

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
  
v.  
CITY OF SEATTLE,  
Defendant.

No. 2:12-cv-01282-JLR

**DECLARATION OF CHRISTINA FOGG IN  
SUPPORT OF UNITED STATES’  
MEMORANDUM IN SUPPORT OF JOINT  
MOTION FOR TERMINATION OF  
PARAGRAPHS 69-168 OF THE CONSENT  
DECREE**

I, Christina Fogg, declare as follows:

1. I am an Assistant U.S. Attorney for the Western District of Washington and I am counsel of record for the Plaintiff United States of America in the above-captioned matter. I am over the age of 18 and am competent to testify in court about the matters stated herein.

2. Attached as **Exhibit A** is a true and correct copy of a letter dated December 3, 2010 from 35 community groups received by the U.S. Department of Justice Civil Rights Division and the U.S. Attorney’s Office for the Western District of Washington.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

1 Executed this 7<sup>th</sup> day of May, 2020.

2 Respectfully submitted,

3 BRIAN T. MORAN  
4 United States Attorney

5 *s/ Christina Fogg*  
6 CHRISTINA FOGG, WSBA No. 40159  
7 Assistant United States Attorney  
8 United States Attorney's Office  
9 700 Stewart Street, Suite 5220  
10 Seattle, Washington 98101-1271  
11 Phone: 206-553-7970  
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13 Email: [Christina.Fogg@usdoj.gov](mailto:Christina.Fogg@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2020, I have electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys of record:

- Brian T. Moran [bmoran@usdoj.gov](mailto:bmoran@usdoj.gov)
- Annette L. Hayes [Annette.Hayes@usdoj.gov](mailto:Annette.Hayes@usdoj.gov)
- Christina Fogg [Christina.Fogg@usdoj.gov](mailto:Christina.Fogg@usdoj.gov)
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- Paul A. Olsen [Paul.Olsen@seattle.gov](mailto:Paul.Olsen@seattle.gov)
- John Wolfe [wolfe@orrick.com](mailto:wolfe@orrick.com)

DATED this 7<sup>th</sup> day of May, 2020, at Seattle, Washington.

s/ Brittany Cirineo  
Brittany Cirineo, Legal Assistant (Contractor)

# **Exhibit A**



December 3, 2010

Thomas Perez  
Assistant Attorney General  
United States Department of Justice Civil Rights Division,  
Special Litigation Section  
950 Pennsylvania Ave. NW Washington, D.C. 20530

Honorable Jenny Durkan  
United States Attorney  
700 Stewart St.  
Seattle, WA 98101

ACLU OF WASHINGTON  
FOUNDATION  
901 FIFTH AVENUE #630  
SEATTLE, WA 98164  
T/206.624.2184  
WWW.ACLU-WA.ORG

**Re: Request to Investigate Pattern or Practice of Misconduct by  
Seattle Police Department**

JESSE WING  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

Dear Mr. Perez and Ms. Durkan,

The American Civil Liberties Union of Washington and the community organizations listed below request that the Civil Rights Division of the Department of Justice (DOJ) open a pattern or practice investigation into multiple incidents of excessive force by the Seattle Police Department (SPD), particularly force used against persons of color.

Recent Incidents of Excessive Force

Over the past 18 months, the City of Seattle has witnessed a series of incidents involving Seattle police officers inflicting physical violence on city residents. In at least one case, a death resulted (a matter that may already be the subject of a DOJ criminal investigation). In each case, the use of physical force appeared unnecessary and excessive. We believe a DOJ investigation is now warranted.

Following are brief descriptions of incidents that have raised concerns that lead us to make this request.

