



January 29, 2016

Via Email and U.S. Mail

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U.S. Department of Justice
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Washington, DC 20530-0001

Vanita Gupta
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Re: Request for the Department of Justice to conduct a Pattern and Practice Investigation into the San Francisco Police Department for Civil Rights Violations, Including, but not limited to the December 2, 2015 officer-involved shooting death of Mario Woods.

Dear Attorney General Lynch and Assistant Attorney General Gupta:

The Honorable Edwin Lee, Mayor of San Francisco, wrote Attorney General Lynch on January 21, 2016 to call for a federal Department of Justice investigation into the officer-involved shooting death of Mario Woods. The Mayor recognized that there was a need for a thorough independent investigation because of the “dissolution of trust between communities of color and law enforcement.” The Mayor’s request to the Department echoes two other requests that are (or will be) pending before you: 1) a letter dated January 6, 2016 from John Burris, the attorney for Gwendolyn Woods (Mario Woods’ mother), and 2) a Resolution adopted by the Board of Supervisors calling for a DOJ investigation that will include “the broader issue of use of force practices by the San Francisco Police Department.

The American Civil Liberties Union of Northern California instituted a Police Practices Project in 1973, and has been focusing for over 40 years on trying to ensure that the policies and practices of the San Francisco Police Department function so that the civil rights and civil liberties of San Franciscans are protected. Our advocacy has taken a myriad of forms: discussions and negotiations with city and police officials; drafting policy proposals; monitoring and actively participating in the public meetings of the Police Commission and Board of Supervisors on police-related issues and problems; and, when necessary, litigation. The Disability Rights Program of the national ACLU is based in San Francisco, and has extensive experience with the issues raised when police officers are involved in confrontations with people in a mental health crisis. Both ACLU entities (“ACLU”) submitted an Amicus Curiae brief in the

United States Supreme Court -discussing these issues. *City and County of San Francisco v. Sheehan*, 135 S. Ct. 1765 (2015).

The ACLU strongly supports the requests of the Mayor, the Board, and of Mario Woods' mother for DOJ to open an investigation of the San Francisco Police Department. We agree with the Mayor that, given the long-standing nature of these problems, and even with local reform efforts afoot, only intervention by your agency will bring the experience, the independence and the institutional credibility that is needed both to craft enforceable remedies **and** to restore "the trust between communities of color and law enforcement."

The nature and extent of these long-standing and deep-rooted problems needs a "pattern and practice" investigation conducted by the Special Litigation Section pursuant to DOJ's authority under 42 U.S.C. sec 14141. The sources of your authority are the "police misconduct provision" of Section 14141, and the anti-discrimination provisions of Title VI of the Civil Rights Act of 1964 and Title II of the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973. Based on our experience and involvement in these issues, we believe that an independent and probing investigation will reveal not just multiple examples of violations of these federal civil rights laws, but systemic failures in the SFPD that must be remedied if there is going to be real change.

The crisis of confidence in San Francisco about police practices today is the result of a convergence of a number of festering problems: the excessive use of deadly force against young men of color; ample evidence of the persistent presence of racial bias; the failure to train and supervise officers to use crisis intervention and de-escalation strategies in dealing with people with disabilities; and a systemic breakdown in the areas of supervision, management and discipline which has led to a fundamental lack of accountability that pervades the Department and its oversight agencies. We will address each of these factors in the hope that this will be useful to you in considering whether to open an investigation.

EXCESSIVE USE OF DEADLY FORCE

The shooting death of Mario Woods has galvanized community outrage and community distrust of the police in part because of the video, which so plainly shows what appears to an execution-style shooting of a young African American man on a public street by five SFPD officers firing 15 shots. While the officers claim that they were in imminent danger because Mr. Woods refused to drop a knife, the video shows no knife, but a person appearing disoriented, and walking slowly and haltingly down the sidewalk accompanied by a convoy of officers on foot. One officer takes four steps to block his path, and then the 15 shots are fired. The video shows nothing that could be construed as imminent danger to the officers or other people.

As horrific as this video is in isolation, people in San Francisco saw it in a context which made it even more alarming. Since 2000, SFPD officers have shot at least 103 persons – 37 have died and at least 35 have been injured. In each of the 37 deaths, the Department found that the use of force was within policy and merited no discipline.

Outrage in communities of color about the police killing of a young man did not start with Mario Woods. For example:

- In 2001, Idriss Stelley, a 23 year old African American man, was shot 10 times and killed by SFPD officers in the lobby of a movie theater for allegedly refusing to drop a knife.

