



City of Phoenix

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To: Mayor and City Council

Date: August 12, 2021

From: Ed Zuercher
City Manager

A handwritten signature in black ink, appearing to read 'EZ'.

Subject: Gang-Related Summary

This report provides a summary of the findings from the in-depth investigation conducted on behalf of the City Manager's Office by Ballard Spahr, LLP, into the criminal street gang charges filed against a group of protestors who gathered in downtown Phoenix on October 17, 2020.

In response to the attached report, the City Manager has taken the following actions:

- At the recommendation of Ballard Spahr's investigators as well as in follow-up to an April 19 letter to Chief Williams from the Maricopa County Attorney's Office, I have asked the Arizona Attorney General to conduct further investigation of potentially criminal matters arising from this report. Ballard Spahr did not have authority to recommend or institute specific discipline of any City employees; they defined areas the City should follow-up for further investigation. Appropriate discipline for involved employees will be determined through the City Manager's Office and Human Resources at the conclusion of their investigation.
- At this point, the following immediate actions have been taken:
 - Chief Williams has received a one-day suspension in accordance with City policy.
 - Chief Williams has removed Assistant Chiefs Collins, Hein and Lopez from Assistant Chief assignments.
 - Any commander named in the reports will not be considered for Assistant Chief.
 - Any TRU personnel named in the report will no longer serve in the TRU.
 - Sgt. McBride has been given a Notice of Investigation and is on administrative leave. He is also part of the criminal referral to the Attorney General.
 - Administrative investigations have been opened on all staff having a role in the report.
- In addition to their original tasks, the city's contracted external review team, 21 CP Solutions, has been tasked to provide an assessment of the Downtown

Operations Unit and the Tactical Response Unit and recommend to the City Manager and Police Chief the appropriate reforms to these units. This information will be presented to the City Council.

- In this case, Chief Williams was not informed by her staff of critical decisions. That can't happen again. She has taken action to re-organize her executive team. Chief Williams has been directed to develop a plan for establishing clear protocols to elevate significant issues to the Police Chief without the option to delegate, in areas including:
 - Recommendations to deviate from Department policy or Operations Orders;
 - Issues of significant employee misconduct;
 - Issues that concern the offices of the City Manager, Mayor and City Council; and
 - Any other issue of great significance to the City or Department.
- Chief Williams has been directed to write new policies or strengthen existing policies to deter any future activity in the following areas:
 - Gang charging protocols and standards;
 - Protection of 1st Amendment rights of all protestors;
 - Appropriate oversight and review of coordination with the Maricopa County Attorney's Office on criminal charges for protestors and all other charges; and
 - Oversight to ensure appropriate review by the Special Investigation Detail.
- Despite PPD's assurances that Ballard Spahr would be provided with whatever information it believed necessary, on various occasions documents were either provided weeks or months after Ballard Spahr's initial requests—on other occasions PPD appears to have ignored requests for information altogether. PPD provided no explanation whatsoever for such delays. I will be communicating specific instances of such conduct to Chief Williams, with the expectation that such conduct will be addressed and corrected within the department.

In summary, the attached report finds:

- The decision to charge the Protestors under the criminal street gang statute was made collaboratively among officials of the Phoenix Police Department ("PPD") and Maricopa County Attorney's Office and included consultation with other law enforcement agencies.
- This collaboration pointedly omitted PPD's Gang Enforcement Unit ("GEU"), a specialized team of police responsible for identifying and investigating criminal street gangs and their members, which, as a matter of operational policy, is required to lead gang-related investigations because of the highly specialized nature of such investigations. There is strong suggestion that this was done to

sideline those likely to object to charging the protestors as members of a criminal street gang.

- Nevertheless, those investigating the protestors sought buy-in from GEU in the late stages of its investigation. A PPD official with supervisory authority over GEU refused, having determined that the investigation was being conducted inappropriately and that it risked doing substantial harm to GEU's credibility.
- Compounding PPD's investigative failures is that police relied on non-credible evidence wholesale, without critically evaluating the other, directly contradictory information it possessed at the time. To further support its case, PPD officials took steps in direct contravention of the department's rules and procedures – conduct that in and of itself warrants further investigation.

These findings are taken seriously and will be addressed through the actions stated above.

c: Jeff Barton
Chief Jeri Williams
Cris Meyer



City of Phoenix
OFFICE OF THE CITY MANAGER

August 12, 2021

Joe Kanefield
Chief Deputy
Arizona Attorney General's Office
2005 N. Central Avenue
Phoenix, Arizona 85004

Dear Mr. Kanefield,

You are likely aware from several media reports that fifteen individuals were arrested on October 17, 2020 while protesting in the City of Phoenix (Phoenix). The Maricopa County Attorney's Office (MCAO) presented to a Grand Jury on October 27, 2020 that these individuals were members of a gang. The protesters were alleged to be part of a group called "ACAB" – "All Cops are Bastards."

The allegation was that the ACAB gang was organized to create violence against the police – and the grand jury chose to hand down all indictments. The protesters filed several motions to dismiss the indictments. In response to questions about the charges, MCAO sent a letter (attached) to Phoenix asking for further investigation into five Phoenix police officers based on MCAO's reliance on the information from Phoenix.

A court order on June 6 dismissed the gang charges and found testimony of Phoenix police Sgt. McBride and MCAO Deputy April Sponsel was "egregious" and presented "false information" to the grand jury. MCAO voluntarily dismissed all charges against all defendants on June 11, 2021.

In February, Phoenix retained Ballard Spahr to investigate allegations of collusion between Phoenix and MCAO and review the process for filing gang charges. At the conclusion of their investigation, Ballard Spahr recommended that Phoenix obtain a separate law enforcement agency to conduct a thorough investigation that includes the ability to compel documents and testimony to develop facts and circumstances as follows:

1. Review of the five officers listed in the MCAO report for potential criminal charges related to filing arrest reports, and grand jury testimony.
2. Review of the Phoenix process of filing gang charges.
3. Review of the process leading to the Grand Jury testimony for a gang-related indictment (subject of the Superior Court's ruling).

August 12, 2021
Letter to Joe Kanefield
Chief Deputy, Arizona Attorney General's Office

Due to the involvement of Maricopa County and the City, I believe the proper entity for review of these criminal charges, and the above issues, is the Attorney General's Office. Therefore, by this letter, I am formally requesting review from your office. We will cooperate with your office as needed and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'EOZ' followed by a stylized flourish and a long horizontal line extending to the right.

Ed Zuercher
City Manager

Attachments: MCAO April 19, 2021 letter
Superior Court Order June 3, 2021
Ballard Spahr Report August 5, 2021

**Report to the City of Phoenix, City Manager's Office of an Investigation
into the Criminal Street Gang Charges Filed against "ACAB"**

August 5, 2021

**Henry E. Hockeimer, Jr.
Terence M. Grugan
Bradley R. Gershel
Jillian L. Andrews**

Ballard Spahr
LLP

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I. INTRODUCTION

On the evening of October 17, 2020, approximately 18 individuals gathered at University Park in downtown Phoenix. While accounts differ as to the purpose of the assembly, there is no dispute that the protest: (i) was announced through a social media account affiliated with the Black Lives Matter movement (“BLM”); and (ii) began as protected First Amendment activity.¹ Some Protestors later described the gathering as a response to the Maricopa County Attorney’s Office’s (“MCAO” or “the State”) announcement (of about a month prior) that an Arizona Department of Public Safety (“DPS”) trooper would not face charges for causing the death of Dion Johnson, an unarmed black suspect.² Other Protestors described their decision to attend as responding more generally to what they perceive to be excessive and unwarranted use of force by the police – in the City of Phoenix (“City”) and elsewhere in the United States.

The Phoenix Police Department (“PPD”), through standard intelligence gathering techniques, learned about the planned protest in advance. In response, it planned to deploy a team of officers from its Downtown Operations Unit (“DOU”), including members of the Tactical Response Unit (“TRU”), before the Protestors assembled. Within an hour of the protest commencing, PPD declared an “unlawful assembly” and arrested each of the Protestors.

The State initially charged the Protestors under criminal complaints with various counts of engaging in a conspiracy to commit aggravated assault on an officer, hindering prosecution in the first degree, riot, and other related offenses. Seven days later, prosecutors from MCAO convened a Grand Jury that charged 15 of the protestors, in relevant part, with assisting a criminal street gang (three other protestors were separately charged as minors). The apparent rationale for the criminal street gang charge was that the protestors chanting “All Cops Are Bastards” were part of a group called “ACAB,” and that ACAB constituted a criminal street

gang because, police claimed, it was organized “for the intent to create violence” against the police.³

On February 12, 2021, during the pendency of the criminal case, the Protestors filed a series of motions to dismiss the indictment and remand to the Grand Jury, principally on grounds that they were denied due process during the State’s Grand Jury presentation. The Protestors argued, in part, that they were “openly target[ed] ... based on their anti-police views,” and that “the grand jurors heard false and incomplete information about what happened during the protest[,] ... [including] that they should regard a non-existent gang (ACAB or All Cops Are Bastards) as more dangerous than several notoriously violent street gangs because of their anti-police views.”⁴ Also on February 12, the *Phoenix New Times* ran a news story on the Protestors’ motions and the particular bases for their requests for relief.⁵ At about 10:30 p.m. that evening, MCAO announced via Twitter that it had decided to dismiss the case “in the interests of justice.”⁶ One week later, MCAO field a motion to dismiss the case against protestor Collins with prejudice.

On February 26, the City retained Ballard Spahr (“Investigation Team”) to conduct an independent inquiry into PPD’s role in the State’s decision to prosecute the Protestors for assisting a criminal street gang (“Investigation”).⁷ We undertook exhaustive efforts to investigate this question. We interviewed more than a dozen PPD officials, ranging from the most senior leadership throughout the relevant time to line police officers with potentially relevant information. We reviewed thousands of documents, including police reports and files, emails, and body worn and strong mount camera footage. In addition, we reviewed publicly available material, including briefs and transcripts from the Protestors’ criminal proceedings,

social media and news coverage spanning the relevant time, and various other sources, to assist our understanding of the relevant facts.

