What we heard from participants about fences in the APD

- The system that is in place for promotion. Is it a fair system? What does a fair system look like? That brings in the contract and barriers associated with that.
- Challenges with specific required course work in forensics that vary by university and impact incoming qualifications.
- Many applicants have been disqualified because of low

- We must use the history of policing as a point of departure.
- The community has power, but no authority. The power comes from the institution. How can we bridge that gap?
- How do we transfer authority to the community so that it is actually distributed there and change comes from a unified effort?
- Who is “the community”? Some parts of the community are not in sync with or in agreement with other parts of the community. JJC: How do we develop strategies to hear voices from all segments of the community?
- There are multiple communities. How do we talk to the little guy in the equity slide such as the formerly incarcerated, Black trans women, homeless, etc. because those are the most vulnerable and those most left out of the community. If we don’t have an existing relationship, we need to create one.
- Division between sworn and civilian is an extreme fence. Employee relations and recruitment have areas of similarity to identify and then synchronize. That’s a huge piece of the puzzle. Employment processes for 911 and officers are the same in the beginning, and then break off at some point. If HR is not on the front end of employment meetings, there are challenges on the back end.
- Do a better job of marketing areas that have been neglected.

STRATEGIC PLANNING

Fundamental to the APD’s future success in tackling the complex and persistent problems of racial disproportionality and disparities in its outcomes is a roadmap—strategic plan—designed to address institutional and structural racism. With the foundation of a deeper understanding about institutional and structural racism as the root cause of racial inequities; the goal of the APD strategic planning session (as facilitated by JJC) was to identify priorities and opportunities for measurable actions.

The strategic planning session opened with participants selecting by consensus the following immediate priorities.

1. Develop and deliver a consistent message about racial inequities and disproportionality about what will not be tolerated and a plan for reiterating the message at multiple levels within the organization and at APD’s “front door.”

2. For both the APD cadets and those who have been in the department for years, ensure policing is handled by the “least intrusive means.”
3. Thoroughly analyze data to ensure focus on the most appropriate areas.
4. Engage members of the community who participated in this process with APD, in the ongoing planning and implementation of new strategies that will improve and strengthen partnerships with community.
5. Add anti-racism language to the APD core values and principles to strengthen the APD mission and vision statement in conveying the importunate of an anti-racist organizational culture.
6. Develop a process for engaging with “Ida Sector” officers, community members, TPOA, and others, to actively involve and hear the voices of the community in the design of a new and inclusive community policing model.
7. Examine budget allocations that may support the new community policing model, i.e., hand select officers, include Ida Sector community members in GWA workshops with assigned APD officer
8. Engage both sworn and civilian staff in the process of identifying and undoing institutional and structural racism.
9. Identify other cross systems partners, city of Austin departments, community-based organizations and individual community members to include in the ongoing efforts to develop an “upstream” collaborative approach to undoing institutional and structural racism in APD.
10. Prioritize and develop a plan to make GWA training available to the APD across department and at multiple levels.
11. Conduct a critical examination of the APD policies and procedures through a racial equity lens

RECOMMENDATIONS

The historical nature and design of law enforcement and all other systems, shows that systems as originally structured have an oppressive racially defined relationship with internal and external constituents. Therefore, ensuring an organizational culture and climate that is supportive of the APD vision requires that the department actively engage in creating a sustainable culture; one not solely focused on individual implicit biases, but rather,

placing a higher level of accountability for addressing racism at the institutional and structural levels. Systemic change will only occur when leadership can visibly demonstrate a willingness to be intentional, deliberate, transparent and vulnerable in recognizing the long history of racism in policing and in creating a liberated and safe space for internal and external stakeholders to share in every step of the process of creating the new APD anti-racist culture.

JJC has recommended in the full report that APD use key components of the nationally recognized Texas model to support and enhance efforts to create its more race competent organizational culture. Racial disproportionality and disparities are complex and multi-faceted. These components will act as a frame for the necessary work ahead.

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RESPONSE EXHIBIT E

Community Report

Austin City Council Resolution 66: Austin Police Department Training Video Review Panel

By: **Jeaux Anderson, Angelica Erazo, Andrea Black, Maya Pilgrim,
Miriam Conner, Phil Hopkins**

January 18, 2021

*"The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country's criminal justice policy, it cannot be said that it was imposed by a repressive minority."
-- Ta-Nehisi Coates, *Between the World and Me**

"Today has shown police don't need de-escalation training. They choose who to escalate on. That's not a training issue."

-- @traceycorder in reference to Jan. 6 riot at the US Capitol

[LINK TO EXECUTIVE SUMMARY](#)

I. Introduction

II. Patterns Identified in Videos

- A. Pattern: Racial Bias, Stereotypes and Use Of Force
- B. Pattern: Overrepresentation of “What Not To Do” Videos
- C. Pattern: Ineffective Language and Neglected Power Dynamics
- D. Pattern: “Us Versus Them” Mentality
- E. Pattern: Dramatic Reinforcement of the “Danger Imperative”
- F. Pattern: “A Few Bad Apples” Theory of Police Accountability
- G. Pattern: Emphasis on Transactional Interactions
- H. Pattern: Inappropriate Use of Mass Media News Clips

III. Insights into the APD Training Academy Curriculum and Process

- A. Ineffective Adult Learning Strategies
- B. Lack of Overall Coordination
- C. Ethics Training Isolated
- D. Concerns About Process

IV. CONCLUSION

I. INTRODUCTION

SCOPE OF THIS PANEL

We were invited as community member representatives to review a core set of Austin Police Department (APD) training videos shown at the police cadet academy as laid out in Austin City Council Resolution 20191205-066.¹ The videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight. We reviewed videos within the Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation, Tactical Communication; Use of Force; and Use of Force - Legal modules. Our task was to identify and analyze any racial and gender inequities in the videos and the ways in which the video training material may reinforce larger cultural stereotypes and narratives.

We are writing this report to share our experience and analysis at the end of a seven-month process. This report supplements the formal reports submitted by the panel facilitators at Life Anew. We would like to call attention to the external review produced by Peace Mill Research and Communications, “Community + APD Equity Assessment Series: Austin Police Department, Training, and Recruiting Divisions.”²

CONTEXT

We are writing this report in the midst of turbulent times. We undertook this review as a community panel a year after the Austin City Council recognized in 2019, through Resolution 66, the Austin Police Department’s (APD) “history of bigotry and discrimination that has contributed to racially disparate outcomes in policing and policy.”³ We came together in 2020 during a summer of uprisings in response to the police killings of Black people. We are currently experiencing a global pandemic that is overwhelming our underfunded public health system and has resulted in disproportionately high sickness and death for Black and Brown communities. This same year, a presidential executive order banning anti-racism training in federally funded programs was issued in an attempt to erase the history and the violence inflicted upon communities of color.⁴

We have undertaken this review and report with a sense of responsibility to the communities of which we are a part and a commitment to voice our analysis and experiences in regards to disproportionate targeting of, and violence toward,

¹ <https://www.austintexas.gov/edims/document.cfm?id=332753>

² <http://www.austintexas.gov/edims/pio/document.cfm?id=352525>

³ <https://austintexas.gov/page/resolution-66>

⁴ <https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/>

communities of color at the hands of Austin's police force. We recognize that the patterns we witnessed while reviewing the APD training videos are not exclusive to APD but are reflective of our society at large. However, as we witnessed in video after video, the power and authority which APD wields can have lethal consequences. We continue to witness Black, Indigenous, and Brown deaths across the country at the hands of police. We know APD wants to and can do better. We submit this report in the hope that APD will:

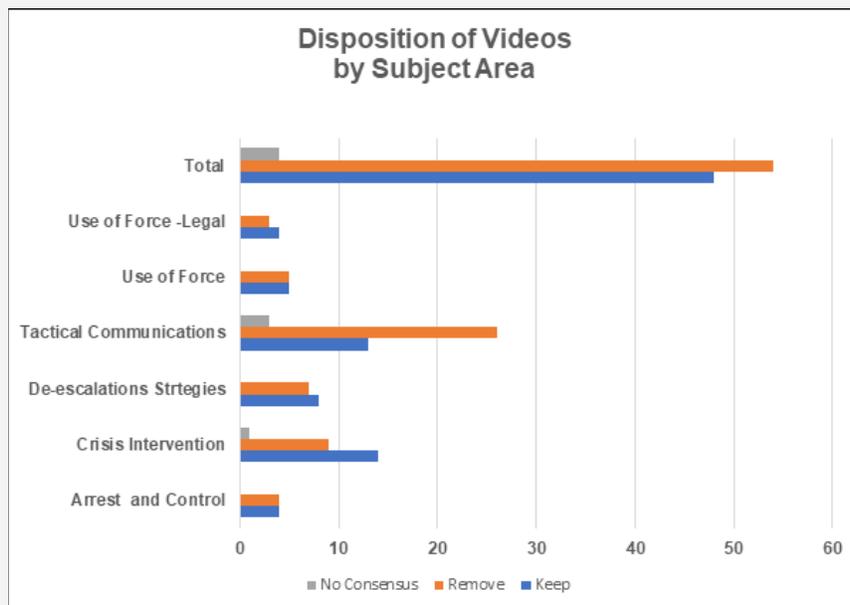
- Unify a siloed approach within the department that currently leads to disjointed training;
- Reevaluate, root out, and correct the ways in which the numerous biases we delineate below--specifically racism, classism, homophobia, ableism, and misogyny--currently permeate its training materials; and
- Interrupt the patterns and mechanisms of systemic violence in the larger culture which are perpetuated by the department charged to protect and serve.

We also recognize that the review of videos used in the cadet training is but a single gear in a larger departmental, city, and cultural machinery that perpetuates biases and behaviors that enact systemic harm and oppression on our communities.