The officers used deadly force even though they had been told in advance that Mr. Stelley had serious mental problems and was in the midst of a nervous breakdown.¹

- Amilcar Perez-Lopez, a Latino 20 year old, was allegedly attempting to steal a bike and chasing its owner (facts that were disputed by multiple witnesses). He was pursued and shot dead by two plainclothes San Francisco officers. Although they claimed he lunged at them with a knife, Mr. Perez-Lopez was shot six times, four times in the back. The two officers had previously been involved in a lawsuit charging police brutality.²
- Alejandro “Alex” Nieto, a Latino man, was shot and killed by four SFPD officers firing 59 shots, and received 15 gunshot wounds. The police believed that Mr. Nieto had pointed a firearm at them. In fact, he had no firearm, but only a Taser gun. Mr. Nieto had a known medical history of aggressive and bizarre behavior, hallucinations, and was taking anti-psychotic drugs.³

As disturbing as the Mario Woods video was when seen in the context of this past pattern of similar deaths, one additional fact has deeply affected the community’s perception of this incident, and points to the systemic failures of management and control that underlie the problems in the field. Two days after the Woods killing, San Francisco Chief of Police Greg Suhr appeared at a community meeting to show an enhanced frame from one of the videos taken at the scene. Chief Suhr claimed that it showed that Mr. Woods was extending his arm in a threatening manner towards the officer before the first shot: “The officer, fearing for his safety....fired in defense of himself and the other four police officers fired in defense of that officer.”⁴ Many, including a local radio station that did its own analysis of the frames, came to the opposite conclusion – that in fact Mr. Woods was shot before he extended his arm.⁵ The point, however, is not who is correct. The point is that the Chief’s actions in justifying the shooting **before** any of the required city investigations had begun—much less concluded—shows a bias and a rush to judgment that discourages people who look to the police for fairness and justice, and at the same time encourages police officers to believe that they can act with impunity because their Chief has their back.

BIASED POLICING

That persons of color, and in particular African Americans, are disproportionately impacted by the criminal justice system is a national, not a local, phenomenon. But in view of its liberal reputation, it came as a shock to many in San Francisco that the city’s racial disparity

¹ A.C. Thompson, *The Tragedy of Idriss Stelley*, SAN FRANCISCO BAY GUARDIAN, January 21, 2002, available at http://www.sfbg.com/36/17/news_tragedy.html.

² Oliver Laughland, *Chronicle of a Death Untold: why Witnesses to Killings of Latinos by Police Stay Silent*, THE GUARDIAN, June 2, 2015, available at <http://www.theguardian.com/us-news/2015/jun/02/amilcar-perez-lopez-san-francisco-police-killing>.

³ Vivian Ho, *SFPD Names Officers Involved in Fatal Alex Nieto Shooting*, SAN FRANCISCO CHRONICLE, January 3, 2015, available at <http://www.sfgate.com/bayarea/article/SFPD-names-officers-involved-in-the-Alex-Nieto-5991200.php>; see also Bay City News, *Alex nieto Shooting: San Francisco Police Officers Won't Face Charges in 2014 Killing of Man Accused of Pulling Taser*, NBC BAY AREA, January 2, 2015, available at <http://www.nbcbayarea.com/news/local/Alex-Nieto-Shooting-San-Francisco-Police-Officers-Wont-Face-Charges-in-2014-Killing-of-Man-Accused-of-Pulling-Taser-291914751.html>.

⁴ Michael Barba, *Suhr Claims video Shows Mario Woods With Raised Knife; Community in Disbelief*, SAN FRANCISCO EXAMINER, December 4, 2015, available at <http://www.sfexaminer.com/suhr-claims-video-shows-mario-woods-raised-knife-at-officer-community-in-disbelief/>.

⁵ Adam Grossberg, *Video Evidence Appears to Contradict SFPD Account of Mario Woods Killing*, KQED NEWS, December 7, 2015, available at <http://ww2.kqed.org/news/2015/12/07/video-evidence-appears-to-contradict-sfpd-account-of-mario-woods-killing>.

statistics were stark, and, frankly, shameful. In 2013, black adults in San Francisco were 6% of the population, yet 40% of the people arrested, 44% of people jailed and 40% of people convicted. Black adults are 7.1 times as likely as whites to be arrested. And this disproportionality has significantly grown in the last twenty years. In 1994, 4.6 black adults were arrested in San Francisco for every one white (as contrasted with 7.1 in 2013). This rising disparity is in sharp contrast to state-wide statistics. In California in 1994, black adults were 3.9 times as likely to get arrested as white adults; in 2013, that number was reduced to 3 times as likely.⁶

However, in terms of clarifying and understanding the extent and seriousness of the problems of racial bias within SFPD that call out for a pattern and practice investigation by DOJ, nothing has been more illuminating than the uncovering in March of 2015 of a series of venomous and hateful text messages exchanged between SFPD officers. These messages only came to light as a result of a federal criminal prosecution. The messages contained a series of racist and homophobic comments, characterizing black people as dangerous in the most insulting terms possible, including a liberal use of the “n” word.