This report (the “Independent Report” or the “Report”) is the culmination of nearly five months of investigative efforts and reflects our distilled conclusions based on a detailed review of the factual record. We established that the decision to charge the Protestors under the criminal street gang statute was made collaboratively among officials of PPD and MCAO, and included consultation with other law enforcement agencies, including the Federal Bureau of Investigation (“FBI”) and the Gilbert Police Department (“GPD”). This collaboration pointedly omitted PPD’s Gang Enforcement Unit (“GEU”), a specialized team of police responsible for identifying and investigating criminal street gangs and their members, which, as a matter of operational policy, is required to lead gang-related investigations because of the highly specialized nature of such investigations.

We further found that police and prosecutors ignored expert-established criteria for identifying true criminal street gangs, and similarly ignored established protocol for processing the gang classification. Instead, police began considering anti-police protestors generally as “criminal street gangs” based upon statements by a source of highly questionable credibility. From there, police and prosecutors orchestrated the criminal street gang case against the Protestors with inconsistent and inaccurate police reports, dubious Grand Jury testimony and deeply flawed (according to the Superior Court of Maricopa County, unconstitutional) legal conclusions. As police and prosecutors built their criminal street gang case, it appears they intentionally excluded GEU in order to “keep things quiet.”

Despite those problems, PPD attempted to classify ACAB as a gang in “GangNet,” a statewide database of purportedly verified gang members, even though no such gang existed and,

in any case, PPD lacks the authority to classify new gangs into GangNet. In this respect, PPD erroneously claimed that ACAB is an “extremist” organization with “violent tendencies,” and to support these spurious claims, asserted merely that the Protestors “marched downtown Phoenix with other members chanting, ‘ACAB, all cops are bastards,’ and wearing all black clothing.” DPS, which has the sole authority to classify new gangs in the database, declined to add the group into the gang intelligence system. According to an email sent on February 25, 2021 to PPD, a DPS administrator wrote, “I consulted with our Legal Counsel at DPS. Based on the information we have right now, this group does not meet the criteria for entry into the gang intelligence system.”

We set forth below the factual findings of our investigation: a high-level overview of the process resulting in the charging decision, who made those decisions and when. Additionally, we propose a series of measures PPD can adopt to ensure the consistent and appropriate application of the criminal street gang statute, which should avoid the use of this statute against groups – albeit anti-police – engaged in protected First Amendment activity.

It bears noting, however, that we reach these findings without the benefit of all possible information. PPD did not provide certain information we requested and, on multiple occasions, certain relevant information was provided to the Investigation Team several weeks after that information was known to PPD. Additionally, due to the City’s 90-day retention policy for emails, we were unable to review certain materials relevant to the Investigation. Had PPD provided us with certain information in a timely manner, we likely would have identified additional email and other relevant electronic documents. Finally, we made several requests to MCAO for information, interviews, and written responses to our questions. Those requests were declined.

II. KEY EVENTS IN THE CRIMINAL CASE AGAINST THE PROTESTORS

Key events in the criminal case against the Protestors provide important context in assessing the specific steps that PPD took, or did not take, in its post-arrest investigation. These events are highlighted below.

On February 12, following a series of investigative reports by ABC15, an ABC-affiliated television station licensed in the City, MCAO filed a motion to dismiss its case against the Protestors without prejudice, asserting that it was “in the interest of justice.”⁸ On March 31, protestor Kaleb Martin opposed that motion, seeking instead for the court to hold an evidentiary hearing and, following that hearing, dismiss the case with prejudice.⁹ Multiple protestors charged in the case joined in Martin’s motion.

On April 15, MCAO filed a reply in support of its motion to dismiss, conceding that its Grand Jury presentation of the criminal street gang charge amounted to “a due process violation,” was “deeply flawed,” and that “remand was inevitable.”¹⁰ With respect to protestor Ryder Collins specifically, MCAO expressed regret, emphasizing that “the arrests and indictment in this case swept up [REDACTED] a man who was entirely innocent and unconnected to the other defendants.”¹¹ However, MCAO opposed the dismissal of charges against the remaining Protestors with prejudice, posting on Twitter that it “remains committed to holding those who committed criminal acts in this event responsible.”¹²

On June 6, the court dismissed with prejudice, as to all defendants, the charges of assisting a criminal street gang and conspiracy to commit aggravated assault.¹³ It characterized the testimony of Sergeant Douglas McBride about the supposed ACAB gang as “egregious” and found that he and Deputy County Attorney (“DCA”) Sponsel, a senior prosecutor in MCAO’s First Responders Bureau (“FRB”) and the lead prosecutor in the case against the Protestors,

“colluded in their efforts to present the grand jury with false information regarding a non-existent gang and a historical pattern of misconduct or threats from co-defendants towards the police.”¹⁴

The court went on to characterize as “ridiculous” the State’s argument that the Protestors’ use of black clothing and purported self-proclamation establish gang affiliation. It described the State’s allegations of prior acts of violence by ACAB, and the lack of any evidence to support those allegations, as “absurd territory,” and found that the State made material misrepresentations to the Grand Jury, misdirected the Grand Jury, and acted in bad faith in presenting its evidence.¹⁵

On June 11, the same day the parties were scheduled to present arguments on whether the remaining counts should be dismissed with prejudice, MCAO released a statement that it would move to do so voluntarily, stating only that it was “in the interests of justice to not proceed.”¹⁶ The court granted that request on the same day.

III. BACKGROUND

A. Description of the Investigation

We developed the investigative plan and methodology for this investigation much the same way as we routinely design and implement them for investigations of corporations and other large organizations. Specifically, we conduct extensive email and document reviews to develop an understanding of the communications relating to the conduct under investigation. We then use what we learn from those communications to formulate our investigative strategy, to identify potential witnesses and to prepare our interviews with those witnesses.

We followed that approach on this matter, searching thousands of emails and other documents to find communications relating to the investigation into the Protestors and interviewing PPD officials as to their knowledge of or role in the investigation.

The following section details the specific steps we took throughout the course of this Investigation.

1. *Overview of the Investigation's Scope, Purpose and Structure*

As noted above, the scope of our investigation included not only “who knew what when” and what was and was not done in response, but also any systemic deficiencies, failures of oversight, or other factors contributing to the charging decisions at issue. We also were afforded latitude to look across the various City agencies and departments to identify relevant facts and circumstances and to inform our assessment of contributing factors and conditions. Under the terms of our engagement, the Investigation was completely independent from the City. One senior official at the Office of the City Attorney was assigned as a point of contact to provide access to relevant records, personnel and other information and resources necessary to complete the Investigation. In addition to reviewing documents the City produced, we conducted interviews of the following PPD officials:

1. Police Chief Jeri Williams
2. Executive Assistant Chief Michael Kurtenbach
3. Assistant Chief John Collins
4. Assistant Chief Lawrence Hein
5. Assistant Chief Gabriel Lopez
6. Assistant Chief Steve Martos
7. Commander James Gallagher
8. Commander Matthew Siekmann
9. Lieutenant Chas Clements
10. Lieutenant James Hester
11. Lieutenant Adam Legere
12. Lieutenant Benjamin Moore
13. Sergeant Douglas McBride

14. Sergeant Sean Burton

15. Officer Jeffrey Howell

We also directly requested the opportunity to speak with Karl Martin, an investigator employed by MCAO, but he, through a representative, declined. MCAO ultimately declined to make any of its employees available for an interview or to respond to our written questions, citing possible lawsuits as its basis for refusing.

Due to the possibility of further investigations into the conduct discussed below, and recognizing the need for witnesses to speak candidly with those conducting the investigations, this report does not reveal the names of most witnesses whose statements (made during their interviews with us) are included below.

2. *Limitations Imposed by Statute and PPD Policy*

Our ability to interview relevant personnel and collect and evaluate all relevant evidentiary material was constrained by application of the Arizona Peace Officer Bill of Rights and PPD's Memorandum of Understanding.

Arizona Peace Officer Bill of Rights. In the case of an internal investigation, Arizona's "peace officers," including police officers employed by PPD, are entitled to certain rights and protections.¹⁷ Most relevant for this investigation is an officer's right to "written notice," referred to as a notice of investigation ("NOI") that informs the officer, among other things, of the specific nature of the investigation and the officer's status in the investigation. Officers are also entitled to copies of "any relevant and readily available materials, including complaints that contain the alleged facts" giving rise to an interview request, and to have present in any interview a non-attorney representative.¹⁸ Such rights and protections are available to officers when "the employer or law enforcement officer reasonably believes that the interview could result in dismissal, demotion or suspension."¹⁹

Because Ballard Spahr is an outside firm acting on behalf of the City, its Investigation cannot directly “result in dismissal, demotion or suspension.” Accordingly, it was our view that the Arizona Peace Officer Bill of Rights should not apply to the Investigation. However, several officers, citing the Arizona Peace Officer Bill of Rights, objected to participating in the Investigation. Resolving these objections delayed the investigation and limited the Investigation Team’s access to certain information.

PPD’s Memorandum of Understanding. Sworn officers of PPD are additionally conferred certain rights under a Memorandum of Understanding (“MOU”) between PPD and the Phoenix Law Enforcement Association (“PLEA”), the union that represents police officers. Among those, the MOU guarantees a right of representation to an officer who requests it when he or she is the subject of an investigation by PPD’s Professional Standards Bureau (“PSB”), any other PPD supervisor, or any other City employee who is conducting an investigatory interview or interrogation.”²⁰ As with the Arizona Peace Officer Bill of Rights, the MOU does not appear to apply to the Investigation. Nevertheless, every officer interviewed in this investigation was permitted to have a representative present in his or her interview, and ultimately did choose to have present in their interview representation of their choosing.²¹

B. Factual Summary of the October 17, 2020 Protest

The following is a detailed narrative of the events giving rise to the arrest of the Protestors through the ensuing investigation.

1. Timeline of the October 17 Protest

Shortly after 7:00 p.m. on October 17, the Protestors assembled at University Park in downtown Phoenix. PPD had obtained information about the protest in advance (*see* Section III, *infra*), and at about 12:30 p.m., TRU, a specialized unit responsible for policing large

demonstrations held a briefing to discuss the anticipated assembly.²² It bears noting that most TRU personnel, though not all, are assigned to PPD's Downtown Operations Unit ("DOU").

