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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 CITY OF LOS ANGELES,  
23 CALIFORNIA; BOARD OF POLICE  
24 COMMISSIONERS OF THE CITY OF  
25 LOS ANGELES; AND THE LOS  
26 ANGELES POLICE DEPARTMENT,

27 Defendant,

28 MICHAEL GARCIA; ERNESTO  
LUEVANO; DUC PHAM; JESUS  
NIETO; SALVADOR SALAS;  
ROBERT HERNANDEZ; CARLOS  
GONZALEZ; DAVID ASKEW;  
TIMOTHY CAMPBELL; ALBERTO  
LOVATO; TONYE ALLEN;  
REVEREND JAMES M. LAWSON,  
JR.; SOUTHERN CHRISTIAN  
LEADERSHIP CONFERENCE LOS  
ANGELES; ACLU OF SOUTHERN  
CALIFORNIA; HOMEBOY  
INDUSTRIES; ASIAN PACIFIC  
AMERICAN LEGAL CENTER;  
RADIO SIN FRONTERAS,

Intervenors.

Case No. CV 00-11769 GAF (RCx)

**REQUEST FOR STATUS  
CONFERENCE RE INQUIRY OF  
INDEPENDENT MONITOR INTO  
MACARTHUR PARK INCIDENT**

The Honorable Gary A. Feess

1 **I. Introduction**

2 Community Intervenors request that this Court hold a status conference to  
3 evaluate Consent Decree compliance in light of the violent use of force on May 1,  
4 2007 by the Los Angeles Police Department (“LAPD”) on protestors and members  
5 of the media in MacArthur Park, in defiance of existing court orders and  
6 departmental protocol, and in dramatic repetition of the kinds of police behaviors  
7 the Consent Decree is designed to prevent.

8 While what occurred in MacArthur Park would be unacceptable at any time,  
9 it is particularly shocking that it happened during a period when the Department  
10 has been officially committed for almost six years to reform through the Consent  
11 Decree, and indeed has sought to have the Consent Decree lifted based on claims  
12 of progress it has already made. The Consent Decree and this Court’s oversight of  
13 its enforcement have been the primary engine of change in the Department,  
14 through which the parties have made the most progress in the last half century  
15 toward the goal of fundamental reform of the LAPD. But the egregiousness of the  
16 violations at MacArthur Park, the methodical manner in which they were  
17 committed, and the number of officers involved raise questions as to the extent of  
18 the Department’s progress and the reach of the reforms so far implemented.

19 These are questions are best answered by this Court itself, by means of a  
20 process that applies the integrity and credibility of this Court’s knowledge, process  
21 and authority to the task of achieving the objectives of the Decree at a moment in  
22 time when the capacity and commitment for reform on the part of the LAPD as a  
23 whole is subject to fair doubt. While various City entities have launched inquiries  
24 into command decisions or tactics that may result in policy revisions or discipline,  
25 this Court, acting through the Independent Monitor, is best suited to determine  
26 what the events of May 1 signal about the LAPD’s compliance with the Consent  
27 Decree and the reform effort it embodies, and what further steps may be necessary  
28 to ensure that real change is implemented and a culture permissive of excessive

1 force is eradicated. Indeed, to Community Intervenors' knowledge, no other  
2 investigation will specifically confront the questions of the relationship of the  
3 Decree to what occurred, examining why the letter and spirit of the Decree were  
4 not followed, and what must be done now to assure future compliance with the  
5 Decree and put genuine reform back on track.

6 Accordingly, Community Intervenors request a status conference to discuss  
7 this Court's response to the MacArthur Park incident and, in particular, the nature  
8 and extent of the Court's inquiry through the Independent Monitor. Community  
9 Intervenors understand that the Independent Monitor already intends to follow the  
10 investigations that have been launched and the results those investigations reach.  
11 However, a status conference at this juncture would ensure that views on the  
12 Independent Monitor's precise role would be heard from the stakeholders  
13 represented as parties, minimizing any likelihood that important issues or  
14 approaches be overlooked, and bolstering community confidence in the process of  
15 police reform.

16 Community Intervenors submit that regardless of the course the City's  
17 investigations take, in keeping with this Court's oversight of the enforcement of  
18 the Consent Decree and in light of the apparent and significant failure of the  
19 LAPD to comply with the constitutional provisions that the Consent Decree is  
20 intended to protect, the Court, acting through the Independent Monitor, should:  
21 (1) scrutinize the compliance of those divisions implicated in the May 1 violence  
22 with Consent Decree requirements on policy, training, and reporting; and (2)  
23 recommend what further steps must be taken to ensure that such a wholesale and  
24 systematic use of excessive force does not recur.

