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March 27, 2019

Augustin Arbulu
Executive Director
Michigan Department of Civil Rights
3054 West Grand Boulevard, Suite 3-600
Detroit, MI 48202

Re: Grand Rapids Police Department

Dear Director Arbulu,

We very much appreciate that the Michigan Department of Civil Rights is holding hearings to address the long-standing and entrenched issue of discriminatory policing by the Grand Rapids Police Department (GRPD). We write to share background information for your investigation based on the ACLU's work, to suggest areas for investigation, and to outline promising approaches that we believe should guide work to reform policing in Grand Rapids.

ACLU Challenges to Discriminatory GRPD Policies and Actions

The ACLU routinely receives complaints about abusive and discriminatory policing by the GRPD. While we cannot share information about individuals who have filed complaints with us without the individuals' permission, we will be encouraging complainants to contact you directly.¹

We can, however, share just a couple of examples where we are representing people who have been discriminated against by the GRPD. The individual incidents are deeply concerning, but perhaps even more troubling is the way in which these incidents are embedded into policies and practices that allow police to act on conscious or unconscious biases in their work.

No Trespassing Letters (*Hightower v. Grand Rapids*): For years, the Grand Rapids Police Department has solicited business owners to sign "Letters of Intent to Prosecute Trespassers." These letters do not articulate a business owner's desire to keep a specific person off their property and are not directed at any particular person. Instead, police officers use these generalized letters to decide for themselves who does not "belong" on premises that are generally

¹ Complaints we have received from multiple individuals allege, among other things that GRPD: racially profiled youth of color who would not have been otherwise stopped; issued false warrants to the U.S. Marshall's Fugitive Task Force and took DNA without consent and without a warrant; filed retaliatory charges; engaged in excessive force and police brutality in response to a noise complaint; and engaged in assorted other acts of police brutality.

open to the public. In many cases, the police arrest people who have done nothing wrong, including patrons of the business.

In 2013 the ACLU brought a federal lawsuit to challenge the use of these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include:

- Tyrone Hightower, an African American man who was arrested and jailed for “trespassing” because he was waiting in his vehicle in a parking lot to see if his friends, who were in line in the rain at a club, would get in or whether they needed a ride elsewhere.
- Jacob Manyong, an African immigrant who allegedly “trespassed” when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot.
- Kirk McConer, an African American man who was stopped for “trespassing” because he was chatting with a friend as he exited a store after buying a soda. When Mr. McConer tried to leave, the officer arrested him with so much force that Mr. McConer was injured.
- Percy Brown, an African American man who was charged with “trespassing” for sitting in his car at a club while waiting for a friend to come out.

An expert commissioned by the ACLU to analyze trespass incidents in Grand Rapids found significant racial disparities. *See Exhibit A, Hightower Expert Reports (analyzing citation and arrest data for trespassing in Grand Rapids between 2011 and 2013)*². 70% of individuals stopped at an officer’s initiative (i.e. pursuant to no trespass letters) were African American. By comparison, citizen complaints resulted in roughly equal numbers of stops of African Americans and Whites. In addition, the expert found that being African American results in a 120% increase in the likelihood of arrest versus citation following a stop for trespassing on commercial business property.

The deposition transcripts and documents from this case are also telling. For example, police officer Anthony Leonard testified that he did not believe Percy Brown when Mr. Brown told him that he was waiting in his car to pick up a friend. Officer Leonard therefore charged Mr. Brown with trespassing. *See Exhibit B, Leonard Deposition Transcript, 162-165*. When Mr. Brown’s attorney asked whether he too was trespassing when he picked up his daughter in the early morning hours at a rowdy bar where she worked, Officer Leonard said that the attorney would NOT be trespassing since:

most middle age, white males are probably not going to frequent Cheero’s on hip hop night, [and so] I’m very comfortable saying you are probably there to pick up your daughter.

² The GRPD hired its own expert, who disputed that the trespassing arrest data showed racial profiling.

Id. at 171-174. Leonard could not identify any difference between Mr. Brown and the attorney (whom Leonard admitted are both middle-aged) that would lead him not to believe that Mr. Brown (who is African-American) was waiting for a friend, while believing that the attorney (who is white) was waiting for his daughter:

Q: Any other difference between my appearance and Percy's appearance as we're sitting out in the parking lot waiting at Cheero's other than race?

