

February 22, 2024

Assistant Attorney General Kristen Clarke
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue NW
Office of the Assistant Attorney General, Main
Washington, DC 20530

SENT VIA ELECTRONIC MAIL TO KRISTEN.CLARKE@USDOJ.GOV

Dear Assistant Attorney General Clarke,

The undersigned community organizations write to request an independent Department of Justice investigation into the Austin Police Department's pattern or practice of unlawful conduct that violates residents' constitutional rights.

Austin's current approach to law enforcement results in a pattern of unnecessarily aggressive and unlawful policing; a toxic culture that reinforces fear, hostility, and harmful stereotypes of communities police are supposed to serve — including people who are Black, Brown, experiencing homelessness, have a disability, and other vulnerable communities; and a culture of impunity. The harms of Austin's police practices are borne disproportionately by Black people, and there is evidence this is due in part to intentional discrimination on the basis of race.

In collaboration with our elected City Council, the community has made numerous unsuccessful efforts over several years to reform these deeply-embedded constitutional deficiencies in the Austin Police Department. These problems are at the root of recent requests for you to investigate the excessive force Austin police inflicted on peaceful demonstrators during 2020 demonstrations against police violence.

The impunity that certain officers enjoy in Austin is highlighted by recent turns in the ongoing prosecution of officers who seriously injured community members exercising their constitutional right to protest in May of 2020. These protests themselves were against police brutality. The Austin Police Department's response to these protests was exceptionally brutal. In numerous incidents over several days, police indiscriminately fired hundreds of lead shot pouches from shotguns into crowds, and tear gas into crowds of demonstrators, and beat many with batons, inflicting serious injuries.¹ Austin Police Department's actions caused intracranial hemorrhages,

¹ Memorandum, APD, After Action Report - APD Response to 2020 Protests (Sep. 16, 2022), <https://services.austintexas.gov/edims/pio/document.cfm?id=392551>.

skull and facial fractures, lacerations, bruises, and ammunition to be stuck in peoples' bodies.² More than 300 protest-related formal complaints followed.³

Years after the protests, we learned that command-level staff within the Police Department knew in advance of deploying officers with 12-gauge munitions that those munitions had caused serious bodily injury before and could do so again.⁴ Troublingly, Austin delayed disclosure to prosecutors about this knowledge until after the statute of limitations to file criminal charges against officers for their actions during the protests had passed.

The department's disturbing behavior during the 2020 protests is simply the latest unlawful conduct that violates residents' constitutional rights. For a non-comprehensive list of incidents that demonstrate the pattern or practice of excessive force, discriminatory policing, and a culture of impunity, please see Supplemental Materials below.

We request a pattern-or-practice investigation to begin to address the deeply embedded deficiencies in the Austin Police Department causing it to violate the constitutional rights of our community members.

Sincerely,

Austin Area Urban League
Austin Community Law Center
Austin Justice Coalition
Austin NAACP
Equity Action
American Civil Liberties Union of Texas

² Kristopher A. Olson, Laura E. Haselden, et al., Penetrating Injuries from 'Less Lethal' Beanbag Munitions, *N. Engl. J. Med* 2020 (Sep. 10, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2025923>.

³ Memorandum, APD, After Action Report - APD Response to 2020 Protests (Sep. 16, 2022), <https://services.austintexas.gov/edims/pio/document.cfm?id=392551>.

⁴ Tony Plohetski, *APD Report Says Higher-ups Knew of Projectile Dangers Before 2020 Protests*, *Austin American Statesman* (Feb. 1, 2024) <https://www.statesman.com/story/news/local/2024/02/01/apd-austin-police-less-lethal-projectiles-2020-protests-report-higher-ups-knew-of-dangers/72433963007/>.