25  
26 **II. Factual Background**

27 While the facts surrounding the LAPD's actions at MacArthur Park are by  
28

1 now well-known to the residents of Los Angeles, and the history of this  
2 Department and the Consent Decree are well-known to this Court, Community  
3 Intervenors briefly recount those facts here for the sake of completeness.

4 On May 1, 2007, in what has been widely characterized as a “police  
5 melee,”<sup>1</sup> LAPD officers assigned to the elite, highly trained Metropolitan Division  
6 Platoon B, violently assaulted peaceful protesters at a lawful rally in MacArthur  
7 Park. The officers, suited in riot gear, wielded batons and shot nearly 150 rounds  
8 of “less lethal” ammunition into crowds that included seniors, families and  
9 children, who posed no threat to the officers and assembled without weapons of  
10 any kind, for no other purpose than to lawfully voice political views on the  
11 immigration policies of the federal government. Organizers had observed all city  
12 protocols for their march and rally, and for weeks had taken all steps required to  
13 inform the police of their plans and objectives. Despite the repeat use of force, the  
14 police made only a handful of arrests, and none related to nearly 150 rounds of  
15 projectiles fired.<sup>2</sup> At the time of the assaults, participants in the event and their  
16 families were listening to music from a stage. An order to disperse was directed  
17 from a police helicopter far above the festivities, out of earshot of most present,  
18 and only in English, despite the facts that the overwhelming number of  
19 participants were known by the LAPD to speak only languages other than English  
20 and that LAPD protocol itself is to give dispersal orders from the ground and in  
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22 <sup>1</sup>See, e.g., Anna Gorman and Stuart Silverstein, *Police action on journalists*  
23 *at melee is assailed*, L.A. Times, May 3, 2007 (attached hereto as Exhibit A);  
24 *LAPD shake-up continues; melee’s toll grows*, L.A. Times, May 9, 2007 (attached  
hereto as Exhibit B)

25 <sup>2</sup>See Richard Winton and Andrew Blankenstein, *Chief vows full inquiry*  
26 *into violence*, L.A. Times, May 3, 2007 (attached hereto as Exhibit C) (noting that  
27 Chief Bratton acknowledged “that none of the rounds fired were directly related to  
the arrests of eight adults and one juvenile during the rally on charges that  
28 included assault with a deadly weapon in a rockthrowing incident and public  
drunkenness”).

1 languages persons can understand.<sup>3</sup>

2 A. Descriptions of LAPD Action Against Rally Participants and Members of  
3 the Media

4 Maritza Alvarez, 36, a filmmaker, described the scene at the northwest  
5 corner of MacArthur Park:

6 “I had a long lens and was able to see a rush of people running  
7 into the park. I can tell you [the police] were just shooting  
8 indiscriminately. I saw them beat up an elderly man, they knocked  
9 his knees down, children were crying. ... I’m telling you, it was  
10 military-style, there was a commander there saying, ‘One, two, shoot,’  
11 and we were trying to duck behind trees, running. We had to hide  
12 behind the stage at one point, we couldn’t even turn our backs.  
13 They’re lying when they said they warned us. There was no warning  
14 at all.”<sup>4</sup>

13 Ernesto Arce, a corresponent for KPFFK, described events as follows:

14 I was at the southeast corner of the park, MacArthur Park,  
15 which I believe was at Seventh and Alvarado. I was trying to get a  
16 sense of what was happening. I noticed that there was a lot of  
17 commotion at that end of the park, and there was a lot of people were  
18 running and fleeing. So I wanted to see what it was that was  
19 happening . . .

20 It was then that I noticed that, you know, police in -- I guess it  
21 was two different kinds of cops. There was the regular cops, and then  
22 there was the SWAT team, who had come in, you know, very  
23 shielded attire. They also were holding what looked like rifles. They  
24 began to push people back from the very southeast corner of the park  
25 into the park. They were at first using batons. But I noticed that they  
26 began to shoot. You know, I wasn’t sure what type of -- whether it  
27 was teargas or whether they were actual real bullets or rubber pellets.

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25 <sup>3</sup> *See id.*

26 <sup>4</sup> *VOICES: Officials, activists, eyewitnesses sound off on clashes,*  
27 *L.A. Times, posted May 3 2007 (available at [http://www.latimes.com/news/local/](http://www.latimes.com/news/local/la-me-voicesweb3may03,1,5990367.story)*  
28 *la-me-voicesweb3may03,1,5990367.story*) (attached hereto as Exhibit D).

