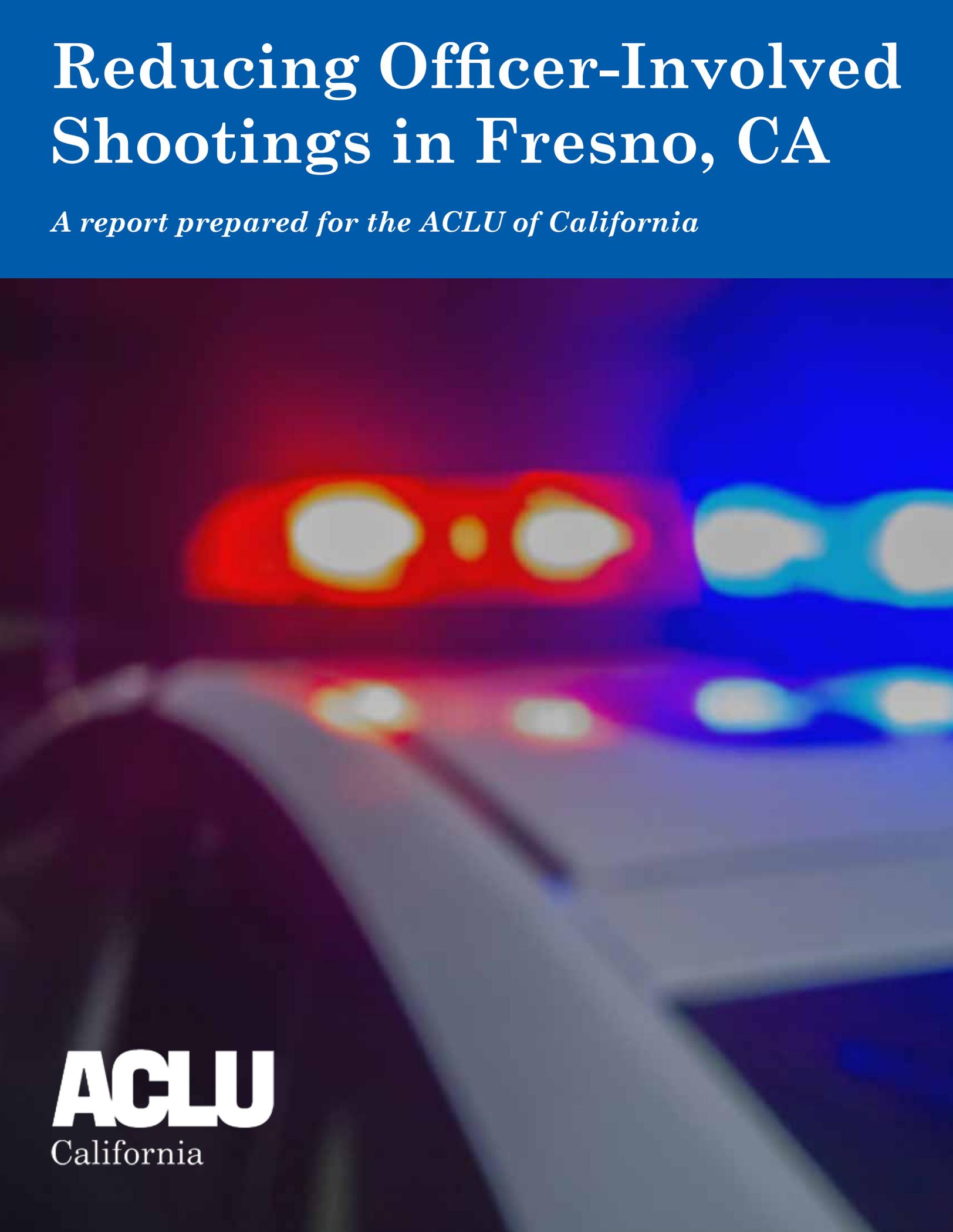


Reducing Officer-Involved Shootings in Fresno, CA

A report prepared for the ACLU of California

A blurred background image showing the red and blue lights of a police vehicle, likely a patrol car, with the lights appearing as out-of-focus bokeh against a dark background.

ACLU
California

REDUCING OFFICER-INVOLVED SHOOTINGS IN FRESNO, CALIFORNIA

*A Report Prepared for the American Civil Liberties
Union of California*

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Contents

| | |
|---|----|
| EXECUTIVE SUMMARY | 3 |
| INTRODUCTION | 5 |
| <i>Fresno, California</i> | 6 |
| <i>Methodology</i> | 6 |
| A TALE OF TWO CITIES: AN ANALYSIS OF OFFICER-INVOLVED SHOOTINGS | 8 |
| <i>North Fresno: Wealthy and White</i> | 8 |
| <i>South Fresno: Poor, Black and Brown</i> | 9 |
| <i>Officer-Involved Shootings: Spatial Disparities</i> | 10 |
| <i>Spatial Disparities</i> | 11 |
| <i>Fresno’s Black and Hispanic Communities</i> | 12 |
| <i>Community Impact</i> | 12 |
| LOCAL PROBLEMS: POLICIES AND PRACTICES | 14 |
| <i>Officer-Involved Shooting Review Process</i> | 14 |
| <i>Community Concerns: Fresno Police Department</i> | 15 |
| Community Relations | 16 |
| Officer Training | 17 |
| Transparency | 18 |
| Body Camera Use | 19 |
| Transparency and Accessibility of Body Camera Footage | 20 |
| Accessibility of Department Data | 21 |
| Accountability | 22 |
| Repeat Shooters* | 25 |
| Limited Avenues for Officer Discipline | 26 |
| <i>Community Concerns: Office of Independent Review</i> | 26 |
| Investigatory Power | 27 |
| Authority | 27 |
| Community Access | 28 |
| <i>Where Fresno is Going</i> | 28 |
| Citizens’ Public Safety Advisory Board | 28 |
| RECOMMENDATIONS..... | 30 |

| | |
|---|----|
| <i>No New Resources</i> | 32 |
| Use of Force | 32 |
| Transparency in the Use of Officer Body Worn Cameras | 32 |
| Community Relations Outreach | 33 |
| <i>Reallocation of Resources</i> | 34 |
| Accountability | 34 |
| Training | 34 |
| Anti-Bias Training | 35 |
| De-escalation Training | 35 |
| Collection and Timely Release of Data and Training Materials | 36 |
| <i>New Resources</i> | 37 |
| Community Involvement in the Citizens’ Public Safety Advisory Board | 37 |
| Expand the Role of the Office of Independent Review | 37 |
| Community Partnerships | 38 |
| CONCLUSION..... | 39 |
| APPENDICIES..... | 40 |
| <i>Technical Appendix I - Cluster Analysis</i> | 40 |
| <i>Technical Appendix II - Interview Methodology</i> | 41 |
| <i>Interview Protocol – Fresno Community Stakeholder</i> | 41 |
| <i>Sample Interview Questions</i> | 42 |
| ENDNOTES..... | 43 |

EXECUTIVE SUMMARY

Police officers are authorized to use force in the line of duty in order to protect the public they serve. However, inappropriate use of this authority can erode trust between the police and the public and undermine the core mandate of the police to “protect and serve.” Between 2001 and 2016, officers of the Fresno Police Department were involved in 146 officer-involved shootings. This high number of shootings, its disparate impact on low-income communities and communities of color, and the department’s policies and practices have significantly damaged police-community relationships.

A spatial analysis of the demographics of officer-involved shootings revealed that people from low-income communities of color in south Fresno are much more likely to experience an officer-involved shooting than those from Fresno as a whole, and that people from wealthier, predominately white communities in north Fresno are much less likely to experience officer-involved shootings. An analysis of officer-involved shooting victims found that while Hispanic (defined by the U.S. Census as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin) and Black residents make up about 44 and 8 percent of Fresno’s population, respectively, they account for 58 and 22 percent of officer-involved shooting victims.

The Fresno Police Department also has a pervasive repeat-shooter problem. At least 55 Fresno police officers have been involved in more than one officer-involved shooting. It appears that the department has or has had seven officers involved in four or more officer-involved shootings. This seriously undermines the department’s supervisory practices. And the department’s repeat shooters have discharged their firearm in 62 percent of the 146 officer-involved shootings between 2001 and 2016.

The costs of the Fresno Police Department’s officer-involved shootings exert a massive burden on the city. At least eight wrongful death civil suits have been filed against Fresno, the police department and its officers on behalf of the families of individuals shot and killed by the police. And in the eight closed cases, out of the 19 lawsuits identified on May 3, 2017 as arising from officer-involved shootings from 2008 through 2016, the city has spent more than \$5.3 million in defending and settling lawsuits.

Between 2001 and 2016, officers of the Fresno Police Department were involved in 146 officer-involved shootings. This high number of shootings, its disparate impact on low-income communities and communities of color, and the department’s policies and practices have significantly damaged police-community relationships.

Interviews with community stakeholders revealed a number of issues surrounding officer-involved shootings, most notably around the department's training policies, community relations, transparency, and accountability. Additionally, the community expressed concern over the Office of Independent Review, the municipal agency tasked with reviewing officer-involved shootings in Fresno. Residents believe that the agency's lack of independent investigative power, limited authority, and insufficient community access have resulted in an agency that is not appropriately equipped to deal with Fresno's officer-involved shooting problem.

Improved and explicit policies and practices around community engagement and transparency will help to rebuild a foundation of trust and cooperation between police departments and the communities they serve. Better policies and procedures around accountability will reduce officer-involved shootings and restore police-community relations. Policies and procedures around officer training and the prevention of use of lethal force will help reduce officer-involved shootings and promote public safety.

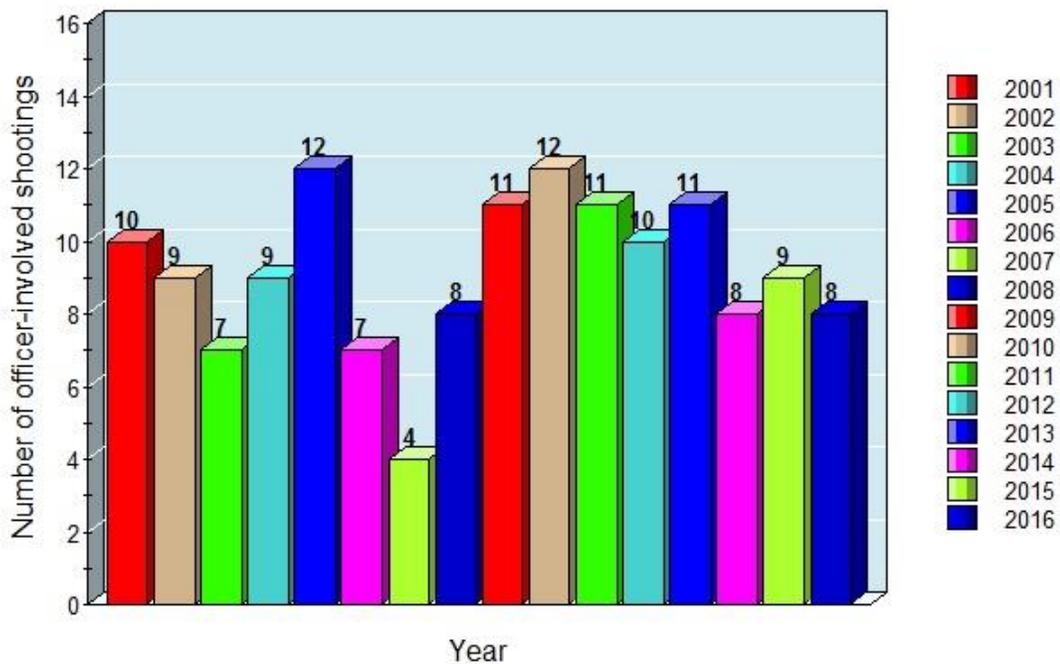
This report recommends a hierarchy of reforms based on their financial feasibility. Policy updates and improvements would require no new resources and would help to improve degraded police-community relationships. Reallocating resources for improved trainings and procedures would help reduce the number of officer-involved shootings while also promoting transparency and accountability. A commitment of new resources to enact a substantive and transparent officer-involved shooting review process could fundamentally change systemic problems with policing in Fresno for the better.