TRU arrived near University Park at about 7:00 p.m., before the Protestors began to congregate.²³ According to PPD records, the total police presence included multiple TRU squads and grenadier teams (specialized TRU personnel trained in various crowd dispersal techniques, including the use of chemical munitions such as CS gas, commonly known as "tear gas"). Shortly after the Protestors assembled, TRU's "Alpha Leader," Lieutenant Benjamin Moore, communicated to the officers on site that "it's definitely [the] ACAB anti police group."²⁴

The Protestors, dressed in black clothing and many having chosen to carry umbrellas (in order to shield their identities), left University Park at about 7:45 p.m. Video footage of the protest was captured by PPD body worn cameras and cameras affixed to certain of PPD's vehicles. Video footage was also captured, and live-streamed, by two individuals who self-identified as members of the group AZ Patriots.²⁵

The Protestors first proceeded eastbound on Van Buren Street. As one protestor explained, "[w]hile we marched, we chanted 'Black Lives Matter' and 'Say His Name... Dion Johnson.'"²⁶ In addition to these phrases, certain Protestors uttered the phrase, "all cops are bastards."²⁷ The frame reproduced below records the Protestors during their march.²⁸



TRU proceeded behind the Protestors in marked vehicles and on foot. According to PPD records, between about 8:06 p.m. and 8:15 p.m., TRU issued multiple audible warnings to the Protestors to move to the side of the roadway, and that if the Protestors failed to comply they would be placed under arrest. Certain Protestors, intending to slow the police presence proceeding behind them, tipped over and/or moved to the middle of the road several construction barriers and temporary street signs.

From Van Buren Street, the Protestors turned onto Seventh Avenue and proceeded southbound until reaching Washington Street, onto which they turned and proceeded eastbound. At about 8:19 p.m., on Washington Street, the Protestors released what PPD described as “at least two smoke bombs ... purposely in an effort to create a visual impediment to the [PPD].”²⁹ The frames reproduced below record the moment a protestor ignited the smoke bomb and threw it toward the direction of PPD officers:



One protestor told PPD afterwards that the objective of the smoke bombs was to create a “visual barrier” between PPD and the Protestors.³⁰ The frames reproduced below appear to show the intended effect:



According to PPD records, at about 8:35 p.m., Lt. Moore saw a light rail train moving in proximity to the Protestors and concluded that the Protestors were planning to disrupt the train's path by "tak[ing] the tracks."³¹ At this point, Lt. Moore told the officers on scene that "everybody is now good for arrest, they've obstructed every street that they've been on."³² Lt. Moore then declared an unlawful assembly and issued an order to arrest each of the Protestors.³³



The frames reproduced below record a confrontation between police and the protestors culminating with a PPD grenadier firing pepper balls into the huddle of Protestors:





In all, the demonstration lasted roughly a half an hour and ended at the corner of First Avenue and Van Buren Street. Eighteen individuals, including three minors, were arrested.

2. *The Arrest of* [REDACTED]

On the day of the protest, [REDACTED] met with two friends to take photographs of downtown Phoenix. [REDACTED] who remained downtown after his friends had left, saw the Protestors proceeding down Washington Street. In the frame reproduced below, [REDACTED] who was not dressed in black clothing, as the Protestors had been) can be seen taking photographs of the Protestors:



Video footage recorded by members of the AZ Patriots includes a brief conversation between those individuals and ██████. In that conversation, ██████ says that he “came down here from Prescott, just doing street photography, and then I saw this shit pop-off.”

██████ continued to follow the Protesters. At one point, a PPD officer directed him to move out of the street (according to court documents, ██████ was crossing in a marked crosswalk at the time of this interaction). In a body worn camera recording, a PPD officer is overheard saying (presumably to another PPD officer), “Spider, watch that guy right there, he’s with them, gray backpack!”³⁴

██████ moved away from the area, and while walking northbound on First Avenue toward Van Buren Street, Sgt. James Groat was recorded saying loudly, “That guy right there is one of their legal observers so he’s gonna end up going too!”³⁵ According to court documents, ██████ turned to the other direction and began walking. Sgt. Groat again confronted ██████ to say, “Don’t think we don’t recognize you.”³⁶ Shortly thereafter, ██████ is placed under arrest.

C. Factual Summary of the Post-Arrest Events

Between October 17 and October 27, 2020, the allegations against the Protestors evolved from crimes relating to unlawful assembly (a misdemeanor offense that carries a maximum penalty of six months’ incarceration) to assisting a criminal street gang, a felony that carries a penalty of four to ten years in prison (with a presumptive sentence of five years’ imprisonment).³⁷ PPD paperwork makes plain that the probable cause giving rise to the arrests was for obstructing thoroughfares, remaining present after a declaration of unlawful assembly was announced, and participating in a riot.³⁸ Consistent with these reports, MCAO charged the Protestors by criminal complaint with one count of riot on October 20. Before long, MCAO presented a new theory of the protest to the Grand Jury indictment of the Protestors, to wit: the

group of 18 individuals were part of a violent criminal street game known as “ACAB” and that the protest of October 17 was amounted to gang-activity.

We outline the evolution of the investigation and prosecution below.

1. *Investigation of the “We Rising Project,” the ACAB “group” and Protestor Ratnam’s prior Arrest*

In the summer months of 2020, PPD was focused on several political and social activist groups it believed had “a propensity for violence.” These groups, though distinct, shared at least one common thread: each was organized and promoted by individuals protesting against incidents of police brutality. As described below, PPD conflated several beliefs, characteristics, and practices of these groups to construct its theory of a single united group named “ACAB” that, it contended, bore the statutory characteristics of a criminal street gang.

In July 2020, the W.E. Rising Project, an activist group focused on protesting what they perceive to be police brutality and racial inequality in the City, held one of several marches around this time in downtown Phoenix.³⁹ PPD alleged that two protestors marched through the downtown area and repeatedly stopped to block roadways and major intersections. It was also alleged that these protestors ignored multiple warnings to disperse and, as a result, they were arrested and charged with obstructing public thoroughfare.

The MCAO would ultimately move to dismiss this case (on May 10, 2021, during the time of this Investigation),⁴⁰ but soon after the criminal complaint was filed, PPD obtained a warrant for the search of the mobile phone of two of the defendants, each members of the W.E. Rising Project. The first phone contained messages between the phone’s owner and protestor Suvarna Ratnam—messages that communicated the home addresses for the City mayor, PPD Chief Williams and other PPD officials, including Lt. Moore and Sgt. McBride. The phone also contained a message from protestor Ratnam in which she admonishes a group of chat

participants not to post “anything sensitive” through Discord, as “it’s not as secure as Signal.” The second phone does not appear to have contained any messages or other materials of evidentiary value to PPD.

Also in the summer of 2020, protestor Riley Behrens reported to law enforcement that he belonged to a group known as ACAB. Although we were unable to obtain a first-hand account of this interview, MCAO reported the following information in a brief filed in the case against the Protestors: while Behrens was being interviewed by Gilbert Police Detective Terry Burchett about an unrelated protest (in which Behrens was reportedly a victim of an unspecified crime), Behrens told Det. Burchett that ACAB was a “protest group to which he belongs” and estimated its membership to be about 30 to 40 in number. Behrens reportedly told Det. Burchett that about 20 or 25 of the members got tattoos of braille, intending to represent the letters A, C, A, and B. Behrens also reportedly told Det. Burchett that the group discussed stealing police bicycles and that one member expressed a desire to kill “the next officer that touches one of us.”⁴¹

On August 23, protestor Ratnam was arrested while attending a protest for allegedly throwing a water bottle at a police vehicle occupied by two officers, and using a sharpened umbrella “as a weapon” to a cut to a police officer’s hand.⁴² As discussed more fully in Section III, video footage of the incident makes plain that, in fact, none of this is true (MCAO would later amend its indictment against Ratnam to omit the charges based on these false claims; the office ultimately moved to dismiss the case in its entirety with prejudice). Nevertheless, PPD heavily relied on Ratnam’s false “attack” on PPD to justify PPD claim that the Protestors—including Ratnam—were inherently violent. In our interviews with PPD officials involved in the investigation into the Protestors, several were careful to point out Ratnam’s August 23 arrest as a justification for the gang charge. For example, one PPD official recalled Ratnam having

“emerged as part of [ACAB’s] leadership and really got on our radar when she stabbed [Sgt. George Herr] with an umbrella and threw a water bottle at a lieutenant.” When pressed to identify other instances where individuals they claimed were members of ACAB acted violently, the officials were unable to do so.

2. *Initial PPD Incident Reports*

Incident reports documenting the arrest of the Protestors totaled over 293 pages, with 89 supplemental reports by various police officers and supervisors. With the exception of two reports submitted by Sgt. McBride (*see* Section III for a more fulsome accounting of these reports). Each of these reports alleged that the Protestors participated in a riot, engaged in unlawful assembly and obstructed a public thoroughfare.⁴³ In other words, none alleged that the Protestors were members of a criminal street gang (though several reports describe the Protestors as part of the ACAB group).

3. *“Take a look at Ratnam for street gang”*

Our review of the documents indicates that Karl Martin, a former gangs detective with PPD and now employed as an investigator by MCAO, was the first to propose charging the Protestors as members of a criminal street gang. On October 21, Investigator Martin sent an email to Deputy County Attorney (“DCA”) April Sponsel, DCA Vincent Goddard and Officer Jeffrey Howell, with the subject “Take a look at Ratnam for street gang.”⁴⁴ In the attached word document (which Investigator Martin describes in his email as a draft search warrant), he applied the “Criminal street gang member” criteria to Ratnam:

Booking photos of Ratnam reveals a tattoo on her left upper chest of the A.C.A.B. identifier of one dot, three dots, one dot, two dots indicated the numerical order of the alphabet. This is a common practice of a criminal street gang. Ratnam has met at least four of the criteria that indicate she is part of a criminal street gang. 1.

Self-proclamation 2. Written or electronic correspondence 3.
Tattoos 4. Other indicia of street gang membership.

Notably, this document referenced ACAB's "increased propensity for violence towards police officers" and, in that respect, referred specifically to Ratnam's August 23 arrest:

On 08/24/2020 [sic], Suvarna Ratnan was arrested for throwing water bottles at Police Officers, while attempting to arrest Ratnan [sic] she stabbed Police Sergeant Herr in the hand with a sharpened edge of an umbrella causing an open wound injury to the Sergeant.⁴⁵

In the body of his email, Investigator Martin asked the recipients to review the document to "see if [they] agree on [his] assessment of [Ratnam] meeting the criteria for qualifying as a street gang member." Four minutes later, DCA Sponsel excitedly replied all to say, "I agree!! This a [sic] amazing."