June 11, 2009: Daniel Macio Saunders, an African-American man, was released from jail due to a bureaucratic mistake. Mr. Saunders did not know that he should not have been released, and went to the Seattle Police evidence unit to pick up his belongings. A police video shows Mr. Saunders opening the door to the evidence room lobby to admit three uniformed Seattle police officers. Immediately upon entry, the officers tackled Mr. Saunders, kicked his face and, for several minutes, administered blows to various parts of his body with their batons.<sup>1</sup>

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News articles describing the incident state that the officers inflicted blows to Saunders' body with their flashlights and fists and used a Taser in "touch mode" several times on him.<sup>ii</sup> Saunders has filed a lawsuit as a result of this incident. The Seattle Police Department's internal investigation found the officers to be exonerated and ruled their conduct was lawful.

April 17, 2010: Seattle police officers stopped a Latino man they believed might be a suspect in a robbery south of Lake Union. They ordered the man to lie face down on the ground while they continued their investigation. The man complied. Video shows that while the man was lying prone on the sidewalk, an officer kicked him in the face and threatened to beat the "Mexican piss" out of him.<sup>iii</sup> Another officer stomped on his legs as still more officers looked on. Shortly thereafter he was released from the scene.<sup>iv</sup>

April 24, 2010: One of the same officers involved in the April 17, 2010 incident arrested a young man after a bar fight. The man was handcuffed and placed in the back of a patrol car where, he claims, the officer repeatedly choked him. Unfortunately, the in-car video camera that should have recorded the activity in the back of the car was not activated.<sup>v</sup> We include this incident because it appears to be another example of excessive force and because we believe DOJ should investigate whether other individuals have suffered assaults by police officers when the in-car video cameras have not been activated.

June 14, 2010 and earlier jaywalking incidents: An SPD officer saw several young people jaywalking near Franklin High School. The officer confronted a 17-year-old African-American girl. Video of the incident shows that after she put her hands on him, the officer punched the girl in the face.<sup>vi</sup>

Another incident in 2009 also started with a jaywalking stop and ended up with a lawsuit for excessive force after the teenager who was confronted by police suffered a broken nose and concussion. The incident was also captured on video.<sup>vii</sup>

Four different police auditors for Seattle have noted that simple jaywalking stops too often result in physical confrontations between police and citizens, and they have called upon the SPD to take steps to reduce such incidents. Despite the auditors' calls since 2004 for improved training and supervision to de-escalate such situations, confrontations over jaywalking stops, particularly those involving persons of color, have not ceased.<sup>viii</sup>

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August 30, 2010: A Seattle police officer shot and killed John T. Williams, a man who belonged to a First Nations Tribe. Williams was well known in the community as a wood carver. The in-car video camera from the officer's car shows Williams crossing the street in the crosswalk. He held a piece of wood and his 3-inch carving knife in his hand. The officer stopped his car, got out and yelled at Williams to drop the knife, but it is unclear if Williams heard the officer since he is partially deaf. So far, no evidence has come to light of any aggressive or threatening act by Williams toward the officer or anyone else, and there is physical evidence indicating Williams was not facing the officer when he was shot multiple times. The press has reported that the SPD Firearms Review Board made a preliminary finding that the shooting was unjustified, and an inquest is pending.<sup>ix</sup>

October 18, 2010: A convenience store's surveillance camera shows an African-American teenager entering the store, putting his hands up and waiting. The youth's name has not been reported since he is a juvenile. A non-uniformed Seattle police officer enters the store and kicks the youth hard in the groin area, causing him to fall to the ground. While the youth is on the ground, the plainclothes officer kicks him several times more with blows apparently aimed at the youth's head. A uniformed officer enters, pushes the kicking officer to the side, and immediately handcuffs the unresisting youth.<sup>x</sup>

This Pattern of Violent Incidents Warrants a Department of Justice Investigation

The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141 ("Section 14141"), authorizes the United States Attorney General to conduct investigations to eliminate a "pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." The DOJ's website explains that the statute "prohibits law enforcement agencies from regularly violating existing constitutional protections against police misconduct, such as excessive force, false arrests, unreasonable searches or seizures, and intentional racial or ethnic discrimination."