INTRODUCTION

In 2009, an officer from the Fresno Police Department shot an emotionally disturbed man who was waving a toy gun.¹ In October of that same year, a Fresno police sergeant shot and killed a man who had crashed his truck.² Allegedly high on drugs, the man did not respond to the officer's commands to exit his vehicle, and the officer shot him.³ In June 2012, a Fresno police officer shot a man in the back while he was trying to escape from police by climbing an elementary school fence.⁴ Once on the ground, the officer shot him three more times.⁵ In March 2014, police officers responding to a domestic disturbance call fatally shot a mentally ill woman.⁶

Dispatchers had warned the officers that the woman was emotionally distraught; reports indicated that she had been behaving erratically.⁷ Within five minutes of arriving at the home, officers kicked open the door, used a stun gun on the woman and then fatally shot her.⁸ These were not rare occurrences; between 2001 and 2016, there were at least 146 officer-involved shootings in Fresno, California.⁹ In this report, an officer-involved shooting refers to an incident in which a police officer discharges his weapon at a civilian irrespective of whether the civilian target was hit. In that period, the Fresno Police Department averaged approximately 9 officer-involved shootings per year.

Fresno Police Department Officer-Involved Shootings



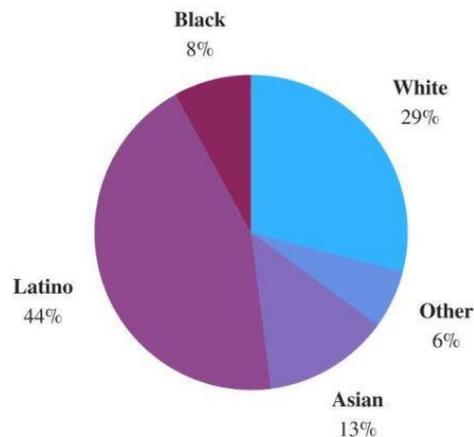
The use of lethal force is one of the most serious powers available to a police officer. Officers have the authority to use lethal force in the service of protecting residents, and with that, the duty and obligation to use lethal force responsibly and as rarely as possible. In addition to potentially unnecessary bodily harm or loss of life that can arise from officer-involved shootings, a high rate of officer-involved shootings can have a negative

impact on police-community relations, particularly if the public views the use of force as excessive or believes that officers are not held accountable for inappropriately using lethal force.¹⁰ When police-community relationships break down, police officers' jobs become more difficult and public safety can suffer.¹¹ Fresno's high rate of officer-involved shootings has put police-community relationships in jeopardy.

Fresno, California

Fresno is the fifth largest city in California and has a population of more than 500,000 residents.¹² The largest inland city in the state, Fresno is racially and ethnically diverse with over 60 percent of residents belonging to a racial or ethnic minority group (Fig. 1).¹³ The city is also one of the poorest in California; approximately half of Fresno households have incomes below 200 percent of the federal poverty line, indicating that they are eligible for government assistance programs such as the Supplemental Nutrition Assistance Program, which helps individuals purchase food.¹⁴ Fresno's median annual household income is approximately \$42,000, nearly \$20,000 below the statewide average.^{15, 16} The income gap

Fig. 1. Percentage of population by race or ethnicity alone



U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates

between rich and poor residents in Fresno is also higher than the gap statewide.¹⁷

Fresno's diverse demographics make it particularly vulnerable to the impacts of officer-involved shootings, which are magnified in low-income communities of color, where trust is lower for police officers than in wealthier communities.¹⁸ The purpose of this report is to identify the communities affected by officer-involved shootings, determine what impact the shootings are having, and identify policy reforms that could reduce officer-involved shootings and improve relationships between affected communities and the police.

Methodology

This report utilizes a triangulated, mixed-methods approach to identify the communities affected by officer-involved shootings, determine the impact of the shootings, and ascertain the policy changes that could reduce officer-involved shootings and improve relationships between affected communities and the police. The report relies on spatial statistical methods and semi-structured

interviews as well as case study analyses. The methods used are discussed in greater detail in a series of technical appendixes.

The spatial analysis in this report focuses on the 99 officer-involved shootings between 2006 and 2016. The study obtained data through four primary avenues: the United States Census; information from Public Records Act requests submitted by the ACLU of Northern California to the Fresno Police Department, the city of Fresno, and the Fresno County District Attorney; documentary research; and interviews. At the time of the analysis, the data on each officer-involved shooting was incomplete. Obtaining data via public record requests proved to be a lengthy process and was collected over several months through communications with the city of Fresno

and the department. Racial data on the victims of officer-involved shootings was collected from the police department and publicly available sources.

The data compiled in this report was used to conduct a simple statistical analysis of officer-involved shootings and their victims. The summary statistics allow the report to identify demographic trends. Additionally, the data was used to conduct a spatial analysis to identify relationships between officer-involved shootings and specific spatial areas.

The report relies on three semi-structured, in-person group interviews with community stakeholders to inform an understanding of how officer-involved shootings impact communities. The interviews were conducted over two days in Fresno.

A TALE OF TWO CITIES: AN ANALYSIS OF OFFICER-INVOLVED SHOOTINGS

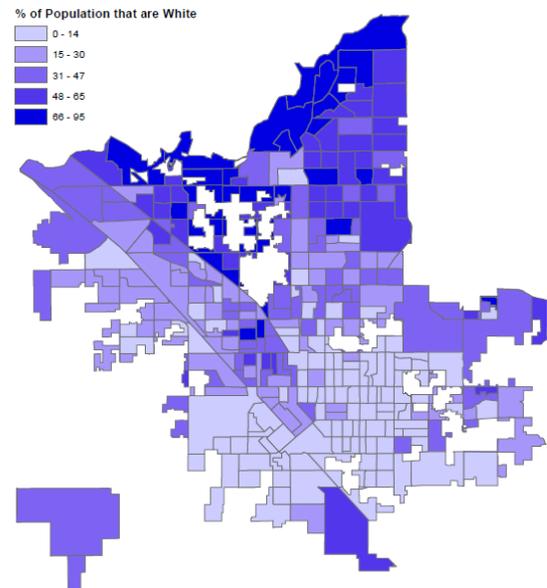
Officer-involved shootings do not impact all people of Fresno equally. In order to adequately address officer-involved shootings, it is essential to understand who is impacted by the shootings. An analysis of United States census data at the block group level, the smallest geographic unit commonly used by the Census Bureau, indicates that Fresno's overall diversity and low-median income masks a city sharply segregated by race, ethnicity, and wealth. The city's persistent pattern of racially segregated housing can be traced back to the federal government's practice of redlining and private citizen's use of racially restrictive covenants in property deeds.¹⁹

An analysis of the 99 officer-involved shootings between 2006 and 2016 indicates that within those segregated communities, there are significant demographic differences between where officer-involved shootings occur and the likelihood of exposure to officer-involved shootings.

North Fresno: Wealthy and White

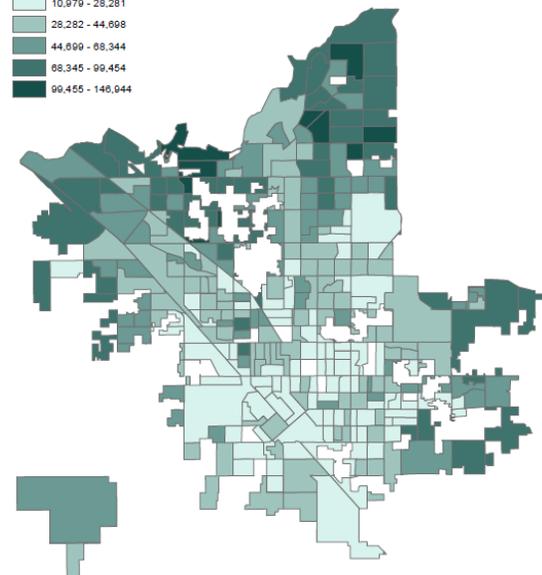
Residents of Fresno believe wealthier, white families live in north Fresno.²⁰ An analysis of census data indicates that belief is well founded.²¹ Map 1 shows the percentages of the population of a census block group that identify as being white alone. The highest concentration of white residents are located in north Fresno, with many blocks having two-thirds or more, up to 95 percent, of their residents identifying as being non-Hispanic whites. The communities within south Fresno have by far the lowest share of white residents, with many blocks having less than 15 percent of their population identifying as being non-Hispanic whites; some blocks have no white residents at all.

Map 1. Fresno Block Group, Percentages of the Population that are White



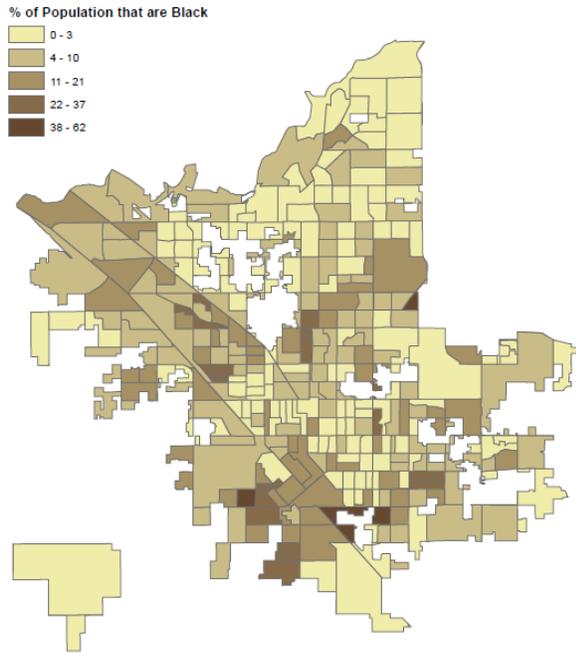
U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates
income

Median Household Income
10,679 - 28,281
28,282 - 44,698
44,699 - 68,344
68,345 - 99,454
99,455 - 146,044



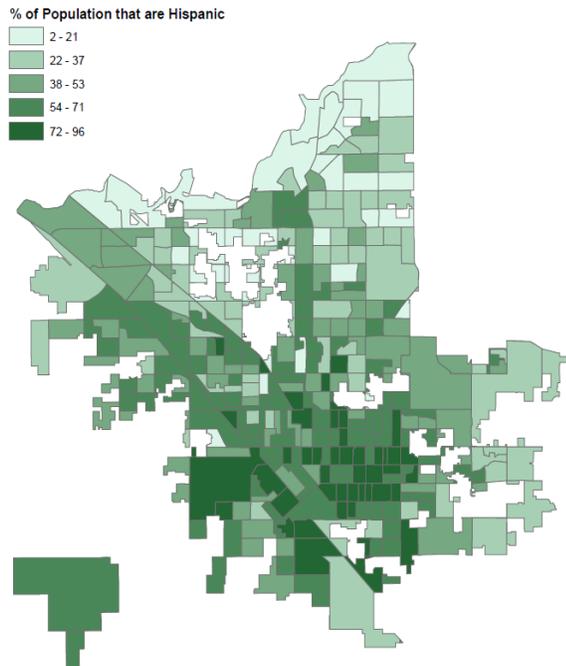
U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates

Map 3. Fresno Block Group, Percentages of the Population that are Black



U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates

Map 4. Fresno Block Group, Percentages of the Population that are Hispanic



U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates

Map 2 displays the median household income by census block group.²² The census block groups with the highest concentration of white residents also have some of the highest median incomes in the city. These block groups have household incomes well above Fresno’s median income. Some block groups in North Fresno have median incomes more than three times as high as the city’s median income, indicating that more than half of the households in those block groups earn more than triple the income of half of all Fresno households. According to data from the Census Bureau, fewer than 16 percent of residents who identify as non-Hispanic whites fall below the federal poverty level.²³

