

June 16, 2015

Hon. Michael H. Simon
United States District Court
1327 United States Courthouse
1000 SW Third Ave.
Portland, OR 97204

Re: *United States v. City of Portland*
District of Oregon Case No. 3:12-cv-02265-SI
Ninth Circuit Case No. 14-35903

Dear Judge Simon:

Pursuant to Federal Rule of Appellate Procedure 12.1¹, the United States, the City of Portland (“the City”), the Portland Police Association (“PPA”), and the Albina Ministerial Alliance Coalition for Justice and Police Reform (“AMA Coalition”) (collectively “the parties”) hereby write to you jointly, with the support of Circuit Mediator Lisa Jaye and Ninth Circuit Judge Edward Leavy, requesting your approval of the parties’ proposed settlement of the City’s appeal. The parties respectfully ask this Court to state that it would grant the parties’ joint motion to convert the periodic evidentiary hearings into annual non-evidentiary status conferences as further described herein and in the proposed Amended Order attached to this letter.

As with previous mediation efforts of the parties, we arrived at this joint motion and the proposed Amended Order through much discussion, collaboration, and negotiation.² The parties’ settlement reflects three guiding principles: (1) the Court and the public need credible and reliable information regarding implementation of the Settlement Agreement; (2) the purpose of ongoing court involvement is to reinforce existing reporting and oversight mechanisms in the agreement; and (3) the PPA and AMA Coalition should be included in any ongoing court proceedings.

I. Credible and Reliable Information Regarding Implementation

Four entities are responsible for generating information about the implementation of the Settlement Agreement. First, the City must produce quarterly reports about its progress. Second, a Compliance Officer and Community Liaison (“COCL”) must provide unbiased expert analysis and also produce quarterly reports. Third, the Community Oversight Advisory Board (“COAB”) must provide the COCL with community input and independently assess implementation of the Agreement. Fourth, the United States monitors the Agreement and ultimately issues its own determination regarding substantial compliance.

¹ If this Court states that it would grant the parties’ motion, the parties may then seek limited remand from the Ninth Circuit allowing this Court to grant the parties’ motion. (“If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.” (FRAP 12.1(a)))

² Although the AMA Coalition requested and was initially denied participation in the Ninth Circuit Mediation process, the AMA Coalition is now a participant in the mediation and agrees with the proposed changes to the Order.

Rosenbaum & Watson, LLP, the firm chosen to be the COCL, is a team of national policing experts including Dennis Rosenbaum, who served on President Obama's Task Force on 21st Century Policing, and Amy Watson, a prominent researcher in the field of policing and crisis intervention. After the resignation of Justice DeMuniz, the team is now anchored locally by Kathleen Saadat, recipient of the Portland Human Rights Commission Lifetime Achievement Award and renowned statewide for her forty-plus years of equity work in Oregon. The voting members of the COAB came from a diverse pool of over one-hundred and fifty applicants, City commissions, and the City commissioners. They have been meeting regularly since March 2015.

The information generated by these four entities is credible and reliable because it is vetted by community stakeholders and informed by evidenced-based research.

II. Reinforcing Existing Reporting and Oversight Mechanisms

Under the proposed Amended Order, the United States, City, COCL, and a voting member of the COAB selected by the COAB, will "describe to the Court the progress being made toward achieving substantial compliance with all provisions of the Settlement Agreement and any obstacles or impediments toward that end and to respond to the Court's questions on these issues." Having the entities most directly involved in implementation and oversight be responsible for describing its progress legitimizes their efforts and holds them accountable.

III. Ongoing Involvement of PPA and AMA Coalition

Over a year ago, this Court sent the parties to mediation to resolve objections of the PPA and the AMAC regarding the terms of the Settlement Agreement. That successful mediation produced two side agreements: a memorandum of understanding ("MOU") with the PPA and a collaborative agreement ("CA") with the AMAC.

Under the proposed Amended Order each of the parties to those side agreements would report to the Court on the status of their respective agreements at the annual status conference. The United States, City, and PPA will describe the status of the MOA; and, likewise, the United States, City, and AMA Coalition will describe the status of the Collaborative Agreement.

The parties all agree that annual non-evidentiary status conferences as described above would fully apprise the Court of the status of compliance with the Settlement Agreement, as well as the MOU and CA. Status conferences will allow for the free exchange of public information in a non-adversarial setting, while serving the purposes of keeping the Court and the public informed.

The parties are committed to seeing that the Settlement Agreement is fully implemented, and none wishes to see further delays in this case. All parties support the attached proposed Amended Order because it will end litigation and allow us to move forward with implementation.

As contemplated by FRAP 12.1, we request that this Court state that it will grant a joint motion to enter the attached Amended Order. Your affirmative response will allow the parties to immediately move for a limited remand so that this Court might enter the Amended Order.

We thank your Honor for your time and consideration and look forward to hearing from the Court soon.

Yours respectfully,

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