A: No.

Id. at 178.

Another example is a declaration submitted by Captain Curt VanderKooi in a related case, in which he sought to justify a trespassing arrest, saying: "My team has had to spend considerable amounts of time monitoring Cheero's, responding to calls for service, and addressing citizen's complaints of the activities at Cheero's, especially on Saturday nights when Cheero's hosts an Urban or hip hop night." Exhibit C, VanderKooi Declaration. This statement suggests that the GRPD spends more time monitoring clubs at events where people of color are expected to be present, based on the type of music being played, than at the same club when the music selection is more likely to attract a primarily white crowd.

In October 2018, the U.S. District Court for the Western District of Michigan ruled that in three of the four cases the officers clearly acted without probable cause of trespass. The court sent the fourth case to trial (scheduled for later this summer) to resolve factual disputes. In addition, in May 2017 the Michigan Court of Appeals ruled in a related case that the GRPD's use of the no trespass letters was unconstitutional. *See People v. Maggit*, 903 N.W.2d 868, 872 (Mich. Ct. App. 2017).

In response to those decisions, the GRPD has announced that it is now limiting the use of No Trespass Letters. Given that No Trespass Letters cannot legally be used for their original purpose (which was to allow the police to make arrests at businesses without contacting the business owner when a person seems "out of place"), we question why the GRPD would still need to use such letters. We are currently negotiating with the City about policy, practice and training changes that would address our concerns.

Photograph and Print (*Johnson v. VanderKooi; Harrison v. VanderKooi*): For years, the GRPD has also had a "photograph and print" policy under which, when the GRPD stops an individual who is not carrying identification, the person is photographed and fingerprinted. Many of those stopped are youth of color³.

The ACLU represents two such youth who are challenging that policy:

³ Trial counsel in this litigation submitted expert evidence of significant racial disparities in the GRPD's use of the photograph and print procedure. However, the trial judge ultimately found that evidence inadmissible. We would be happy to provide that report if the MDCR wishes to review it.

- Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model train and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy train is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him.
- Denishio Johnson, an African American 15-year-old, was walking through an athletic club parking lot, when he was stopped by the GRPD, who wanted to investigate him in relation to vehicle break-ins that had occurred there in the past. Nothing tied Denishio to the earlier break-ins. Nevertheless, instead of letting him go on his way, the police photographed and fingerprinted him because he did not have identification.

Even though Keyon did nothing more than admire a toy and Denishio did nothing more than walk through a parking lot, their pictures and fingerprints are now in the GRPD's database. The Grand Rapids police previously used this "photograph and print" procedure on about 1000 people per year, although the practice has since been curtailed in response to the litigation.

In July 2018 the Michigan Supreme Court ruled in favor of Keyon and Denishio, holding that the City of Grand Rapids could be held liable for authorizing unconstitutional conduct by their employees. The case is now back before the Court of Appeals to decide whether police may seize biometric data like fingerprints without probable cause.

The most striking thing about Keyon and Denishio's cases is the tremendous resources the GRPD has invested into defending the photograph and print policy, with the case going all the way to the Michigan Supreme Court, and now being contested further on remand. The GRPD's insistence on fighting in court for the photograph and print policy is particularly problematic given that this policy has long been a source of tremendous friction between the GRPD and communities of color. Officers who photograph and fingerprint youth simply because they do not have ID are treating those youth like criminals, even when all they are doing is engaging in the most ordinary behavior. We are deeply concerned that the GRPD is unwilling to end this policy, no matter the cost to community trust.

Contacting ICE Based on a Person's Ethnicity, and then Demeaning Him Based on His Disability (Jilmar Ramos Gomez): The GRPD contacted U.S. Immigration and Customs Enforcement (ICE) on Jilmar Ramos-Gomez, a decorated Marine combat veteran and United States citizen who was born and raised in Grand Rapids, Michigan. ICE was contacted based on Mr. Ramos-Gomez's recognizably Latino name and appearance. A full description of that incident, including a timeline, is included as Exhibit D (Appeal to Civilian Appeal Board).