The texts that were uncovered involved at least eight officers but consisted of only these individual officers’ communications with the officer-defendant, so it is hard to believe that other such racist text messages do not exist. What must the mothers of Mario Woods or Alex Nieto or Amilcar Perez-Lopez or Idriss Stelley think and feel when they read that messages such as “All niggers must fucking hang” have been expressed by SFPD officers? Is one to believe that these racist sentiments are never expressed on duty, either in patrol cars or in the station or in the street in confrontations with African Americans? What does it say about the level of SFPD management and supervision that these texts only came to light because of a federal investigation? Sgt. Yulanda Williams, a 26-year veteran officer and current president of the Officers for Justice (OFJ), which represents minority SFPD officers, explained the impact of these texts: “This has managed to bring such hostilities and racism and Ku Klux Klan ideology up to the surface, to the point where all officers feel uncomfortable in our work environments now....They’re fearing the unknown.”⁷

INTERACTIONS WITH PERSONS WITH MENTAL ILLNESS

The San Francisco Police Department has a long history of fatal and near-fatal encounters with people with disabilities prior to the fatal shooting of Mario Woods on December

⁶ The root causes of these shocking San Francisco statistics are not clear, which is why a broad-based investigation by the DOJ would help local policy-makers and communities understand why the problems are so persistent and resistant to change. However, one factor that underlies discussion of racial issues in San Francisco is that the once-vibrant African American community is dramatically shrinking. Between 1994 and 2013, the number of black adults decreased by 21 percent! There are now only 49,443 African Americans in a city of 852,469. The causes of this displacement of a community are many and complex, but this phenomenon has certainly increased feelings of alienation and powerlessness. In this context, incidents of police violence directed against people of color contribute to a feeling of being a community under siege. These views have been expressed at many public meetings by such community leaders as Reverend Amos Brown, Minister Christopher Muhammad and Shawn Richards. See THE HAYWOOD BURNS INSTITUTE, SAN FRANCISCO JUSTICE REINVESTMENT INITIATIVE: RACIAL AND ETHNIC DISPARITIES ANALYSIS FOR THE REENTRY COUNCIL 4 (2015), http://www.burnsinstitute.org/wp-content/uploads/2015/06/SF_JRI_Full_Report_FINAL_7-21.pdf.

⁷ <http://www.latimes.com/local/lanow/la-me-ln-racist-police-text-messages-review-20150317-story.html>

2, 2015. A 2014 analysis found that more than half of 19 individuals killed by San Francisco police between 2005 and January 2014 – 11 out of 19 – had a mental illness.⁸

The number of fatal SFPD shootings of people with disabilities is not improving. A more recent review, also based on Department records, found that at least 14 people with histories of mental health problems or who were acting erratically were fatally shot by San Francisco police between 2010 and 2015.⁹

One person who survived being shot by the SFPD was Teresa Sheehan. On August 7, 2008, officers responded to a group home for individuals with psychiatric disabilities to assist a social worker with an involuntary psychiatric detention. Outside the residence, the social worker explained Ms. Sheehan's mental health conditions, and that she had locked herself in her room, and was resisting treatment with threats.

Without a clear plan for a safe interaction, and without waiting for backup or supports, the officers entered Ms. Sheehan's locked second-story room without her permission. The second time, they did so by force and with guns drawn. In crisis, and in her own home, Ms. Sheehan brandished a bread knife.¹⁰ Seconds later, Ms. Sheehan was shot five times and critically injured. She survived but spent months in the hospital and rehabilitation. She now lives with serious physical disabilities that complicate her psychiatric conditions.

There are safer, ADA-compliant ways to interact with people with disabilities, including crisis intervention and de-escalation strategies. These methods are not more expensive, but they take a commitment to change.

In its subsequent internal review of the Sheehan shooting, San Francisco found the shooting to be "in policy." The Department still does not have a policy requiring crisis intervention and de-escalation strategies for persons with psychiatric disabilities subject to involuntary detention.

