

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ALBUQUERQUE,

1:14-cv-1025 JB/JFR

Defendant,

vs.

THE ALBUQUERQUE POLICE  
OFFICERS' ASSOCIATION,

Intervenor.

**MOTION FOR APPROVAL OF THIRD AMENDED AND  
RESTATED COURT-APPROVED SETTLEMENT AGREEMENT**

Plaintiff United States of America and Defendant City of Albuquerque (the Parties), with the concurrence of the Independent Monitor and Intervenor the Albuquerque Police Officers' Association, file this Motion pursuant to Paragraph 338 of the Second Amended and Restated Court-Approved Settlement Agreement (Second Amended CASA) (Doc. 465-1),<sup>1</sup>

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<sup>1</sup> Paragraph 338 provides:

The Parties may jointly stipulate to make changes, modifications, and amendments to this Agreement, which shall be effective, absent further action from the Court, 45 days after a joint motion has been filed with the Court. Such changes, modifications, and amendments to this Agreement shall be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate that the Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose. Where the Parties or the Monitor are uncertain whether a change to the Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties may agree to temporarily implement an alternative requirement. The Monitor shall assess whether the

seeking the Court's approval of a Third Amended and Restated Court-Approved Settlement Agreement (Third Amended CASA) that reflects proposed joint modifications to the CASA, attached hereto as Exhibit 2.

Within the last year, the Albuquerque Police Department (APD) has made major improvements in the Independent Monitor's assessment of its compliance with the terms of the CASA. Most notably, APD has now achieved 100% primary compliance, 99% secondary compliance, and 80% operational compliance with the terms of the CASA.<sup>2</sup> As noted by the Monitor in its 16th report (IMR-16), "[t]his is a ten percentage point increase in operational compliance during the IMR-16 reporting period, the highest level of operational compliance yet achieved by APD." Doc. 959 at 4. In addition to significantly improving its compliance ratings, APD has made internal changes that bear on the terms of the CASA, including reorganizing and expanding its Division of Data Analytics and hiring a Director of Analytics, creating the Bureau of Police Reform, and making changes in policies and procedures that reflect other restructuring of APD operations. In light of these achievements and changes, the Parties deemed it an appropriate time to review the provisions of the CASA with which APD remains

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suspension of the requirement, and the implementation of any alternative provision, is as, or more, effective at achieving the purpose as the original or current Agreement requirement, and the Parties shall consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment.

Second Amended CASA, Doc. 465-1 at 104.

<sup>2</sup> The Independent Monitor employs three compliance levels for purposes of the APD monitoring process: primary, secondary, and operational compliance. The three levels are fully defined in each Monitor report. *See, e.g.*, Doc. 959, Monitor's 16th Report, 7-8 (citations to court-filed documents in this Notice use ECF page numbering). In short, primary compliance means that APD policies comply with the terms of the CASA, secondary compliance means that APD training implements policies as written and complies with the terms of the CASA, and operational compliance means that the day-to-day operation of APD complies with the terms of the CASA in that "APD 'owns' and enforces its policies." *Id.* at 8.

out of compliance to assess whether any of them should be updated or modified, based on developments over the life of the CASA, and to collaboratively develop strategies for achieving the overarching goals of the CASA to promote “officer safety and accountability; constitutional, effective policing; and high-quality police services.” Doc. 465-1 at 1. The Parties also worked to consolidate certain requirements in the CASA that were previously spread out over multiple paragraphs, in order to streamline the document and simplify the Monitor’s compliance assessments.

The Court’s Memorandum Opinion and Order approving the original CASA required that, “[s]hould the parties wish to jointly modify the consent decree, they must file briefing explaining (1) the nature and purpose of the change; (2) a description of the practices or events necessitating the change; and (3) an explanation of why each party, separately, consents to the change.” Doc. 134 at 13. Accordingly, attached as Exhibit 1 is a redlined version of the Second Amended CASA, reflecting all of the changes made for the Third Amended CASA, with comments explaining the basis for each of those changes. Attached as Exhibit 2 is a clean copy of the Third Amended CASA. In addition, the Parties highlight some of the most notable changes for the awareness of the Court, the Amici, and the public below, as well as provide their separate explanations for consenting to these changes.