1 But many people were getting hit. It was at that time that people  
2 began to just, you know, flee towards the north of the park. There was  
3 a lot of commotion. There was a lot of confusion.<sup>5</sup>

4 Jill Leovy, a reporter for the Los Angeles Times, provided this account:

5 On the north side of Wilshire, some people lingered right in  
6 front of the line, facing the officers at distances of between six and 20  
7 feet, and letting officers close the distance between them.

8 The lingerers were a mix of protesters and reporters. Some  
9 were reporters from established news organizations watching or  
10 recording what police were doing, and some were self-styled  
11 grassroots reporters – protesters with cameras – some of whom were  
12 both filming officers closely and yelling challenges at them. At least  
13 three men in this mixed group lingered long enough to be caught by  
14 the advancing line of officers and they were batoned. They received  
15 one or two baton strokes each.

16 The arguments continued as police advanced. The challengers  
17 were resistant, but appeared nonviolent. . . .<sup>6</sup>

18 In conjunction with this use of unwarranted and excessive force against  
19 civilians, officers also assaulted members of the local media covering the event,  
20 who also posed no threat to the public order or to the safety of officers. Reporters  
21 and camerapersons were physically assaulted and injured, had their equipment  
22 physically separated from them, and, in some instances, were compelled by police  
23 to kneel and lay prone on the grounds of the park. Consequently, journalists  
24 covering the demonstration also reported their own encounters with the police.

25 Christina Gonzalez, a reporter with FOX affiliate KTTV-11, suffered a  
26 bruised shoulder from her encounter with officers, while her camera operator

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27 <sup>5</sup> Amy Goodman, *Democracy Now*, May 3, 2007 (transcript available at  
28 <http://www.democracynow.org/article.pl?sid=07/05/03/1357234&mode=thread&id=25>) (attached hereto as Exhibit E).

<sup>6</sup> Jill Leovy, *A Reporter's Account of the MacArthur Park Clash*, L.A. Times, May 2, 2007 (attached hereto as Exhibit F).

1 suffered a broken wrist. Video footage shows Gonzalez explaining to one officer  
2 that she is helping her camera operator move only to be shoved by another  
3 officer.<sup>7</sup> As the anchor described the events captured in the video footage, “A  
4 photographer was trying to capture all of the action when he was targeted by  
5 police. He’s knocked over, then kicked. The officer even grabs and throws his  
6 camera. As our crew tries to move to safety, the police officer hits cameraperson  
7 Patti Ballaz.”<sup>8</sup> Gonzalez stated that she heard officers in the operation laughing  
8 and saying: “Double time, it’s tussle time.”<sup>9</sup>

9 One article in the Los Angeles Times offered the accounts of various  
10 reporters injured in the melee, beginning with Patricia Nazario, a reporter for radio  
11 station KPCC-FM (89.3), who was “bruised by a police baton”:

12 “I was dumbfounded,” said the KPCC reporter, Patricia  
13 Nazario. “I’ve covered riots. I’ve covered chaos. I was never hit or  
14 struck or humiliated the way the LAPD violated me yesterday.”

15 Nazario said she was walking away from riot police when she  
16 was hit in the back.

17 Wearing a press pass and holding a microphone, she turned  
18 around and told the officer, “Why did you hit me? I’m moving. I’m a  
19 reporter,” Nazario recalled.

20 Then the officer hit her on the left leg, she said, knocking her to  
21 the ground and sending her cellphone flying.

22 “I was shocked, trying to scramble to my feet,” she said. “At  
23 that point, I just started crying.... I just felt totally vulnerable.”

24 ...

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25 <sup>7</sup> KTTV-11 News, *LAPD Officers Use Force to Disperse Immigration*  
26 *Marchers*, aired May 2, 2007 (video available at <http://www.myfoxla.com/myfox/pages/Home/Detail?contentId=3086223&version=15&locale=EN-US&layoutCode=VSTY&pageId=1.1.1>).

27 <sup>8</sup> *Id.* Excerpts of this broadcast were replayed on the radio program  
28 *Democracy Now*. See Exh. E (transcript of radio program).

<sup>9</sup> See Steve Lopez, *The LAPD owes the city some answers*, L.A. Times, May  
3, 2007 (attached hereto as Exhibit G).