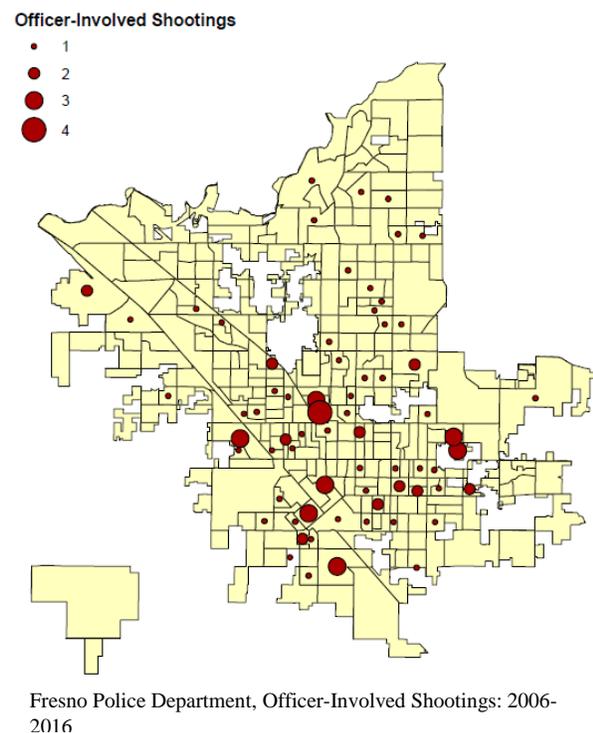
South Fresno: Poor, Black and Brown

South Fresno is notably different from north Fresno. Maps 3 and 4 display the percentages of the population for each census block group that identify as either Hispanic or non-Hispanic Black. Both groups are heavily concentrated in south Fresno, with some census block groups having as much as 96 percent of their population identifying as Hispanic. Much of south Fresno is composed overwhelmingly of Black and Hispanic residents. Some of these census block groups have no white residents at all. These same communities are also some of the poorest in the city. The median household income in south Fresno is remarkably lower than in north Fresno; a majority of the block groups have households earning between about \$11,000 and \$28,000, less than 20 percent of the median household income in north Fresno’s wealthiest block groups. The median household income of these block groups is also much lower than the city as a whole. Forty-four percent of all Black residents and more than 35 percent of all Hispanic residents of Fresno live below the federal poverty level.²⁴

Officer-Involved Shootings: Spatial Disparities

Map 5 shows the 99 officer-involved shootings that occurred within Fresno between 2006 and 2016.²⁵ The mapping reveals that the largest number of officer-involved shootings, and the densest grouping, are located within south Fresno. Many of the areas with the highest median incomes and largest share of white residents have had no officer-involved shootings within this 11-year period. The grouping of officer-involved shootings suggests that there is a cluster, meaning a statistically significant relationship between a location and the likelihood of an officer-involved shooting, but it does not indicate a true spatial correlation.

Map 5. Fresno Block Group, Officer-Involved Shootings



correlated with incidents of officer-involved shootings at the highest confidence level. This indicates a nonrandom relationship between those communities and officer-involved shootings; residents of these census block groups are at a much greater risk of exposure to officer-involved shootings than anyone else within Fresno. Conversely, there is a strong negative correlation between communities in north Fresno and incidents of officer-involved shootings. Those communities, some of the wealthiest and whitest within the city, are less likely than the average census block group in Fresno to be exposed to an officer-involved shooting.

In order to identify if these incidents of officer-involved shootings represented a true cluster, a spatial analysis was conducted. The spatial statistics method uses a fixed-band to identify if there is a relationship between incidents and specific areas.²⁶ Census block groups with a disproportionately high or low number of officer-involved shootings, surrounded by block groups with a similar value, are flagged as being clusters with an accompanying likelihood of experiencing an officer-involved shooting. The analysis provides a localized understanding of the spatial relationship between places and officer-involved shootings and it allows researchers to identify areas likely or unlikely to have an officer-involved shooting.

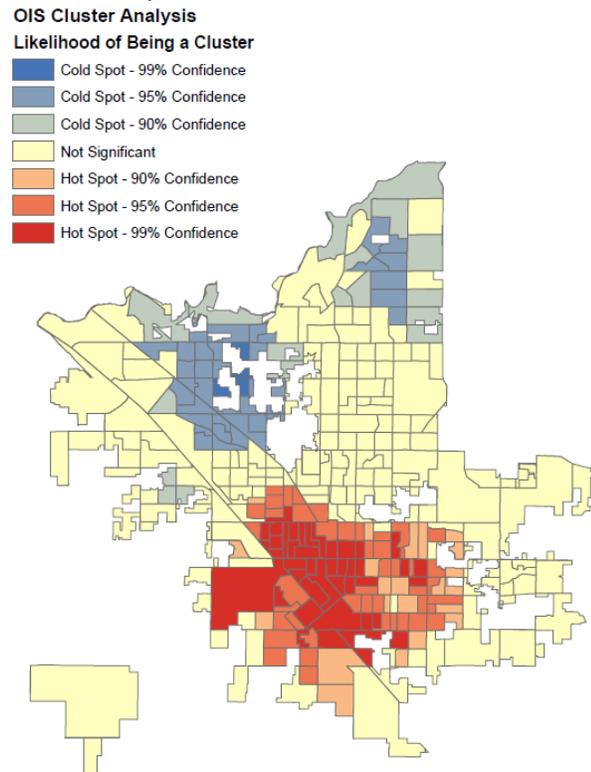
Map 6 shows the results of the cluster analysis. A large segment of south Fresno, in communities with the lowest median household income and the highest share of Black and Hispanic residents, are positively

Spatial Disparities

Fresno is a city characterized by division. North and south Fresno are composed of notably different communities, with vastly different racial, ethnic, and economic makeups. These different communities differ greatly in their exposure to officer-involved shootings. Residents of North Fresno, particularly its whitest and wealthiest areas, are less likely than anywhere else within the city limits to be exposed to an officer-involved shooting. South Fresno residents, including its poorest communities, are much more likely to be exposed to officer-involved shootings. Community members report that there is a significant difference between how residents of north and south Fresno perceive the police, an outcome that is not unlikely when such strong spatial disparities exist.²⁷

An analysis of available data on officer-involved shootings confirms that there are sharp differences in the likelihood of being a victim of officer-involved shootings among racial and ethnic groups.

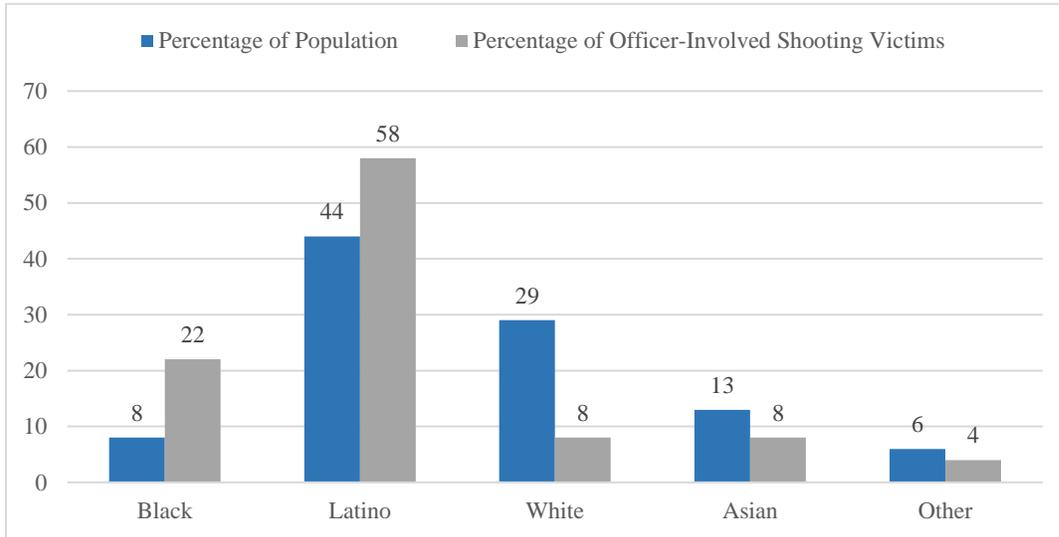
Map 6. Fresno Block Group, Officer-Involved Shootings Cluster Analysis



Fresno Police Department, Officer-Involved Shootings: 2006-2016

Residents of North Fresno, particularly its whitest and wealthiest areas, are less likely than anywhere else within the city limits to be exposed to an officer-involved shooting.

Fig. 2. Comparison of Fresno racial and ethnic population makeup and racial and ethnic makeup of officer-involved shooting victims



U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates & Fresno Police Department, Officer-Involved Shootings 2006-2016

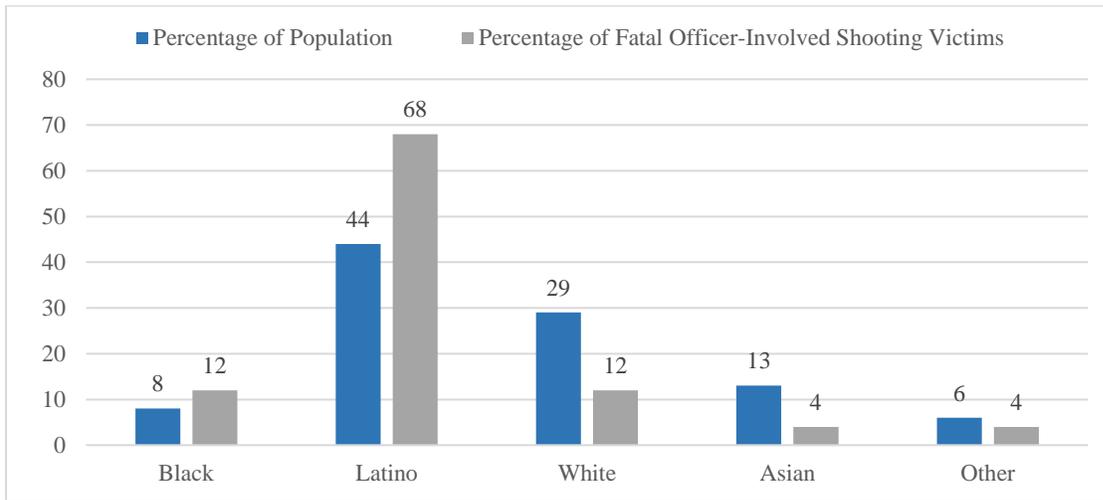
Fresno's Black and Hispanic Communities

The toll of these shootings has been especially high in communities of color; between 2011 and 2016, the years for which the racial data of shooting victims is most complete, Black and Hispanic people accounted for 80 percent of officer-involved shooting victims (Fig. 3).²⁸ Black and Hispanic people make up about 52 percent of Fresno's population.²⁹ Black victims are even more disproportionately represented, making up 22 percent of all officer-involved shooting victims, despite making up only 8 percent of Fresno's residents.³⁰

Community Impact

Officer-involved shootings do not affect all people of Fresno equally. There appear to be two distinct experiences within Fresno, characterized by significant differences in income as well as the racial and ethnic makeup of residents. Low-income Black and Hispanic communities share a strong spatial relationship with incidents of officer-involved shootings, which plays out in an analysis of the available racial and ethnic data of shooting victims. Understanding these differences is essential to identifying who is affected by officer-involved shootings and discovering which policies and procedures contribute to shootings as well as to developing policies to disrupt the social and spatial patterns that characterize the shootings.

Fig. 3. Comparison of Fresno racial and ethnic population makeup and racial and ethnic makeup of fatal officer-involved shooting victims



U.S. Census Bureau, 2010-2015 American Community Survey 5-Year Estimates & Fresno Police Department, Officer-Involved Shootings 2006-2016

LOCAL PROBLEMS: POLICIES AND PRACTICES

The Fresno Police Department's

disproportionately high number of officer-involved shootings, in which the victims overwhelmingly come from low-income Black and Hispanic communities, has contributed to strong negative perceptions of the department and its officers.³¹ According to interviews with community leaders and stakeholders, some residents view the department as unlawful and illegitimate, perceptions that are detrimental to effective policing and public safety.^{32, 33} Interviewees identified specific policies and practices that have contributed to negative public perceptions.