**I. Notable Proposed Changes to the Second Amended CASA**

**A. Changes to Review of Level 1 Uses of Force**

In August 2022, APD began a pilot project in two area commands to have Level 1 uses of force investigated by a centralized unit of civilian investigators. Typically, all uses of force have been investigated by sergeants, including the type of low-level force categorized as Level 1. APD instituted the pilot project to address concerns that Level 1 force investigations

diverted supervisory resources from other CASA requirements and APD operations. Under the CASA as currently written, all uses of force are reviewed and investigated by supervisors or sworn personnel. *See, e.g.*, Doc. 465-1, Second Amended CASA, ¶ 42 (“The use of force reporting policy shall require all officers to provide a written or recorded use of force narrative of the facts leading to the use of force to the supervisor conducting the review or the APD officer conducting the investigation.”). The Parties have made changes to the language of the CASA that give flexibility for all Level 1 uses of force to be investigated by civilian personnel, in the event the current pilot project is successful and expanded by APD. *See, e.g.*, Ex. 2, ¶ 42 (“The use of force reporting policy shall require all officers to provide a written or recorded use of force narrative of the facts leading to the use of force to the *force reviewer or investigator*.” (emphasis added)). If the pilot project is not expanded and made permanent, the language of the Third Amended CASA is broad enough to permit supervisors and sworn personnel to continue to review and investigate Level 1 uses of force.

**B. Changes to Timelines to Reflect the Terms of the Collective Bargaining Agreement Between APD and Intervenor**

When the City and Intervenor APOA negotiated a new Collective Bargaining Agreement (CBA) effective January 1, 2022, through June 30, 2023, they agreed to expand the timeline for administrative investigations by APD’s Internal Affairs Force Division from 90 to 120 days. The Parties have revised the language of the CASA to simply mirror the deadlines in the CBA so that the CASA need not be revised again, should the City and APOA negotiate different timelines in the future. *See* Ex. 2, ¶ 71 (revising paragraph to state that APD will complete Level 2 and Level 3 administrative investigations “within the applicable deadlines in the Collective Bargaining Agreement between the City and Intervenor.”).

### **C. Changes to the Crisis Intervention Section**

When the Parties negotiated the CASA in 2014, the predominant manner in which APD planned to address 911 calls involving individuals in crisis due to mental illness or behavioral health issues was through sworn personnel who were specially trained in crisis intervention. Thus, the original CASA focused on ensuring that APD maintained a “sufficient number of crisis intervention certified responders” who would “respond to calls involving those in mental health crisis.” Doc. 9-1, Original CASA, ¶ 123. However, in the intervening years, much has changed across the landscape of law enforcement interaction with individuals in crisis, with multiple response models taking hold, including co-response by police working with mental health practitioners and diversion to a non-law enforcement response. Both APD and the City have continued to innovate in this area, most notably with the City forming a cabinet-level department, Albuquerque Community Safety (ACS), that provides a non-law enforcement response to 911 calls for mental health, substance abuse, and homelessness issues. Since ACS’s inception, the City estimates that over 15,000 calls for service have been diverted from APD to ACS.<sup>3</sup> The Parties anticipate that a greater percentage of calls for service will continue to be diverted to ACS, lessening the demand on APD to respond to calls that were previously directed to crisis intervention certified responders within the Department.

Based on these changes, the Parties agree that it is an appropriate time to amend the CASA to ensure that the City’s investment in crisis intervention certified responders does not come at the expense of a non-law enforcement response like ACS that may be more effective

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<sup>3</sup> See <https://www.cabq.gov/acs/documents/acs-monthly-informational-report-feb-2023-2.pdf> (estimating that 15,611 calls for service had been diverted). As this was the estimated number of calls diverted as of February 2023, the number is likely higher as of the date of this filing.

and efficient at addressing some 911 calls that present mental and behavioral health issues. As such, the Parties have agreed to remove from the Third Amended CASA the requirement that APD maintain a “sufficient” number of crisis intervention certified responders and to instead focus on APD collecting and analyzing data in order to better assess the City’s overall crisis response efforts and determine where gaps in critical services remain. *See* Ex. 1, ¶¶ 123, 127, 137. In addition, the Parties have removed the CASA requirement that APD maintain a Crisis Outreach and Support Team (COAST), as the function of that civilian team overlapped significantly with ACS, and the Parties agree that those resources are better shifted to ACS itself. *See, e.g.*, Ex. 1, ¶¶ 132-37 (removing the requirement that APD maintain COAST as part of its crisis prevention efforts).