The ACLU asks that DOJ initiate an investigation under this statute because the disturbing incidents of excessive force inflicted on residents of Seattle, and especially on persons of color, have continued despite actions and statements from the Police Department and City leadership. The officers appear to inflict injury out of anger at the individual rather than the need to protect public safety. Distrust of the police by communities of color grows as a result, and it becomes harder for the Seattle Police Department to do its job of keeping all Seattle residents safe.

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The DOJ is well-equipped to investigate the cause of these repeated incidents. The investigation should determine why the police initiated or escalated the confrontations; whether and why the officers perceived a threat from certain individuals; whether officers view the use of force differently when they are confronting a person of color; why the officers chose not to use de-escalation tactics in responding to perceived law violations in order to avoid the use of violence; whether SPD employees who witness excessive force promptly reported it; whether the SPD supervisors promptly and properly gathered the evidence and fully investigated the allegation of use of force; and what caused contradictions between the initial statements of the officers involved and other evidence.

All residents of Seattle deserve equal and professional treatment by police officers. But these highly publicized incidents have further eroded an already strained relationship between the Seattle Police Department and parts of our community. The Seattle Police Department has compounded the feelings of distrust when its spokespeople attempt to justify the involved officers' actions based on factors unknown to the officers at the time of the incidents, such as a person's criminal history, mental illness, or substance abuse. For example, the Department's spokesperson acknowledged that it was unknown whether the officer involved knew Mr. Williams, yet he commented shortly after the shooting that Mr. Williams had been "arrested many times."<sup>xi</sup>

We request that the Civil Rights Division of the Department of Justice promptly investigate whether the Seattle Police Department has engaged in a pattern or practice of violations of civil rights by using unnecessary and excessive force against the residents of Seattle in violation of federal law. The DOJ has the authority and tools to investigate these troubling incidents; to evaluate the SPD's policies, practices, training and supervision; and to provide technical assistance, advice and guidance to the City of Seattle. Through such an investigation, the DOJ can significantly improve equality, fairness, and public safety throughout Seattle.

Sincerely,



Kathleen Taylor  
Executive Director  
ACLU of Washington

Michele Wong, President  
Asian Bar Association of Washington

Verlene Jones, President  
A. Philip Randolph Institute, Seattle

Andrea Caupain, Executive Director  
Central Area Motivation Program

Diane Narasaki, Executive Director  
Asian Counseling and Referral Service

S. Arsalan Bukhari, Executive Director  
Council on American-Islamic Relations of  
Washington State

Alaric Bien, Executive Director  
Chinese Information and Service Center

Estela Ortega, Executive Director El  
Centro de la Raza



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Rev. Steve Baber, President  
Community Christian Leaders Coalition

Leslie Irizarry-Hougan, Chair  
Immigrant and Refugee Advisory Board,  
City of Seattle

Juan Jose Bocanegra  
El Comité Pro Reforma Migratoria y  
Justicia Social

Merril Cousin, Executive Director  
King County Coalition Against Domestic  
Violence

Sharyne Shiu Thornton, PhD, Executive  
Director  
International District Housing Alliance

Lynn Domingo, Community Organizer A  
Legacy of Leadership, Equality, and  
Organizing

Robert Chang, Director. Fred T. Korematsu  
Center for Law and Equality

Nicole Gaines, President  
Loren Miller Bar Association

Fe Lopez, President-Elect  
Latina/o Bar Association of Washington

Sahar Fathi, President  
Middle Eastern Legal Association of  
Washington

Rev. Paul Benz, Director  
Lutheran Public Policy Office

Rev. Harriet Walden, Executive Director  
Mothers for Police Accountability

Dorry Elias-Garcia, Executive Director  
Minority Executive Directors Coalition

Mary Nguyen, Co-Chair National Asian  
Pacific American Women's Forum –  
Seattle