The next day, DCA Sponsel introduced Investigator Martin to Sgt. McBride via email, and shortly thereafter, Investigator Martin responded to provide a "draft copy of the warrant affidavit" and asked Sgt. McBride to give him a call. The attachment, a word document entitled "AFFIDAVIT FOR SEARCH WARRANTRatnam.docx," was ostensibly prepared in anticipation of a warrant to search of the mobile phones of various Protestors. Among other things, the document described ACAB as a "group ... similar to the ANTIFA group and shares its ideology" and details the findings of a prior search warrant of "active member[s]" of the W.E. Rising Project (more specifically, the document references the communications providing home addresses for various City officials and protestor Ratnam's message pertaining to the use of Signal). The document also detailed protestor Behrens having provided law enforcement with information concerning "threats of violence towards members of the [PPD]," including one Protestor "want[ing] to shoot Phoenix Lt. Ben Moore in the head."

4. *Sgt. McBride's First Incident Report*

An analysis of PPD's electronic records system indicates that Sgt. McBride submitted his first incident report on October 21—four days after the protest—at about 9:20 p.m. This report, the first PPD record to allege that ACAB is a violent group, stated that “ACAB has been a particularly violent group who wanted to create violence similar to Portland, Oregon” (an apparent reference to the fervent and sustained racial injustice protests the city witnessed in the wake of the killing of George Floyd). To support that novel contestation, Sgt. McBride cited protestor Ratnam's arrest of August 23:

One of their leaders Suvarna Ratnam was currently out on release for aggravated assault on a police officer with a deadly instrument and various other charges. Whenever these individuals have been arrested they are frequently found in possession of incendiary devices, acetone, make shift weapons, umbrellas, rocks, various projectiles, fireworks, firearms, lasers, strobe flashlights, paint balloons, silly string, spray paint, etc. all of these items have been used against police departments around the country as well as in Phoenix.⁴⁶

This incident report also described an injury Sgt. McBride sustained to his left thumb:

I tore away several umbrellas and began working on two subjects who were intertwined with each other. As I tried to pry their hands apart one of the subjects ... dug his fingernails into the back of my left thumb causing it to bleed ... I had photographs taken and have had trouble with the finger to this date.

5. *Interagency Involvement and Deliberations*

At some time between October 17 and October 21, the investigation into the Protestors was assigned to the Assaults Detail (a unit within the Violent Crimes Bureau (“VCB”) responsible for investigating, among other things, aggravated assault directed toward the police). Adam Legere, a detective in the Assaults Unit with no prior experience handling gang investigations (but who worked with DCA Sponsel on prior investigations), was assigned the

role of case agent (the PPD official “responsible for submitting the case in totality for prosecution”).⁴⁷ While we were unable to obtain more precise information into the circumstances regarding the decision to involve the Assaults Detail in the investigation, we found that Sgt. McBride’s unit (DOU) is unable to carry out certain investigative steps, such as executing search warrants on alleged gang members. Thus, it was necessary for DOU to assign the investigation, if perfunctorily, to a unit such as the Assaults Detail.

On or about October 21, Det. Legere reportedly expressed frustration that investigative steps “were being done outside the loop.”⁴⁸ For example, Det. Legere was not copied on any of the above correspondence between Investigator Martin, DCA Sponsel, Sgt. McBride and Officer Howell, and it was not until October 27 (the same day the Protestors were indicted for assisting a criminal street gang) that Sgt. McBride provided Det. Legere with a copy of the draft search warrant affidavit that had been circulated days earlier. Separately, Comdr. Edward DeCastro, the head of the VCB (i.e., a supervisor of Det. Legere’s), expressed a concern that he was not “fully aware” of the facts of the investigation.

To address these concerns (and possibly others), Lieutenant Brian Knueppel (assigned to the Homeland Defense Bureau (“HDB”)) sent a calendar invitation on October 21 for a meeting to be held at the conference room of VCB on October 23. This meeting was attended by at least the following individuals:

<u>Name</u>	<u>Title</u>
Phillip Bates	Special Agent, FBI
Sean Burton	Sergeant, PPD
John Collins	Assistant Chief, PPD
Edward DeCastro	Commander, PPD
Vincent Goddard	Deputy County Attorney, MCAO
Lawrence Hein	Assistant Chief, PPD
James Hester	Detective, PPD
Jeffrey Howell	Officer, PPD

Bryan Knueppel	Lieutenant, PPD
Bryan Korus	Sergeant, PPD
Brian Lee	Commander, PPD
Adam Legere	Detective, PPD
Gabriel Lopez	Assistant Chief, PPD
Karl Martin	Detective, MCAO
Douglas McBride	Sergeant, PPD
Nicholas Michaud	Deputy County Attorney, MCAO
Benjamin Moore	Lieutenant, PPD
Dennis Orender	Commander, PPD
April Sponsel	Deputy County Attorney, MCAO

In addition to the names identified above, several officials from the FBI and GPD were also in attendance. When asked why the FBI was asked to attend this meeting, one PPD official told the Investigation Team that it was “due to damage that had been done to the Federal Courthouse during previous potentially related incidents.”⁴⁹

In various interviews, high-ranking PPD officials told us that the “whole point” of the meeting was to discuss whether to charge the Protestors under the gang statute. One PPD official with whom we spoke described the meeting as a “pre-charging meeting” attended by representatives of PPD’s Executive Team, the VCB, and MCAO. While most attendees with whom we spoke were not able to recall specific details, several told us that the First Amendment was a topic of discussion and, specifically, included the recognition of the tension between the exercise of the First Amendment activity and the commission of alleged criminal activity. Several attendees also told us that DCA Sponsel, Investigator Martin, and Sgt. McBride spoke in support of charging the Protestors under the gang statute. No attendees with whom we spoke were able to recall anyone vocalizing opposition to such a decision or advocating the primacy of First Amendment activity.

During the meeting, Investigator Martin advised the attendees that he would provide Det. Legere with a draft search warrant to gather additional evidence. Notably, Det. Legere was not present for this meeting (nor was he asked to attend). Finally, it was discussed and agreed that Sgt. McBride would file a second incident report in order to “bolster” the gang charges.

Asst. Chief Collins told us that after the meeting concluded, he went to the office of Executive Assistant Chief Michael Kurtenbach and explained that he had just attended a meeting where the possibility of filing criminal street gang charges against the Protestors was deliberated. We were unable to independently determine what, if anything, Exec. Asst. Chief Kurtenbach said in response (during his interview, he could not recall this discussion with Asst. Chief Collins or learning from any other PPD official about the possibility of charging the Protestors as members of a criminal street gang). Our Investigation did not uncover any evidence that Chief Williams had any knowledge of the October 23 meeting at or around the time it occurred; we similarly found no suggestion that Chief Williams was told of the decision to charge the Protestors as members of a criminal street gang until after the Grand Jury presentation of October 27.

6. *Grand Jury Presentation*

On October 27, MCAO presented the charge of assisting a criminal street gang, together with other offenses including conspiracy to commit aggravated assault, riot, obstructing a highway or other public thoroughfare, unlawful assembly, and resisting arrest, against the following protestors:

- | | | |
|----------------------|-------------------|----------------------|
| 1. Nathan Aderholdt | 6. [REDACTED] | 11. Nathaniel Llanes |
| 2. Jacquelyn Alcaraz | 7. Brenda Diaz | 12. Kaleb Martin |
| 3. Britney Austin | 8. Jessica Gibson | 13. Suvarna Ratnam |

4. Riley Behrens
9. Amy Kaper
14. Christopher Roberson
5. Dominic Bonelli
10. Marysa Leyva
15. Kalixta Villasaez

DCA Sponsel presented the State's case to the Grand Jury.⁵⁰ In the beginning of her presentation, she addressed members of the Grand Jury to say, in part, the following:

Several individuals with an organization known as ACAB, also known as All Cops Are Bastards, met down in downtown Phoenix in order to participate in a riot. These individuals entered into the streets with umbrellas that shielded them from the police officers. They then turned around and threw smoke bombs at police officers. They then eventually were arrested after throwing barricades and things of that nature into the streets.⁵¹

DCA Sponsel also told the Grand Jury that the Protestors used "one of their techniques" to assault officers.⁵² Upon concluding her opening remarks, DCA Sponsel called Officer Jeffrey Raymond as the State's first witness. In his testimony, Officer Raymond made repeated reference to "the group." For example, he testified that "the group" walked in the middle of several streets and "released at least two smoke bombs ... purposely in an effort to create a visual impediment to the [PPD]."⁵³ With respect to the effect of the smoke bombs on PPD personnel, Officer Raymond testified that the smoke burned the eyes of officers and caused a police vehicle to run inadvertently over a barricade "they" had put in the street.⁵⁴ With respect to protestor [REDACTED] DCA Sponsel asked whether, during the time PPD was "trying to get a handle on the entire group, did [REDACTED] actually run up on officers and try to impede their ability to take these individuals under arrest by running up on the officers trying to distract them?"⁵⁵ Officer Raymond testified, "Yes."⁵⁶

Sgt. McBride was the State's second and final witness to testify. In his testimony, Sgt. McBride stated that the "indicia" of a criminal street gang may include "signage," "chants walking down the street," "paint[ing] on the side of their car," and even "just hanging out with

each other, with other members.”⁵⁷ With respect to the Protestors, Sgt. McBride testified that they “self-identify” as members of a criminal street gang by “walk[ing] down the street[,] . . . chanting out ACAB” and otherwise exhibit the “marks” of criminal street gang members.⁵⁸ Those marks, according to Sgt. McBride, include “graffiti, signage, ACAB written on the back of skateboards, and different paraphernalia.”⁵⁹ He also testified that ACAB claims the color black, includes umbrellas as part of their “uniform,” organizes “almost on a weekly basis to disrupt police, commit violent acts of aggravated assault against police, throw incendiary devices at police,” and that its members sharpen their fingernails into points and dig into officers’ hands to disrupt arrests.⁶⁰