SYSTEM FAILURES: DISCIPLINE AND ACCOUNTABILITY

The Civil Rights Division has repeatedly noted that it is critical for law enforcement agencies to track a variety of indicators of possibly problematic behavior by officers. While a relatively small percent of officers may generate a disproportionate amount of complaints, uses of force, and litigation, if that small minority is not dealt with appropriately -- if officers do not

⁸ Alex Emslie and Rachael Bale, "More Than Half of Those Killed by San Francisco Police Are Mentally Ill," KQED News (Sept. 30, 2014); San Francisco Police Department, Captain Christopher Pedrini, "Officer-Involved Shootings from 2000 to Present" (Jan. 16, 2014) (reviewing 93 officer-involved shootings between 2000 and January 16, 2014).

⁹ Vivian Ho, "Slow strides with police, mentally ill," San Francisco Chronicle (Dec. 20, 2015).

¹⁰ Of the 11 individuals with disabilities shot and killed by SFPD between 2005 and January 2014, seven had knives. . Crisis intervention and de-escalation strategies are appropriate safer strategies for interacting with individuals with disabilities who have knives, because backing up and increasing the perimeter decreases the risk of the interaction. Recent empirical research by UC Berkeley Professor Franklin Zimring, reviewing every killing by police in the United States from 2008-2013, shows that there has never been a fatal knife attack on an officer when there is any distance between the officer and the individual. Based on this research and the video, Professor Zimring concluded that "the death risk to the officers in the Woods encounter was zero." Franklin E. Zimring, *Mario Woods' Unnecessary Death*, SAN FRANCISCO CHRONICLE, Dec. 9, 2015, available at <http://www.sfchronicle.com/opinion/article/Mario-Woods-unnecessary-death-6686745.php>.

understand that management takes these issues seriously -- the damage to civil rights and police/community relations is enormous.

SFPD has an early interventions system—at least on paper.¹¹ However, there are significant indicators that—at best—it is not operating as intended. In fact, if SFPD is still actively collecting EIS data per their policy, it is quite apparent they are not using it properly. A Police Executives Research Forum (PERF) review of decrees as of 2013 noted several EIS standard features that we believe SFPD may be lacking in practice—especially those related to actually requiring supervisory interventions when officers are flagged, documenting the interventions and tracking their relative success.¹²

There are several danger signs in this regard given the developments over the last year. First, the SFPD's reaction to the racist/homophobic text messages suggests an indifference to the internal cultural issues and the existence of an "anything goes" atmosphere that can develop when the supervisory tracking and interventions required by EIS are either ignored or de-prioritized. Part of the SFPD's response to the texting was to implement implicit bias training-- surely an important training tool but of, at best, only tangential relevance to a scandal involving biases that are expressed in the most explicit ways possible. These officers did not engage in the texting because they had not been trained and somehow did not know it was "wrong." They knew it was wrong, but apparently did not care. Nothing in the internal culture of SFPD deterred them from communicating with their fellow officers in this way, and nothing made them feel they would be held accountable. Were any of the officers involved in those texts ever flagged by the EIS? If not, why not? If so, what happened?

Secondly, as the DOJ has found in its other investigations, too frequent use of "disorderly conduct" laws -- especially "resisting, obstructing or interfering" officers (commonly known as "contempt of cop" arrests) - is a strong indicator of a pattern and practice of misconduct. Just as the *Seattle Post-Intelligencer* did in 2008 prior to DOJ's eventual investigation and decree involving that city's police agency, last spring the *San Francisco Chronicle* found a shockingly disproportionate rate of these arrests (covered by California Penal Code sec 148) in San Francisco involving African Americans. The sheer number of these charges—measured only in cases where no felony charges were also lodged—over the prior five year period was alarmingly high as well for a city of this size. The *Chronicle* found 9,633 such charges by SFPD from January 2010 to April 2015—a rate of five such arrests each day! And in a city whose population is now only about 6% African American, 45% of those charged with PC 148 were African American—or a disparity rate of 7.5 times or 750% higher than the population.

Given that data and the size of the patrol force, it is inevitable that there are some officers making a high number of these PC 148 charges, which are usually immediately dropped by the District Attorney. On paper the SFPD EIS system requires these PC 148 arrests to be tracked. Were any officers flagged for their too common or frequent use of PC 148? If not, why not?

In the wake of the text disclosures, the San Francisco District Attorney's Office established a special Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement headed by three retired judges. The panel's investigations and hearings have been

¹¹ DGO 3.19, <http://www.sf-police.org/modules/ShowDocument.aspx?documentid=14793>

¹² Pg. 16

http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.)

met with stonewalling from the SFPD. Last week it was reported that SFPD attorneys charged with ensuring compliance with *Brady* disclosure requirements had withheld SFPD *Brady* compliance policies. Faced with this non-compliance with legal obligations to disclose, the District Attorney's Office has had to resort to the extraordinary step of filing a complaint against the SFPD with the City's Sunshine Ordinance Task Force.¹³ And just yesterday an extraordinary letter was made public from the District Attorney to the Mayor pleading for far greater support and cooperation in the face of a "dizzying array of stonewalling tactics" from the SFPD and the police union. "These problems are far too serious and far too systemic to simply pay them lip service."¹⁴

SFPD's lack of cooperation with the local District Attorney provides further support for the need for federal intervention in the form of an independent investigation.