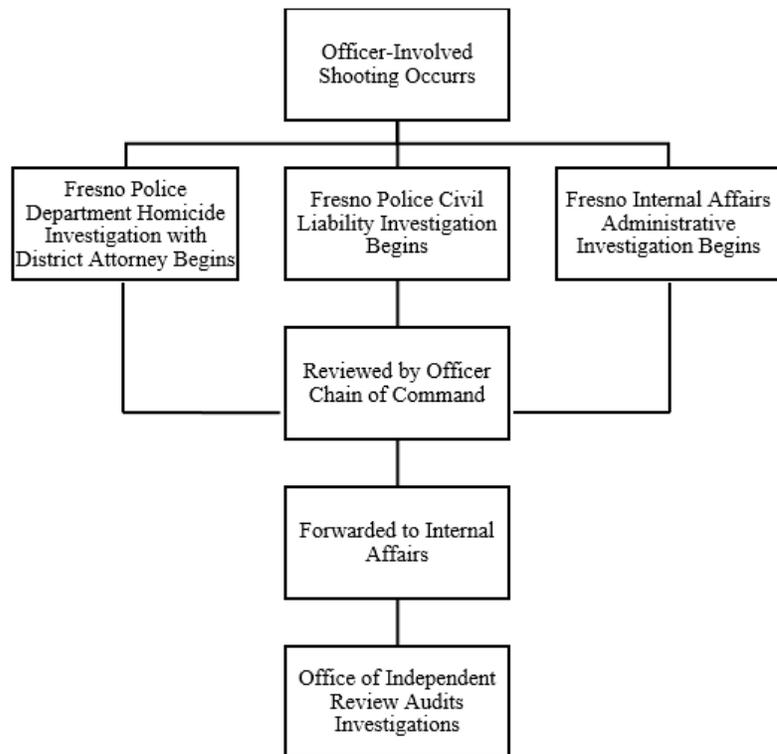
An understanding of Fresno's officer-involved shooting review process is essential to appreciating community member complaints. Policies around the investigation and review of officer-involved shootings are central to the concerns of Fresno's residents. The following sections detail the officer-involved shooting review process as well as concerns about the process and other policies and practices that impact officer-involved shootings.

Officer-Involved Shooting Review Process

The review process consists of three separate, internal investigations.³⁴ All three investigations must be completed within 12 months.³⁵ One investigation is a criminal investigation of the shooting, the second is a civil liability investigation, and the final is an administrative investigation.³⁶ The three investigations happen concurrently but are conducted independently within the police department. During the criminal investigation, the Fresno Police Department's Homicide Unit as well as a representative of the Fresno County

District Attorney's Office investigate the legality of the shooting.³⁷ This investigation does not determine whether or

Figure 4. Organizational Overview of Officer-Involved Shooting Investigations



Fresno Police Department, Policy Manual

not the shooting was justified under Fresno Police Department policies, but whether or not a crime, such as murder, was committed.³⁸ The administrative investigation is conducted by the Fresno Police Department's Internal Affairs Bureau.³⁹ The investigation focuses on whether or not the shooting was within departmental policy.⁴⁰ Both the administrative investigation and its results are considered part of the involved officers' confidential personnel files.⁴¹ The civil liability investigations are conducted in order to establish or refute the civil culpability of an officer-involved shooting.⁴² These investigations are considered attorney work product and are not released to the public.⁴³ At the conclusion of the three investigations, the results are reviewed by the officer's chain of command and then forwarded to the Internal Affairs Bureau where any disciplinary actions may be recommended.⁴⁴

Following the completion of the Fresno Police Department investigations, the Office of Independent Review (OIR) conducts an audit of all officer-involved shootings as well as use-of-force incidents and civilian complaints against officers.⁴⁵ The OIR was established in 2009 to strengthen public trust in the Fresno Police Department by providing an independent review of internal investigations.⁴⁶ All reviews are conducted by the Independent Police Auditor, an individual hired by the city.⁴⁷ The Independent Auditor produces quarterly public reports on the review of investigations, with a focus on whether or not each incident was within the department's policy.⁴⁸

Community Concerns: Fresno Police Department

The Fresno Police Department has faced mounting public criticism over the number of officer-involved shootings as well as the department's response to them. Residents maintain that the department's policies enable officers to use lethal force, contribute to a culture of secrecy around officer-involved shootings, and do not engage with the broader community in a meaningful way. The Fresno Police Department's policies and practices around community relations, training, transparency, and accountability have contributed to both the number of officer-involved shootings as well as the fraying of police-community relations. The Citizens' Public Safety Advisory Board, which has been recently established by the Mayor of Fresno as an attempt to remedy community relation concerns, is also problematic in a variety of ways.

Image 1. August 10, 2015 Protest in Downtown Fresno



Community Relations

Community stakeholders believe that the Fresno Police Department's lack of engagement and participatory practices, social media practices, and hiring practices have contributed to the creation of barriers between the department and the public and have also led to the deterioration of trust between the department and community members. Research demonstrates that distrust of officers by community members leads to underreporting of crime and reluctance to assist officers in investigations, thereby reducing overall public safety.⁴⁹

Interview respondents articulated a concern regarding a lack of community engagement and participatory practices by the department. Research suggests that policing practices improve as community involvement increases.⁵⁰ Currently, the department policy manual neglects to provide guidelines for mandatory community engagement practices. Interview respondents maintained that there are minimal avenues for community participation under current policing practices.⁵¹ In the past, the police chief convened an advisory board to provide an avenue for community engagement.⁵² Also, the department-funded "community cookouts," ostensibly intended to be another opportunity for community engagement, though community members perceived them to be merely "photo-ops."⁵³ Perceptions such as these contribute to an erosion of community-police relations and negatively impact community trust in the police. Community organizations said many of their members do not trust the Fresno Police Department and have expressed grave concerns about the

department's willingness to use lethal force.⁵⁴ This loss of trust and diminished community engagement can be counterproductive to the goals of the police department as residents who distrust the police are less likely to report crimes or cooperate with police investigations.^{55,56}

Interview respondents also expressed deep concern about the department's social media practices.⁵⁷ The department currently uses social media sites such as Facebook to release photos of people who have been arrested and charged with a crime but who have not been convicted.⁵⁸ This practice is counterproductive to establishing and maintaining community trust. The Fresno Police Department claims that releasing booking photos online is done in the name of transparency.⁵⁹ Many residents, however, believe the purpose of posting the photos is to publicly shame people suspected of crimes.⁶⁰ Community members report that the practice of posting booking photos on social media deters the restoration of community trust.⁶¹

Lastly, community stakeholders do not perceive the department to be representative of the city's demographics. The stakeholders maintain that the Fresno Police Department is not appropriately representative of the city's residents, and that white officers who are not familiar with the city's diverse communities dominate the force.⁶² According to the Fresno Police Department policy manual, the department's current recruitment strategy places an emphasis on "[identifying] racially and culturally diverse target markets."⁶³ But the Fresno Police Department does not make the demographics of its police officers publicly

available, so it is impossible to identify whether or not the perception of residents is accurate. Furthermore, the department does not require that its officers be residents of the city.⁶⁴ Many Black and Latino residents believe that the department is insufficiently representative of their communities. Research has shown that a department that is demographically similar to the community it serves is more likely to establish and sustain community trust.⁶⁵ The lack of diversity within the Fresno Police Department, as perceived by members of the Fresno community, functions as an additional barrier to repairing community-police relations in Fresno.

Officer Training

The Fresno Police Department has not made the training its officers receive publicly available, which adds to the perception of secrecy around the department's policies and practices. According to publicly available information, the department has training policies and procedures that "ensure personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community."⁶⁶ The purpose of departmental trainings is to ensure the professional growth and development of its personnel. Trainings are provided when funding is available, the trainings meet the needs of assignments, staff is available, or the trainings are legally required.⁶⁷

Department officials have verbally stated that training pertaining to use of force includes: 24 hours of firearms training; training on tactical communications, bias, and community-oriented policing; mental

health awareness updates; crisis intervention training; and annual anti-discrimination training provided to all employees of the city of Fresno.⁶⁸

"On April 1, 2003, the Department began entering Use of Force (UOF) information into the *Reportable Response to Resistance* database."⁶⁹ "The information gathered in this report helps the Department to measure how force is used by [its] officers and indicates if changes to policy, procedures or training should be considered."⁷⁰ The data in the report is limited to "reportable force," which is defined as:

1. Officers (including canines) use force and a person is injured; or,
2. Officers strike a person with a body part (i.e. fist, foot, elbow, etc.) or any object (i.e. flashlight, clipboard, etc.); or,
3. Officers use (not merely display) a department issued weapon (i.e. electronic immobilizing device, less-lethal impact projectile, chemical agents, baton, firearm, etc.).⁷¹

Based on this data, the department issues Roll Call Training Bulletins to officers, which cover "tactical considerations for responding to unpredictable calls and deadly force situations."⁷² While some departments, such as the Seattle Police Department,⁷³ require that officers report all force, including pain control holds, pointing of weapons, or grappling that causes even temporary pain, Fresno does not require reporting of such force and therefore does not track it. The failure to include data about use-of-force incidents that do not involve a strike or weapon and

do not result in a person's injury unnecessarily limit the ability to identify and introduce training to prevent patterns or practices that may nevertheless be unlawful or that create an unnecessary risk of harm or escalation.

Fresno Police Chief Jerry Dyer has asserted that the Fresno Police Department "has implemented many of the [White House Task Force on] 21st Century Policing recommendations, including [anti-bias],⁷⁴ de-escalation⁷⁵ and mental health training."⁷⁶ Because the department refused to disclose many of the records containing departmental training information, it is impossible to determine the extent to which any of these recommendations have been implemented. However, based on the department's description, the anti-bias training appears to focus mostly, if not exclusively, on defining bias without providing officers tools to prevent them from acting on bias in a given situation.⁷⁷ However, scenario-based, use-of-force judgment training that uses scenarios countering stereotypes, where persons "who turn out to be a threat in a given scenario [are] just as likely white as black, just as likely female as male, just as likely old as young," may reduce acting on bias where there is "prolonged exposure to these counter stereotypes over time."⁷⁸

The large number of officer-involved shootings that occur within Fresno and the disparate impact officer-involved shootings have on Black and Hispanic communities suggest that the department's training is insufficient in preparing officers for the stressful and dangerous situations they experience on the job. Adequate anti-bias and de-escalation trainings would ensure that

officers relied less on lethal force during challenging situations.

Transparency

Police departments are experiencing increasing levels of public scrutiny due to improvements in technology and increased access to information.⁷⁹ Nationally, police transparency has increased due to agencies such as the Bureau of Justice Statistics and the National Institute of Justice (NIJ), which allow the public to access data on law enforcement practices.⁸⁰ However, on the state and local level significant public concern remains over transparency of policing, particularly in instances where the public cannot see a direct line between police misconduct and disciplinary measures.⁸¹

Policies and practices within police departments that promote public access to policing data and increase community knowledge in what the police do strengthen community trust and perceptions of legitimacy in the police.⁸² California law makes records of investigations and discipline of peace officers almost completely inaccessible to the public, a level of secrecy afforded to no other public employees in California and significantly greater than that given to police in many other states.⁸³ By blocking the release of investigations into police shootings or information about whether officers have committed serious misconduct, this law creates a significant obstacle to transparency in policing. But many opportunities for transparency still fall within the control of local departments.

The Fresno Police Department's policies and practices fall short of achieving the

transparency standard that promotes trust. This includes its policies and practices related to when body-worn cameras are used and the public's access to footage. Also, the department's policies and practices related to the collection and accessibility of policing data are deficient and leave the public in the dark. There are three practices that reduce transparency and hinder the development of community trust. Those are body-worn camera usage, body-worn camera footage release, and the collection and accessibility of data.