Sgt. McBride testified that in the course of the investigation into the Protestors, he was able to determine that “all of these members with meeting at least two of the criteria.”⁶¹ But he only specified protestor Ratnam by name, and while he testified that Ratnam met five such criteria, he provided specific information only as to four. With respect to the remaining 17 Protestors, Sgt. McBride stated that all “the other individuals” met the alleged criteria of “self-proclamation and the colors, the clothing” and that they self-identify by chanting ACAB as they walk down the street.⁶² Sgt. McBride went on to compare ACAB to several notorious street gangs, such as the Bloods, the Crips, the Hells Angels, and the Mexican Mafia, testifying that ACAB adheres to “the exact same type of philosophy” as those gangs, but that ACAB is more dangerous than those street gangs because “[t]he Bloods and Crips don’t . . . say we are going to go down to headquarters and engage the police in activity.”⁶³

Toward the end of the presentation, DCA Sponsel asked Sgt. McBride if he had formed an opinion as to whether ACAB is a criminal street gang under the relevant statute. He testified that “[t]hey absolutely meet every single part of the statute.”⁶⁴ With respect to protestor [REDACTED]

DCA Sponsel asked Sgt. McBride whether [REDACTED] was “working in concert” with the Protesters.⁶⁵ Sgt. McBride testified, “Yes, he did,” and that [REDACTED] was “in and around the group throughout the entire night.”⁶⁶

The Grand Jury ultimately returned an indictment against the Protestors for the offenses of rioting, obstructing a public thoroughfare, unlawful assembly, aggravated assault with a deadly weapon, and assisting a criminal street gang (the three protestors charged as minors were separately charged).⁶⁷

7. *Sgt. McBride’s Second Incident Report*

According to an analysis of PPD’s electronic records system, Sgt. McBride completed a second incident report on October 28 at 7:17 p.m., the day after his Grand Jury testimony—and eleven days after the protest. In this report, Sgt. McBride revised his description of the Protestors’ activity to conform to his testimony (as compared with his first incident report). More specifically, he described the “ACAB group” as “one that has been mimicking the behavior of a criminal street gang and should be classified as such.”⁶⁸

Of more than seventy incident reports submitted by officers involved in the arrests (including the prior report submitted by Sgt. McBride), this report is the only one to classify the Protestors’ conduct as gang-related. As shown in the below excerpt of this, Sgt. McBride does not indicate that the Protestors were “Gang Involved.” This omission is notable: if the box reflected in the screenshot below had been checked, the incident report (and any further police action related to it) would be transferred from DOU to GEU.

 PHOENIX POLICE DEPARTMENT (0723) Incident Report		Incident Number: 202000197081 - 001	CS Is Incident #: 202000197081
Report Type: Incident Supplement		Page 1 of 4	
Date / Time Reported: 10/28/2020 08:00:00		Date / Time Reported: 10/28/2020 08:00	
<input type="checkbox"/> ARREST Suspect	<input type="checkbox"/> Additional Suspect	<input type="checkbox"/> Unknown Suspect	<input type="checkbox"/> Victim
<input type="checkbox"/> Other Person	<input type="checkbox"/> Vehicle	<input type="checkbox"/> Bike	<input type="checkbox"/> Evidence Container
<input type="checkbox"/> Lack of Control	<input type="checkbox"/> Damage Value	<input type="checkbox"/> Lack of Control	<input type="checkbox"/> Gang Involved
<input type="checkbox"/> Other Police	<input type="checkbox"/> Other Code	<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Other

The report includes the definition of a criminal street gang and the criteria to determine criminal street gang membership, as set forth under Arizona law. It then purports to assess this criteria for each of the Protestors – with the exception of protestors Ratnam and Behrens, such criteria is limited to “self-proclamation” and “clothing.” In all, this report is notable in at least one other respect: a text analysis of the narrative section indicates that much of it was taken directly from the draft search warrant applications prepared days earlier by Investigator Martin. As with Investigator Martin’s draft warrant applications, Sgt. McBride’s second incident report also cited “intelligence” suggesting “the group was looking to be more violent.” To support that claim, the report emphasized protestor Ratnam’s August 23 arrest “for aggravated assault on a police officer for stabbing Sergeant George Herr in the hand with an umbrella.”

8. *Investigation by PPD’s Special Investigations Detail*

In April 2021, and at the specific request of Chief Williams, SID opened an investigation into Sgt. McBride’s testimony for possible perjury. On May 5, SID issued a closing memorandum observing, in part, that while PPD’s “investigative methodology” was “unorthodox,” it found no evidence that Sgt. McBride’s testimony was perjurious.

While SID did not recommend criminal charges, it was careful to note two “areas of concern” that, in its view, warranted additional investigation by PPD’s Professional Standards Bureau (“PSB”). First, SID determined that Sgt. McBride’s identification of protestor [REDACTED] as having been part of the protest was unsupported by the evidence. Second, SID found Sgt. McBride’s testimony regarding ACAB’s use of “sharpened fingernails” to be “unclear.” More specifically, SID was unable to determine whether Sgt. McBride was testifying that the protestor who caused his hand injury had sharpened fingernails, or, alternatively, whether Sgt. McBride was describing a tactic used in other, unrelated, incidents. SID noted in its closing memorandum that there was no evidence that any of the Protestors had sharpened fingernails.

9. *Letter from the County Attorney*

On April 19, County Attorney Allister Adel sent a six-page letter to Chief Williams in which she outlined several “areas of concern” relating to the conduct of certain PPD officials in connection with the investigation into the Protestors.⁶⁹ Notably, the Investigation Team was not made aware of this letter until June 11, nearly two months after it was sent to PPD. To date, PPD has failed to explain why it did not provide a copy of this letter until that time.

With respect to the specific allegations of gang-related indicia or conduct, Ms. Adel questioned Sgt. McBride’s Grand Jury testimony, including his testimony regarding ACAB’s “technique” of sharpening their fingernails and that his “particular thumb got disrupted” when a protestor dug a sharpened fingernail “into the back of [his] knuckles and hands.”⁷⁰ Similar to the findings of SID, Ms. Adel emphasized the absence of any evidence that the Protestors had sharpened nails, or that any other protest group had sharpened their fingernails to use as weapons against the police.

The letter went on to describe other areas of concern of Sgt. McBride’s testimony, including that his “opinions” about the ACAB group were unreasonable. For example, Ms. Adel stated that further investigation into “the basis” for Sgt. McBride’s testimony that the chant “All Cops are Bastards” was form of self-identification (a criteria under the gang statute). Ms. Adel also stated that there was no evidence to support Sgt. McBride’s claim that ACAB was “setting out almost on a weekly basis to disrupt police, commit violent acts of aggravated assault against police, throw incendiary devices at police.”

The letter appears to be at odds with public statements made by Ms. Adel on June 11, in which she reported her office’s decision to seek the dismissal of the case against the Protestors. In that statement, Ms. Adel emphasized that the decision “in no way reflects negatively on the

hard work law enforcement performed that night in preventing violence and property damage, and other crimes to keep our community safe.”⁷¹ In any case, the letter fails to address the conduct of Ms. Adel’s own prosecutors and investigators in connection with Sgt. McBride’s testimony.

10. Letter from Counsel for Various PPD Officials

On July 7, 2021, we received a letter from the attorney representing a number of PPD officials in connection with our Investigation, including the PPD officials closest to the investigation into the Protestors. It is worth noting that this letter was sent only after it was clear from our interviews with these officials that we were aware of the facts and circumstances the letter set out to address.

In stark contrast to the letter by Ms. Adel, this letter levied blame for any inappropriate charging decisions squarely on MCAO. In doing so, the letter emphasized that PPD merely “considered the recommendations they received from prosecutors” and that PPD “strive[s] to maintain an effective working relationship with MCAO.” That said, the letter was similar to the one authored by Ms. Adel in at least one respect: those on whose behalf the letter was sent declined to take any responsibility for the decision to charge the Protestors under the criminal street gang statute.

III. INVESTIGATIVE FINDINGS

As explained above, the focus of the Investigation was to determine whether the decision to charge the Protestors with participating in a street gang was influenced by improper factors. The results of our Investigation with respect to this question are below.

A. The Decision to Apply the Criminal Street Gang Statute Was Deliberated Outside of Traditional Channels

1. PPD Policy Governing Gang Investigations

Development of the gang charges appears to have occurred entirely outside of normal and appropriate channels. As an initial matter, PPD policy provides that GEU is responsible for both initial and follow-up investigation into gang-related incidents.⁷² According to one PPD official with supervisory authority over GEU, in practice, GEU is expected to take the primary lead over the component of *any* investigation that is gang-related.

PPD practice further provides that officers who contact individuals who are, or may be participants in criminal street gang activity, complete a Gang Member Identification Card (“GMIC”) in order to document the reasonable suspicion underlying the contact and the indicia leading to the suspicion that the individual is a criminal street gang participant. These records are entered into “GangNet,” a statewide database managed by DPS that is accessible to law enforcement agencies across the state. PPD has the authority to submit GMICs for individuals it believes to be associated with gangs already classified as such by DPS. However, DPS has the exclusive authority to classify a new gang in connection with GangNet.

2. GEU Was Excluded from the Investigation into the Protestors

We found that those leading the investigation into the Protestors consciously avoided GEU’s involvement, choosing instead to rely on their own limited prior experience conducting gang investigations. We further found strong suggestion that this was done to sideline those deemed likely to object to charging the Protestors as members of a criminal street gang. One PPD official with supervisory authority over GEU left no room for ambiguity when, during the course of his interview, he told us that if asked to weigh in on the charging decision, “I would have offered my opinion that it does not meet the definition of a criminal street gang.” This

official, while acknowledging that assessing the state of mind of his colleagues requires a degree of speculation, told us that he perceived among those investigating a desire to “keep this close to the chest” and, put another way, “to keep it quiet.” When asked to speculate as to why this was the case, he said that it was likely due to there being no precedent for its investigation, and that those involved were likely aware that it would be controversial. Consistent with the investigators’ desire to “keep this close to the chest,” neither Commander James Gallagher (the head of the Drug Enforcement Bureau with direct supervisory authority over GEU at all relevant times) nor Lieutenant Chas Clements (the head of GEU at all relevant times) was asked to participate in any of the deliberations leading up to the October 27 indictment of the Protestors, including the October 23 meeting. In fact, neither Comdr. Gallagher nor Lt. Clements was aware that such a meeting ever took place.

GEU’s lack of involvement in the investigation is a significant red flag. In our interviews with PPD personnel, which included high-ranking officials with twenty years of experience or more, none could recall a single other occasion in which non-GEU officials or units identified a new criminal street gang. Notably, one PPD supervisor told us that he perceived DOU as “ill-suited” to conduct an investigation of this sort.