1 Telemundo reporter Carlos Botifoll said he was hit by a baton  
2 as he was waiting to go live on the broadcast.

3 He was carrying a microphone and standing in front of a  
4 camera.

5 "We were obviously reporters," he said. "There could not have  
6 been any doubt whatsoever."<sup>10</sup>

7 Another reporter, Telemundo Anchor Pedro Sevcec, was quoted as follows:

8 "The next thing I heard was the shotguns, and they were firing  
9 in our direction," he said. "Suddenly I started seeing people falling on  
10 the ground.... It was completely ridiculous."

11 Sevcec said a police officer took a camera and threw it about  
12 15 or 20 feet. Then the police started hitting reporters and cameramen  
13 with their batons.

14 "Police ran us over," he said. "Lights were flying, monitors  
15 were on the floor."

16 At one point, a police officer pointed a weapon at his face.  
17 Sevcec said he was struck by a baton three times on his neck and  
18 back.<sup>11</sup>

19 B. Responses to LAPD Actions by Chief Bratton, President of the Police  
20 Commissioner Mack, and Mayor Villaraigosa

21 LAPD Chief William Bratton, Board of Police Commissioner President  
22 John Mack, and Mayor Antonia Villaraigosa responded to the events in  
23 MacArthur Park with apologies for the LAPD's handling of the situation and  
24 condemnation of conduct which patently violated both the Consent Decree in this  
25 case as well as the settlement agreement in the federal action *Crespo v. City of Los*  
26 *Angeles*, No. 00-8869 GHK (Rcx) (C.D. Cal.), which set out requirements for

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27 <sup>10</sup> See Gorman and Silverstein, *Police action on journalists at melee is*  
28 *assailed*, at Exh. A.

<sup>11</sup> See Winton and Blankenstein, *Chief vows full inquiry into violence*, at  
Exh. C.



1 police procedures for treatment of the media during public demonstrations.<sup>12</sup> After  
2 viewing extensive videos of the incident , the Chief was quoted as stating: “I feel  
3 comfortable apologizing.... Things were done that shouldn’t have been done;”  
4 referring to the elite Metro unit, he was quoted as adding: “This was my best and  
5 that was what was extraordinary disturbing about this.”<sup>13</sup> Mayor Villaraigosa told  
6 constituents in Watts, “I want you all to know that what we saw on May 1 was  
7 unacceptable. . . Everybody has the right to march, to stand up and speak out.”<sup>14</sup>  
8 John Mack, President of the Police Commission, summed it up succinctly after  
9 reviewing the same videos: “This was not a pretty picture.”<sup>15</sup>

10 As is obvious from the televised videos alone, basic constitutional  
11 principles were repeatedly violated or ignored. Perhaps most ominously, these  
12 violations occurred over an extended period in broad daylight in a public park  
13 within a community of color, wherein some 10,000 marchers had assembled and  
14 news media recorded the officers’ actions.<sup>16</sup>

15 The LAPD also failed to comply with provisions of a consent decree entered  
16 in *Crespo v. City of Los Angeles*, which recognizes the right of media to cover  
17 police dispersal of an assembly declared to be unlawful and requires that the  
18 LAPD, where practicable, designate a press liaison and press area and take  
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20 <sup>12</sup> A copy of the agreement is attached as Exhibit H to these papers.

21 <sup>13</sup> Chief Bratton was quoted as stating that the firings “with no arrests is of  
22 grave concern to me.” See Winton and Blankenstein, *Chief vows full inquiry into*  
23 *violence*, at Exh. C. In the same article, he is quoted as “label[ing] some of the  
officers’ actions ‘inappropriate.’” *Id.*

24 <sup>14</sup> Louis Sahagun, *L.A. mayor vows action against guilty officers*, L.A.  
Times, May 6, 2007 (attached hereto as Exhibit I).

25 <sup>15</sup> Richard Winton, *LAPD chief offers strongest apology yet*, L.A. Times,  
26 May 7, 2007 (attached hereto as Exhibit J).

27 <sup>16</sup> Teresa Watanabe and Francisco Vara-Orta, *Small turnout, big questions*,  
L.A. Times, May 2, 2007 (attached hereto as Exhibit K).

1 reasonable efforts to ensure that the press area is not subject to an order to  
2 disperse.<sup>17</sup> The ACLU filed *Crespo* on behalf of several journalists following  
3 LAPD's use of force against members of the media while dispersing protesters at  
4 the 2000 Democratic National Convention in downtown Los Angeles.