Supplemental Materials

Relevant Information About Use of Excessive Force and Discriminatory Policing:

- In June 2015, Breiaon King, a Black elementary school teacher, was violently arrested by an Austin Police Department officer during a minor traffic stop. The incident, captured on police dash cam video, showed the officer forcefully removing King from her car and slamming her to the ground. Officers told her on the way to jail that Black people get this treatment because they are more violent.⁵
- In February 2016, an Austin Police Department officer shot and killed David Joseph, a Black 17-year-old high school senior who was experiencing a mental health crisis. Joseph was naked and unarmed.⁶
- In October 2016, the Center for Policing Equity released a report examining Austin Police Department's use of force. It found that Austin Police Department officers were more likely to use force in African American and Latino communities, including severe force. These racial disparities persisted even after controlling for such factors as crime, education, homeownership, income, youth, unemployment, and poverty rates.⁷
- From 2010 to 2018, according to state-mandated racial profiling reports, Austin Police Department officers were more than twice as likely to search Black and Latino drivers than white drivers during traffic stops despite no greater likelihood of discovering contraband.⁸
- In December 2018, an officer used a Taser weapon on Quentin Perkins, an unarmed Black man on his knees with his hands in the air. Body camera footage captured the incident. Two officers were charged and terminated in 2018, but the officers were later found not guilty.⁹

⁵ Phil Helsel, *Austin Police Chief 'Sickened' by Violent Arrest of Breiaon King*, NBC News (July 22, 2016), <https://www.nbcnews.com/news/us-news/austin-police-chief-sickened-violent-arrest-breiaon-king-n614586>.

⁶ Katie Hall, *David Joseph Shooting: Police Report Sheds Light on Teen's Mental State*, Austin American Statesman (Aug. 13, 2016), <https://www.statesman.com/story/news/2016/08/13/david-joseph-shooting-police-report-sheds-light-on-teens-mental-state/9881113007/>.

⁷ Phillip Atiba Goff et. al., *The Science of Policing Equity: Measuring Fairness in the Austin Police Department*, Center for Policing Equity, Urban Institute, and New York University (Oct. 2016; revised May 2017), https://www.urban.org/sites/default/files/publication/85096/2000970_science_of_policing_equity_1.pdf.

⁸ Memorandum, Kroll Associates, Preliminary Assessment of Austin Police Training Academy (Feb. 26, 2021), <https://services.austintexas.gov/edims/document.cfm?id=355805>.

⁹ Russell Falcon, KXAN Austin, *APD Officers Fired after Previously Cleared of Excessive Force Charges*, (March 18, 2019), <https://www.kxan.com/news/local/austin/apd-officers-fired-after-previously-cleared-of-excessive-forcecharges/>.

- In July 2019, Austin Police Department officer Christopher Taylor shot and killed Dr. Mauris DeSilva, a man of Sri Lankan descent. Dr. Mauris DeSilva was experiencing a mental health crisis, and officers were responding to a mental health call.¹⁰
- In September 2019, a report released by the Human Rights Clinic of the University of Texas School of Law alleged that "Austin police are violating international human rights standards during mental health calls", as "Austin has the highest per capita rate of police shootings during mental health calls of the 15 largest US cities."¹¹
- In December 2019, the Austin City Council passed Resolution Number 20191205-066, wherein the City of Austin acknowledged that a "history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy."¹²
- In April 2020, Austin Police Department officer Christopher Taylor shot and killed Mike Ramos, a Black and Hispanic man. Ramos was unarmed. Ramos was the second person officer Taylor shot and killed in less than one year.¹³
- In April 2020, a coalition of grassroots groups sent a letter to city leaders pointing to the killing of Mike Ramos as another example of failure to reform the Austin Police Department despite the clear push from community groups and City Council in that direction.¹⁴
- In April 2020, the City of Austin released an independent investigation into allegations of racist conduct involving an Assistant Chief. The report documented a pattern of racism and sexism that had permeated the Austin Police Department for years, and that department staffers did not expect to change.¹⁵
- In November 2020, the City of Austin's Office of Police Oversight, Innovation Office, and Equity Office released a joint report analyzing Austin Police Department motor vehicle stop data from 2015-2019. They concluded that Black people were overrepresented in motor vehicle stops, Black residents were three times more likely to

¹⁰ Amanda Ruiz, *Family of Doctor Killed by Police in 2019 Still Awaiting Justice*, Fox 7 Austin (July 28, 2021), <https://www.fox7austin.com/news/family-of-doctor-killed-by-police-in-2019-still-awaiting-justice>.