Body Camera Use

Body cameras do not advance accountability if police can turn them off when they do not want to be recorded. Officers should record all interactions with the public, including all investigatory interactions (including consensual encounters). Any exceptions to this rule should be limited to sensitive situations—such as in instances of sexual assault or recording inside homes—and they should only be permitted with clear, on-camera permission to stop recording. Research supports this approach: When police departments mandate the consistent use of body-worn cameras by officers, the cameras become tools for holding police accountable and repairing community-police relations.⁸⁴

In Fresno, the department requires officers to activate their body cameras as soon as practical in the following circumstances:

- Arrests and detentions, or situations where an officer reasonably believes they will [a]ffect an arrest or detention (to include traffic stops and consensual encounters made with the intent to develop reasonable suspicion to detain);
- Officers assisting in an arrest or detention situation;
- Confrontational interactions with citizens;
- Vehicle and foot pursuits;
- Forced entries, search warrants and warrantless searches (including vehicles);
- When entry is made with or without a warrant, all officers should activate their cameras prior to making entry and continue recording until the scene has been secured. Once the location is secure, and no other circumstances warrant recording, officers may deactivate their cameras.
- Suspect interrogations (including Miranda advisement) and generally, interviews of victims and witnesses.⁸⁵

But the policy also allows for officer discretion when activating a body camera to ensure officer safety.⁸⁶ Officers who fail to comply must file a report, but the policy does not establish disciplinary procedures for failure to comply.

The Independent Police Auditor has repeatedly charged the department with inconsistent use of body cameras. In the first quarterly report of 2016, the Independent Police Auditor requested that supervisors within the department “make [the use of body cameras] a priority item that all levels of supervision emphasize until such point that body camera activation becomes as second nature as securing a police car upon exit from the vehicle.”⁸⁷ In the fourth quarterly report of 2016, the auditor wrote, “[the use of body cameras] still needs to expand to being a universally used tool in every incident detailed in the Policy Manual.”⁸⁸

Transparency and Accessibility of Body Camera Footage

In addition to inefficiencies within the Department’s policy and practices relating to the activation and usage of body cameras, the vagueness of the policy regarding the release of official video diminishes community trust.

Setting the right balance between privacy and transparency in public access is a difficult balance, but some situations are clear. Videos of public importance—such as those of a shooting or other serious use of force, or other potential misconduct—should be made public by the department. Videos with highly private footage, such as inside a home, should remain private. Research supports the necessity of public

release for the repair and maintenance of community trust.⁸⁹

The department’s policy manual does not meet this standard of transparency. According to the manual, the release of all official video, be it from a body camera or a dash camera mounted in a police vehicle, is decided only by the Chief of Police or a designee.⁹⁰ The Chief of Police “may elect to release video when the public interest served by the disclosure of the video outweighs the public interest served by the non-disclosure of the video.”⁹¹ This places the release of all videos at the discretion of the Chief of Police, greatly limiting the public’s access to any video evidence from officer-involved shootings.

In at least two instances the department’s body camera footage has been released. On March 24, 2016, Fresno Police Chief Jerry Dyer released body camera footage of officers’ fatal shooting of Freddy Centeno on September 3, 2015.⁹² The footage was released one day after Mr. Centeno’s family members filed an excessive force and wrongful death lawsuit.⁹³ And on July 13, 2016, Chief Dyer released officers’ body camera footage of the June 25 fatal shooting of Dylan Noble.⁹⁴ Still our interview respondents perceive efforts to delay or deny the release of footage from officer-involved shootings as efforts by the department to hide evidence of wrongdoing on the part of its officers.⁹⁵ That the Chief of Police has decided to release video in some instances in the past shows that it is possible to do so. The department’s policy does not clearly provide for releasing all body camera footage within a short time frame.

The barriers to public access to videos of officer-involved shootings severely diminish the public's trust in the department. The department's policy manual also provides that "[o]fficers, either as a subject or witness, who are involved in any significant use of force, incident, or collision causing injuries will be permitted to review their recordings prior to providing a statement or written report."⁹⁶ As recommended by the ACLU, to better promote accountability, officers involved in a critical incident like a shooting or those facing charges of misconduct should not be permitted to view footage of the incident before making a statement or writing an initial report.⁹⁷ Police do not show video evidence to other subjects or witnesses before taking their statements. Officers should watch the video after their initial statement and have the chance to offer more information and context. Officers may not remember a stressful incident perfectly, so omissions or inconsistencies in their initial account should not be grounds for discipline without evidence they intended to mislead. This would provide the fullest picture of what happened without tainting officers' initial recollection or creating the perception that body cameras are being used to cover up misconduct or not hold officers accountable.

Accessibility of Department Data

In addition to the problematic nature of departmental body camera footage release policies, department practices regarding collection of and public accessibility to department data is a cause for concern. Research states when policing data is made accessible to the public, community-police relations are likely to improve.^{98, 99}

Additionally, increasing public access to policing data can yield important insights into policing for the department.¹⁰⁰ According to the Police Foundation, "[increasing public access to] data allows the community to use data in ways that may not have been previously attempted, potentially yielding new insights into crime, safety, and community well-being."¹⁰¹ This is especially true when academic institutions, researchers, and/or advocacy organizations access data. Furthermore, a department is more likely to see returns on the benefits of open data when said data is collected and shared in research-friendly formats such as Microsoft Excel.

The Fresno Police Department has no formal policy for the collection and dissemination of data. Some data is currently accessible on the department's website.¹⁰² However, most of the data is only released in an aggregated format, denying residents the opportunity to conduct their own analyses. Rather than in a machine-readable format, residents can only access the data as PDF documents, which makes it difficult to conduct any independent analyses. The data released is also very limited and does not include any information about police interactions that do not result in the arrest of an individual. For example, data about the number and types of police interactions with civilians that is disaggregated by outcome—such as arrest, citation, a search, injury, or no law-enforcement action taken—can provide meaningful insight into the fairness and effectiveness of law-enforcement practices. The department's data-release practices therefore strongly hinder the public's ability to access and

interpret the department's data and practices.

The benefits derived from open data policies within police departments extend to the release of training materials. As previously mentioned, departmental trainings are currently inaccessible to the public. The department further erodes trust by withholding its training materials from the public.¹⁰³

Accountability

Police accountability plays a substantial role in informing community trust and resulting community-police relations. Our interview respondents believe that the Fresno Police Department's policies and procedures around investigating officer-involved shootings have failed to hold officers accountable, thereby further deteriorating community-police relations.¹⁰⁴ Existing use-of-force policies and Fresno Police Department Internal Affairs investigation findings have contributed to the concerns residents have around officer accountability.

Fresno's use-of-force policy states: "officers shall use only the amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to accomplish a legitimate law enforcement purpose."¹⁰⁵ Reasonableness of force, as described by the manual, "will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances

that are tense, uncertain and rapidly evolving."¹⁰⁶ The policy's incorporation of a reasonableness standard is consistent with that articulated by the United States Supreme Court in 1989 in *Graham v. Connor*.¹⁰⁷

But Fresno's policy appears to authorize too much force by tying the amount of force used to accomplishing "a legitimate law enforcement purpose" without requiring that the amount of force used be proportional, meaning necessary to overcome force, resistance, or risk of harm. In *Graham*, the Court held that determination of whether the amount of force is reasonable under the Fourth Amendment "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, 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."¹⁰⁸

Fresno's policy also falls short of what the Constitution requires because it fails to specify that deadly force should only be used to overcome a risk of imminent deadly harm to the officer or others.¹⁰⁹

Furthermore, absent specific guidance, Fresno's policy may be applied in a subjective manner in practice.¹¹⁰ In practice, the policy may allow police officers a lot of leeway in determining what is or is not reasonable, and in the eyes of some residents the policy enables officers to justify officer-involved shootings.¹¹¹

It appears the department does provide at least some specific training and guidance for particular scenarios, but that information is not readily available to the public. For example, the police chief

informed the media that “after several instances where officers fired at people in vehicles because they feared being ran over,” the department “developed a training video and put officers through simulations to outline steps they could take so they wouldn’t be in the path of a vehicle.”¹¹² This also led to a new policy providing that “the person in the vehicle must be the one posing a threat to the officer for the officer to fire his weapon.”¹¹³ That new policy does not appear in the department’s publicly available policy manual. While this policy does not comply with the recommended policy of strictly prohibiting shooting at vehicles,¹¹⁴ it does provide specific guidance in the form of a restriction designed to limit unnecessary injury or loss of life. And providing public access to such policies could help instill greater public trust.

Furthermore, the more specific policies should be incorporated into the department’s general use-of-force policy. “Many police agencies already have policies that go beyond legal requirements. For example, many police agencies have adopted pursuit policies and rules barring officers from shooting at or from moving vehicles, that go beyond current legal precedents.”¹¹⁵

The frequent filing of civil lawsuits arising from officer-involved shootings likely exacerbates community distrust. Although the city of Fresno does not keep track of its civil litigation expenses by

type of matter, the ACLU of Northern California identified 19 lawsuits arising from the police department’s officer-involved shootings from as early as 2008 through 2016.¹¹⁶ At least eight wrongful death civil suits have been filed against the Fresno Police Department and officers on behalf of the families of individuals shot and killed by the police.^{117, 118} For the eight closed cases out of the 19 lawsuits, the city has spent \$1,790,358.65 in legal costs defending these lawsuits and \$3,510,000 on settlement awards.¹¹⁹ Together that amounts to over \$5.3 million. These expenditures do not include litigation costs for the remaining 11 open cases or the court award of \$1.5 million after a jury found a Fresno police officer to be partly responsible for the fatal shooting of Stephen Willis.¹²⁰ Residents perceive these settlements as evidence of the illegitimacy of officer discretion during the shootings and question why the department’s Internal Affairs investigations failed to identify the shooting as being out of policy.¹²¹

The Department’s Internal Affairs bureau has found only one officer-involved shooting to be “outside [of] policy”—the fatal shooting of Dylan Noble.¹²²

And for the period from 2001 through 2016, in which there were 146 officer-involved shootings, the Fresno County District Attorney’s Office has never brought criminal charges against an officer arising from an officer-involved

For the eight closed cases out of the 19 lawsuits, the city has spent \$1,790,358.65 in legal costs defending these lawsuits and \$3,510,000 on settlement awards.¹ Together that amounts to over \$5.3 million.

shooting.¹²³ The District Attorney’s Office expressly declined to say whether there were incidents within that period for which it found probable cause to file a criminal case but nevertheless declined to do so.

The Fresno Police Department’s philosophy states that the department “maintains a high regard for human life”

while simultaneously promoting a use-of-force policy that allows for the use of lethal force in all cases so long as a “reasonable” officer would do so.¹²⁴ But the department’s current policy grants officers a license to use force, including lethal force, in circumstances in which de-escalation tactics could have been successful.