Briefly, GRPD officers arrested Mr. Ramos-Gomez on November 21, 2018, after an incident where he trespassed at Spectrum Hospital. Mr. Ramos-Gomez developed Post Traumatic Stress Disorder as a result of bravely serving our country in Afghanistan. Mr. Ramos-Gomez had identification on him that showed he is a United States citizen and a veteran, including his U.S. passport, U.S. Marine Corp tags, and REAL ID compliant driver's license.

Captain Curt VanderKooi, who was off-duty, saw a picture of Mr. Ramos-Gomez in a local news report, and then contacted an immigration enforcement officer at ICE to investigate Mr. Ramos-Gomez's "status." ICE incorrectly determined that Mr. Ramos-Gomez was a foreign national unlawfully present in the United States, thanked Captain VanderKooi for "the lead" and encouraged him to continue providing ICE with "any other good leads." Captain VanderKooi later sent a copy of the police report to his ICE contact in which he described Mr. Ramos-Gomez as "loco" and "mad".

Although the prosecutor flagged that Mr. Ramos-Gomez is a U.S. citizen and veteran, no action was taken by anyone at the GRPD to prevent ICE from detaining and trying to deport him. ICE subsequently unlawfully detained Mr. Ramos-Gomez for three days until his family's attorney intervened on his behalf by providing documentation proving his United States citizenship.

Lawyers for the ACLU and the Michigan Immigrant Rights Center, representing Mr. Ramos-Gomez, requested an investigation. At the conclusion of an investigation by the Internal Affairs Unit, the GRPD determined that Captain VanderKooi's decision to have Mr. Ramos-Gomez's "status" investigated by ICE did not violate GRPD's impartial policing policy. We have appealed that decision to the Civilian Appeal Board.

The actions of Captain VanderKooi in calling ICE based on Mr. Ramos-Gomez's ethnicity and in disparaging his disability, as well as the actions of other officers in blithely ignoring information that ICE was trying to deport a U.S. citizen, raise serious questions about racial profiling and treatment of people with disabilities. The failure of the Internal Affairs investigation to hold Captain VanderKooi accountable raises serious questions about the GRPD's ability to police itself

Areas for Additional Investigation

We also want to suggest several areas for additional investigation by the MDCR.

First, there have been numerous, highly publicized incidents where the GRPD has handcuffed or pulled guns on children of color, in addition to the recent incident involving two Latino youths, which helped spur the MDCR's hearings. While the children's names are often not public, based on publicly available information, we recommend that the MDCR investigate incidents that occurred on:

- March 24, 2017, Francis St. near the Kroc Center.
- October 21, 2018, Lafayette south of Leonard.
- September 6, 2018, Howard St.
- August 26, 2018, Alto & Griggs.
- October 9, 2019, Batavia Place.
- December 6, 2018, Turner near Richmond.

Second, we would encourage the MDCR to seek data regarding the race of individuals arrested for low-level offenses. We were provided with a copy of the attached report showing low-level offenses resulting in arrests. Exhibit E. This report was prepared by the 61st district court administrator for a member of the Grand Rapids City Commission (who then provided it to us). We understand that this report concerns convictions in cases where there was an arrest, not just a citation.

If there are, in fact, approximately 7,000 *arrests* per year for petty offenses – which include things like jaywalking, littering, and driving with expired tabs – that is very concerning. In any event, the MDCR should request and analyze data on arrests and citations for low-level offenses to determine if there is disparate enforcement based on race.

Third, we would encourage the MDCR, pending a review, to send a preservation notice to the GRPD to ensure that all videos related to use of force during the period under investigation are preserved. Because we frequently receive complaints that GRPD officers are using excessive force against people of color and people with mental disabilities, we believe the MDCR will likely want to review many or all of the GRPD videos where force was used. The MDCR should therefore take steps now to ensure that this evidence is preserved.