¹¹ Robert Sims and Alyssa Goard, *Fatal Use of Force by APD during Mental Health Calls Violates Human Rights, Report Finds*, (Sep. 25, 2019), <https://www.kxan.com/news/fatal-use-of-force-by-apd-during-mental-health-calls-violates-human-rights-report-finds/>

¹² Austin City Council Resolution 20191205-066 (Dec. 5, 2019), <https://services.austintexas.gov/edims/document.cfm?id=332753>.

¹³ Michael Barajas, *Why Protesters in Austin are Chanting 'Justice for Mike Ramos'*, (June 5, 2020), <https://www.texasobserver.org/mike-ramos-austin-police/>.

¹⁴ Austin Sanders, *Activists Call for Firing of APD Leadership in Wake of Officer Involved Shooting*, Austin Chronicle (April 27, 2020), <https://www.austinchronicle.com/daily/news/2020-04-27/activists-call-for-firing-of-apd-leadership-in-wake-of-officer-involved-shooting/>

¹⁵ Memorandum, City of Austin, *Investigation into Anonymous Complaints Alleging Use of Racist Language in the Austin Police Department and Next Steps* (Apr. 17, 2020), <https://services.austintexas.gov/edims/pio/document.cfm?id=338889>.

be searched than White residents, and that Black people were overrepresented in cases where their race was known by officers before being stopped.¹⁶

- In January 2021, a review of 112 Austin Police Department Training Academy videos over a seven-month period revealed a pattern of “dangerous racial and class stereotypes” in training materials and “reinforcement in videos of the idea that every encounter is potentially life-threatening” that encourages police overreactions and excessive use of force.¹⁷
- In January 2021, off-duty Austin Police officer Gabriel Guteirrez shot at Alex Gonzalez in his car eight times. Officer Gutierrez claimed Gonzalez aimed a weapon at him through the car window while driving erratically. Austin Police Officer Luis Serrato, who responded to the scene, shot the wounded Gonzales ten more times as he reached into the backseat of his car, where his infant child was. Alex Gonzalez was killed. A citizen panel that examined the evidence urged the police Department to fire officers Gonzalez and Serrato. The interim director of the city’s Office of Police Oversight also recommended that one of the officers be fired. Austin Police Chief Joe Chacon decided against disciplinary action.¹⁸
- In March 2021, the Austin City Council passed Resolution 20210325-037 guiding what should have been major reforms to the police academy curriculum intended to move Austin law enforcement from a “warrior to guardian” culture and launching a multi-report evaluation process guided by Kroll Consulting.¹⁹
- In April 2021, Kroll Associates, Inc. issued a report evaluating the Austin Police Department Training Academy’s ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices. According to the report, former cadets that resigned from the academy “said that their Academy class taught the ‘warrior mentality’ from the moment training began. They called the environment ‘toxic,’ ‘abusive,’ and ‘combative.’ Cadets felt that the instructors lacked empathy and did not care about their well-being, which they believed would create police officers who were indifferent to the community.” Instructors were reported to have selectively ridiculed minorities, females, smaller-statured cadets, older cadets, and

¹⁶ 2019 Joint report: Analysis of APD Racial Profiling Data, Office of Police Oversight, the Equity Office, and the Office of Innovation, (Nov. 2020), https://www.austintexas.gov/sites/default/files/files/Office%20of%20Police%20Oversight/Reports%20and%20Recommendations/2019_Joint_Report_Analysis_of_APD_Racial_Profiling_Data_FINAL.pdf.

¹⁷ Jeux Anderson, et al., Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel (Jan. 18, 2021), <https://docs.google.com/document/d/17IZB6nqQXtxX0f7y3mqPE9mDW0tlicQuKtrkKMZkeAI/edit>

¹⁸ Katie Hall and Tony Plohetski, Austin Police Chief Won’t Discipline Officers Who Shot Driver With Baby in Backseat, Austin American Statesman (Jan. 26, 2023), <https://www.statesman.com/story/news/crime/2023/01/26/austin-police-officers-not-punished-alex-gonzales-death-2021-shooting/69841113007/>.