James Bible Esq., President  
NAACP of Seattle King County

Bree Kame'enui-Ramirez, President  
Northwest Indian Bar Association

Jorge L. Barón, Executive Director  
Northwest Immigrant Rights Project

Chandra Gary –Simmons  
People advocating Involvement in  
Democracy

Pramila Jayapal, Executive Director  
OneAmerica

Andy Sachs, President  
QLaw

David West, Director  
Puget Sound Sage

Patricia Hayden and Steve Daschle, Co-  
Chairs  
Seattle Human Services Coalition

Tim Harris, Executive Director  
Real Change

Amit Ranade, Treasurer  
South Asian Bar Association of  
Washington

Alison Eisinger, Executive Director  
Seattle/King County Coalition on  
Homelessness

Janeen Comenote, Development Officer  
United Indians of All Tribes

Jesus Rodriguez, Co-Chair  
Trusted Advocates Association

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Endnotes:

<sup>i</sup> <http://www.youtube.com/watch?v=VWpwXj-x6go>

<sup>ii</sup> [http://seattletimes.nwsourc.com/html/localnews/2013276590\\_arrestsuit28m.html](http://seattletimes.nwsourc.com/html/localnews/2013276590_arrestsuit28m.html)  
[http://seattletimes.nwsourc.com/html/localnews/2010264603\\_saunders13m.html](http://seattletimes.nwsourc.com/html/localnews/2010264603_saunders13m.html)

<sup>iii</sup> <http://www.kirotv.com/news/23479966/detail.html>

<sup>iv</sup> [http://seattletimes.nwsourc.com/html/localnews/2011917010\\_opa21m.html](http://seattletimes.nwsourc.com/html/localnews/2011917010_opa21m.html)  
[http://seattletimes.nwsourc.com/html/localnews/2011894195\\_coalition19m.html](http://seattletimes.nwsourc.com/html/localnews/2011894195_coalition19m.html)

<sup>v</sup> <http://www.kirotv.com/news/25687185/detail.html>

<sup>vi</sup> [http://seattletimes.nwsourc.com/html/theblotter/2012141464\\_--  
from\\_times\\_staff\\_reporter\\_11.html](http://seattletimes.nwsourc.com/html/theblotter/2012141464_--from_times_staff_reporter_11.html)

<sup>vii</sup>

[http://seattletimes.nwsourc.com/html/localnews/2012663534\\_apwajaywalklawsuit.h  
tml](http://seattletimes.nwsourc.com/html/localnews/2012663534_apwajaywalklawsuit.html)

<sup>viii</sup> [OPA Civilian Auditor's Report for April – December, 2003, page 14](#)  
[OPA Civilian Auditor's Report for October 2005-March 2006, pages 9-10](#)  
[OPA Civilian Auditor's Report for October 2006 to March 2007, page 5](#)  
[OPA Civilian Auditor's Report for June 2009 to November 2009, page 8](#)

[http://seattletimes.nwsourc.com/html/localnews/2012136804\\_coppunch17m.html](http://seattletimes.nwsourc.com/html/localnews/2012136804_coppunch17m.html)

<sup>ix</sup>

[http://seattletimes.nwsourc.com/html/localnews/2013443640\\_policeshooting16m.ht  
ml](http://seattletimes.nwsourc.com/html/localnews/2013443640_policeshooting16m.html)

[http://seattletimes.nwsourc.com/html/localnews/2013385604\\_policeshooting10m.ht  
ml](http://seattletimes.nwsourc.com/html/localnews/2013385604_policeshooting10m.html)

<sup>x</sup> [http://seattletimes.nwsourc.com/html/localnews/2013465458\\_copkick19m.html](http://seattletimes.nwsourc.com/html/localnews/2013465458_copkick19m.html)

[http://seattletimes.nwsourc.com/html/nationworld/2013462005\\_apuspolicekickvideo  
.html](http://seattletimes.nwsourc.com/html/nationworld/2013462005_apuspolicekickvideo.html)

<sup>xi</sup> [http://www.seattlepi.com/local/426004\\_police01.html](http://www.seattlepi.com/local/426004_police01.html)