## **II. The Parties’ Explanations for Consenting to the Proposed Changes to the Second Amended CASA**

The Parties worked together over a period of months to agree upon the changes to the Second Amended CASA proposed herein. The reasons each party consents to these changes are set out below.

### **A. United States**

The United States’ goal has not shifted since the inception of this litigation: “to remedy the Defendant’s violations of constitutional and federal law and to ensure that the Albuquerque Police Department implements sustainable reforms that will result in effective and constitutional policing.” Complaint, Doc. 1 at 1. The Monitor’s most recent reports demonstrate that many of the reforms implemented by APD are indeed sustainable and are promoting constitutional policing. However, these reports and the Parties’ years of experience in implementing the CASA also demonstrate that certain requirements within the Second Amended CASA should be modified to make them clearer (e.g., Paragraph 41, which could be

read to require that personnel report a use of force that has already been reported); more efficacious (e.g., Paragraph 267, requiring that members of Community Policing Councils (CPCs) complete the Citizens Police Academy, which effectively barred people with minor criminal histories from participating in CPCs); and more consistent with current context and practices (e.g., Paragraph 191, which mandates deadlines for Internal Affairs Division investigations that do not match the deadlines within the current Collective Bargaining Agreement between the City and Intervenor). The United States believes that the modifications proposed by the Parties remedy these issues and provide an effective scaffolding to support the City's work to attain full and effective compliance with the requirements of the CASA.

**B. City of Albuquerque**

The City has worked to achieve compliance with the CASA's requirements and this work has resulted in the highest compliance rating in the history of the settlement agreement. In order to ensure the CASA is properly tailored to the current status of this litigation, the City believes the CASA should be revised. These revisions will not relieve the City from the requirements related to the original purpose of the settlement agreement, but rather ensure that the requirements reflect the current reform efforts and those moving forward. While these revisions are generally minor, they will ensure progress is not stymied by the potentially outdated wording.

\* \* \*

The City has worked diligently over the past few years to come into compliance with the requirements of the CASA. That work is now bearing fruit. The Parties are confident that a renewed effort underwritten by the modifications in the Third Amended CASA will promote "officer safety and accountability; constitutional, effective policing; and high-quality police

services.” Doc. 9-1, Original CASA, 5. The Parties have shared their proposed modifications to the CASA with the Independent Monitor, who agrees that they are reasonable and appropriate. Accordingly, the Parties respectfully submit the Third Amended and Restated Court-Approved Settlement Agreement for the Court’s review and approval.

April 12, 2023

Respectfully submitted,

Plaintiff UNITED STATES OF AMERICA:

ALEXANDER M.M. UBALLEZ  
United States Attorney  
District of New Mexico

AJA BROOKS  
Executive Assistant U.S. Attorney  
RUTH KEEGAN  
Civil Division Chief  
U.S. Attorney’s Office  
District of New Mexico  
P.O. Box 607  
Albuquerque, NM 87103  
Telephone: (505) 346-7274  
Aja.Brooks@usdoj.gov

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

STEVEN H. ROSENBAUM  
Chief  
PAUL KILLEBREW  
Deputy Chief

/s/ Jean Zachariasiewicz  
JEAN ZACHARIASIEWICZ  
PATRICK KENT  
JARED HAGER  
Trial Attorneys  
Special Litigation Section



Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530  
Telephone: (202) 305-3229

Defendant CITY OF ALBUQUERQUE:

*Approved by Email*

LAUREN KEEFE, CITY ATTORNEY  
City Attorney  
P.O. Box 2248  
Albuquerque, NM 87103  
(505) 768-4500  
lkeefe@cabq.gov

TAYLOR RAHN  
Robles, Rael & Anaya, P.C.  
500 Marquette NW, Suite 100  
Albuquerque, NM 87102  
(505) 242-2228  
taylor@roblesrael.com

**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2023, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

*/s/ Jean Zachariasiewicz*  
JEAN ZACHARIASIEWICZ