5 C. The MacArthur Park Incident Is a Manifestation of a Longstanding  
6 and Reform-Resistant Culture of Excessive Force

7 The LAPD's apparently deliberate and widespread use of excessive force on  
8 May 1 suggests an institution permissive of excessive force — a suggestion that is  
9 all too familiar regarding the LAPD. The troubled history of the Department can  
10 be found in the reports of commission after commission that, while spurred by  
11 various different incidents from the Watts disturbances of 1965 to the Rampart  
12 scandal, are virtually interchangeable in their conclusions that the department  
13 suffers from a culture of excessive force and a code of silence about the  
14 misconduct of fellow officers that, to date, neither civilian oversight nor  
15 department leadership have been able to uproot.

16 As this Court is aware, following the Rodney King beating, the Christopher  
17 Commission raised the “culture” of the LAPD as a significant factor in the  
18 department's problem with excessive force — describing not only the aggressive  
19 policing philosophy of the LAPD,<sup>18</sup> but the glorification of excessive force among  
20 officers,<sup>19</sup> the failure of supervisors to create an environment where excessive

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22 <sup>17</sup> See Settlement Agreement, *Crespo v. City of Los Angeles*, No. 00-8869  
GHK (Rcx) (C.D. Cal.) (attached hereto as Exhibit H).

23 <sup>18</sup> See Report of the Independent Commission of the Los Angeles Police  
24 Department (“Christopher Commission”) i, 95–106 (1991) (attached in pertinent  
part as Exhibit L).

25 <sup>19</sup> See *id.* at 54–55 (observing of recurring explicit references to beatings on  
26 the MDT communication, “That officers would feel free to type such messages . . .  
27 into the Department's official computer communications channel, knowing that  
the communications were subject to monitoring, is, in the Commission's view,  
28 evidence of a serious problem with respect to excessive force in the LAPD. The

1 force is not tolerated,<sup>20</sup> routine retaliation against whistleblowers,<sup>21</sup> and a  
2 pervasive code of silence.<sup>22</sup> The Commission made the importance of cultural  
3 change clear in its recommendations: “The LAPD has done an outstanding job, by  
4 all accounts, of creating a culture in which officers generally do not steal, take  
5 bribes, or use drugs. The LAPD must apply the same management tools that have  
6 been successful in attacking those problems to the problem of excessive force.”<sup>23</sup>

7 In 1996, yet another report concluded, contrary to then-Chief Willie  
8 Williams’ representations, that the LAPD still “has not undergone reform to the  
9 extent that was possible or required.”<sup>24</sup> The report sharply criticized the LAPD for  
10 continuing to use force in arrests at roughly the same rate that it did at the time of  
11 the Christopher Commission report, failing to develop a computerized system for  
12 tracking potential problem officers, and continuing to discipline too leniently  
13 officers against whom complaints of excessive force had been sustained.<sup>25</sup>

14 Following the scandal that erupted in 1999 over a pattern by officers in the  
15 \_\_\_\_\_  
16 apparent confidence of these officers that nothing would be done about their  
17 inflammatory statements suggests a tolerance within the LAPD of attitudes  
18 condoning violence against the public.”).

18 <sup>20</sup> *See id.* at 61–62 (“The leaders of the LAPD can send, if they want to, an  
19 unequivocal message that the pride so often expressed and widely felt within the  
20 Department is deserved only if officers act within the law in the use of force and  
21 exercise restraint in the power entrusted to them. That message has not been sent.  
22 Without it, meaningful progress in reducing excessive force by the LAPD cannot  
23 be achieved.”).

21 <sup>21</sup> *Id.* at 170.

22 <sup>22</sup> *Id.* at xx (“Perhaps the single greatest barrier to the investigation and  
23 adjudication of complaints is the officers’ unwritten code of silence . . .”).

24 <sup>23</sup> *Id.* at 61.

25 <sup>24</sup> Merrick J. Bobb *et al.*, *Five Years Later: A Report to the Los Angeles*  
26 *Police Commission on the Los Angeles Police Department’s Implementation of*  
27 *Independent Commission Recommendations*, vi (1996) (attached in pertinent part  
28 as Exhibit M).

27 <sup>25</sup> *Id.* at v.