This lack of institutional cooperation is not a new problem. On April 2, 2015, the District Attorney's Chief of Staff, Christine DeBerry, testified before the Board of Supervisors' Public Safety Committee about the very serious "systemic issues" impacting the SFPD and the civil rights of San Franciscans:

We have insufficient oversight over our law enforcement agencies. We don't have a culture of transparency around disciplinary actions and problems that may be brewing.... Number 2, we don't really have meaningful mechanisms to force reporting of misconduct other than obligations that we have under Brady to turn over potentially exculpatory information. We have very limited access to information about misconduct that may be happening in the police department. . . . And, third, there is too little discipline and too little consequence for misconduct that happens here in San Francisco. It's a very rare situation where somebody is fired for the kinds of misconduct, (sic) there are very few cases that are reported to us (by the SFPD) for misconduct and the discipline that is meted out is rare, relatively weak and uncertain. . . . It will require systemic change. . . .

I think there needs to be an improvement to the discipline structure to make sure it's swifter and more meaningful. . . . Obviously if consequences are not handed out in any kind of timely way they become less meaningful. If we don't hand out consequences, all the recruitment efforts we make to get a diverse, well-intentioned police force will not sustain because people will not stay in a department where they feel unwelcome or unsupported. We see from the news reports that multiple of these officers [involved in the racist/homophobic texting] had prior disciplinary issues that did not, obviously, result in termination. I'm not sure what discipline they did result in. But it's critically important that outside the racism we're seeing in the text messages that we deal meaningfully with police misconduct in all its forms and make sure officers don't tint our cases or our work."¹⁵

Officers for Justice President Sgt. Yulanda Williams provided another ground level view of the disciplinary system as it really works:

¹³ See <http://ww2.kqed.org/news/2016/01/19/blue-ribbon-panel-hears-testimony-on-s-f-police-and-racism> and <http://www.sfdistrictattorney.org/district-attorney-expands-taskforce-investigating-officer-misconduct> .

¹⁴ Vivian Ho, *SF's DA Says Ed Lee, Greg Shur Uncooperative in Police Misconduct Probe*, SF CHRONICLE, January 28, 2016, available at <http://m.sfgate.com/news/article/SF-s-DA-says-Ed-Lee-Greg-Suhr-uncooperative-in-6791753.php>.

¹⁵ (Public Safety and Neighborhood Service Committee, April 2, 2015, starting at 3:00:30 mark -- http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=44&clip_id=22408 .)

“I have seen that the disciplinary procedures vary according to if you are part of what they call the ‘good old boys group,’ ” she said, referring to officers with generational ties to the department and those who attended certain schools in San Francisco.

“Or perhaps something happened and you kept your mouth shut, and then you get a free buy, or what I call the halo effect, the freeway treatment, and you continue to advance,”¹⁶

A vivid illustration of the breakdown of a meaningful system of discipline was candidly provided recently by Joyce Hicks the Director of the Office of Citizen Complaints, who publicly testified that of the 250 complaints received by the OCC which contained an allegation of racial bias, **not one had been sustained**. “Racial bias is very difficult to prove”, she said. “It is frustrating in light of today’s climate. It is painful.”¹⁷

These voices from persons inside the system should be taken very seriously and require further comprehensive investigation by DOJ.

Only the federal government has the tools and the authority to conduct the independent investigation that San Francisco public officials and concerned citizens are requesting. Only such a DOJ pattern and practice investigation can result in systemic remedies, accompanied by specific enforceable deadlines and subject to independent oversight. The fact that such a federal intervention has the broad support not just from the affected communities, but from a broad spectrum of the political leadership, bodes well for its success. The time for such federal action is now.

Respectfully submitted,

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¹⁶Emslie, *Blue Ribbon Panel*, KQED NEWS, January 19, 2016,

<http://ww2.kqed.org/news/2016/01/19/blue-ribbon-panel-hears-testimony-on-s-f-police-and-racism>

¹⁷ Alex Emslie, *Blue-Ribbon Panel Hears Testimony on S.F. Police and Racism*, KQED NEWS, January 19, 2016, available at <http://ww2.kqed.org/news/2016/01/19/blue-ribbon-panel-hears-testimony-on-s-f-police-and-racism>.

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