On June 25, 2016, 19-year-old Dylan Noble was shot and killed by two Fresno Police Department officers. Noble was stopped by the two officers for speeding. The officers had been in the area responding to a call about a man walking down the street carrying a shotgun or a rifle, wearing a long sleeve shirt and a camouflage jacket when they pulled Noble over. Noble did not match the description of the individual reported, but officers were still on alert for an armed suspect. Once officers attempted to stop his truck, Noble drove for about a half of a mile before pulling into a parking lot. Footage from a police body-worn camera revealed one of the officers was driving with his gun drawn while following Noble’s truck. Once Noble stopped his truck, the officers exited their vehicles with weapons drawn. Officers repeatedly ordered Noble to show his hands and to exit the vehicle. Noble eventually complied; once outside the vehicle he kept one hand raised and alternated between keeping the other hand behind his back and dropping it to his side, despite officers’ orders to show both of his hands. Officers ordered Noble to raise his hands, show his hands, and lay down on the ground, but Noble did not comply. Following these orders, Noble moved towards the officers, who were a notable distance away from Noble, and said, “I [expletive] hate my life.” One officer opened fire, shooting Noble twice. Noble collapsed to the ground, and officers again ordered him to show his hands. While lying on the ground shot, Noble moved his hands around his chest and shirt despite officers’ orders to keep his hands up. Officers responded by shooting Noble twice more while he was laying on the ground, once with a shotgun. Noble died at a hospital shortly after the shooting; he had been holding a small plastic container of clay. A toxicology report showed that Noble’s blood alcohol level was well above the legal limit at the time of his death.¹²⁵

Repeat Shooters*

The Fresno Police Department appears to suffer from a shockingly high number of officers who have been involved, meaning they have discharged their firearm, in more than one shooting. In the 146 officer-involved shootings from 2001 through 2016, at least 55 Fresno police officers have been involved in more than one such shooting; of those 55, seven officers have been involved in three shootings, four officers have been involved in four shootings, one officer has been involved in five shootings, one officer has been involved in six shootings, and one officer has been involved in seven shootings.¹²⁶ The department's repeat shooters discharged their firearm in 62 percent of the department's officer-involved shootings.¹²⁷ According to the Pew Research Institute "only about a quarter (27%) of all officers say they have *ever* fired their service weapon while on the job."¹²⁸

In the 146 officer-involved shootings from 2001 through 2016, at least 55 Fresno police officers have been involved in more than one such shooting; of those 55, seven officers have been involved in three shootings, four officers have been involved in four shootings, one officer has been involved in five shootings, one officer has been involved in six shootings, and one officer has been involved in seven shootings.¹ The department's repeat shooters discharged their firearm in 62 percent of the department's officer-involved shootings.

| Number of Officer-Involved Shootings (2001-2016) | Fresno Police Department Officers |
|--|--|
| 2 | Adrian Alvarez; Joe or J. Alvarez; Rudy Anaya; Marc or M. Anderson; Daniel or D. Astacio; John Banuelos; Eddie Barrios; Andre or A. Benson; Joshua or Josh Bowling; Sergio Briseno; A. Campos; P. Cervantes; Robert Chavez; Eric Claiborne; Christopher or C. Desmond; Keith Dooms; Christopher Fern; Henry Garcia Jr.; J. Herring; Greg Jouroyan; Teddy or T. Kazarian; Michael Kirby; Brannon Kirkland; Eric Kong; Colin Lewis; Robert Lincoln; Edward or E. Louchren; Phillip Lucero; Joe Ploharz; Jeremy or J. Preis; Zebulon Price; Christian Ramos; L. Sanchez; Trevor Shipman; Clayton Smith; Bishop or B. Sturgeon; David Surabian; R. Tafoya; Brett Vestal; Bryan or B. Williams; James or J. Young |
| 3 | Chris or C. Cooper; Daniel Gonzalez; Rick Harrell; Justin Hoagland; P. McQuay; Keenan or K. Rodems; Matthew Vincent |
| 4 | Juan Avila; Richard or R. Nadeau; Mike or M. Palomino; Marcus or M. Tafoya |
| 5 | Carl or C. McNight |
| 6 | Alfonso or A. Castillo |
| 7 | Gunter Meiss |

Because the records did not provide unique officer identification numbers it is possible that the number may be smaller if officers share the same first name initial and last name.

Limited Avenues for Officer Discipline

While the Fresno Police Department utilizes an Early Alert System to detect and prevent significant performance problems for individual officers through non-disciplinary intervention measures,¹²⁹ the system has a number of structural limitations.

An initial alert results from the tracking of specified performance criteria.¹³⁰ The department also uses IA Pro software to compile data from multiple sources to identify incidents including vehicle pursuits, internal affairs reports, informal complaints, and use-of-force incidents.¹³¹ The Internal Affairs commander then prepares a confidential report that is reviewed by the Administrative Division Commander.¹³² If after considering the officer's behavior the commander determines further review is warranted, the commander convenes a committee to review the file with the officer's name redacted.¹³³ If a majority of the committee authorizes intervention, the commander meets with the officer to discuss his behavior and identify positive ways to address it.¹³⁴ The department's policy explicitly states that the "Commander will not track the [officer's] progress nor will punitive action result from the [officer's] failure to follow the plan."¹³⁵

Furthermore, the Early Alert System report must be destroyed once the meeting occurs.¹³⁶

In the Office of Independent Review 2010 annual report the auditor concluded that "this centerpiece of police accountability does not seem to be functioning effectively."¹³⁷ After the first year of implementation there was "no systematic permanent and documented tracking of

performance indicators that led up to the alert."¹³⁸ The auditor found that the system did "not appear to have a meaningful identification and selection process."¹³⁹ Of the 38 Early Alert System reports generated in 2009 and 2010, only three were selected and provided to the committee, and none of them required intervention.¹⁴⁰ And the failure to maintain permanent records makes it impossible to track the system's effectiveness.¹⁴¹

The department also has a Critical Review Incident Committee to identify training needs.¹⁴² But like the Early Alert System, it cannot be used in considering any disciplinary action.¹⁴³ Furthermore, any report generated by the committee cannot identify the officers whose actions are being critiqued.¹⁴⁴

Finally, the Fresno Police Department's disciplinary policy and practices seem to provide a limited avenue for subjecting officers to discipline for use of force that is unlawful or does not comport with departmental policy. Under a non-exhaustive list of "conduct which *may* result in discipline" is "[u]nauthorized or unlawful fighting, threatening, or attempting to inflict unlawful bodily injury on another." (emphasis added).¹⁴⁵ Thus, discipline for unlawful use of force appears to be optional.

Community Concerns: Office of Independent Review

Interview respondents routinely criticized Fresno's Office of Independent Review as being a largely symbolic office.¹⁴⁶ These respondents contend that the OIR is not equipped to sufficiently investigate officer-involved shootings, that it lacks the authority to contribute to any

When the auditor concludes that an officer-involved shooting was out of compliance with departmental policies, there is no required response from the department.

meaningful improvements, and that the office is removed from the realities affecting the people of Fresno.¹⁴⁷

Investigatory Power

The investigatory power of the auditor has become a point of contention for community members.¹⁴⁸ The auditor presently relies exclusively on the police department's internal documents, making all determinations about the appropriateness of incidents based on reports from the department's own investigations.¹⁴⁹ The auditor is not allowed to conduct his own independent investigations.¹⁵⁰ The OIR does not have any investigative staff aside from the auditor, nor does the auditor have subpoena power in order to solicit testimony or documentation from parties involved.¹⁵¹ And the former auditor's remote location tended to impede his ability to observe the department's investigation as it is conducted. The auditor therefore could not independently verify events, testimony, or evidence. As a result, the auditor's ability to make comprehensive and accurate determinations on the appropriate use of force is limited. Residents, who have come to regard the department's internal investigation process as biased, do not believe it is possible for the auditor to conduct a truly independent review of use-of-force incidents when he cannot conduct his own investigations.¹⁵²

Authority

The limited authority of the OIR has also become a cause for concern in Fresno.¹⁵³ The auditor's reports and recommendations are only advisory, as the OIR has no enforcement power.¹⁵⁴ When the auditor concludes that an officer-involved shooting was out of compliance with departmental policies, there is no required response from the department.¹⁵⁵ The department is not required to review the shooting, discipline the officer, or take any other action. The auditor's investigations, therefore, lack any authority, even if he concludes that the initial investigation made the wrong conclusion. Similarly, the auditor lacks the authority to enforce any recommendations as it relates to departmental policy. In 2016, the auditor recommended that the Fresno Police Department adopt new trainings in order to reduce the number of officer-involved shootings in Fresno.¹⁵⁶ Chief Dyer issued a public response asserting that the current training for officers was sufficient, and the auditor's recommendations were not adopted.¹⁵⁷ This incident underscores the OIR's lack of authority.

Community Access

Previously, Fresno's auditor lived in Salt Lake City, Utah, and served only part-time.¹⁵⁸ The auditor's remoteness and part-time commitment may have impaired the auditor's ability to participate in investigations.¹⁵⁹ Respondents to the team's interviews have also criticized the lack of engagement between the auditor and community members.¹⁶⁰ There are no formal avenues for community members to engage with the OIR over their concerns, a common practice in other municipalities' review bodies.¹⁶¹ This lack of interaction between community members and the OIR has resulted in a misunderstanding of the office, according to some community members.¹⁶² Many residents of Fresno are unsure of the powers of the OIR and lack a clear understanding of what the office does.¹⁶³ This disconnect between the public and the OIR indicates that the OIR is struggling to fulfill its purpose, as it is difficult to promote public trust in police when the public does not understand the role of the OIR.

Where Fresno is Going

Due, in large part, to persistent pressures from key community stakeholders, the Fresno Police Department in partnership with the mayor of Fresno has taken steps to reform problematic aspects of the department. These efforts have taken shape in the proposed formation of a Citizens' Public Safety Advisory Board. The creation of the board, while commendable, fosters similar problematic sentiments regarding authentic community inclusion.

Citizens' Public Safety Advisory Board

In March 2017, Fresno Mayor Lee Brand introduced a plan to create a Citizens' Public Safety Advisory Board to serve as a formal avenue for community participation in police conduct. According to the plan, the board will be composed of nine voting members who serve at the discretion of the mayor.¹⁶⁴ The board will operate as an advisory board with no investigatory power or authority.¹⁶⁵ The board will make recommendations for reforms to the Fresno Police Department based entirely on investigative reports constructed by the Internal Affairs department and the District Attorney.

On August 30, 2017, Mayor Brand introduced new Auditor John A. Gliatta, who will reside in Fresno and work full-time.¹⁶⁶ Mayor Brand also announced his appointees to the nine-member advisory board, who range in age from 26 to 71 years and come from six of the city's seven council districts.¹⁶⁷

As of February 2017, residents of Fresno expected the board to be an insufficient vehicle for community participation for a variety of reasons. First, the process of creating the board included a limited number of stakeholders, and community members were not included in creating or amending the board's bylaws that outline its scope, responsibilities, and goals.¹⁶⁸ Second, the lack of clarity around the process through which community members were identified and appointed to the board led some residents to fear that leaders from the city's most vulnerable communities were left off of the board, silencing the voices of some of the department's loudest critics.¹⁶⁹ Third, although one of the board's main purposes

is to enhance transparency, the board's bylaws declare that "[a]ll meetings shall be closed to the public and shall not be subject to the provisions of the Ralph M. Brown Act."¹⁷⁰ The Brown Act, which was "designed to encourage public participation in government," "requires that public agencies conduct business and deliberate openly."¹⁷¹ Fourth, residents have been critical of the board's dependence on the Fresno Police Department and the Office of

Independent Review for investigating the patterns and practices of officer-involved shootings in Fresno. Notably, the mayor's March 2017 changes to the Office of Independent Review maintain that "it will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct."¹⁷² Furthermore, the board's lack of enforcement power limits the authority with which recommendations made by the board are perceived.

RECOMMENDATIONS

Substantive reforms will help reduce the number of officer-involved shootings as well as help to promote improved police-community relationships. The following recommendations focus on improving training, transparency, community relations, and accountability for police officers.

| Training | Transparency | Community Relations | Accountability |
|--|--|---|--|
| Require continued evidence-based anti-bias trainings that provide officers with tools to prevent acting on bias | Mandate proper and consistent use of body cameras | Emphasize hiring a diverse workforce representative of policed communities | Revise department use-of-force policies to reflect non-force responses and to allow deadly force only when necessary; adopt de-escalation techniques as formal department policies |
| Require continued evidence-based de-escalation training | Adopt department policies requiring the release of body camera footage for defined incidents of public importance with limited enumerated privacy exceptions | Promote public participation in Citizens' Public Safety Advisory Board; revise the bylaws of the Citizens' Public Safety Advisory Board to better reflect the will of Fresno's residents; provide a fair and transparent process for the selection of board members | Expand the investigatory and enforcement powers of the OIR and Citizens' Public Safety Advisory Board; require the board to comply with the Brown Act |
| Collect data enabling the department to identify training needs based on use-of-force practices or incidents that are not limited to those resulting in a person's injury or involving a strike or use of a weapon | Create provisions for the proper collection and release of data available to the public without barriers | Enhance community-based policing efforts through more community-based initiatives and partnerships with local stakeholders | Ensure the timely adjudication of investigation of officer-involved shootings |
| | | Eliminate the use of social media that stigmatizes community members | Monitor the effectiveness of the Early Alert System and require officers to implement interventions proposed |

This report breaks the above recommendations into three categories based on their implementation costs: changes that require no new resources, changes that require a reallocation of existing resources, and changes that require new resources.