Nevertheless, those investigating the Protestors sought buy-in from GEU in the late stages of its investigation. Between the “pre-charging meeting” of October 23 and Grand Jury Presentation of October 27, Sgt. McBride reportedly called Lt. Clements to request that GEU assist the investigation by serving search warrants on various Protestors (our investigation found that only certain PPD units, such as GEU, have authority to execute search warrants). Subsequent to this discussion, Lt. Clements reportedly spoke with Lieutenant James Hester, the supervisor of VCB’s Assaults Detail. In that call, Lt. Hester expressed his surprise to learn of

Sgt. McBride's request. According to Lt. Hester (and several PPD other officials with whom we spoke), the investigation into the Protestors was on a "need to know" basis and in the meetings he attended, the possibility of involving GEU was never raised.

Nevertheless, Lt. Hester told Lt. Clements that the Fugitive Apprehension Detail had already agreed to execute the warrants. Lt. Hester reportedly asked Lt. Clements whether he believed it was necessary to file GMICs for each of the Protestors. Lt. Clements responded to say that it was. We are also told that Lt. Hester asked Lt. Clements what he thought about charging the Protestors under the criminal street gang statute, to which Lt. Clements said that he could not give an opinion due to his limited understanding of the facts.

Subsequently, Lt. Clements called Sgt. McBride. During this call, Lt. Clements said that while GEU would not be executing the warrants, he would be willing to make GEU available to assist with the search of the various premises, but that he first needed approval from his supervisor, Comdr. Gallagher. Also during this call, Lt. Clements asked Sgt. McBride whether he planned to submit GMICs for each of the Protestors. Sgt. McBride responded to say that was "absolutely" the case.

Lt. Clements next called Comdr. Gallagher. During this call, Comdr. Gallagher reportedly learned of the existence of the investigation for the first time. When told of the nature of the investigation, Comdr. Gallagher denied the request for GEU's assistance, both with the search of the various premises and with the investigation more broadly. Our Investigation found that this was due to Comdr. Gallagher's effort to distance GEU from the investigation because, in his view, the investigation was being conducted inappropriately and that it risked doing substantial harm to GEU's credibility.

B. There is a Lack of Credible Evidence to Substantiate the Classification of ACAB as a Group or Gang or that the Protestors Would Resort to Violence

After a review of all information gathered from the City, as well as information made available to us by third parties and in the public domain, we found no credible evidence to support the assertion that ACAB is a criminal street gang, that it organized the protest of October 17, or was prone to violence.

1. ACAB is Widely Recognized as a Slogan – Not an Organized Group or Gang

While the exact origin of the phrase is unknown, there is overwhelming consensus that “All Cops Are Bastards” is a slogan for a critique of the police. Documented use of the phrase goes back nearly a century to a song from the 1920s (“I’ll sing you a song, it’s not very long: all coppers are bastards”) and appears in a 1959 British documentary film that shows a group of boys singing the song while passing a police officer on the road.⁷³ The phrase reentered popular culture in the 1980s through the song “A.C.A.B.” by the London band, The 4-Skins:

All cops are bastards
Copper come up say what’s the matter with you
Now they see what we can do ...⁷⁴

Today, the phrase has been widely embraced at protests throughout the world after the death of George Floyd.⁷⁵

2. The Decision to Charge the Protestors as Members of a Gang was based on Uncorroborated and Non-Credible Evidence

According to MCAO, “the genesis” of the belief among Phoenix prosecutors and police that ACAB was behaving as a criminal street gang was information provided by protestor Behrens.⁷⁶ At some point prior to the protest of October 17, Behrens was interviewed by a detective from the Gilbert Police Department about an unrelated protest (that had taken place in the city of Gilbert) when he first mentioned ACAB, a “protest group to which he belongs.”

He described its membership as about thirty to forty in number, and alleged its members “got matching gang tattoos three weeks ago” of braille representing the letters “A,” “C,” “A,” and “B.” In the same interview, Behrens told the detective about how members of this group “will steal your [meaning police officers’] bikes,” that another member of this group said she wanted to kill “the next officer that touches one of us.” Later, on October 16, Behrens texted law enforcement (likely Det. Burchett) that “[s]omething is happening tomorrow but I can’t figure it out. Several people have said to be prepared for violence and that it won’t be peaceful I’m concerned.”⁷⁷

PPD appears to have accepted the information provided by Behrens wholesale, despite having obtained this information second-hand from a detective from a separate law enforcement agency (as a result of only one interview of Behrens), and without any regard for Behrens’ prior history of lying to the police (including a criminal conviction for filing a false emergency report). Indeed, the manner in which MCAO describes the steps taken in response to information provided by Behrens illustrates the absence of any critical analysis by MCAO and PPD. As just one example, as of April 15, 2021 (nearly 6 months after the arrest of the Protestors), MCAO “[was] still trying to piece together exactly what information Behrens provided, when it was provided, how it may have been erroneously relied upon and what efforts were made to vet the reliability of Behrens as a source.”⁷⁸ Notably, in that same filing to the court, MCAO acknowledged that the group about which Behrens provided information does not *actually* refer to itself as ACAB.⁷⁹ In all, the questions raised by MCAO are clearly inconsistent with what one would likely perceive to be a thorough police investigation, let alone one that ultimately results in charging more than a dozen individuals with multiple felonies who appeared to be engaging in

protected First Amendment activity. Simply stated, it suggests that law enforcement ignored the obvious problems with the information it received.

PPD's assertion that ACAB members engaged in prior acts of violence is similarly belied by readily available evidence. A key justification for the classification of ACAB as a violent street gang stems from the assertion that on August 24, 2020, protestor Ratnam "stabbed" Sgt. Herr "with a sharpened edge of an umbrella," and that Ratnam, at the time, was found with a water bottle filled with acetone.⁸⁰ During the State's Grand Jury presentation, and in response to DCA Sponsel's question as to whether the ACAB group has used umbrellas a "weapon" on prior occasions, Sgt. McBride gave the following testimony:

Yes. So on a prior occasion, the Suvarna Ratnam, who I discussed earlier, she actually utilized her umbrella to stab an officer in the hand causing a cut on his hand.⁸¹

Following the October 17 arrest and in a bond hearing to determine Ratnam's eligibility for release, DCA Sponsel again asserted that Ratnam used a sharpened umbrella to slice an officer's hand during her previous arrest, and that Ratnam had bomb-making materials that could be used to create Molotov cocktails. But video footage made available through public sources is unequivocal that Ratnam at no time used the umbrella as alleged against her.⁸² Video footage shows Ratnam attempting to run past PPD personnel as she held the umbrella facing downward at her side when Sgt. Herr raised his right arm and placed it around Ratnam's neck as he brought her to the ground. Soon after this footage reached the public, MCAO conceded both that the umbrella tip was not "sharpened" and the alleged Molotov cocktail supplies were discarded by PPD and, as a result, never tested.⁸³ On July 9, 2021, MCAO filed a motion to dismiss the case with prejudice. The court granted the motion on July 14.

Sgt. McBride also testified more generally that "[t]hrough several arrests and violent crimes that were committed, [PPD] had contact with several [ACAB] members on a prior

occasion with prior civil unrests.” Yet in our interview of Sgt. McBride, he could only recall that the prior arrest of Ratnam put ACAB “on our radar” and that, aside from this incident, there were prior reports of “ACAB” spray painted as graffiti. Indeed, there is little else to corroborate Sgt. McBride’s claims of “several arrests” and “violent crimes:” a search of PPD’s incident report database yields only two prior incidents relating to “ACAB” activity: the first, a demonstration on June 6, 2020, during which a protestor held up a sign that said “ACAB” (no arrests were made); and the second, on June 16, 2020, describing an instance wherein an unidentified person allegedly spray painted “ACAB” on a structure inside of Steele Indian School Park.⁸⁴ The court, in its June 6, 2020 order dismissing the charges for assisting a criminal street gang and conspiracy to commit aggravated assault, was careful to note this very point. As to Sgt. McBride’s testimony that ACAB is “specifically setting out almost on a weekly basis to disrupt police [and] commit violent acts of aggravated assault against police,” the court observed that such testimony was provided without any evidentiary support whatsoever.⁸⁵ In all, our Investigation determined that this is because there most likely is no evidence to support Sgt. McBride’s claims.

3. *The Contention that ACAB is a Gang is Further Undermined by PPD’s Limited Investigative Steps*

Compounding PPD’s investigative failures is that those investigating the Protestors appear to have relied on the above information wholesale, without critically evaluating the other, directly contradictory information PPD had at the time. As discussed below, our Investigation found that the limited investigative steps PPD did take directly undermine the conclusion that ACAB is a standalone criminal street gang.

First, DOU appears to have relied on information concerning *other* groups that it may have perceived as promoting an anti-police message, further indicates an insubstantial and result-

oriented nature of PPD's investigation. For example, on October 16 (the day before the protest), Police Officer Steven Denney emailed Officer Howell to say the following:

A source advised that a subject named Kaleb Wise has been telling others that the protest Saturday the 17th will be violent and that those that don't want to be violent should not come. He said everyone should bring umbrellas so that the cameras couldn't see them any gas masks because whatever they were going to do the would cause the police to use gas.

I have no Intel as to what this action may be.

Prior to this info I was told the group planned to take the streets and sit down until arrested.