Recommendations for Reform

For some time now the subject of police reform has been at the center of public debate. What has emerged is a set of standard recommendations that vary in value depending largely on the particular circumstances of particular law enforcement agencies. These proposed reforms include, among others:

- Body and dashboard cameras
- Community oversight
- Enhanced discipline
- Cultural competency training
- Community policing
- Mental health screening/periodic evaluation
- De-escalation
- Restorative Justice

These and other measures may be useful to a greater or lesser degree, and they should be used whenever they will be helpful. However, based on observations and conversations with law enforcement personnel across the state, the ACLU of Michigan urges a special focus on two areas:

A. Police Culture

The ACLU of Michigan has observed a growing awareness among law enforcement administrators of the need for improved relationships with communities of color. Many have taken affirmative steps to establish new policies as well as provide their officers with training

opportunities. The Michigan Commission on Law Enforcement Standards (MCOLES) provides training for police officers statewide and has incorporated into its curriculum training designed to improve police/community relations. Nevertheless, the complaints about police/community encounters persist. Frequently these complaints concern demeanor. On some occasions, even when physical force is not employed, there are complaints that officers are unnecessarily aggressive or hostile in their approach, and that intimidation appears to be their primary objective. This creates a high potential for these encounters to end in violence, and almost always there is damage to the relationship between law enforcement and the community.

Some officers have acknowledged their objective is, with aggressive behavior, to establish police authority during stops of pedestrians and motorists because officers walk into encounters with unknown individuals. The officers' hope is they will be able, by their intimidating appearance, to discourage any thoughts of physical reaction. This may be a factor in some of the complaints about intimidating behavior by Grand Rapids police officers. Training provided to the officers may discourage this method of policing, but it runs headlong into resistance fueled by a police culture that has endured for generations.

Rarely acknowledged is the role of racial stereotypes in decisions about who should be the target of this type of aggressive approach. The reluctance of officers to depart from traditional methods of interacting with communities of color often has less to do with purposeful racial bias than it does with fears that new, friendlier approaches in "dangerous" communities can be fatal. Consequently, a change in police culture is less likely to be successfully imposed from without than if the officers are motivated to change the culture themselves. Providing incentives for such change presents a challenge. Disciplining officers who demonstrate unnecessary hostility toward the community seems logical, but law enforcement administrators are well-aware of the obstacles to punitive measures posed by police unions and other influential constituencies connected with the law enforcement community.

With the difficulties associated with discipline in mind, the ACLU of Michigan encourages law enforcement administrators to consider the inverse. Rewards for good behavior may provide incentives for a change in police culture. If only the officers who abandon old-fashioned hostile interactions with the public become eligible for commendations, choice shifts and assignments, promotions, overtime assignments, etc., it is possible that an increasing number of officers will recognize the value to their own careers of adopting a new approach to policing.

B. Emergency Response Division of Labor

A few years ago, Dallas Police Chief David Brown said: "We're asking cops to do too much in this country. Every societal failure we put it off on the cops to solve. Not enough mental health funding, let the cops handle it...we got a loose dog problem, let's have the cops chase loose dogs. Schools fail, let's give it to the cops...That's too much to ask. Policing was never meant to solve all those problems."

Indeed, on any given day, a police officer may be called upon to function as: a social worker, substance abuse counselor, grief counselor, mental health professional, paramedic, mediator, or animal control official. Yet, the training officers receive is primarily geared to the role they play

as paramilitary soldiers. Consequently, police officers may, with disastrous results, use a paramilitary approach in situations that actually require the unique skills needed to defuse a domestic quarrel, or calm an individual coping with a mental disability, or to redirect into positive directions the energy of young people who lack purpose and self-esteem.

Grand Rapids, like most cities, may benefit from reconsidering the conventional emergency response model that relies too often and too heavily on police. After-the-fact examination of some of the incidents that prompted this hearing might lead some to conclude that if different types of professionals had intervened rather than police officers, there may have been different results.

Any decisions to diversify the professional personnel available to respond to emergencies will almost certainly lead to budgetary concerns. However, ever-present is at least one option. That is the reduction of the number of police officers and their replacement by drug counselors, mental health professionals, etc.

We appreciate that the MDCR is investigating the long-standing problems with the Grand Rapids Police Department. Please let us know if there is any other information we can provide.

Sincerely,

/s/ Miriam Aukerman
Senior Staff Attorney

/s/ Mark P. Fancher
Racial Justice Project Staff Attorney

Encl.

Exhibit A: *Hightower* Expert Reports

Exhibit B: Leonard Deposition Transcript

Exhibit C: VanderKooi Declaration

Exhibit D: Ramos-Gomez Appeal to Civilian Appeal Board

Exhibit E: Low Level Offenses