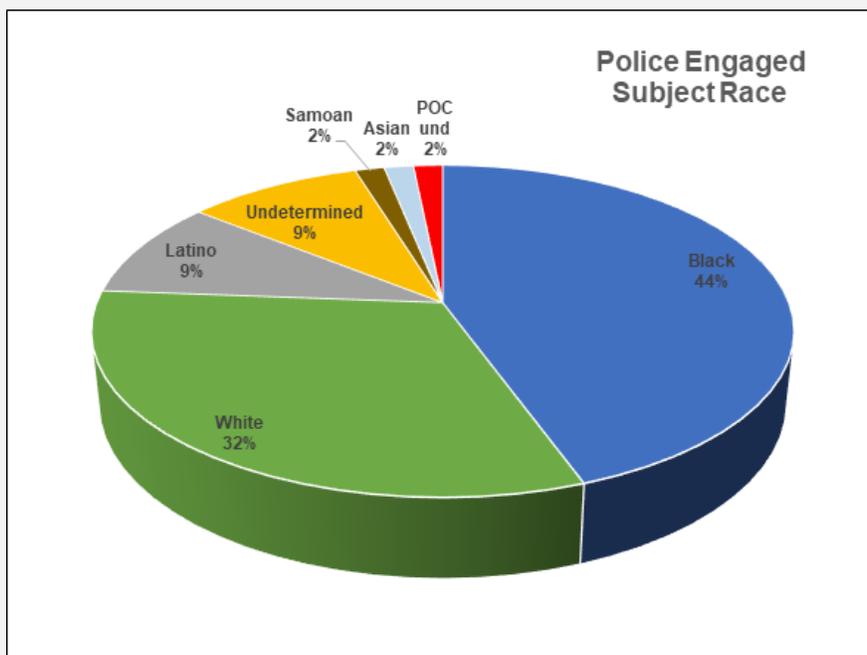
II. PATTERNS IDENTIFIED IN VIDEOS

Pattern: Racial Bias, Stereotypes and Use of Force

The vast majority of the videos we reviewed over these seven months were disappointing in quality. Most were outdated, many were hard to follow and had poor viewability, and some had unprofessional or sensationalistic commentary. Please reference Graphic A below. **But, by far the most alarming pattern we witnessed was the harmful stereotypes perpetuated against Black and Brown communities.** The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death. The videos we reviewed were mirrors of the patterns of racism, sexist gender norms, and classism we see perpetuated across systems and institutions in Austin and nationwide, including the fact that the outcome of many of these videos was almost immediate and completely avoidable death. Graphic B below highlights the race of the subjects that engaged with police from the videos reviewed. Graphic C depict the subject's race that involved the subject being shot. In both graphics we can see people of color, particularly, Blacks, being overrepresented in the videos highlighted in the curriculum.



Graphic A - (Graphic highlights the disposition of videos by subject area and the review panel’s suggestion on either keeping the videos, removing them or where no consensus was reached. Over 50% of the videos were recommended to be removed from the curriculum.)



Graphic B - (Graphic displays the subject’s race from the videos. Blacks comprised the largest percentage of subjects at 44% and whites as the next highest percentage of 32%. “POC und” is a subject of color of undetermined race. Out of the videos filtered, 59% involved subjects defined as people of color). Austin’s city demographic listed the city’s population as: 48.3% White (non-Hispanic), 33.9% Hispanic, 7.8% Black, 7.6% Asian, 0.7% American Indian or Alaskan Native, 0.1% Native Hawaiiin or Pacific Islander.

Issues of Racism, Implicit Bias, Not Integrated Throughout

We did not observe any discussion about the historical context of policing and the impact of White supremacy, racism and other intersectional forms of oppression, or implicit bias. While this may be covered in a separate training module, we believe it is critical that discussion of these issues be integrated throughout the training and that cadets be supported and encouraged to discuss the racialized, gendered and classist dynamics at play in every day interactions with the community. **These issues should be addressed at both the individual officer level as well as at the departmental level. Instead, the training appears to be focused solely at an individual level, focusing on an individual officer's "professional" vs "personal" demeanor and looking solely at their individual interactions.** There is no discussion about how they can and should intervene when issues of bias or racism or other misconduct arise or to examine how a department can and should build trust in the community and how it can respond to harm it creates in the community and work to repair harm and rebuild trust. It should not be about "hiding" or ignoring bias but about confronting it in effective ways. This is a critical area that requires in-depth training integrated throughout the training modules.

Dehumanizing Footage

Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed. We saw this play out in the way that many peoples' faces were not blurred--even when footage showed them in extreme crisis, nudity, and in vulnerable positions. In several videos, people's names were shared or people were depicted via police "mug shots" although not relevant to the training objective.

Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded. ***Because these are real human beings, not actors, in particular moments of time in their life, it is important to not perpetuate insensitivities to people's privacy and show care and ethics around how people's stories are used as training tools.***

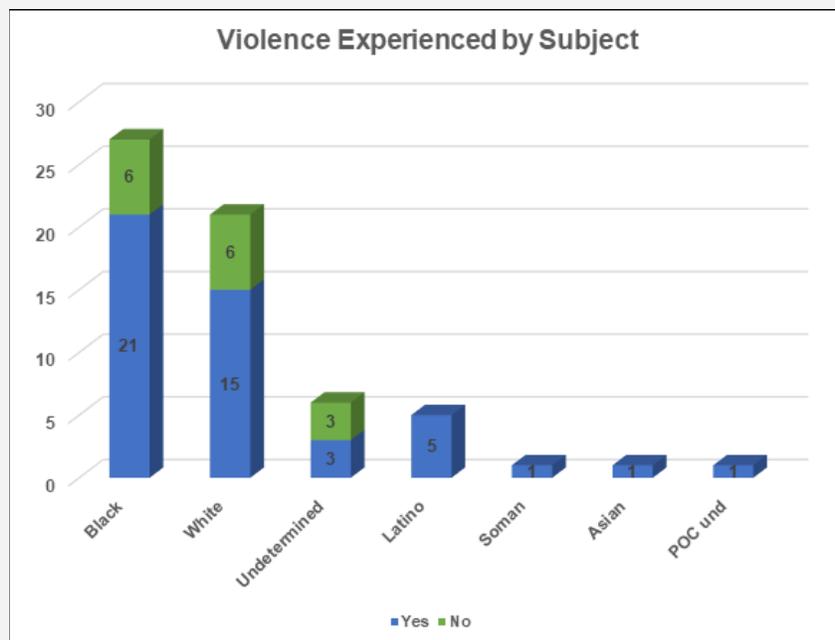
Rapid Escalation and Use of Force with People of Color

There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again mostly Black men dying within minutes, sometimes within seconds, of an interaction with police. There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly

led to rapid escalation with often violent and even deadly results. We did not find any consistent focus in the training material on the fact that not all situations need to be controlled to the same extent and in the same ways. Please refer to Graphic C which is a representation of the number of subjects that experienced violence.

Many of the videos, including several that are more broadly used in police academies nationwide, are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. We do not believe these videos should be shown if APD trainers or guest facilitators are not able to offer a critical analysis and discussion of both what went wrong in the videos and how the results shown in them are shaped by deep cultural biases and stereotypes. We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity.

It is important to state that it was very traumatic for community members to watch repeated racialized violence displayed in the videos. We have grave concerns about the impact watching these videos will have on all cadets, and particularly cadets of color.

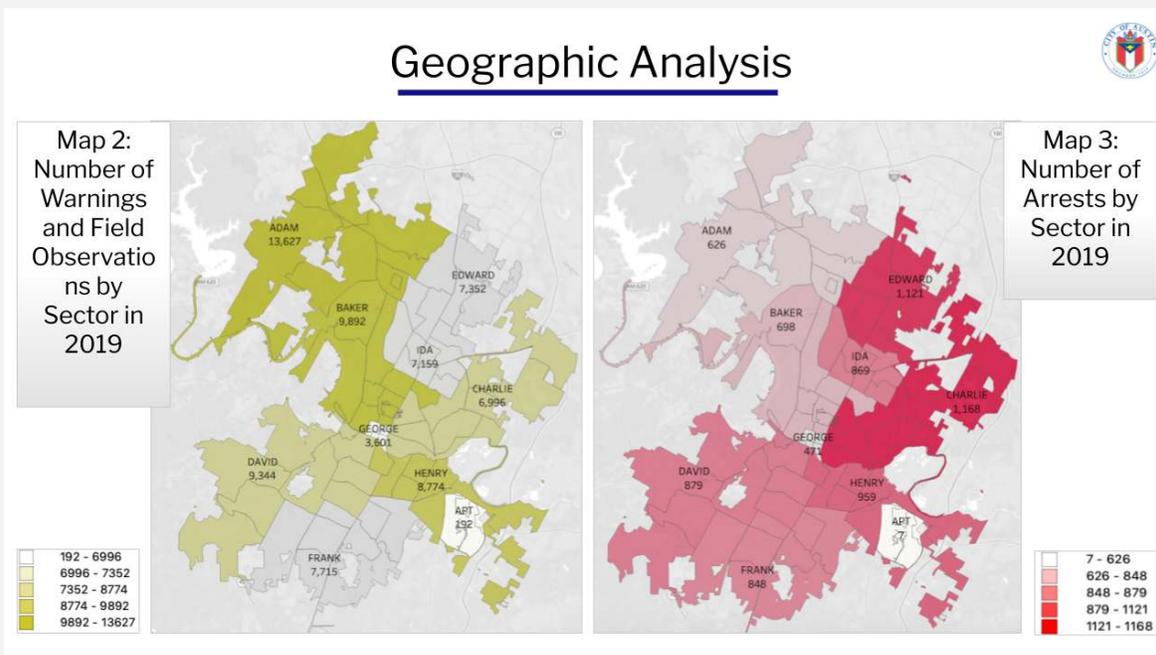


Graphic C - (This graph is a representation of the number of subjects that experienced violence. Violence is described as tased, shot, shot at, killed, excessive force, shot with a bean bag, and pepper sprayed. As a percentage of the total number of subjects that experienced violence, Blacks represent 46%, Whites represent 30%, Latino 11%, Asian, POC und and Samoan represent 2% each, respectively. All people of color collectively represent 63% of all subjects that experienced violence.)

Working Class and People of Color Seen as Threats

There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. ***Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more "dangerous" in clear distinction to White people.*** In the training material, class markers also clearly assigned "dangerousness" to less affluent socio-economic groups.