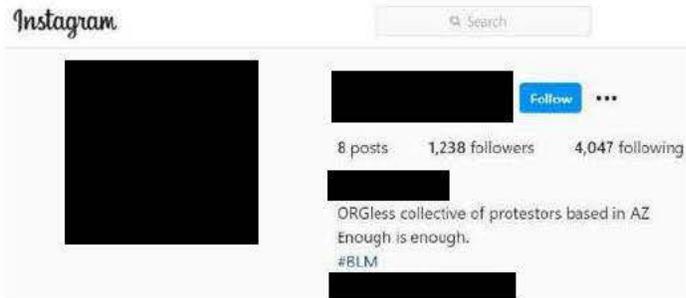
They have a link

[REDACTED]

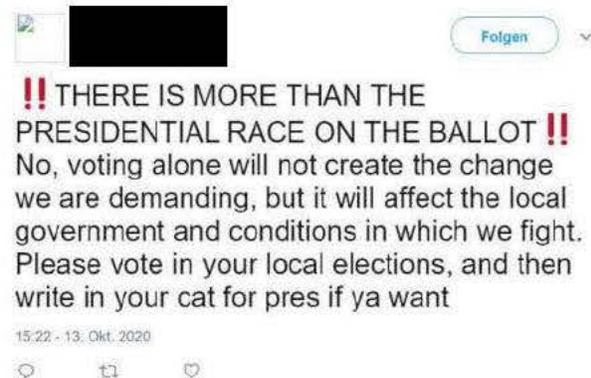
It's in one of their chat rooms. Not sure which one and won't be getting any more intel.⁸⁶

Had PPD taken additional investigative steps, it may have obtained more information about the "group" [REDACTED] and whether it intended to resort to violence at the protest of October 17. Some investigative steps – namely, pursuing contact with [REDACTED] or reviewing [REDACTED] online presence – would have tempered any belief that the protest would be violent.

To start, [REDACTED] online presence leaves no doubt that it is a decentralized "collective" of protestors in Arizona seeking reform:



[REDACTED] promoted the protest of October 17 as early as September 27. Prior to that, it promoted other protests unrelated to any perceived beliefs about law enforcement and social justice causes, including activism through the traditional voting process:



As is clear from the various postings on its social media accounts, in instances where [REDACTED] [REDACTED] organized or promoted protest events similar to the one of October 17, there is no indication that it was advocating violence:



The above information militates heavily against the contention (advanced among senior DOU officials with whom we spoke) that the Protesters were likely to be violent. In fact, there is evidence to suggest that DOU did not consider violence to be a likely occurrence at the protest. For example, one PPD supervisor told us that DOU did not have an action plan for the protest because PPD did not anticipate that the event was going to be “significant” (Lt. Moore told us that DOU only implements an action plan when there is “strong intel[ligence]” suggesting the need for a “significant deployment”). This official reported to us that in the case of the October 17 protest, DOU had been briefed only “on possible groups that could possibly gather but nothing specifically stating they were going to do anything.”

Second, other information known to PPD in advance of the protest is unequivocal that no group identified as “ACAB” was responsible for, or in any way affiliated with, the gathering of the Protestors. On October 16 (the day before the protest), PPD’s Community Response Squad (“CRS”), the unit that monitors the City’s demonstrations, rallies and marches, sent a Department-wide email that included information about the October 17 protest:

<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Organization</u>	<u>Details</u>
Saturday 10/17	7:00 PM	1002 West Van Buren Street	Freedom 4 The People	No Justice No Peace Rally: Gathering at or near University Park with march to Washington Street and plans to occupy the roadway.

The above information circulated by CRS points to an entirely separate group as the organization responsible for the protest. In addition to that information, HDB prepared and circulated widely throughout PPD a “social media events report” that provided the following:



Social Media and Event Report



17
MARCH ON PHOENIX
March On Phoenix BLM

University Park

Public · Hosted by Jacob Wise

10/17 7 pm there will be a march in downtown Phoenix. We been ignored now we disrupt

Saturday October 17th
At 1900 Hours

1002 W Van Buren St.
University Park

Hosted by Jacob Wise
(Claims to be one of the organizers
for The NALM party)

In other words, PPD intelligence gathered in advance of the protest indicates that groups *other* than the supposed ACAB group (i.e., “Freedom 4 The People” and “The NALM party”) were responsible for organizing the protest. Evidence gathered by PPD in the immediate aftermath of the protest only strengthens this point. In an interview following the arrests on October 17, protestor Behrens told PPD officer Brandon McCombs that he heard about the protest on Instagram. When Officer McCombs asked for a specific account, Behrens responded to say, “there’s like twenty of them, there’s one that says like Arizona Area Protests but then people repost it so I don’t know who originally posted it.”⁸⁷ In considering the above information, DOU appears to have conflated various social justice forums and groups to construct a singular “ACAB group.”

Third, both the timing and content of Sgt. McBride's incident reports further reflects the dubiousness of PPD's classification of "ACAB" as a criminal street gang. As described above, none of the approximately ninety reports (including the two submitted by Sgt. McBride) indicated that the arrests related to criminal street gang activity. In addition to undermining the appropriateness of gang charges, this suggests another attempt to circumvent GEU's involvement in the investigation. As described above, when an incident report indicates an arrest was "Gang Involved," PPD's electronic systems automatically transmits the report (and any additional investigative duties) to GEU. While Sgt. McBride's second incident report is the only one to characterize the arrests as gang-related, he does not indicate in the report that the arrests are "Gang Involved." Absent checking that specific box, GEU will not receive a copy of this report, nor will it be tasked with any follow up responsibilities. At best, this reflects a lack of understanding the protocol for identifying, investigating and prosecuting true criminal street gangs.

Furthermore, both the timing (the day after his Grand Jury testimony) and the report's contents (significant portions of which are copied wholesale from documents provided to him by Investigator Martin) suggest that Sgt. McBride was creating a paper trail to support his Grand Jury testimony that the ACAB group was a criminal street gang and the Protestors were all members of that gang. At a minimum, this report was created in a manner inconsistent with PPD's policies and procedures, which mandate that such reports be completed as soon as possible.⁸⁸ When asked in his interview why it had taken him eleven days to submit this report, Sgt. McBride told us that he "had been working on it for a while," and in that respect, was "compiling information from various sources and working to finalize it." That response is consistent with what attendees of the October 23 meeting told us in their interviews: namely, that

in order to “bolster” the gang charge against the Protestors, Sgt. McBride should submit a second incident report that couches the protest of October 17 as gang-related activity.

Fourth, certain actions taken by PPD at the supervisory level indicate an awareness of the lack of merit to support the allegation that ACAB was operating as a criminal street gang. Between October 23 and October 27, Det. Legere submitted Investigator Martin’s search warrant application to Lt. Hester for approval (though the formatting of the application was conformed to PPD standards, the substance of the application was nearly identical to the one Investigator Martin sent to PPD). Lt. Hester declined to submit the application, having concluded that it lacked probable cause and was otherwise “insufficient.” When pressed to explain how he had reached that conclusion, Lt. Hester told us that he had been advised in the October 23 meeting that the application would cite to specific evidence that was not detailed in the various incident reports. However, according to Lt. Hester, he found that the application cited no such evidence.

Those investigating the Protestors were persistent in seeking to obtain additional evidence of the supposed ACAB gang. On October 28 (the day after the Protestors were indicted for assisting a criminal street gang), Det. Legere submitted a revised search warrant application to Maricopa County Superior Court, this time for the search of a phone belonging to a protestor that was seized by PPD at the time of the protest. Strikingly, the application does not contain any reference to the assisting a criminal street gang charge or the allegation that ACAB was operating as a criminal street gang. Instead, the narrative giving rise to probable cause tracks the language contained in nearly all of the PPD incident reports, which is limited to acts of alleged gang-related conduct or references assisting a criminal street gang as an offense for which the phone is likely to contain evidence.

We find troubling that PPD found evidence of supposed gang activity insufficient to obtain a search warrant, on the one hand, but that the same evidence was enough to seek an indictment for assisting a criminal street gang. Indeed, this contradiction is all the more apparent when one considers that even after the Protestors were indicted for the offense of assisting a criminal street gang, Det. Legere avoided any mention of that offense (or allegations giving rise to that offense) in the search warrant of October 28. While we were unable to more fully develop the facts and circumstances giving rise to the second search warrant application (despite our best efforts to obtain that information from relevant PPD officials), we found strong suggestion that PPD sought to shield the investigation into the Protestors from scrutiny as much as it reasonably could. By submitting a search warrant application that did not allege criminal street gang activity, PPD was spared from judicial review of those allegations.

VI. RECOMMENDATIONS

Set forth below are our recommendations for the City to ascertain additional facts about the decision to charge the Protestors under the criminal street gang statute, and separately, to inform efforts going forward to charge appropriately under that statute:

1. *Retain a separate law enforcement agency to conduct a thorough investigation.*

Newly obtained information relevant to what occurred during PPD's investigation indicates the need for thorough investigation, conducted by a separate law enforcement agency or other investigative authority empowered to compel the production of documents and testimony. Outside investigators should fully develop the facts and circumstances in regard to the following areas.

First, whether the attempt to enlist GEU to execute the initial search warrant (i.e., the warrant that alleged the Protestors were members of the supposed ACAB gang) was motivated by a belief that doing so would lend legitimacy to PPD's investigation.

Second, whether there was any improprieties with respect to PPD's submission of the GMICs relating to the Protestors and, relatedly, how DPS reached its determination about the supposed ACAB group. According to several PPD officials with whom we spoke, PPD sidestepped an unambiguous policy that only DPS has the authority to identify new gangs in connection with the GangNet database. While we have been unable to determine precisely when the GMICs were submitted to DPS, we reviewed an email of February 25, 2021, in which DPS advised PPD that based on the advice of its legal counsel, ACAB did not meet the criteria for entry into GangNet.⁸⁹ We additionally obtained information that Sgt. McBride instructed a DOU detective to prepare GMICs for several Protestors, and that this detective was misled to believe that the GMICs were to be submitted to GEU for review. This too merits further investigation.

Third, investigative steps taken by SID were limited and in light of the information it had at the time of its inquiry, warrant independent scrutiny. For example, SID could have, but did not, attempt to interview Sgt. McBride at any time; attempt to interview any other PPD personnel involved in responding to or investigating the arrest of the Protestors; or attempt to interview anyone from MCAO. To be sure, assessing whether those steps would have made a difference requires some prediction of how other actors, including some who have refused to speak with us, would have responded to SID's request for information. However, had SID pressed Sgt. McBride, or anyone else, for that matter, who was directly involved in the decision to charge the Protestors under the criminal street gang statute, SID might have developed additional relevant evidence.

In light of the circumstances surrounding the decision to apply the criminal street gang statute, and in order to avoid any resulting appearance of impropriety, PPD should be disqualified from participating in any further action with respect to investigating Sgt. McBride's

Grand Jury testimony. In addition to the inevitable concerns implicated in a law enforcement agency investigating one's own, our Investigation found evidence that undermines SID's contention that it was uninvolved in the decision to apply the criminal street gang statute. Specifically, despite SID's contention that its "detectives and supervisors were not deployed as part of [PPD's] response to these protests," Asst. Chief Lopez, the head of SID, acknowledged having participated in a meeting where deliberations concerning whether to charge the Protestors under the criminal street gang statute took place.