1 Rampart division's "CRASH" gang unit of fabricating evidence, committing  
2 perjury and engaging in brutality, Professor Erwin Chemerinsky's report  
3 concluded that "the central problem to be solved is the culture of the Los Angeles  
4 Police Department."<sup>26</sup> Chemerinsky stated that a decade after the Christopher  
5 Commission's conclusions, Rampart had been born of cultural problems that the  
6 earlier commission had identified but had gone uncorrected: the code of silence,  
7 hostility and retaliation towards officers who report misconduct, and an aggressive  
8 approach to policing that "inevitably creates its cultural corollaries: impatience,  
9 contempt, and arrogance among the police."<sup>27</sup>

10 Most recently, the Blue Ribbon Rampart Panel convened by Chief Bratton  
11 and headed by Connie Rice issued a report that, on its opening page, concluded  
12 that the Rampart scandal "happened because LAPD brass, the Police Commission,  
13 the City Council, the District Attorney, federal authorities and the courts failed to  
14 heed decades of warnings to change that police culture and the City's policing  
15 paradigm."<sup>28</sup>

16 More importantly, the Rampart Blue Ribbon Panel's Report – issued only  
17 last year – paints a picture of a Department that, while taking positive steps with  
18 the crucial assistance of the Consent Decree, still embraces reform only in the

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20 <sup>26</sup> Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police*  
21 *Department's Board of Inquiry Report on the Rampart Scandal* ("Chemerinsky  
22 Report"), 34 Loyola L.A. L. Rev. 545, 560 (2001) (attached in pertinent part as  
23 Exhibit N). This view echoed that of former Assistant Chief David Dotson, who  
24 wrote in a *Los Angeles Times* editorial, "[A]t bottom, the problems at the Los  
25 Angeles Police Department's Rampart Division are cultural in nature, the result of  
26 an institutional mind-set first conceived in the 1950s. . . . Unless this police culture  
27 is overthrown, future Rampart scandals are inevitable." *Id.* at 560 n.17 (quoting  
28 David D. Dotson, Editorial, *A Culture of War*, L.A. Times, Feb. 27, 2000, at M1).

29 <sup>27</sup> *Id.* at 569; see also 561–63, 573–74 (discussing retaliation for  
30 whistleblowers and the persistence of the code of silence).

31 <sup>28</sup> *Rampart Reconsidered: The Search for Reform Seven Years Later*, 1  
32 (2006) (attached in pertinent part as Exhibit O) (available at  
33 [http://www.lapdonline.org/police\\_commission](http://www.lapdonline.org/police_commission)).

1 Command Staff and a few isolated divisions and has not yet established the  
2 cultural change it needs for real reform. As of 2006, the Rampart Blue Ribbon  
3 Panel still reports that the same culture that spawned Rampart persists: a “warrior  
4 mentality” that justifies disproportional responses to crime, a code of loyalty that  
5 keeps officers silent about the misconduct of others, and an enduring hostility to  
6 whistleblowers.<sup>29</sup> While the Blue Ribbon Panel held up as a model the successes  
7 of a Rampart division reinvented in its leadership and policing styles, its report  
8 noted, “The fact that these examples are notable as exceptions and that they faced  
9 vocal and covert opposition demonstrates that they are not the LAPD norm.”<sup>30</sup>  
10 The Commission reported that officers gave the changes at Rampart Division only  
11 even chances of lasting two years.

### 13 **III. The Consent Decree in the Wake of the MacArthur Park Incident**

14 The gross and excessive use of force on May 1 raises “grave concern”<sup>31</sup>  
15 about the capacity of the LAPD to alter its fundamental culture to eradicate the  
16 code of silence and to operate within constitutional limits.<sup>32</sup> As this Court has  
17 repeatedly noted in status conferences and hearings in this case, such fundamental  
18 culture change is essential and long overdue and is the ultimate goal of the  
19 Consent Decree into which the City entered in good faith and over which this  
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21 <sup>29</sup> *Id.* at 27; *see also id.* at 27–34.

22 <sup>30</sup> *Id.* at 15.

23 <sup>31</sup> *See Lopez, The LAPD owes the city some answers*, at Exh. G.

24 <sup>32</sup> That concern is only heightened by the fact that LAPD’s use of force  
25 against the media at MacArthur Park occurred in spite of the safeguards required  
26 for media by the settlement agreement in *Crespo*, and indeed at an event at which  
27 the Department failed to follow those safeguards in violation of that decree. The  
28 Department’s inability to comply with the *Crespo* settlement agreement further  
underscores the difficulty in achieving lasting reform and reinforces need for  
vigorous oversight of the enforcement of the Consent Decree in this case.

1 Court has taken pains to superintend. At the very least, the May 1 police melee in  
2 MacArthur Park underscores the thin reed on which change hangs and the  
3 necessity of the Court's continued involvement in oversight during this time of  
4 transition within the LAPD.