We know that this pattern is not only reflected in the curriculum, but also in current Austin policing. Graphic D below, taken from a [recent analysis of racial disparity](#) in policing in Austin by the City of Austin's Equity Office, Office of Police Oversight, and Office of Innovation, shows the tangible result of this kind of biased training combined with deep historical inequities in policing. The map on the left shows that warnings and field observations were disproportionately represented in 2019 police interactions in the predominately White and affluent areas of West and North West Austin. In contrast, 2019 arrests were concentrated in East Austin (Central, North, and South) and areas of South Austin--areas with the highest concentration of Black and Brown residents. This data clearly shows the implications of unequal policing, specifically with officers giving more grace, in the form of warnings, in more affluent and Whiter communities; and giving less grace, in the form of over-policing and arrests, in working class and Black and Brown communities.



Graphic D - (Graphic from the 2019 Analysis of APD Racial Profiling Data by the Office of Police Oversight, Equity Office, and Office of Innovation.)

Gendered Stereotypes

Patterns of gender stereotypes across different modules displayed frequent and unacknowledged gender biases. Female officers were rare, and when one was present, we witnessed her judgments and strategies disregarded by her male peers. Descriptions of effective officer presence and posture were often described in masculine ways, such as an emphasis on perceivable upper-body strength. Women were most visible in the Crisis Intervention section--both as officers and community members--reinforcing the “feminized” stereotypes of care and stereotypes that view women as “victims” of “hysteria.” While women, both as community members and officers, were absent in most of the Arrest and Control and De-Escalation videos, we did see disturbing moments of violence and “what not to do” examples from White male officers toward Black women civilians. When Black women were featured, the impetus to control their bodies and dominate the interaction was clear, with officers justifying force due to “angry” and “sassy” stereotypes.

A lot of the videos perpetuated toxic masculinity and continued to show a disregard for nuance in what it means to be masculine and in what it means to be a police officer. In their interactions with community members, we repeatedly watched officers cling to ideas of control that perpetuates the need to be an aggressive, alpha male and having to assert dominance. We saw little to no room offered for police officers to turn aside from a “need” to be dominant in order to better connect to, and work with, the community on a human level.

Who Is Allowed To Be In Crisis

Some of the videos, many in the Crisis Intervention section, gave cadets an opportunity to hear personal storytelling and build empathy for people's problems and difficulties. However, this storytelling came almost exclusively from White men. This leaves a gap in knowledge of how mental health issues may show up differently for women and gender-non-conforming community members. ***Instead, women and men of color were rarely allowed to speak for themselves and were portrayed almost exclusively in footage that cast them in uncritical narratives about their needs from the point of view of those who assumed the authority to speak for them.***

This difference in whose perspectives are valued and highlighted in the videos correlates to the stark differences in police responses that we witnessed. It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats.

Throughout this process, the training curriculum lacked substantive content on how to effectively interact with people with disabilities. There was little to no information provided about the ways in which crisis can present differently for individuals across the spectrum of neurodiversity and ability. There were some videos in the Crisis Intervention section that highlighted information on different abilities and mental health issues, but no clear advice was offered on how to best accommodate a range of abilities or what to look for when approaching a crisis situation. Without this training, officers may not have the tools to recognize the various ways that ability and mental health impact an individual's responses. In some cases, behaviors that may be perceived as "aggressive" by officers may in fact be indicative of mental health crises or disability.

Outside of the Crisis Intervention training section, there was no mention of how to adequately serve and protect community members with disabilities. There were a few videos that appeared to show people experiencing mental health crises; however no explicit mention was made of the role mental health played in the interaction, and many such instances resulted in excessive use of force by an officer. A 2018 audit of [APD Response to Mental Health- Related Incidents](#) highlights the lack of implementation of peer-city best practices in APD crisis intervention training. This panel similarly identified these patterns and need for improvement.

Particular Crises Are Validated; Racialized Trauma Is Not

We also observed dramatic differences between the strategies taught during Crisis Intervention and the strategies taught in the other modules. The crisis intervention strategies encouraged officers to consider different factors that may influence a person's responses in a given situation. Trauma responses, developmental disabilities, and neuro-atypical behaviors were discussed and considered. Dementia, autism, and Alzheimer's were highlighted in particular. It was emphasized that people dealing with these issues deserve to be treated with dignity and respect. ***These strategies were nowhere to be seen in any of the other modules nor was their absence deemed relevant in processing the content of the other videos. Limiting these strategies to a particular module can have the effect of contradicting and devaluing those strategies and skills.***

We are concerned that such dignity and respect seemed largely restricted to people in recognizable mental health crises, but not other people in different forms of crisis, particularly those still largely unrecognized and produced by the allostatic load brought on by the stress and trauma of racialized poverty in our society. The emphasis on broadly supported mental health issues made stark the absence of recognition and support for these other serious and prevalent mental and emotional health issues throughout the videos.

This lack of recognition contributes to the patterns of violence which have resulted in police killings nationally of George Floyd, Breonna Taylor, and Elijah McClain in 2020 and the following deaths at the hands of the Austin Police Department from 2000-2020: Mike Ramos (2020), Mauris DeSilva (2019), Hugo Alvarez (2018), Aquantis Griffin (2018), Victor Sanchez Ancira (2018), Leslie Salazar (2018), Thomas Alvarez (2018), Landon Nobles (2017), Morgan Rankin (2017), David Joseph (2016), Larry Jackson, Jr. (2013), Ahmede Jabbar Bradley (2012), Maurice Paladino (2012), Byron Carter Jr. (2011), Devin Contreras (2010), Nathaniel Sanders Jr. (2009), Kevin Brown (2007), Daniel Rocha (2005), Michael Clark (2005), Jesse Lee Owens, Jr. (2003), Lennon Johnson (2003), Sophia King (2002), Jose Navarro (2001), Joel Hernandez (2001), Kevin Scott (2000), to name a few.⁵

RECOMMENDATIONS:

- There needs to be explicit acknowledgement of the embedded racism and cultural narratives in the videos. Issues of White supremacy, as well as race, gender, class, and other inequities in our community, should be explicitly

⁵ "Use of Force Deaths in Austin, TX," National Association for the Advancement of Colored People (NAACP) – Austin branch, <http://www.naacpaustin.com/use-of-force-deaths-in-atx.html>. City of Austin 2018 Officer-Involved Shooting Report, Office of Police Oversight, June 2020.

discussed throughout the training modules, not just included in one or two sections.

- Find new training videos that offer a much more diverse representation of the demographics of both the Austin community and the APD force. Videos should portray multiple points of view and depict a diversity of community interactions, for example with women, the elderly, youth, LGBTQ, etc as well as different ages, races, ethnicities, abilities, individuals who are non neurotypical, etc. Special attention should be paid to the types of interaction portrayed so as not to overrepresent communities of color in violent interactions or overrepresent White community members in storytelling.
- Support APD trainers to build their capacity to analyze videos more fully and critically in terms of race, class, and gender equity. This capacity should be built in collaboration with community experts who are well versed and experienced in facilitating these conversations and integrating this type of analysis.
- Ensure that the privacy and dignity of all persons depicted in videos are upheld by blurring faces and nudity and deleting names.

Pattern: Overrepresentation of “What Not To Do” Videos

Over half of the videos that we reviewed displayed officers engaged in behaviors and practices they should NOT be doing, and a large proportion of those videos displayed officers using excessive force or making other grievous mistakes. We have termed these videos as “What NOT to Do” videos. These videos are very problematic. ***The continuous repetition of ‘What NOT to Do’ interactions actually reinforces negative behavior; can lead to officer desensitization about abuse, injustices, and corruption; and dehumanizes the community that the officers are sworn to protect.*** Only a very small percentage of videos we reviewed were examples of what officers SHOULD be doing, and even those contained content that was sometimes deemed problematic by the review board.

RECOMMENDATIONS:

- Integrate adult education methods that prioritize methodologies that support adult learning. Watching videos about “What NOT to do” is not the best approach. APD should emphasize videos that demonstrate and reinforce positive behaviors rather than videos that display and reinforce bad conduct.
- Prioritize a few “What NOT to do” videos that could be part of a deeper analysis and discussion in the classroom about the larger dynamics that tend to produce undesirable results.
- When we encouraged the trainers to identify positive, intentional ‘what to do’ videos, we were told that they would be hard to find. This serves as an argument for allowing time and resources for trainers to research material and to engage in creative strategizing to create, identify, or locate the types

of videos instructors need. The difficulty in finding such material quite likely also speaks to a broader nationwide dearth of appropriate, good quality police training videos and would suggest the need to review other police department training materials.

- Make de-escalation a much higher priority in the training and include more videos that demonstrate de-escalation without the use of a firearm.

Pattern: Ineffective Language and Neglected Power Dynamics

In all modules, but especially in the Tactical Communications section, we observed that the attempt to demonstrate professional verbal interaction often portrayed that communication unrealistically, with an emphasis on repeated stock phrases that have limited use in reality. Impersonal recurring phrases included: “cooperate so we can get you out of here quickly,” “we want to get you home,” “we’re on your side,” and “we want to hear your side of the story.” Such examples not only come off as artificial and contrived but as essentially dishonest. The portrayal of them in the videos was stilted and reinforced that these ways of talking are not natural to the officers employing them.

We noted a stark contrast between the examples offered in the videos and the examples offered by the training officers themselves in our discussions. The instructors were able to demonstrate the sorts of communications they would offer in ways that were quite natural and believable. Our concern is that such examples as presented in the videos discourage rather than model the training of effective non-biased communication.

We also observed that the phrase “stop resisting,” while frequently heard in videos, is not used in everyday language. In videos it was not clearly understood by community members with whom officers were interacting and tended to escalate the situation. More often it seemed to be used as a technique to justify use of force: in a number of videos we saw police officers shout it to people who were not resisting and were trying to comply with the officer’s instructions. Police officers need to be trained in more effective, relatable language and strategies.

In particular, generalized instructions on compliance seem particularly ineffective with communities who are traumatized by the hyper-criminalization of their neighborhoods and whose families and communities have been disproportionately negatively impacted by the criminal legal system. This reinforces a dynamic of dominance which requires total submission in order to survive while more privileged communities are treated with respect and dignity. Even when officers in video footage communicated what appeared to be a genuine and sincere desire to help, they seemed unaware of their unmistakable position as representatives of state authority and how that authority creates a barrier, at least, to providing that help.