No new resources required means that the department can implement the policy immediately without the need for additional fiscal resources or the shifting of existing resources. These recommendations would allow the department to improve community relations at no cost.

Reallocation of resources required means that the department will need to divert funding from other areas in order to make the recommendation feasible. These policies do not require new resources but will require the department to shift funding from existing areas. These recommendations would allow the Fresno Police Department to reduce the rate of officer-involved shootings without additional fiscal cost.

New resources required means that the department will need to acquire additional funding in order to implement the recommendation. Additional funding can be obtained through a variety of means, including increased municipal spending or applying for an increased number of federal grants. These recommendations constitute a fundamental change to departmental policy or policing.

| No New Resources | Reallocate Resources | New Resources |
|--|--|--|
| Revise department use-of-force policies to reflect non-force responses and to allow deadly force only when necessary; adopt de-escalation techniques as formal department policies | Monitor the effectiveness of the Early Alert System and require officers to implement interventions proposed | Revise the bylaws of the Citizens' Public Safety Advisory Board to better reflect the will of Fresno's residents; require the board to comply with the Brown Act |
| Emphasize hiring a diverse workforce representative of policed communities | Require continued evidence-based anti-bias trainings that provide officers with tools to prevent acting on bias | Expand the investigatory and enforcement powers of the OIR and Citizens' Public Safety Advisory Board |
| Mandate proper and consistent use of body cameras | Require continued evidence-based de-escalation training | Ensure the timely adjudication of investigation of officer-involved shootings |
| Adopt department policies requiring the release of body camera footage for defined incidents of public importance with limited enumerated privacy exceptions | Collect data enabling the department to identify training needs based on use-of-force practices or incidents that are not limited to those resulting in a person's injury or involving a strike or use of a weapon | Enhance community-based policing efforts through more community-based initiatives and partnerships with local stakeholders |
| Eliminate the use of social media that stigmatizes community members | Create provisions for the proper collection and release of data available to the public without barriers | |
| Promote public participation in Citizens' Public Safety Advisory Board; provide a fair and transparent process for the selection of board members | | |

No New Resources

The following measures require no new resources, however their implementation could help the Fresno Police Department make significant steps towards improving community relations and transparency.

Use of Force

Currently, the Fresno Police Department's use-of-force policy lacks an express proportionality requirement and fails to specify when deadly force is authorized.¹⁷³ Under this standard, most officer-involved shootings in Fresno have been found to not be in violation of departmental policy, despite cases in which the use of force was not considered necessary or proportional to the behavior leading up to the shooting.¹⁷⁴ The department should update its current use-of-force policy to not only comply with the Constitution's proportionality requirement and include an express policy limiting the use of deadly force but also to minimize the use of force.

Fresno's Office of Independent Review has also recommended that the Fresno Police Department adopt de-escalation as a formal agency policy to establish procedures that clearly maintain de-escalation as the tactically sound approach to most incidents.¹⁷⁵ To that end, it is recommended that the Fresno Police Department establish de-escalation procedures and policies as outlined by the Office of Independent Review. The National Consensus Policy on Use of Force, developed by a number of groups including the International Association of Chiefs of Police, provides that "Officers shall use force only when no reasonably effective alternative appears to exist."¹⁷⁶ And other police departments, such as in

San Francisco, California; Camden, New Jersey; and more recently Chicago, Illinois already take this approach.¹⁷⁷ This will help the department ensure that policies prioritize the proportionality and necessity of force as best practices standards. The department should adapt its use-of-force policy to emphasize the preservation of human life, the value of less lethal force options, and the role of de-escalation training. This includes the formal adoption of de-escalation.

And the department's more specific policies pertaining to use of force should be adopted into the department's formal, publicly available policy. As the department already updates its policies on a regular basis, this important amendment will require no additional resource allocation or redirection of employee time.

Transparency in the Use of Officer Body-Worn Cameras

Improving transparency would help to recover community trust within Fresno's police department.¹⁷⁸ While the Fresno Police Department has taken steps to improve the transparency of its operations, including the release of some data online, departmental policies do not mandate transparency. Updating body-worn camera policies would be a substantive contribution to the promotion of transparency.

The department should update and improve the policies surrounding the use of body-worn cameras. The Fresno Police Department's officer handbook acknowledges that body-worn cameras provide officers with a useful and unique tool for recording engagements with the public that might not otherwise be

possible. As such, the department should clarify the wording of its policy to ensure the mandatory use of body cameras during any potential law enforcement action. The Fresno Police Department should adopt more extensive directions on the appropriate use of body cameras as well as more detailed requirements for when cameras should be activated.

In addition, Fresno should develop and implement new policies around the release of body-camera footage. The policy should require the affirmative release of videos of public importance, such as those of a shooting or other serious use of force, or other potential misconduct, within 21 days of the incident. The department's policies should protect privacy by anonymizing civilians' features and voices through blurring and audio alteration, where possible and only if doing so does not hinder the transparency aims of the footage. Footage in highly private settings, such as inside a home, should remain private, but unedited footage should always be available for viewing by civilians involved in the incident recorded or their legal representatives. This policy should include a specified mandatory timeframe for when footage will be made available to the public when an officer-involved shooting has occurred. The department should also adopt a policy of maintaining body-camera footage for a fixed time period from the date it was recorded. But the department should retain footage for longer where it captures use of force or an encounter about which a complaint has been registered by a subject of video footage, retention is requested by a member of the public subject to such footage, or retention is requested by a law enforcement agency that asserts it has evidentiary or exculpatory value. And

finally, officers providing witness statements should not be given more access to body-camera footage than civilians; rather, officers should watch the video after their initial statement and have the chance to offer more information and context.

In order to make these changes, the Fresno Police Department should solicit feedback from the public on what type of policy the department should adopt.¹⁷⁹ Once again, these changes will require little supplementary effort on behalf of the department and can be conducted alongside regularly scheduled policy reviews.

Community Relations Outreach

Alongside policy changes, the department should take steps to improve community-based outreach and policing strategies that promote trust and inclusion and address negative perceptions held by residents. The following recommendations will address improvements to community relations, as well as effective investments in the community that will promote greater trust and overall public safety, with no additional fiscal burden to the department.

The Fresno Police Department should immediately cease its use of social media to publicize identifying information regarding Fresno community members; the practice deteriorates public trust and is antithetical to principles of inclusion. By conducting investigations on social media and providing a space for any individual to view, comment on, and share information regarding Fresno residents regardless of the resident's criminal history or proceedings, the Fresno Police

Department is promoting division between community members and violating the privacy of the impacted individuals. The practice of posting the pictures of individuals charged with crimes on social media sites also contributes to the stigmatization of individuals and the negative relationship between the department and vulnerable populations.

The Fresno Police Department's efforts to promote positive community relations by hosting events in the community is commendable, but these events are not sufficient to build meaningful trust between residents and officers. Fresno should adopt policies that ensure police officers engage in meaningful interactions outside of traditional law enforcement roles. By allowing Fresno residents to interact with officers outside of traditional policing, residents are more likely to identify commonalities and view officers as members of the community with the responsibility of protecting the community from within.¹⁸⁰ This is in accordance with research which overwhelmingly demonstrates that community members find it difficult to trust and embrace police when officers are only seen in a capacity that portrays them as an "occupying force coming from outside to rule and control the community."¹⁸¹

These efforts to promote positive community relations would also be aided by hiring officers that reflect the demographics of Fresno. Similarly, the Citizens' Public Safety Advisory Board should reflect the demographics of Fresno. And the process for selecting board members should be transparent. These changes have the potential to not only improve external community relations,

but also increase understanding within the police department.¹⁸²

Reallocation of Resources

The following recommendations would require the reallocation of current resources, however their implementation could help the Fresno Police Department reduce the number of officer-involved shootings.

Accountability

The auditor's critique of the Early Alert System lends itself to a number of recommendations.¹⁸³ These include:

- Maintain systematic permanent and documented tracking of evidence-based performance indicators leading up to the initial alert;
- Develop evidence-based criteria for screening initial alerts;
- Maintain permanent records to evaluate the effectiveness of the initial alert, screening, and review criteria;
- Maintain permanent records to evaluate the effectiveness of intervention methods; and
- Provide feedback and/or subject officers to discipline for failure to implement intervention methods.

Training

Implicit bias and use-of-force decisions have become central to the national discussion around officer-involved shootings, particularly within

communities of color. In efforts to address implicit biases and excessive use of force, police departments across the nation have implemented trainings that specifically address learned social biases and emphasize options aside from lethal force.¹⁸⁴

Anti-Bias Training

“Decades of cognitive bias research demonstrates that both unconscious and conscious biases lead to discriminatory actions, even when an individual does not want to discriminate.”¹⁸⁵ For example, “police officers, like other persons, link Blacks to violence and threat, which may impact their decisions to shoot.”¹⁸⁶ But research also suggests that the malleable nature of stereotypes makes it so that previous biases can be replaced through anti-bias trainings that mitigate the influence that biases have in potentially dangerous situations.¹⁸⁷

Fresno’s disproportionate officer-involved shootings in Black and Hispanic communities demonstrate the need for anti-bias training that addresses implicit biases held by officers that can have subtle or large influences on officer judgments and behaviors during interactions with community members. And with a city as racially and economically diverse as Fresno, it is imperative that officers are understanding of and sensitive to the experiences of the communities they serve. To achieve this end, the department should adopt policing practices that deliberately avoid excessive policing of minority populations derived from biased perceptions of these groups. Thus, it is recommended that the Fresno Police Department require its officers to undergo evidence-based anti-bias training to mitigate the use of force that results from

negative stereotypes and cultural assumptions. Such evidence-based anti-bias training is required by California’s Racial and Identity Profiling Act of 2015.¹⁸⁸ Such training will further the ability of officers to effectively serve communities from a respectful, compassionate, and understanding perspective.

De-escalation Training

In conjunction with clearly established de-escalation policies, it is also recommended that Fresno officers be required to complete evidence-based de-escalation training throughout the course of their careers so they are equipped with the knowledge and tactics necessary to adhere to recommended future de-escalation policies. The identification of training needs should not just be based on the department’s limited definition of “reportable force” incidents, meaning those that result in a person’s injury. In a constantly evolving world, frequent trainings to address inevitable community changes are indispensable to a police force’s ability to effectively serve its communities. While both anti-bias and de-escalation training will require the department to reconsider the allocation of its training budget, it is a vital step to ensuring the disproportionate number of officer-involved shootings is reduced, allowing the department to regain community faith and trust and prevent the unnecessary loss of human life.

Recently, the Fresno Police Department began a pilot program, creating a crisis response team to provide resources to those with mental health issues.¹⁸⁹ One sergeant and four officers have been specially trained and will partner with four mental health clinicians to respond to calls related to mental health. The lessons

learned from this pilot program have the potential to serve as a model for widespread reform throughout the department.

Collection and Timely Release of Data and Training Materials

The Fresno Police Department must address the limited public access to departmental data and police training documents, which the department currently designates confidential and not subject to public release, unless approved on a case-by-case basis.¹⁹⁰ While Fresno does make available some data, much of it is in an aggregate or summarized manner, which is difficult to access and interpret. Disaggregation of this data, and removing access barriers, will help to ensure departmental transparency and promote an environment of cooperation.