¹⁹ Austin City Council Resolution 20210325-037 (Mar. 25, 2021), <https://services.austintexas.gov/edims/document.cfm?id=357869>

anyone who was perceived as unable to keep up with other cadets during a specific training. Instructors were also reported to have “implicitly taught their students to be biased in enforcing the law.” Cadets reported that bias was, “inherently a part of Academy culture and that instructors were indoctrinated into that culture.”²⁰

- In December 2021, the City of Austin released a third-party evaluation by James Joyce Consulting of the Austin Police Department. Among its findings, the report observed the Department had “an ‘us versus them mentality,’” that training was “militaristic,” officers lacked “awareness and sensitivity to Black history and culture in the Department” that a “spirit of care for fellow officers” did not extend to the community, and that “Every racial group in Austin is underrepresented in APD’s graduating cadet classes, except for white cadets, who are overrepresented when compared to the city’s demographic makeup.”²¹
- In January 2022, Kroll Associates, Inc. issued a report that observed the Austin Police Department “aggressively” employs stop and frisk; that officers escalated citizen encounters unnecessarily; that officers sometimes did not have valid criminal charges when they detained someone who failed to immediately comply; that use of force was often inappropriate; and that there were not proper supervisory safeguards to address inappropriate use of force.²² The report further found that Black Austinites were more likely to have force used against them during an arrest, and this was largely driven by arrests in low-violent-crime areas.
- In November 2022, Austin Police Officer David Sanchez shot and killed Rajan Moonesinghe, who was on his front porch aiming a gun at the interior of his own home. A Ring doorbell camera video of the shooting shows that Officer Sanchez shot Moonesinghe instantly after shouting his warning, without giving Moonesinghe a chance to comply.²³
- In December 2023, Austin-based organization Equity Action filed a lawsuit against the Austin City Manager, Austin Police Chief, and Director of the Office of Police Oversight seeking declaratory and injunctive relief for failure to implement multiple provisions of a voter-approved ballot initiative intended to improve police transparency and accountability.

²⁰ Kroll Associates, Inc., Austin Police Department: Review and Assessment of Training Academy (Apr. 23, 2021), <https://www.austintexas.gov/edims/document.cfm?id=359317>.

²¹ James Joyce Consulting, Racial Inequities and Institutional Racism: A Report Submitted to The City of Austin Equity Office and The Austin Police Department (Nov 2020), <https://services.austintexas.gov/edims/pio/document.cfm?id=352525>.

²² Kroll Associates, Inc., Evaluation of Austin Police Department: Use of Force / Public Interactions / Recruitment, Selection, and Promotions (Jan. 21, 2022), <https://services.austintexas.gov/edims/document.cfm?id=375462>

²³ Britny Eubank and Tony Plohetski, *Austin Police Officer Indicted in Connection with Deadly November 2022 Shooting*. KVUE (Dec. 20, 2023), <https://www.kvue.com/article/news/investigations/defenders/rajan-moonesinghe-austin-police-officer-indicted/269-1d3548b0-a1d1-4b0e-b157-6e02247c12e9>.

- In March 2023, Kroll Associates, Inc. issued a final report observing that “few curriculum changes” had been documented as a result of an Austin Police Department curriculum review process. The report noted a “lack of responsiveness by some instructors and supervisors” and “resistance to change within the Academy.”²⁴
- In February 2024, former officer Samm Leidtke filed a gender-based discrimination lawsuit against the Austin Police Department that alleged troubling Department practices. Allegations included that her training officer emphasized a practice referred to as "how to hunt," focusing on targeting vehicles that appeared suspicious for drugs or guns, then following them until a traffic violation could justify a stop.²⁵

²⁴ Memorandum, City of Austin, APD Training Academy: Curriculum Review Process Assessment by Kroll (Mar. 16, 2023), <https://services.austintexas.gov/edims/pio/document.cfm?id=404612>.

²⁵ Skye Seipp, *Ex-APD officer alleges culture of harassment in lawsuit: 'This was never going to stop'*, Austin American-Statesman (February 9, 2024) <https://www.statesman.com/story/news/local/2024/02/09/former-austin-police-officer-sues-city-claims-gender-discrimination-lawsuit-harassment/72255794007/>