They did not portray an understanding of the unequal power dynamics inherent between police and members of the public.

Cadets need to be educated about these obstacles and provided with tools to navigate both the relative power dynamics between officers and the public and their own trauma and emotions. The phrase “I’m here to help” simply will not be heard the same way from a uniformed officer with a gun and the power of arrest as from a neighbor or a social worker. Given this power differential, any such offers of help may be perceived as orders. Furthermore, if a civilian is exhibiting fear or trauma responses because of the power differential, those responses may be perceived as suspicious or threatening by the police officer who may escalate the situation. Expectations formed from the other training videos that reinforce the perception of certain community members as more dangerous, as well as the lack of a fully effective Crisis Intervention Training, exacerbate this likelihood.

RECOMMENDATIONS:

- Trainers need to explicitly acknowledge race, class, and gender dynamics at work in the interactions with community members displayed in these videos. Trainers should not avoid these dynamics or focus, as they currently do, solely on an individualized framework; i.e. a police officer’s “professional” versus “personal” face.
- Inculcate a culture of attention to social and emotional intelligence and develop successful coping strategies for officers throughout an officer’s service through consistent policies and practices.
- Include explicit training in how to build rapport with the community and connect with community members in ways that are honest, transparent, and authentic rather than using detached, formal “police” language.

Pattern: “Us Versus Them” Mentality

One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, class, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers.

The us-versus-them bias was explicit in some of the videos--i.e. police work is “the deadly game of cops and robbers”; however, much of it was implicit. This bias manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A “warrior” versus “service” mentality in which officers see themselves as the “good guys” and the public they interact with often as “bad guys,”

- An emphasis on a kind of impossible objectivity and “professionalism” in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and
- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.

Primarily this bias manifested in a focus on police officers “winning” by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. **It is counterproductive to frame interactions with the public as a contest in which the police should focus on “winning.” This cannot help but set up the public in the position of “losing” in encounters with the police.** The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and “win.” In the end, communities will continue to suffer, as there is no viable way to “win”--not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework.

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of “war zone” rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of “bad actors” which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.⁶

We would like to call attention to Dr. Sara Villanueva’s report referencing the paramilitary culture of both APD and particularly the training academy. We observed a paramilitary training style in some of the videos we reviewed. Dr. Villanueva states:

There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police service model. A growing body of research has shown that paramilitary-structured academies do not align well with the

⁶ In the past few decades, since 9/11, for a variety of reasons and by means of a number of local, state and federal programs, police departments, including APD have grown more militarized, not only or even primarily in terms of equipment, but also in terms of broad perspective. One of the most problematic dynamics of the national funding sources for the increased militarization of police departments is the way it skews accountability away from the local community and toward the broader state or federal sources of that funding. Cf. Also, <https://www.pnas.org/content/115/37/9181/actual-report>
<https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds-easier-to-read-report>
<https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing>

*principles of community policing and problem solving which are based on collaborations and partnerships.*⁷

RECOMMENDATIONS:

- The training and training videos should be more focused on serving and protecting the community instead of its current focus on the “warrior” mentality which views the community as the “enemy.”

Pattern: Dramatic Reinforcement of the “Danger Imperative”

Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the “danger imperative”—a belief in a constant and prevalent danger for police officers. APD is not unusual in this regard. A significant number of training videos in most police academies focus on interactions where officers’ lives are under threat or in significant danger. Several of the descriptions of the training materials in use at the APD academy state this plainly. However, statistics from both the FBI Uniform Crime Reports (compiled by departments’ self-reporting nationwide) and the US Bureau of Statistics show this emphasis to be disproportionate to the actual danger an officer is likely to face. Policing is among the top 20 most dangerous occupations, but it is near the bottom of that list, according to Department of Labor statistics.⁸

Violence against police has been dropping for the past five decades, while police violence against the public remains steady. Ambush killings of the police are down 90% since 1970 according to a longitudinal study in the *Police Quarterly*.⁹ Police officers are several times more likely to die in an automobile accident, but still routinely refuse to wear seatbelts because they don’t want to be hindered from exiting a vehicle should they be threatened with deadly force, a far less likely occurrence.¹⁰

⁷ Villanueva, Sara, et. al., *Review Analysis and Strategic Plan for the Austin Police Department Training Academy*, May 2020 (p.10).

⁸ <https://www.bls.gov/iif/oshcfoi1.htm#rates>

⁹ White, Michael D., “Ambush Killings of the Police, 1970–2018: A Longitudinal Examination of the ‘War on Cops’ Debate,” *Police Quarterly*, 0(0) 1–21, Sage, 2020. Between 1980 and 2014, an average of 64 law enforcement officers were feloniously killed each year. There are over 600,000 police officers in over 18,000 agencies in the US. Construction workers and farm laborers have similar rates of on-the-job deaths. Steel workers, truck drivers, and farmers/ranchers die on the job at twice that rate. Trash collectors and roofers die three times as often. Airline pilots and fishery workers die four times as often. Loggers die seven times as often on the job. With the exception of truck drivers, none of those other dangerous occupations kill others frequently in the performance of their duties. Cf. also, “Disaggregating the Police Function,” https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564469#:~:text=It%20proposes%20a%20totally%20novel,safety%20from%20the%20ground%20up

¹⁰ Sierra-Arévalo, Michael, *American Policing and the Danger Imperative* (November 1, 2016). Available at SSRN: <https://ssrn.com/abstract=2864104> or <http://dx.doi.org/10.2139/ssrn.2864104>

However, despite the statistical evidence, officers are trained to view every encounter as potentially life-threatening. While any given encounter with the public may indeed pose some degree of danger to an officer, the fact that across the United States 600,000¹¹ officers constantly ready to escalate situations out of fear for their safety poses a much greater threat to the public they serve. If officers are trained to view every person they encounter as a potential “cop-killer,” then bodies already perceived by our larger society as inherently dangerous, such as young Black males, will inevitably bear the brunt of that fear. Further, the central dynamic of policing--to control the public in every encounter with them--will tend toward unnecessary escalation when that control is perceived as being resisted, something that occurs far more frequently when officers interact with People of Color.

One of the training officers acknowledged that there has been an overemphasis on an officer “going home at the end of the shift” for some time in policing and police training. The training we reviewed, particularly the training highlighting the danger imperative, definitely emphasized the safety for the officer above all else. ***We believe the emphasis should be on maintaining the safety of everyone in police interactions with the public. The goal should be for everyone to go home safely.***

RECOMMENDATIONS:

- The curriculum needs to address the impacts officers’ choices have on individuals in the community. Cadets need to be continually reminded that their actions and choices may have profound and lasting impacts on individuals’ lives.
- Introduce explicit and in-depth training in ways to mend relationships and rebuild trust with the community after bad actions by the police: from empowering individual officers to speak out after witnessing behavior ranging from merely inappropriate to criminal, to articulating the responsibilities, institutional expectations, and departmental practices in relation to the community when community standards are transgressed.

Pattern: “A Few Bad Apples” Theory of Police Accountability

We noted in our review the way in which examples of bad or even criminal behavior on the part of police officers in the videos was explained as being the result of individual bad actors. Repeatedly, the training officers expressed surprise over how officers in the videos acted, claiming they did not understand what those officers were thinking or why they were acting the way they acted. This is part of a nationwide trend to excuse this behavior as the product of a few “bad apples” rather than as the natural, even inevitable, consequences of larger biases and power

¹¹ <https://www.statista.com/statistics/191694/number-of-law-enforcement-officers-in-the-us/>

dynamics at work across police departments and society more broadly and of the structures and traditions of policing itself. The view that systemic problems are the result of individual police officers not properly following their training or lacking the appropriate attitude or temperament for policing prevents departments from properly addressing these prevalent and continuing patterns.

From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment. These patterns of police behavior are inseparable from the history of policing and how police practices have evolved to the present day. It is also tied to larger cultural narratives which engender perceptions of People of Color, women, gender-expansive individuals, the differently abled, and working class people as inherently less worthy of respect, or inherently suspicious, dangerous, and in need of “control.”

A lack of awareness of these broader cultural biases that influence interactions with the public in ways unconnected to individual professionalism underscore the need for incorporating the proposed course on History of Police and Race in America course into the training academy curriculum. ***Without this foundation training that addresses racism and other forms of oppression and an awareness of and sensitivity to the intersectional identities that people live, the training will fall back on the popular narratives and frameworks that it already presents throughout the training modules***

If we continue to treat the problem as individual aberrant behavior and try to address it through individual disciplinary actions that clearly are not working even when they are (rarely) imposed, we will make little progress. The problems are systemic and must be addressed through cultural change and system-wide training that recognizes the role that police structure and history plays in producing them.

RECOMMENDATIONS:

- We wholly support the addition of the proposed course on History of Police and Race in America into the training academy curriculum.
- The proposed training in the history of policing should be a foundational module which precedes the skills-building training modules. We would recommend that additional coursework be incorporated that addresses implicit bias and cultural humility.
- In a hierarchical organization like APD, incoming, lower-ranked cadets are not effective levers of cultural change. In addition to revamping the cadet training academy, APD needs to undertake retraining of current officers to

respond to these critiques of the current training. It is not enough to revise the training solely for new staff.

- New cadets are being introduced to an established system with an entrenched ethos and worldview. The police department leadership would need to commit and follow through with cultural change through policies, practices, and expectations in order to change the academy. The department can't change through training alone.

Pattern: Emphasis on Transactional Interactions

Many videos emphasized a “transactional” approach to interacting with the community, rather than long-term relationship building to develop genuine, authentic relationships; i.e., “The Memphis model.”¹² ***The main goal of many of the videos appeared to be teaching officers how to protect and safeguard themselves against complaints, reduce potential liability, and be prepared for court appearances rather than engaging with the community authentically, humanely, and ethically.***

This transactional approach was evident across modules, where cadets were encouraged to perform a show of humanity or behave in productive and community-oriented ways in order to gain compliance or avoid fallout from community complaints or legal action against them. The theme, explicit in several videos, was clearly that officers should treat people with respect for a specific and self-interested goal, rather than teaching that officers must treat people with respect because that is what they are due. It is deeply problematic to train cadets that acting appropriately with the public has a price tag in the form of some expectation of return.