2. *Revise the investigative guidelines to inform the use of the criminal street gang statute.* PPD should create written guidelines for applying the criminal street gang statute. We understand that most PPD personnel have extensive law-enforcement backgrounds and are capable investigators. However, in light of the broad language of the statute, and the resulting potential for misuse, PPD should set forth clearly what it expects from its officers and investigators who engage in gang-related investigations. In drafting the guidelines, PPD should consider providing a specific statement that in instances where a non-GEU officer or investigator is considering whether to apply the criminal street gang statute to the conduct in question, he or she is required to consult with GEU prior to submitting its recommendations to a prosecutor's office. These concerns are even more acute when officers are contemplating the filing of such charges against protest groups engaged in protected First Amendment activity. In such cases, PPD should be required to obtain approval from the City Attorney's Office.

3. *Clarify PPD's policy for information gathering and analysis.* We recommend that PPD make clear that information obtained from other law enforcement agencies should be vetted with the same degree of scrutiny as PPD expects when it obtains that information first-

hand. This would provide better quality assurance and more confidence that PPD is relying on credible information that PPD has independently evaluated.

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- ¹ See, e.g., PPD Social Media and Event Report of October 17, 2020, at 4.
- ² See *State of Arizona v. Kaleb Martin*, No. CR2020-139581-013 (Dkt. 22), at 2.
- ³ GJ Tr. 36:19-22.
- ⁴ *Id.* n.2, at 1-2.
- ⁵ Josh Kelty, *Attorneys: Prosecutors Misled Grand Jury in Depicting Protesters as Gang*, PHOENIX NEW TIMES (Feb. 12, 2021), <https://www.phoenixnewtimes.com/content/printView/11531045>.
- ⁶ *State of Arizona v. Nathaniel Benjamin Llamas*, No. CR2020-139581-001 (Dkt. 35), at 1; [REDACTED] TWITTER (Feb. 12, 2021), <https://twitter.com/marcoattorney/status/1360428927626346496>.
- ⁷ The focus of our engagement was on PPD’s role in bringing the charges under the gang statute. MCAO is conducting its own inquiry; indeed, our efforts to interview relevant MCAO employees were rebuffed by MCAO.
- ⁸ *Id.* n.1.
- ⁹ *State of Arizona v. Kaleb Martin*, No. CR2020-139581-013 (Filing ID 12717449).
- ¹⁰ *Id.* n.9 (Filing ID 12781222), at 2.
- ¹¹ *Id.* n.24, at 2.
- ¹² [REDACTED] TWITTER (Feb. 12, 2021), [REDACTED]
- ¹³ *Id.* n.9 (Dkt 23), at 15.
- ¹⁴ *Id.* at 13.
- ¹⁵ *Id.* at 15.
- ¹⁶ [REDACTED] TWITTER (June 11, 2021), [REDACTED]
- ¹⁷ A.R.S. § 38-1104.
- ¹⁸ *Id.*
- ¹⁹ *Id.* § 38-1102(A).
- ²⁰ PLEA MOU at 11.
- ²¹ Chief Jeri Williams, Executive Assistant Chief Michael Kurtenbach, Assistant Chief Steve Martos, Assistant Chief Lawrence Hein, Assistant Chief John Collins, Assistant Chief Gabriel Lopez. Commander James Gallagher and Commander Matthew Seikmann did not request to have counsel present when they spoke with the Investigation Team.
- ²² *Id.* at Dkt. 23, Ex. 2. It bears noting that this briefing was part of TRU’s standard procedures as part of any deployment.
- ²³ *Id.*
- ²⁴ *Id.*
- ²⁵ AZ Patriots, *commies in phoenix*, YOUTUBE (Oct. 17, 2020), <https://www.youtube.com/watch?v=4H7MJdZRA24> (“AZ Patriots Video”).
- ²⁶ *State of Arizona v. Amy Beth Kaper*, No. CR2020-139581-015 (Nov. 15, 2020 Aff. of Amy Beth Kaper), at 5.
- ²⁷ PPD Incident Report (“IR”) No. 202000001707081 – 048, at 1.
- ²⁸ AZ Patriots Video.
- ²⁹ Oct. 27, 2020 Tr. of Grand Jury Proceeding (“GJ Tr.”) at 16:19-22.
- ³⁰ *State of Arizona v. Riley Behrens*, No. CR2020-139581-006 (Dkt. 34), at 5.
- ³¹ PPD IR No. 202000001707081, at 51.

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- ³² GJ Tr. at 19:14.
- ³³ E.g., PPD IR No. 202000001707081 – 024, at 4.
- ³⁴ *State of Arizona v. [REDACTED]* No. [REDACTED] (Dkt. 32), at 3.
- ³⁵ *Id.* at 4.
- ³⁶ *Id.*
- ³⁷ *See id.*
- ³⁸ E.g., PPD IR No. 202000001707081 – 024, at 7.
- ³⁹ Catherine Holland, *PD: 4 men were arrested during a protest in downtown Phoenix Saturday night*, AZFAMILY.COM (July 19, 2020), https://www.azfamily.com/news/pd-4-men-were-arrested-during-a-protest-in-downtown-phoenix-saturday-night/article_69b248c4-c9f3-11ea-a9d3-7b7091d816d3.html.
- ⁴⁰ *Criminal Court Case Information*, CR2020-001870-002 (May 10, 2021), <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber=CR2020-001870/>.
- ⁴¹ *State of Arizona v. Kaleb Martin*, No. CR2020-139581-013 (Filing ID No. 12781222), at 4.
- ⁴² Dave Biscobing, *Phoenix Police Department falsely claimed protester stabbed officer with ‘sharpened’ umbrella*, ABC15, <https://www.abc15.com/news/local-news/investigations/protest-arrests/phoenix-olice-department-falsely-claimed-protester-stabbed-officer-with-sharpened-umbrella>.
- ⁴³ PPD IR No. 202000001707081 – 023, at 1.
- ⁴⁴ Correspondence from Karl Martin, received on Oct. 21, 2020.
- ⁴⁵ *Id.*
- ⁴⁶ PPD IR No. 202000001707081 – 068, at 1.
- ⁴⁷ PPD, Operations Orders § 4.19, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.
- ⁴⁸ The case agent has primary responsibility for the investigation responsible for overseeing the completion of all necessary investigative steps before submitting the case for prosecution. *See* PPD, Operations Orders § 4.19, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.
- ⁴⁹ In reviewing PPD incident reports relating to “ACAB” activity prior to the protest of October 17, we did not find anything to support a claim of damage to federal property by those purporting to be associated with ACAB.
- ⁵⁰ FRB is responsible for prosecuting crimes that involve “first responders,” such as police officers, as victims. *See* MCAO. *Meet Tom Van Dorn: MCAO’s First Responder Liaison Supervisor* (Dec. 2019), <https://www.maricopacountyattorney.org/366/Meet-Tom-Van-Dorn-MCAOs-First-Responder->
- ⁵¹ GJ Tr. 11:4-13.
- ⁵² *Id.* at 11:18-21.
- ⁵³ *Id.* at 16:19-22.
- ⁵⁴ *Id.* at 16:23-25.
- ⁵⁵ *Id.* at 22:6-10.
- ⁵⁶ *Id.* at 22:11.
- ⁵⁷ *Id.* at 32:23-33:4.
- ⁵⁸ *See id.* at 32:23-33:4.
- ⁵⁹ *Id.* at 31:9-14.
- ⁶⁰ *Id.* at 11:20-21, 37:14-19

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- ⁶¹ *Id.* at 33:11-15.
- ⁶² *Id.* at 34:15-19. 34:24-35:2
- ⁶³ *Id.* at 52:22-24
- ⁶⁴ *Id.* at 39:4-9.
- ⁶⁵ *Id.* at 45:6-16.
- ⁶⁶ *Id.*
- ⁶⁷ See CR2020-139581 (Dkt. 1).
- ⁶⁸ PPD IR No. 202000001707081 - 072, at 3.
- ⁶⁹ Correspondence of Allister Adel, sent on April 19, 2021.
- ⁷⁰ *Id.*
- ⁷¹ MCAO, *Statement from County Attorney Allister Adel Regarding Dismissal of Charges for Oct. 17, 2020 Case* (June 11, 2021), <https://www.maricopacountyattorney.org/CivicAlerts.aspx?AID=809>.
- ⁷² PPD, Operations Orders § 2.1, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.
- ⁷³ Amy Hawkins, *Shot in the arm: how the pandemic transformed protest slang*, THE ECONOMIST (Jan. 11, 2021), <https://www.economist.com/1843/2021/01/11/shot-in-the-arm-how-the-pandemic-transformed-protest-slang>.
- ⁷⁴ The 4-Skins, *A.C.A.B.*, LYRICS.COM, <https://www.lyrics.com/lyric/3514395/The+4-Skins/A.C.A.B.>
- ⁷⁵ See n.47, *supra*.
- ⁷⁶ *State of Arizona v. Kaleb Martin*, No. CR2020-139581-013 (Filing ID No. 12781222), at 3.
- ⁷⁷ *Id.*
- ⁷⁸ *Id.* n.58, at 5.
- ⁷⁹ *State of Arizona v. Kaleb Martin*, No. CR2020-139581-013 (Filing ID No. 12781222), at 3.
- ⁸⁰ See, e.g., n.26.
- ⁸¹ GJ Tr. 38:20-23.
- ⁸² *Id.* n.25.
- ⁸³ *State of Arizona v. Suvarna Ratnam*, No. CR2020-132033-001 (Dkt. 34), at 4. Notably, DCA Sponsel was initially assigned to the case against Ratnam, and it was only after the case was reassigned to another Deputy County Attorney did MCAO seek to amend the indictment and correct the evidentiary record.
- ⁸⁴ PPD IR Nos. 202000000945427, 202000001004067
- ⁸⁵ See n.9, *supra* (Dkt 23), at 15.
- ⁸⁶ Correspondence from Police Officer Steven R. Denney, received on Oct. 17, 2020.
- ⁸⁷ PPD IR 202000001707081 – 052, at 2.
- ⁸⁸ PPD, Operations Orders § 8.4, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.
- ⁸⁹ Correspondence from Tijana Danilovic, sent on February 25, 2021.