The department should establish a policy of releasing the following data:

Demographic data of all people stopped by police, description of stop, reason for stop;¹⁹¹

Demographic data of all people searched by police, description of search, reason for search;¹⁹²

Demographic data on all arrests, including reasoning and description;¹⁹³

Data on all officer-involved shootings, including demographics of officer and civilian shot at, location of incident, and nature of incident;¹⁹⁴

Data on all use-of-force incidents, including demographics of officer and civilian shot at, location of incident, and nature of incident. This incident data should include use of pain control holds,

pointing of weapons, or grappling that causes even temporary pain; and

Data on response times to reported crimes and incidents.

While collection of data in the first four recommended policies will become required as a matter of statutory law under California's Racial and Identity Profiling Act of 2015 and Assembly Bill 71 (2015), we further ask that the department issue an annual report of that data that is made available to the Fresno community and presented at a public meeting. Also, the department should be proactive by aiming to achieve compliance with the act before the statutory deadline.

Also, while California law generally requires that law enforcement agencies provide the names of officers involved in use-of-force incidents upon request unless there is evidence of a specific concern that outweighs the public's interest in disclosure, the department could achieve greater transparency by making this information publicly available without requiring a member of the public to submit a Public Records Act request.¹⁹⁵ Furthermore, the fourth and fifth recommended policies promote greater transparency by also providing officer demographic data.

The department should also release officers' training materials, including those pertaining to use of force and the prevention of acting on bias, in compliance with the California Public Records Act. And the department should make that information readily available to the public.

The department should also establish open source data protocols where policing data is automatically updated and

available in a machine-readable format to the public. By providing data in this way, it will be easier for the public to understand how the department is performing.

New Resources

The following recommendations would require the department to acquire additional financial resources. Although this makes these alternatives less viable from a fiscal standpoint, they could help the department address systematic challenges that require more fundamental changes to the functioning of the police department.

Community Involvement in the Citizens' Public Safety Advisory Board

Fresno's newly formulated Citizens' Public Safety Advisory Board currently lacks adequate input from community members. It is recommended that the Fresno City Council and Mayor Brand revise the bylaws of the board to better reflect the will of Fresno's residents. This process should engage with communities most heavily impacted by officer-involved shootings and police use-of-force incidents. It is imperative for positive community relations that discussions to modify the board include the input of citizens. The exclusion of community members further perpetuates a relationship of distrust and directly contradicts principles of inclusion. It is further recommended that any advisory board created with the purpose of investigating officer-involved shootings independently be given full investigatory powers to examine all legally permissible

components of officer-involved shootings to provide substantive recommendations for each incident. Also, the board should comply with the open meeting requirements of the Brown Act.

Expand the Role of the Office of Independent Review

Fresno should expand the power of the Office of Independent Review to include independent investigatory power. The OIR's lack of independent investigatory power makes it impossible for it to serve as a legitimate third party investigator of officer-involved shootings. The Independent Police Auditor's reliance on internally generated documents calls into question the objectivity and quality of the investigations, and whether the investigation accurately establishes fault. The auditor should be given subpoena power in order to ensure an effective and complete independent investigation of officer-involved shootings. This will require the addition of qualified staff to conduct such an investigation.

In line with changes to the power of the OIR and the auditor, efforts should be made to ensure that OIS investigations do not exceed six months, as recommended by Fresno's Office of Independent Review.¹⁹⁶ Delays in Fresno's OIS investigations have contributed to the current perception of the Fresno Police Department as being resistant to transparency.¹⁹⁷ This timeframe will ensure that recollections of events are not clouded by the passage of time, families of victims are not put under undue stress of drawn-out proceedings, and officers' time on administrative leave before a verdict is kept to a minimum. An efficient and effective review process for officer-

involved shootings is necessary to both satisfy public concerns and to prevent undue stress and disruption to the work of police officers. Timely investigation and adjudication of officer-involved shootings helps avoid the perception of unfair scrutiny among officers, while also enabling the department to uncover deficiencies in policies and trainings.¹⁹⁸

Community Partnerships

The department should consider developing partnerships with community stakeholders, such as universities, community groups, and service providers, to create ongoing programs, research, and officer training. This would allow the department to utilize resources that are community-based. For example, a partnership with Fresno State University could help the department develop evidence-based trainings that are grounded in research and supported by academic findings. Additionally, partnerships with Fresno service providers could allow the department to participate in efforts to improve the quality of life for Fresno residents, further increasing positive relationships between officers and the community. While this recommendation would require substantial financial input and support from the police chief, it would allow the department to develop long-term strategies to ensure it fulfills its role as a public-serving body. Such long-term initiatives are vital for showing the community that the department is dedicated to evoking meaningful change and investing in the training and development of its officers.

CONCLUSION

The frequency of officer-involved shootings and the disproportionate impact on Black and Hispanic communities have left many residents distrustful of the Fresno Police Department. Policy and procedural shortcomings, issues around transparency, questions about accountability, and a lack of meaningful community engagement have further damaged the relationship between these vulnerable communities and the department. However, there is a meaningful opportunity for reform in Fresno. Political leaders and residents have called for changes in how officer-involved shootings are reviewed and investigated, and the police chief has signaled his openness to mandate some of these changes. Substantive reforms can help improve the relationship between communities and the police, reduce the number of officer-involved shootings, and possibly fundamentally change policing in Fresno for the better.

The recommendations in this report present an opportunity. Policy updates and improvements would likely advance police-community relationships without expending any new resources, helping the department to swiftly improve community relations. A commitment to the reallocation of existing resources would likely help reduce the number of officer-involved shootings while also promoting transparency and accountability. Investment in updating and expanding the investigation and review of officer-involved shootings could fundamentally change Fresno for the better by enacting a substantive and transparent process that offers a legitimate and independent review of these shootings.

Officer-involved shootings can be reduced. Across the United States, municipalities go years without a single officer-involved shooting. Fresno has the opportunity to follow a similar path and embrace a future with improved public safety, greater police-community relations, and fewer officer-involved shootings.

APPENDICIES

Technical Appendix I - Cluster Analysis

The spatial analysis described in this report is commonly referred to as a hot spot or cluster analysis. A cluster analysis is used to identify whether or not there is a relationship between an observation and spatial area in which it occurred. This analysis uses the Getis-Ord, or G_i^* , spatial statistics method. The G_i^* spatial statistics method uses a fixed-distance band to identify if spatial correlations exist between observations and areas.¹⁹⁹ G_i^* works by examining each census block group within the context of the surrounding census block groups within the fixed-distance band.

In order to identify if an area represents a statistically significant cluster, the census block group will have a disproportionately high or low value and be surrounded by block groups with a similar value. G_i^* looks at the sum of the area analyzed within the local band, in this case within 1.7 miles, and then compares it to the sum of all of the broader area. When the total is very different than the expected total, and the difference is larger than what would likely be generated by chance, it is considered statistically significant.²⁰⁰ In this way the analysis generates a z-score and p-value to identify if areas are positively or negatively correlated with incidents, and if those correlations are statistically significant.²⁰¹ The analysis provides a localized understanding of the spatial relationship between places and officer-involved shootings; it allows researchers to identify if there are any possible relationships between geographic locations and events or observations that occur there.

A cluster analysis is not a causal model. A cluster analysis alone provides no causal evidence as to why there is a relationship between events (here an officer-involved shooting) and a given spatial area. The G_i^* method does not take into account any factors that may contribute to an officer-involved shooting occurring, such as the violent crime rate in an area. Instead, the method only pinpoints areas in which there is a non-random relationship between officer-involved shootings and the spatial location.

Technical Appendix II - Interview Methodology

To better understand the effects officer-involved shootings have on different communities within Fresno, we conducted three in-person group interviews with community stakeholders as identified by the ACLU-NC. Each interview lasted between 60 to 90 minutes and took place at the ACLU-NC Fresno office.

The ACLU-NC identified a variety of stakeholders based on its awareness of community members and individuals who have expressed concerns about the Fresno Police Department’s use of force or who have advocated for reform. Of the stakeholders identified by our client, we were able to engage three groups that represented various communities affected by officer-involved shootings in Fresno. Each interview was semi-structured and followed a similar protocol to determine the organization’s role in the community, how communities affiliated with each organization perceived Fresno police, and the kind of reforms the organizations felt would improve community-police relations. Throughout the study each group will be referred to as community stakeholder, community organization, or interview respondent to honor the groups’ anonymity requests.

Interview Protocol – Fresno Community Stakeholder

The purpose of this interview is to collect information about and gain insight into officer-involved shootings in the city of Fresno, California. Specifically, the interview will focus on the organizational expertise of community stakeholders in Fresno as it relates to past, present, and future police reform efforts and other information related to the relationship between officer-involved shootings and community/police interactions.

This interview is voluntary. If you decide to participate in the interview, you have the right to refuse to answer any questions. If at any time you wish to no longer participate in the interview, tell the interviewer and the interview will end.

Unless given explicit permission otherwise, the contents of this interview will be confidential. All information collected will be stored anonymously to ensure confidentiality. No identifying information will be used in our reporting.

Organization: _____

Interviewee (Title and Name) _____

Date: _____

Sample Interview Questions

Can you describe the role your organization plays in the Fresno community?

Can you describe your organization's relationship with the police?

What efforts, historically, have your organization been involved in around policing in Fresno?

What efforts are you currently involved in around policing and officer-involved shootings?

How do you feel about how the police interact with members of your organization's community?

How do you think the police view members of your organization's community?

Are there any positive changes that have occurred within the Fresno Police Department?

What aspects of the Fresno Police Department does your organization believe to be problematic?

What are the barriers to policing reform efforts?

What actions would your organization recommend the Fresno Police Department take to repair public trust?

What other kind of reforms would your organization like to see implemented?

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⁸⁹ Stanley, J, op. cit. 74.

⁹⁰ Fresno Police Department, op. cit. 54.

⁹¹ *Ibid*.

⁹² Appleton, R. (2016, March 24). Dyer Defends Officers as Graphic Video of Fresno Police Shooting Goes Public. *The Fresno Bee*. Retrieved from: <http://www.fresnobee.com/news/local/article68014762.html>

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⁹⁹ “5 Things You Need to Know about Open Data in Policing.” (n.d.). *The Police Foundation*. Retrieved from: https://www.policefoundation.org/wp-content/uploads/2015/04/PF_FiveThings_OpenDateInPolicing_Handout_Rev6.18.15.pdf; see also Sibley, R., et. al. (2015, April). The Benefits of Data in Criminal Justice: Improving Police-Community Relations. *The Sunlight Foundation*. Retrieved from:

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¹⁰¹ *Ibid*.

¹⁰² Data shared by the Department is aggregated and shared in PDF format. Aggregate data in PDF format are not research friendly.

¹⁰³ *Ibid*.

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¹⁰⁵ Fresno Police Department. (2017, March 30). Policy 300.1. *Fresno Police Department Policy Manual*.

¹⁰⁶ Fresno Police Department. (2017, March 30). Policy 300.1, Purpose and Scope. *Fresno Police Department Policy Manual*.

¹⁰⁷ “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police 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.” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (internal citations omitted).

¹⁰⁸ *Graham v. Connor*, 490 U.S. 386, 396 (1989)

(international quotation marks omitted).

¹⁰⁹ *Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985).

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¹⁹³ AB 953 will also require collection of arrest data where the arrest occurred after a police stop. Cal. Gov't Code § 12525.5(b)(3), (5) & (6).

¹⁹⁴ AB 71, enacted in 2015, requires law enforcement agencies to collect data on all officer-involved shootings, including demographics of officer and civilian shot at, location of incident, and nature of incident. Cal. Gov't Code § 12525.2.

¹⁹⁵ *Long Beach Police Officers Ass'n v. City of Long Beach*, 59 Cal. 4th 59, 74-75 (2014); 91 Cal. Op. Att'y Gen. 11, 2008 WL 2122596, at *1, 6 (2008). And California law generally requires law enforcement agencies to provide the name of arrested persons but does not require disclosure of the names of civilians shot at by officers who were not arrested. Cal. Gov't Code § 6254(f)(1).

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