RECOMMENDATIONS:

- What was apparent throughout the videos was wide-scale dehumanization and a lack of community accountability. We encourage APD to explore what community accountability should look like in direct consultation with the most directly impacted communities.
- Undertake a community review of the academy training, including a review of all videos every two years until APD has established trust with the community, after which the review process could be extended to every five years.

Pattern: Inappropriate Use of Mass Media News Clips

¹² The Memphis model was cited in one of the Crisis Intervention I training videos, but it was unclear whether APD has fully adopted and integrated this model. We believe it should be a priority orientation for all units, not just Crisis Intervention. The ethos of the Memphis model --“they treated me like a human not a perpetrator” -- should be for everyone.

A final pattern we noted concerns the source of the video clips. It appears that APD acquires some core sets of training materials from third-party sources, with individual training officers given the option to find any additional or alternative material. It does not appear that they are provided with a great deal of support or resources in their quest to find appropriate materials; it appears they often resort to reaching out individually to colleagues within APD or in other police departments to identify body cam footage that may be applicable to their teaching objectives. As a result, a number of the videos were gathered from very problematic video sources. In addition to Verbal Judo, T-COLE, PERF--many of which were outdated and were rife with stereotypes--we saw footage that was taken from questionable websites such as www.TheYnc.com and Thin Blue Line.

Many of the training videos used are sourced from mass media news clips and other online or social media outlets. There are several problems with using such material. First, mainstream journalists' primary priority is capturing and holding attention, often accomplished by stirring fear or otherwise sensationalizing interactions. Frequently, videos were overlaid with sensationalized music as well as explanatory commentary which was, at best, tangential to the training needs of the curriculum, and, at worst, actively working against the objectives of the training by skewing and dramatizing the material. Even if such narratives are challenged by the trainer, the cadets will still hear the commentary which speaks in the voice of the "public" tacitly or explicitly authorizing the police behavior. The commentary often borrows from and perpetuates popular narratives about both the world and certain "kinds" of people, offering a cartoonish breakdown of people as either "good guys" or "bad guys," usually simply on the basis of their roles or racial/class/socioeconomic status. The commentary exaggerates danger in ways that feed into narratives the public already accepts about what kinds of people are "dangerous." This reinforces unquestioned biases the cadets may bring with them into the training. It is not possible to tell a complex story about historical structures and dynamics in a two-minute news clip. Instead, news outlets recycle the same stereotypes and stories we already know and believe. ***The point of the training videos is to educate; using sensationalized news clips is counterproductive to that goal due to the "reality effect" that visual media imparts.***¹³

Some of the training material was even taken from Hollywood movies. ***No serious or real training value can be gleaned from Hollywood fantasies about the world.***

Training material should remain focused on the actual world. A particularly problematic example was drawn from *The Last Samurai*, exemplifying the cherry-picking of Eastern Cultures out of context (also present in several forms in

¹³ Bourdieu, Pierre, *On Television* (New York: New Press, 1998), 21. Bourdieu argues "that images...show things and make people believe in what they show." Not seeing images has the effect of hiding them not only from our view, but from our consideration as a part of reality.

other training material, such as “Verbal Judo” and “Mushin”). ***Training material should avoid cultural appropriation.***

A number of the videos depicted outdated and stereotyping pop culture. The “humor” clips included cultural appropriation, and/or reinforced dated notions of policing, masculinity, gender norms, People of Color stereotypes, veneration of guns, etc. The comedy clips would likely appeal to particular audiences and would not necessarily resonate with a younger, more diverse cadet class. These videos need to be updated and made more inclusive, if used at all.

RECOMMENDATIONS:

- Overall, the APD videos need to be updated and refreshed. The training team should look for more interactive, engaging training videos with more dynamic storytelling. We recommend utilizing fewer, high quality videos for multiple modules which allows cadets to focus on different aspects of learning using the same scenario. While each module has distinct learning objectives, reemphasizing important skills like tactical communications, crisis intervention, and de-escalation strategies should happen continuously throughout the training so cadets can more fully integrate those skills into their approach to each situation that arises.
- The APD Training Academy should rely less on videos and instead facilitate more interactive roleplay as a more effective teaching tool.

III. INSIGHTS INTO THE APD TRAINING ACADEMY CURRICULUM AND PROCESS

In addition to watching the videos individually, the review process gave the panel a window into the overall training framework. We have the following observations about the training structure and the sequencing of the training modules, and also about our review process:

Ineffective Adult Pedagogy

While training officers are clearly interested in and working at developing better adult learning pedagogies, Dr. Sara Villanueva’s report to the APD clearly articulated a series of steps to improve this effort for the academy.¹⁴ We recommend that the APD Training Academy reach out to and utilize the expertise to be found at the University of Texas, Huston-Tillotson University, Southwestern University, St. Edward’s University, and Austin Community College for help both in finding or

¹⁴ Cf., Villanueva, Sara *Review Analysis and Strategic Plan for the Austin Police Department Training Academy*, May 2020

developing training materials and videos and facilitating training pedagogy and curricula including training the trainers.

Our review of the videos and concomitant interaction with APD trainers also made clear to us that the trainer is critically important. The trainer should be versed not only in the penal code but also in broader human interaction skills and psychology as well as the larger cultural issues so instrumental in shaping how police interact with the public.

RECOMMENDATIONS:

- The APD Training Academy curriculum should be extensively revamped, as outlined in Dr. Villanueva's report.
- Properly vetted subject matter experts outside of the department (including community members with lived experience and expertise in these areas) should be brought in as trainers to augment the APD training team and help train the trainers.
- The Austin City Council should create a paid community advisory board that serves as a resource to APD on an ongoing basis to develop trust and transparency with the community about its policing policies, training and practices, and facilitate the broader use of community resources.

Lack of Overall Coordination

There appears to be a lack of overall coordination, communication, and shared learning techniques among the trainers. Each training module appears to be very siloed. Trainers do not have a clear idea what is being taught in other sections and don't appear to regularly communicate with each other in order to reinforce and integrate previous learnings into the training content. As a result, the training modules are somewhat repetitive without building and expanding on each other. More worrisome, as mentioned above, is that training videos seem to contradict each other when a video shows what NOT to do from a previous module but then is left unaddressed in the current module.

The lack of coordination between trainers of different modules exacerbated this dynamic of overrepresentation of People of Color in disturbing situations and "What NOT to Do" videos by allowing for a perhaps unintended proliferation of these kinds of videos without a specific awareness of the pattern on the part of the academy as a whole. This kind of unintended result argues forcefully for better coordination of the curriculum and closer interaction among the trainers. Too frequently over the course of this process we repeatedly heard the phrase from the trainers: "I don't teach that section... I don't know what they do in that section."

RECOMMENDATIONS:

- The training would benefit from less siloing and better integration among the training modules and better communication among the trainers so that they are aware what each trainer is teaching and how best to sequence the videos.

Ethics and Crisis Intervention Training Isolated

According to the training officers, “ethics in policing,” including when and how officers should intervene when a fellow officer is doing something wrong is addressed in a separate half day “ethics” unit. Treating “ethics” as well as the Crisis Intervention Training as isolated and tangential aspects of the training and police work is a problematic approach that fundamentally misunderstands the way ethics works in society and for individuals. In all of the many “what NOT to do” videos, NONE of them shows any fellow officer intervening.

In general, we observed an overall lack of discussion about whether a particular action or response was ethical.

RECOMMENDATIONS:

- Rethink the order of the training. **The order in training matters.** Tactical communications and Crisis Intervention should be shown early on and be better integrated, and later interactions in subsequent videos should be evaluated based on Tactical Communication and Crisis Intervention tools. Ethics training should permeate every section.

Concerns About Process

In the beginning, as participants engaged in the video review process, there was confusion over our role and how much control/influence that we would have over the process. Many of us assumed that we would be seen as consultants and would be able to let our coordinators know what we needed in order to do our jobs well. However, we quickly ran into problems with being denied information that we requested. The academy trainers emphasized several times that we were unable to grasp the full context because we were only seeing some of the videos or the training material, but we were then denied access to the other material that would have helped us gain a greater understanding of the training.

Additionally we encountered other barriers to full participation. We understand that for many anti-racist initiatives, information is collected in a report and put in a drawer never to be seen again. We watched videos with extremely traumatic content and subsequently engaged in detailed and explicit discussions; it was important for us to make sure it was worth it. We wanted to be clear about where

our analysis and feedback was going, how our recommendations would be implemented, and how the process would be transparent to the community.

During the beginning of the process, our group experienced two major obstacles:

1. Unrealistic timeline laid out by the City of Austin
2. Austin Police Association intimidation tactics

At the beginning of this process, our group was tasked with an impossible two-month timeline for reviewing all the videos. We knew we could not possibly provide the level of quality feedback we felt was warranted given this rushed process. The City of Austin has a reputation for appearing to rush community input in order to provide a stamp of “good faith” effort, engaging in little to no communication as to how these recommendations would be implemented to generate much needed change. After several discussion sessions, we agreed to extend the process and enlist a new vendor to assist with facilitation; namely, Life ANew. Our group facilitators from Life ANew were Sherynn Paxton and Randy Chivas. Thanks to them, the relationship between APD and the community review board dramatically improved.

It should be noted that during the process of raising our critiques and adjusting to new procedures, we also experienced an attack from the Austin Police Association (APA) regarding our process. This led to further distrust in an already sensitive relationship between the community review board and APD staff. Our group made a good faith effort to engage in this review process after watching several community organizations terminate their relationship with the APD. This attack from APA demonstrated the existence of a faction within policing that is opposed to the transformation we are attempting to facilitate and is intentionally spreading a very different message than APD and city leadership have communicated about the need for change.

It is a devastating commentary on the current police-community relations that community members felt endangered while involved in this review process.

Several community members were actively threatened by APA representatives. APD and the Austin City Council need to hold APA accountable.

After finalizing our panel’s work, we continue to have questions about the transparency and accountability of this review process as well as the broader review process outlined in Resolution 66. Some questions are:

- How will the results of this review be presented to the community?
- What is the timeframe and process for APD to review, respond to, and implement the recommendations made by this panel?