5 The evidence of repeated and methodical use of inappropriate force by  
6 Metro officers at MacArthur Park suggests a pervasive problem relevant to the  
7 Consent Decree, that calls for action by this Court in at least two ways.

8 First, because substantial portions of the Consent Decree are aimed at  
9 preventing the sort of widespread use of excessive force displayed in MacArthur  
10 Park, the place to look for the source of the troubling behavior of the Metro unit is  
11 in the unit's past compliance with those provisions that govern use-of-force  
12 policies, training, and reporting.<sup>33</sup> While Chief Bratton has already committed to  
13 multiple investigations, no investigation yet announced will give special scrutiny  
14 to the Metro unit and its deviations from the requirements of the Consent Decree  
15 in the time leading up to the incident. Nor does any other institution have the  
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17 <sup>33</sup> Various provisions of the Consent Decree bear directly and indirectly on  
18 eradicating both the persistent use of excessive force by the LAPD and the culture  
19 that permits it. The stated purpose of the Consent Decree in this case is "to  
20 promote police integrity and prevent conduct that deprives persons of rights,  
21 privileges, or immunities secured or protected by the Constitution or laws of the  
22 United States." Consent Decree ("CD") ¶ 1. The detailed reporting and  
23 investigation procedures for uses of force are intended to identify and resolve  
24 tendencies toward excessive force in individual officers, as well as to expose  
25 tolerance of excessive force by supervisors. *See* CD ¶¶ 55-69. Indeed, the  
26 reporting procedures on search and arrests assist in this by eliminating fabricated  
27 or post-hoc justification for more common and less life-threatening forms of police  
28 action. *See* CD ¶¶ 70-73. The requirements on handling, investigation, and  
adjudication of complaints similarly help maintain a robust system through which  
the Department may receive warnings of problems conduct. *See* CD ¶¶ 74-87.  
Regular, periodic training on issues of police integrity, including the duty to report  
misconduct and constitutional requirements governing excessive force, are  
designed to dispel the belief that the officers are above the law. CD ¶¶ 117-123.  
Finally, inclusion of disciplinary history in existing components of the not-yet-  
compliant TEAMS II database and proper use of that information in decisions  
about assignments, promotions, and annual evaluations identifies both problem  
officers and inattentive supervisors. CD ¶ 47.

1 credibility and experience with overseeing the Consent Decree that this Court  
2 possesses.

3 As this Court is well aware, the Independent Monitor, in its quarterly  
4 reports, ordinarily utilizes random-sample audits and meta-audits to study  
5 compliance with various provisions across the Department so as to cover the  
6 various provisions of the decree systematically.<sup>34</sup> Given such a categorical failing  
7 by a single unit, however, the Monitor should take the opportunity to study that  
8 one unit in particular and evaluate its adherence to the Consent Decree in the  
9 various training, reporting, and supervisory requirements designed to prevent such  
10 a large-scale abuse of constitutional rights. In addition, the Monitor might  
11 examine whether the various reporting and investigation procedures for use of  
12 force are working as anticipated, or whether modified procedures might have  
13 provided better warning about the Metropolitan division.

14 Second, the MacArthur Park incident suggests that new manifestations of  
15 the problems the Consent Decree was meant to confront may have arisen in an  
16 organization that has naturally evolved over the six years since the Decree went  
17 into effect. This suggests the great value of this Court, through the Independent  
18 Monitor, examining the substantive policies, training, and procedures in order to  
19 determine whether the terms of the decree or its enforcement may need to be fine-  
20 tuned to ensure that the problems the decree has successfully addressed in some  
21 areas are not simply driven to other parts of the Department.

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22  
23 <sup>34</sup> For example, in its most recent report, the Independent Monitor  
24 examined, among other issues, compliance with provisions governing supervisory  
25 review of warrants by conducting a meta-audit of the LAPD Audit Division's  
26 random-sample study of 97 warrant packages out of the 167 prepared by LAPD in  
27 July 2006 and looked at compliance with complaint procedures by examining a  
28 random selection of 83 complaint investigations, out of 568 completed during  
December 2006, and by reviewing the Audit Division's December 27, 2006, audit  
of complaint investigations. *Report of the Independent Monitor for the Los  
Angeles Police Department: Report for the Quarter Ending March 31, 2007* at  
18-19, 22-23 (May 15, 2007).

