

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

v.

**No. 1:14-cv-1025-RB-SMV**

**THE CITY OF ALBUQUERQUE,**

**Defendant,**

v.

**THE ALBUQUERQUE POLICE  
OFFICERS' ASSOCIATION,**

**Intervenor.**

**ORDER**

This matter is before the Court at the request of the City of Albuquerque (the City) and the Albuquerque Police Officers Association (APOA) in response to the Independent Monitor's (Draft) Special Report. The Court held its monthly telephonic status conference on Thursday, September 8, 2016, and heard from the Parties regarding their concerns. After considering the comments of the Parties, the comments of the Monitor, and the controlling documents from this litigation, the Court declines to censor the Independent Monitor's Special Report.

The Monitor drafted a Special Report (the Report), examining three uses of force that occurred in 2015, and the follow-up investigations that the Albuquerque Police Department (APD) completed by March 2016. The City raises several concerns with the Report, all revolving around one central theme: the City perceives that while the Report analyzes data from Reporting Periods 2 and 3, the Monitor's conclusions give the impression that the problems therein persist

without resolution to the present. Both the City and the APOA are concerned that the Report's conclusions have the potential to mislead and/or confuse the community.

In support of its position, the City cites paragraph 312 of the Court-Approved Settlement Agreement (CASA), which provides that “[a]ny press or public statement made by the Monitor regarding its employment or monitoring activities under this Agreement shall first be approved by DOJ and the City.” (Doc. 9, Ex. 1 (CASA) ¶ 312.) Both the City and the APOA request that the Monitor alter the Report to include information clarifying, in essence, that the APD has implemented improved policies and procedures since the investigations of these three case studies.

The United States Department of Justice (the DOJ) objects to the City and APOA's comments on the basis that it would be improper to alter or influence the Monitor's Report. The Monitor is confident that the CASA provides the necessary authority for this Special Report.

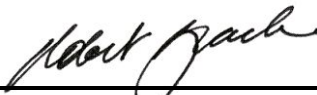
The Court believes that the City's suggestions are neither well-founded nor workable. The Court is not inclined to censor the Independent Monitor, as it would violate the spirit and the terms of the CASA. The Court agrees that the CASA provides authority for the Special Report and does not agree that the Report falls within the ambit of paragraph 312, requiring approval of the DOJ and the City. Paragraph 304 requires the Monitor to “review each serious use of force investigation and each serious misconduct complaint investigation for completeness, consistent with the methodology developed pursuant to Paragraphs 300 and 303.” (CASA ¶ 304.) The Court finds that paragraphs 296, 297, and 305 support the Monitor's authority to draft “special reports,” including this one regarding the Monitor's review of these three specific uses of force. Paragraph 296 mandates that “the Monitor shall conduct the reviews specified in this Agreement, and shall review APD policies, training curricula, and programs developed and implemented

under this Agreement.” (*Id.* ¶ 296.) Paragraph 297 provides that the Monitor “shall conduct compliance reviews or audits as necessary to determine whether the City has implemented and continues to comply with the material requirements of this Agreement.” (*Id.* ¶ 297.) The Monitor has authority pursuant to paragraph 305 to “make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives.” (*Id.* ¶ 305.)

The CASA was created in order that APD could “promote more effective law enforcement and . . . strengthen public confidence in APD” by “increasing transparency and accountability on use of force” (*id.* at 5). The Court believes that the above-cited paragraphs, given the overarching purpose of the CASA, provide the necessary authority for the Monitor to publish the Special Report without prior approval of the Parties. Moreover, the Independent Monitor is tasked with “assess[ing] and report[ing] whether the requirements of [the CASA] have been implemented, and whether this implementation is resulting in” the desired results. (*Id.* ¶ 294.) To allow the City to red-line the Monitor’s reports, pre-publication, would undermine the Monitor’s independence and introduce a precedent the Court is unwilling to set. The City and APOA’s requests to modify the Special Report are hereby denied, and the Monitor may proceed in the manner he finds appropriate.

The Court understands that due to the nature of this settlement, some informal communications are necessary. Going forward, however, the Parties must file any request for judicial action as a motion.

**IT IS SO ORDERED.**

  
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**ROBERT C. BRACK**  
**UNITED STATES DISTRICT JUDGE**