- How do APD and the City of Austin plan to hold themselves accountable and be transparent to the community?

While this process was challenging, we were able to engage APD instructors who answered our questions patiently and offered creative solutions to implement the changes we were suggesting. There were indications that some of the APD staff were listening to the concerns we raised and working to understand the perspectives offered. Several of the trainers were present for almost all of the sessions, and collaboration with them helped to achieve better results. We believe such officers demonstrate a growing desire to engender important and essential change within the academy and the police department as a whole and share our vision of better training for future cadets and a better police department for Austin and its diverse communities.

IV. CONCLUSION

While this process has given us valuable insight into the cadet training videos, the contributing factors that led to the formation of this panel review and to Resolution 66 are much bigger than video selection. The patterns and biases that we witnessed in videos were pervasive through each module because they are reflective of the patterns and biases we see everyday, everywhere. These patterns and biases are indicative of the systemic racism that corrodes the integrity of our institutions in Austin and across the country, *including* the police. They cannot simply be edited out of a video. They cannot be “trained” away if there are no changes in how the department is structured and how police work is done. Changing these patterns and biases cannot solely be the responsibility of the newest, lowest ranked officers who are entering a well-established, hierarchical culture that was founded on and continues to perpetuate systemic racism.

Accountability is a foundational requirement in all of our recommended changes. While we fervently hope that APD leadership agrees to make the changes we have outlined in the detailed list of recommendations, the culmination of a thorough seven-month review process, we know that nothing will fundamentally change unless APD also implements a detailed accountability framework, the specifics of which are necessarily outside the parameters of this report. **We recommend that APD collaborate with the City of Austin’s Reimagining Public Safety Taskforce to develop further recommendations for an accountability framework.**

Undoing systemic racism requires systemic changes. It requires a cultural shift towards community respect, accountability and trust. It requires showing trustworthiness before a crisis occurs, not in a slapdash effort after the fact. It requires deep listening, authentic dialogue, and consultation with the communities most directly impacted by police violence. It requires the courage and skill to hold

difficult conversations throughout the department and confront world views that perpetuate these biases rather than take a colorblind approach. It requires a shift from “what can I legally do?” to “what does the community need me to do?”

This video review process is but a step in the right direction. Implementing the recommendations from this process is another step. The department will have to decide how far it is willing to walk to make systemic change happen.

In conclusion, we would like to thank the following people who joined us in this review process: Kellee Coleman, Rocio Villalobos, Sherwynn Patton, Randy Chavis, Dr. Sara Villanueva, Anni-Michelle Evans, Gary Carillo, Patricia Bourenane, Lt. Eve Stephens, Farah Muscadin, and Veronica Ferren.

RESPONSE

EXHIBIT F

RESOLUTION NO. 20200611-096

WHEREAS, The Austin City Council has articulated a new strategic direction for policing and public safety in countless resolutions, ordinances, budget directions and guidance; and

WHEREAS, Resolution No. 20191205-066 directed the City Manager to investigate and improve the very inner workings of the Austin Police Department, including training protocols, practices, and officer behaviors; and

WHEREAS, the City of Austin supports policies that reduce the unnecessary use of force by police, enhance implicit-bias and de-escalation training, expand civilian oversight of the Austin Police Department, and improve relations between police and those they serve; and

WHEREAS, recent police action showed that sworn officers of the Austin Police Department fired rubber bullets, bean bag rounds and tear gas into crowds and sent unarmed protesters to the hospital; and

WHEREAS, more than two dozen community leaders presented a letter to City Council demanding that the leadership at the top of our city's public safety system be replaced with individuals who support and are willing to enact the reforms passed by City Council; and

WHEREAS, the elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and

culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities, and returning and low-income residents; and

WHEREAS, the measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past; and

WHEREAS, Austin's 911 system, managed by the Austin Police Department, continues to send armed police to address problems that would be better met with an alternative response; and

WHEREAS, for Fiscal Year 2020 Council budgeted for the implementation of a program of alternatives for first response to mental health crisis calls, and from December 16, 2019 to June 4, 2020 of 23,333 calls for service with a mental health component, 291 were transferred to a Crisis Center Counselor, indicating the need for continued development of additional alternatives and the resources to do so; and

WHEREAS, the COVID-19 global pandemic requires us to carefully reconsider how the City allocates FY2021 funds in order to address the needs of disparately impacted residents; and

WHEREAS, the greater Austin area has lost 100,000 jobs during the COVID-19 global pandemic and closures, and the Austin City Council actively

supports the need to edify budget spending priorities to address this regional socioeconomic crisis; and

WHEREAS, the FY 2020-2021 budget is scheduled to be adopted in August 2020; and

WHEREAS, the budget for the Austin Police Department is the City's single largest General Fund expenditure, comprising approximately 40% of the City of Austin's General Fund budget, leaving fewer resources available for other public safety strategies that could better serve our community's needs and long-term goals; and

WHEREAS, according to the U.S. Department of Justice's Bureau of Justice Statistics, public expenditure on policing in the United States more than quadrupled between 1982 and 2006, with no clear correlation between increased spending and lower violent crime rates; and

WHEREAS, a Prison Policy Initiative 2017 report explicated that local governments nationwide spend approximately \$13.6 billion on incarceration and over-criminalization; and

WHEREAS, the budget is a reflection of the City of Austin's morals, overarching vision, and strategic direction; and

WHEREAS, starting in FY16, the Council set a goal of increasing spending on social service contracts to better align with community needs; and

WHEREAS, the City Charter grants Council final authority over budget decisions; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Austin City Council affirms its commitment to reimagining public safety and law enforcement in our community.

BE IT FURTHER RESOLVED:

The City Manager is directed to bring forward a baseline budget that:

- Includes no additional sworn police staff positions;
- Eliminates the sworn positions that the Austin Police Department cannot reasonably fill in FY2020-2021 and reallocates those unused funds to alternative public safety and public health strategies such as, but not limited to, training and standards for trauma-informed responses, substance abuse, mental health responses, victims services counselors, a comprehensive and community informed community policing standard, COVID-19 relief, social services, housing stability programs, family violence prevention and family violence sheltering strategies funded through the Austin Public Health or Neighborhood Housing and Community Development Departments, housing-focused case management for individuals experiencing homelessness, human trafficking prevention, and other preventative actions and alternatives;

- Explores options for reallocating positions and roles currently assigned to the Austin Police Department that could be managed by other departments, including but not limited to Code Enforcement, Austin Transportation Department, Austin Public Health, Austin Fire Department, and Parks and Recreation Department;
- Explores options for reallocating positions and roles to new city units and departments not currently reflected in our existing organizational structure including but not limited to an Office of Violence Prevention as other major cities have created;
- Explores options for reallocating positions and roles currently assigned to the Austin Police Department that could be managed by other outside partner entities, including but not limited to CAPCOG, constable precincts, or non-profit organizations.
- Does not include any additional funding for militarized equipment, including but not limited to:
 - Tear gas
 - Rubber bullets
 - Bean bag rounds
- Includes funding for a process to rewrite the Austin Police Department's General Orders, in collaboration with Offices that may provide policy

guidance that aligns with the equity and oversight policy direction from Council, such as the Office of Police Oversight, using national best practices and community input for the implementation of new guidelines in the following areas, including but not limited to: use of force, de-escalation, search and seizure, body worn camera and dashboard camera, discipline matrix, comprehensive on duty reporting requirements, language and courtesy, bias, and mental health response;

- Funds an audit of all disciplinary records held by the Austin Police Department, along with providing recommendations on staffing needed to build data systems designed to measure and track the implementation of new force guidelines and equity outcomes and recommendations to establish practices that use a scoring mechanism for disproportional behavior to identify at-risk officers, assign appropriate interventions, and use in the determination of promotions;
- Sets aside reserve funds, in collaboration with Offices such as the Office of Police Oversight and the Equity Office, to implement forthcoming recommendations from APD-related audits, evaluations, memos and reports, including but not limited to Council Resolutions 20190131-77 and 20191205-66, cadet training curriculum from the Office of Police Oversight, and the Joint Report: Analysis of APD Racial Profiling Data;

- Increases staffing for mental health first response, such as Community Health Paramedics, EMCOT, and the Homelessness Outreach Street Team (HOST), to ensure the full implementation of an alternative response to 911 calls related to mental health;
- Provides funding required to implement at full scale the First Responder Mental Health Calls for Service program outlined in the 2019 Meadows Institute Report, to include funding for mental health clinicians, call center training and support, equipment and technology, project management and implementation support. Funding shall reflect at least the amount in the City Manager's budget proposed for FY 2021 for this program in the FY 2020 budget documents;
- Exempts victim services and sex crimes unit from cuts unless those FTEs are transferred to another City department or to a newly created department;
- Funds for the distribution of Naloxone and training in its use to ensure that officers save lives when confronted with drug overdose situations;
- Includes funds for the expansion of programs to reduce or eliminate arrests for low-level, non-violent offenses by substituting alternatives to arrest and incarceration, including harm reduction strategies, when the underlying issues can be better addressed with services and health care;

- Includes additional funding for the Office of Police Oversight and the Equity Office that enables the departments to sufficiently perform their missions and fulfill Council directives, including funding for additional FTEs; and
- Establishes and funds an audit of the costs incurred by the City in expenditures related to suspected and/or confirmed officer misconduct, including but not limited to paid administrative leave, replacement compensation and overtime, litigation and fees, settlements and payouts.

BE IT FURTHER RESOLVED:

The City Manager is directed to explore and propose ways to structure the FY2021 Austin Police Department budget using outcomes-based budgeting and zero-based budgeting frameworks.

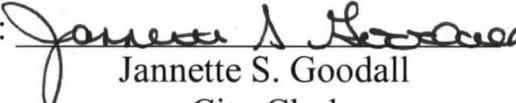
BE IT FURTHER RESOLVED:

The City Manager is directed to review all grants received by the Austin Police Department to determine if those funds and initiatives align with and advance Council's affirmed vision for department policies and practices.

BE IT FURTHER RESOLVED:

The City Manager is directed to report back to Council and relevant Council Committees all changes made to the Austin Police Department General Orders.