1 For example, following the abuses by the CRASH gang units in Rampart,  
2 the Consent Decree imposed particular conditions on officers serving in LAPD's  
3 gang units, including the following:

4 (a) special eligibility requirements for service in gang units, including a  
5 demonstrated commitment to police integrity. CD ¶¶ 106(b), 107.

6 (b) limits on length of service in gang units for both supervisory and non-  
7 supervisory officers to three years (39 deployment periods), plus at least one  
8 year service in other units between assignments to gang units. *Id.*

9 ¶¶ 106(b),(c),(d).

10 (c) explicit confirmation that the rules governing regular patrol officers  
11 apply to specialized gang officers (including for gang officers adherence to  
12 procedures for detention, arrest and booking of suspects, use of uniforms  
13 and marked cars, and a prohibition of use of off-site locations for holding  
14 arrestees or interviewing witnesses other than at the scene of a crime). *Id.*

15 ¶ 106(e).

16 The Monitor should determine whether some or all of these requirements might be  
17 necessary in the Metropolitan division which, like the gang units, is an elite unit  
18 employing special tactics and equipment and in which supervisory and  
19 nonsupervisory officers serve for years on end, leading to a heightened possibility  
20 of an insular subculture and strong code of loyalty that makes reporting of  
21 misconduct unlikely. Moreover, to avoid the backward-looking approach of  
22 chasing reform of the LAPD from scandal to scandal, one unit at a time, the  
23 Monitor should suggest whether any of these requirements might be suitable for  
24 the other units or, in the case of assignment caps, department-wide application.

25 As this Court has recognized, the Consent Decree embodies "a singular  
26 objective to reform the Department," by finally confronting problems that have  
27  
28



1 endured for decades.<sup>35</sup> As the Rampart Blue Ribbon Panel concluded, “[T]he  
2 federal court is the singular entity capable of keeping the City and the department  
3 focused on taking the steps necessary for forging permanent changes capable of  
4 significantly reduc[ing] undetected corruption and police-public confrontations.”<sup>36</sup>  
5 In keeping with this objective and the credibility of this Court, minor changes to  
6 the Consent Decree recommended by the Monitor would almost certainly be  
7 considered for adoption pursuant to a stipulation of the parties under Paragraph  
8 180.

9       However, in the event the Monitor suggests substantive changes, court-  
10 ordered modification would likely be justified on a number of grounds. The  
11 Department’s long-running failure to comply with implementation of the  
12 TEAMS II early warning system provides the Court substantial discretion to  
13 pursue a remedy for the prolonged absence of such a system. *See Freeman v. Pitts*,  
14 503 U.S. 467, 487 (1992) (“The essence of a court’s equity power lies in its  
15 inherent capacity to adjust remedies in a feasible and practical way to eliminate the  
16 conditions or redress the injuries caused by unlawful action. Equitable remedies  
17 must be flexible if these underlying principles are to be enforced with fairness and  
18 precision.”).

19       Moreover, the resurfacing of problems addressed by the Consent Decree in  
20 new forms or in different parts of the Department alone may justify court-ordered  
21 modification. Courts possess the power “to alter a consent judgment where a  
22 better appreciation of the facts in light of experience indicates that the decree is  
23 not properly adapted to accomplishing its purposes,” providing flexibility  
24 “essential to the administration of comprehensive decrees arising out of complex

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26 <sup>35</sup> See Transcript of May 15, 2006 Proceedings at 18:11–17 (attached in  
pertinent part as Exhibit P).

27 <sup>36</sup> Exh. O, *Rampart Reconsidered*, at 37.

1 litigation.” *Keith v. Volpe*, 784 F.2d 1457, 1460 (9th Cir. 1986) (quotation  
2 omitted); *see also United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) (“We are  
3 not doubtful of the power of a court of equity to modify an injunction in  
4 adaptation to changed conditions, though it was entered by consent.”).

5  
6 **IV. Conclusion**

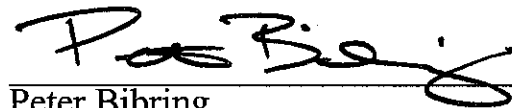
7 Although demonstrations like those occurring in MacArthurPark on May 1  
8 took place across the nation, no other police force responded by use of force in  
9 even remotely the same way as the LAPD. For the foregoing reasons, then,  
10 Community Intervenors respectfully request that this Court set a status conference  
11 at which the parties may be heard on the proper nature and scope of the Monitor’s  
12 inquiry into the MacArthur Park incident.

13  
14 Dated: May 17, 2007

RESPECTFULLY SUBMITTED,  
ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA

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