ADOPTED: June 11, 2020

ATTEST: 
Jannette S. Goodall
City Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SHALITHA ROSS, INDIVIDUALLY,	§	
AND AS INDEPENDENT	§	
EXECUTRIX OF THE SUCCESSION	§	
OF AQUANTIS GRIFFIN, ARIEL	§	
GRIFFIN AND KEYEARA	§	
FRANKLIN	§	
Plaintiffs,	§	CIVIL ACTION NO. 1:20-cv-00856-LY
	§	
v.	§	
	§	
CITY OF AUSTIN	§	
Defendant.	§	
	§	

**DEFENDANT CITY OF AUSTIN’S REPLY IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT**

Defendant City of Austin files this Reply in Support of its Motion to Dismiss Plaintiffs’ First Amended Complaint as follows:

I. INTRODUCTION

The City’s Motion to Dismiss identifies the flaws in Plaintiffs’ First Amended Complaint including the total absence of non-conclusory facts regarding the City’s alleged policies and moving force causation. The Plaintiffs’ response does nothing to ameliorate these flaws and, as a result, the Court should dismiss the Plaintiffs’ claims against the City.

A. Insufficient Facts to Establish a Policy or Practice

Plaintiffs’ response, like their First Amended Complaint, recites investigative reports regarding alleged racist behavior of individuals within the Austin Police Department and the Austin City Council’s criticism of department leadership’s alleged inadequate implementation of measures to eradicate police bias and racism. Plaintiffs’ reliance on reports regarding APD traffic stops and

discretionary arrests such as driving with an invalid license and marijuana possession, as well as inappropriate comments by APD personnel, hardly constitutes a pattern tantamount to official policy sufficient to state a claim for relief under *Monell*.

A plaintiff may show a “persistent, widespread practice of City officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Piotrowski*, 237 F.3d at 579 (quoting *Webster v. City of Houston*, 735 F.2d 838, (5th Cir. 1984) (en banc)). However, “[a] pattern requires similarity and specificity; [p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 851-52 (5th Cir. 2009)(quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). A pattern sufficient to support a *Monell* claim cannot be established by previous bad acts of the municipality unless those bad acts are specific and similar to the violation in question. *Id.*

None of the prior bad acts described in the First Amended Complaint are specific and similar to the alleged violation in this case, i.e., the officers’ use of deadly force on Griffin. Plaintiffs provide no specific facts to support their allegations that any alleged pattern or practice of APD consisted of prior bad acts which were specific and similar to the officers’ use of deadly force. Plaintiffs’ First Amended Complaint fails to allege non-conclusory facts sufficient to establish an actual policy or custom of the Austin Police Department. As a result, this claim fails as a matter of law.

B. Insufficient Facts to Establish Moving Force Causation

Plaintiffs’ response makes many pronouncements that APD’s alleged racist culture caused Griffin’s death, but fails to identify actual facts alleged in the First Amended Complaint which

support moving force causation. The First Amended Complaint does not contain any specific non-conclusory facts to support the Plaintiffs' claim that the alleged "policing culture" was the moving force of the alleged constitutional violation committed by the officers. It takes more than a conclusory allegation that "[t]he Austin Police Dept. fostered an institutionally racist and violent culture that directly led to Defendants' unjustified killing of Aquantis Griffin" to adequately allege specific facts to support the causation element of a *Monell* claim.

In order to hold a municipality liable under Section 1983 for the misconduct of one of its employees, a plaintiff must initially allege that an official policy or custom "was a cause in fact of the deprivation of rights inflicted. *Spiller v. City of Texas City, Police Dept.*, 130 F.3d 162, 167 (5th Cir. 1997), quoting *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 525 (5th Cir. 1994). The description of a policy or custom and its relationship to the underlying constitutional violation, moreover, cannot be conclusory, it must contain specific facts. *Spiller*, 130 F.3d at 167.

In *Spiller*, the Fifth Circuit held that allegations that a police department had policies of operating "in a manner of total disregard for the rights of African American citizens" and "engag[ing] in conduct toward African American citizens without regard to probable cause to arrest" failed to allege specific non-conclusory facts to demonstrate how these alleged policies were causally connected to the officer's alleged misconduct. *Id.* Plaintiffs attempt to distinguish *Spillar* by arguing that the allegations in *Spillar* were only conclusory, while the Amended Complaint in this case makes "specific, non-conclusory allegations of specific policies and customs, coupled with causation allegations that show the constitutional injury coincides directly with the identified polices and customs." (Doc. 47, p. 17) The problem is that Plaintiff's First Amended Complaint does not explain factually how APD's alleged policies were the moving force of **these eight officers'** alleged unconstitutional actions.

Plaintiffs' conclusory allegations of moving force causation are clearly insufficient to support a *Monell* claim. Plaintiffs make the conclusory allegation that Griffin's death is the direct result of an "institutionally racist and violent culture" but offers no specific facts to support a claim that the alleged racism was the moving force of Griffin's death. Plaintiffs pronounce that the eight officers followed APD's "racist policies," yet alleges no specific, non-conclusory facts which demonstrate that bias or racism played any role in this incident much less was the moving force of the death of Griffin. Plaintiff's First Amended Complaint points to no action or statement of the eight officers or anyone else connected to the Austin Police Department that demonstrates that any "racist culture" of the Austin Police Department was the moving force of the officers' decisions to use deadly force on Griffin.

Similarly, Plaintiff's First Amended Complaint fails to allege non-conclusory facts demonstrating that the alleged inadequate training was the moving force of the death of Griffin. The only facts alleged in the First Amended Complaint regarding APD's training are that "the racially infused training of Austin police cadets constituted deliberate indifference to the deprivation of the constitutional rights of Black people in Austin." (Doc. 4, p. 16). The First Amended Complaint does not, however, allege specific non-conclusory facts to demonstrate how the alleged training policies were causally connected to the officers' decision to use deadly force on Griffin. As a result, Plaintiffs' claim against the City fails as a matter of law.

C. Insufficient Facts to Establish Inadequate Disciplinary Policies were the Moving Force of the alleged Constitutional Violation.

To prevail on a failure to discipline claim, Plaintiff must show: (1) the municipality failed to discipline its employees; (2) that failure to discipline amounted to deliberate indifference; and (3) the failure to discipline directly caused the constitutional violations in question. *Deville v. Marcantel*, 567 F.3d 156, 171 (5th Cir. 2009). A plaintiff must identify the individual supervisor

who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to commit constitutional violations. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). Plaintiffs have not done so here. Moreover, Plaintiffs' First Amended Complaint contains no specific factual allegations regarding the City's disciplinary policies and how the policies allegedly caused the officers to use deadly force on Griffin. Instead, Plaintiffs merely allege that the City had "inadequate disciplinary policies that failed to hold officers who used excessive force or committed racist acts accountable." (Doc. 4, p. 18) This non-specific conclusory allegation is insufficient to support a *Monell* claim for inadequate disciplinary policies and, as a result, this claim should be dismissed.

D. Wrongful Death Claim/Damages

Plaintiffs contend in their response that they are not actually asserting a wrongful death claim under the Texas wrongful death statute and are instead merely asserting a claim for wrongful death damages under 42 U.S.C. §1983. The City's motion to dismiss the wrongful death claim was based on the language in the First Amended Complaint contained under the heading "E. Wrongful Death" which states: "Plaintiffs incorporate all previous allegations into **this cause of action.**" (Doc. 4, ¶ 61)(emphasis added) This language certainly appears to assert a separate wrongful death cause of action.

Additionally, Plaintiffs curiously argue that the City's characterization of Plaintiffs' claims as asserting an intentional tort claim was "invented...from whole cloth." (Doc. 47, p. 18) Plaintiffs contend in their response that "Plaintiffs' Amended Complaint itself makes no allegation that the officers' wrongful conduct was intentional...." (Doc. 47, p. 18) A review of Plaintiffs' Amended Complaint reveals that this is simply not the case. Paragraph 45 of the Amended Complaint alleges the following: "Defendants engaged in a willful, malicious, and reckless course of conduct that was

intended to cause and, in fact, caused Ajay Griffin to suffer extreme and severe mental and emotional distress, agony, anxiety, and death.” (Doc. 4, ¶ 45) Again, the City relied on the exact language of Plaintiffs’ Amended Complaint in formulating its arguments in the Motion to Dismiss.

Nevertheless, Plaintiffs advise that they do not object to an order clarifying that Plaintiffs do not assert a claim arising under the Texas wrongful death statute. The City likewise would not object to an order clarifying that Plaintiffs do not assert a claim arising under the Texas wrongful death statute.

PRAYER

Defendant City of Austin respectfully requests that the Court grant its Motion to Dismiss and dismiss all claims against the City of Austin with prejudice and with all costs assessed to the Plaintiffs.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 27th day of July, 2022.

Via CM/ECF:

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**ATTORNEY FOR DEFENDANT
OFFICERS**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUG 29 2022
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

SHALITHA ROSS, INDIVIDUALLY, AS §
INDEPENDENT EXECUTRIX OF THE §
SUCCESSION OF AQUANTIS GRIFFIN, §
AND AS NATURAL GUARDIAN OF K.F., §
A MINOR; ARIEL GRIFFIN; AND §
KEYEARA FRANKLIN, §

PLAINTIFFS, §

V. §

CAUSE NO. 1:20-CV-856-LY

JOSEPH CAST; WESLEY DEVRIES; §
JUSTIN HALBACH; STEPHEN §
JOHNSON; ALBERTO MARTINEZ; §
DANIEL MATHIS; JOSEPH MORAN; §
CHRISTOPHER SALACKI; AND §
THE CITY OF AUSTIN, §

DEFENDANTS. §

ORDER

This lawsuit for the death of Aquantis Griffin (“Griffin”) is brought by Griffin’s mother, Shalitha Ross, and Griffin’s two younger sisters, Ariel Griffin and Keyeara Franklin, collectively referred to as the “Plaintiffs.”

Before the court is the June 22, 2022 Motion for Judgment on the Pleadings under Federal Rule of Civil Procedure 12(c) (“Rule 12(c)”) filed by the City of Austin (the “City”) (Doc. 43) along with Plaintiffs’ response in opposition (Doc. 47) and the City’s reply in further support (Doc. 48).

In a separate order rendered on August 3, 2021, the court dismissed from this lawsuit eight police officers employed by the City (the “City Officers”) in their individual and official capacities, leaving the City as the only real party in interest.

LEGAL STANDARD

“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). The standard for dismissal under Rule 12(c) is the same standard for dismissal under Rule 12(b)(6). *Hale v. Metrex Research Corp.*, 963 F.3d 424, 427 (5th Cir. 2020). That is, the court draws “all well-pleaded facts” from Plaintiffs’ August 18, 2020 First Amended Complaint, accepting such facts as true and viewing them in the light most favorable to the Plaintiffs. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 589 (2007); Fed. R. Civ. P. 12(b)(6), 8(a). But the court does not credit “legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court is generally limited to the contents of the pleadings, including any attachments. *Borsage v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 440 (5th Cir. 2015). Ultimately, only a complaint that states a “plausible” claim for relief survives dismissal. *Iqbal*, 556 U.S. at 679. “Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

FACTUAL BACKGROUND

On Thursday, August 16, 2018, Griffin was attending a concert at “Terminal 6” located near the corner of Sixth Street and San Jacinto Boulevard in downtown Austin, Texas. Griffin was wearing loose pants but no shirt; he was not carrying a weapon. During the concert, at approximately midnight, a dispute broke out inside Terminal 6. Individuals involved in this dispute—including Griffin, Jordan Seguin (“Seguin”), and several others—exited Terminal 6 through a back door that led to an alley connecting San Jacinto Boulevard and Trinity Street, before moving to a San Jacinto-side parking lot behind Terminal 6 where the dispute continued.

Seguin opened a car door and fired multiple gunshots above the heads of those around him, which included Griffin, before attempting to flee the area. Police officers were dispatched to the area in response to 911 calls about the dispute inside Terminal 6 and the gunshots outside of it. A group of police officers congregated on the corner of Sixth Street and San Jacinto Boulevard. Another group of police officers, including the City Officers, congregated on the corner of Sixth Street and Trinity Street. All police officers wore body cameras equipped for video and audio recording.

A second round of gunshots was heard from the area where Seguin first fired his weapon. Both groups of police officers began to converge on the area. Following this second round of gunshots, Griffin now had a gun in his hand. He started running east through the alley behind Terminal 6 in the direction of Trinity Street.

The City Officers formed a line across Trinity Street, blocking anyone who exited the alley from turning south on Trinity Street toward Sixth Street, but not blocking anyone who continued north on Trinity Street toward Seventh Street.

The City Officers drew guns. Several of the City Officers instructed individuals fleeing the scene to “get on the ground”—among other simultaneous commands. Instead, many individuals who exited the alley turned north on Trinity Street toward Seventh Street. When Griffin encountered the City Officers, he likewise disregarded instructions to “get on the ground” and instead turned north on Trinity Street toward Seventh Street.

As he turned left, Griffin’s right arm moved to the right of his body. Griffin did not otherwise look at, point his gun at, or speak to the City Officers. But the City Officers then opened fire; this occurred within three seconds of instructing Griffin to “get on the ground.”

Gunshots struck Griffin, who fell forward onto his front torso. Body camera footage shows that he then released his gun, which skidded across the pavement. Griffin released his gun about one-half second after the City Officers first opened fire. Overall, the Officer Defendants fired 42 shots for at least four seconds, 30 of which hit Griffin. Paramedics who responded to the incident transported Griffin to Dell Seton Medical Center, where he was pronounced dead of gunshot wounds at 1:22 a.m. the next day. The majority of the gunshot wounds struck Griffin from the rear.

ANALYSIS

Plaintiffs bring a federal-law claim against the City under 42 U.S.C. § 1983 (“Section 1983”) as well as a state-law claim for wrongful death.

I. Wrongful Death Claim

The City argues that Plaintiffs’ state-law claim for wrongful death is barred by governmental immunity. *See* Tex. Civ. Prac. & Remedies Code § 101.057(2); *Harris Cty., Tex. v. Cabazos*, 177 S.W.3d 105, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (holding governmental unit’s immunity from suit not waived for claim arising out of deliberate shooting by deputy sheriff). In response, Plaintiffs disclaim a “wrongful death *cause of action*,” claiming instead the right to “wrongful death *damages* that may be recovered by a plaintiff on a cause of action that arises under 42 U.S.C. § 1983.” *See Geinosky v. City of Chicago*, 675 F.3d 743,745 n.1 (7th Cir. 2012) (explaining plaintiff opposing dismissal may elaborate on allegations contained in complaint). Plaintiffs are, in short, only pursuing a Section 1983 claim.

II. Section 1983 Claim

Section 1983, in turn, expressly waives a governmental unit’s immunity from suit. 42 U.S.C. § 1983. Section 1983 creates a federal cause of action for “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]” *Id.*

Still, a city is only liable under Section 1983 if it had a “policy or custom” that was the “moving force” behind the violation of a plaintiff’s constitutional rights. *Monell v. Department of Social Servs. of New York*, 473 U.S. 658, 694 (1978) (“[I]t is only when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible[.]”); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[A] governmental entity is liable under § 1983 only when the entity itself is a moving force behind the deprivation.”). In other words, a plaintiff must identify a city policy that is the moving force—akin to the proximate cause (*see Martinez v. California*, 444 U.S. 277, 284–285 (1980); *Murray v. Earle*, 405 F.3d 278, 290 (5th Cir. 2005))—of the plaintiff’s harm. The policy “must be either unconstitutional or adopted with deliberate indifference to the known or obvious fact that such constitutional violations would result.” *Shumpert v. City of Tupelo*, 905 F.3d 310, 316 (5th Cir. 2018).¹ The rationale underlying *Monell* is that

¹ The policy can be made by the city’s governing body or by a city official who “possess[es] final authority to establish [city] policy with respect to the [harmful] action,” often referred to as a “final policymaker.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 470 (1986) (plurality opinion). The question whether an official is a final policymaker is determined by reference to state and local law. *Jett v. Dallas ISD*, 491 U.S. 701 (1989).

a governmental unit should not be held liable for the unconstitutional actions of its employees simply under a theory of vicarious liability, such as respondeat superior. *Monell*, 473 U.S. at 694.

Plaintiffs here allege three unconstitutional policies attributable to the City, relating to “excessive force” (Count A), “inadequate training” (Count B), and “racial bias” (Count C). Plaintiffs further allege these policies “work together in tandem.” To establish a Section 1983 claim premised on excessive force, a plaintiff must show a “routine policy” permissive of excessive force or a “pattern of similar violations” by the city. *Shumpert*, 905 F.3d at 317. Alternatively, the failure to provide proper training may be said to represent a policy for which the city is responsible, where the plaintiff shows the (1) city’s training policy “was inadequate,” (2) inadequate training policy was a “moving force” in causing plaintiff’s harm, and (3) city was “deliberately indifferent in adopting its training policy.” *Id.*

Plaintiffs’ allegations suffice to overcome dismissal of their Section 1983 claim. Plaintiffs allege that Griffin was disarmed within one-half second after the City Officers opened fire. Still, the City Officers fired 42 shots, 30 of which hit Griffin, and none of which immediately killed him. Moreover, Plaintiffs allege City “policy” was both permissive of excessive force and inadequate to deter it—including policy regarding the handling of “armed[,] fleeing suspects” and deploying of “contagious gunfire when police officers are in a group setting.” These allegations state a “plausible” Section 1983 claim against the City. *See Iqbal*, 556 U.S. at 679. For example, Plaintiffs’ allegations support the conclusion that Griffin did not seriously threaten the City, the City did not adequately warn Griffin, the City’s use of force was unreasonable given the changing circumstances, and the City was permissive of excessive force (or provided inadequate training on the use of force) in situations where a suspect is fleeing or an officer is in a group setting. *See Peterson v. City of Fort*

Worth, 588 F.3d 838, 847 (5th Cir. 2009) (question whether officer’s knee strike was justifiable even after plaintiff was handcuffed created genuine issue of material fact); *Baker v. Putnal*, 75 F.3d 190, 193, 198 (5th Cir. 1996) (where decedent was shot while sitting in passenger seat of car after having been identified by civilians as one of the shooters, Fifth Circuit remanded case to trial court because case had “too many factual issues” for summary-judgment disposition). At this stage, all well-pled facts and reasonable inferences are construed in Plaintiffs’ favor; Plaintiff has stated a Section 1983 claim. *See Iqbal*, 556 U.S. at 679.

CONCLUSION

It is **ORDERED** that the City’s Motion for Judgment on the Pleadings (Doc. 43) is **DENIED**.

SIGNED this 29th day of August, 2022.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE

/s/ H. Gray Laird, III

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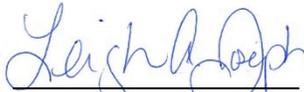
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**ATTORNEYS FOR THE OFFICER
DEFENDANTS**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record on August 17, 2023 via the Court's CM/ECF system.


Leigh A. Joseph

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ariel Griffin, Individually, as Independent
Executrix of the Succession of Aquantis Griffin
and for Shalitha Ross, and Keyeara Franklin,
Plaintiffs,

§

§

§

v.

§

NO. 1:20-cv-856

§

§

§

Joseph Cast, Wesley Devries, Justin Halbach,
Stephen Johnson, Alberto Martinez, Daniel
Mathis, Joseph Moran, Christopher Salacki, and
The City of Austin,
Defendants.

§

ORDER OF DISMISSAL

The Court has before it the parties’ Joint Stipulation of Dismissal, filed August 17, 2023. (Dkt. # 67.) After consideration, the Court is of the opinion that such Stipulation is well taken and should be granted.

IT IS ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** as to the claims of Plaintiffs Ariel Griffin and Keyeara Franklin (“Plaintiffs”) and Defendants Joseph Cast, Wesley Devries, Justin Halbach, Stephen Johnson, Alberto Martinez, Daniel Mathis, Joseph Moran, Christopher Salacki, and the City of Austin (“Defendants”). Each party will bear its own costs and attorneys’ fees in this matter.

The Clerk is **INSTRUCTED** to **CLOSE THE CASE**.

SIGNED this 18th day of August, 2023.



David Alan Ezra
Senior United States District Judge