



Chesa Boudin
District Attorney

February 8, 2022

Dear Chief Scott,

I am writing to respond to the letter my office received from you on February 2, 2022, announcing your unilateral decision to withdraw from the Memorandum of Understanding (MOU) governing the investigation of police use of force, killings, and in-custody deaths in San Francisco. I have always appreciated the candor and respect that we have shown one another despite disagreements. My office is eager to work together to ensure the continued use of the MOU to promote our shared interest in public safety for all San Franciscans.

At the outset, I want to be clear: your decision to walk away from this agreement will not stop the District Attorney's Office from working to protect the residents of San Francisco harmed by police violence. However, there is no doubt that a termination of the MOU will make it more challenging for us to investigate instances of police violence. We believe ending this agreement will also deeply damage community trust in law enforcement. From our conversations, we know that you recognize the importance of police accountability and police reform so we remain hopeful that we can continue to work together to resolve any issues with the implementation of this Memorandum of Understanding.

Executive Summary

This letter contains detailed responses to your raised concerns. We explain that:

- The MOU was effectively preventing police violence and killings since its implementation in 2019. Terminating the MOU threatens public safety and public trust in law enforcement.
- Neither my office nor that of my predecessor violated the operable 2019 MOU during the investigation of Officer Stangel.
- SFPD has violated the terms of the MOU, yet our office has not walked away from our agreement.
- Three separate judges found probable cause for the charges my office filed against Officer Stangel for the beating of Dacari Spiers. Yesterday a judge denied the defense's motion to dismiss, which was based on the hearing in which Magen Hayashi testified. The court

rejected allegations that my office withheld exculpatory evidence.

- I remain hopeful that we can discuss our concerns and continue to operate under our MOU.

Background of this MOU

The work you, my predecessors, and I have done under this MOU is crucial work. We should not forget what led to its creation. Between 2000 and 2015, there were 95 reported shootings¹ by San Francisco Police Department officers, including 40 shootings in which SFPD officers killed people. In 2015 alone, San Francisco Police Department officers killed 6 people, sparking outcry across San Francisco and nationally. To put this number from 2015 in context: there were 52 homicides in San Francisco in 2015; police officer killings constituted the equivalent of more than 10% of homicides in San Francisco that year.

The alarming number of police shootings prompted the U.S. Department of Justice to examine the city's police force and recommend a slate of reforms, an effort that continues and remains unfinished. The killings spurred departmental personnel changes as well as policy changes that emphasized police de-escalation and prioritized preserving life.

Out of this history came the SFDA's Independent Investigations Bureau (IIB), a national model to hold police accountable. The initial MOU was signed by then-District Attorney George Gascon and you in April 2019; you and I signed another MOU in July 2021. The announcement was widely heralded.

More importantly, the MOU was effective. In 2019, the first year the MOU was enacted, there were zero killings by SFPD officers. In 2020 and in 2021 there have been one killing each year. This is dramatic progress from the context in which the MOU was created, and your department and my office deserve praise for the effectiveness of this agreement.

Indeed, the SFDA's IIB and the MOU that created it were so significant that the California DOJ's² report relied upon the MOU in many of its findings that the SFPD was on the road to reform. The unilateral decision by SFPD to walk away from this MOU suggests that the California DOJ may need to reconsider its findings.

¹ Note that I am only referring to police shootings here, not other acts of violence committed by officers.

² The California Department of Justice took over oversight of the SFPD after the U.S. DOJ, under the Trump administration, abandoned its role in police oversight.

The Pretext for Ending the MOU: The Stangel Case

Your letter addresses a current case, *People v. Terrance Stangel*, which is now in trial. It is a case that emerges from an incident on October 6, 2019, when Officer Stangel beat Dacari Spiers, an unarmed man, with a baton so severely that he was hospitalized with numerous broken bones and other injuries.

Pursuant to the 2019 MOU, the SFPD led the “Ancillary Investigation,” allegations that the victim had engaged in violence that led to the police responding to the scene. The SFDA led the investigation into the “Covered Incident,” the police officer’s alleged unlawful use of force.

Mr. Spiers, was initially charged by the SFPD on the night of the incident with a violation of Penal Code section 148, resisting arrest, a misdemeanor. On November 14, 2019, the office of Interim District Attorney Suzy Loftus dismissed those charges. At no time did the SFPD ever present other charges to the SFDA.

The DAI Interview of a 911 Caller Following SFPD’s Interview

On October 8, 2019, SFPD Sgt. O’Connor, who was leading the SFPD’s investigation into the ancillary incident, conducted a lengthy telephonic interview of a witness (referred here by her initials “ME”) who had called 911. Thereafter, on December 3, 2019,³ a DA Inspector, Magen Hayashi, personally interviewed ME. This interview contained no new information or changes from what ME had told Sgt. O’Connor earlier.

Thus, your purported basis for ending the MOU was that Hayashi did not provide Sgt. O’Connor this duplicative statement of ME—a witness whom he had already interviewed and to whom O’Connor had equal access (indeed he had spoken with her first and at length).⁴

However, the language of the 2019 MOU reveals that the SFDA did not violate the MOU terms as you allege. According to the language of the 2019 MOU,⁵ which delineates the information sharing within the structure of two independent investigations, the SFDA’s office should provide the evidence that it gathers “upon declination of criminal charges or upon completion of all prosecutions.” The prosecution in this case, as you know, remains ongoing; as a result, discovery of non-protected evidence has not been triggered. Meanwhile, the SFPD is required to forward to the SFDA **all** evidence, including “all statements” and “the chronological records,” to the SFDA “as the

³ This occurred during Suzy Loftus’s tenure as Interim District Attorney.

⁴ Indeed, when the judge in the trial denied the defense’s motion to dismiss on February 7, 2022, she specifically noted the failure of SFPD to conduct its own follow-up interview of ME.

⁵ This is language from the 2019 MOU, which was governing at the time of this incident.

information becomes available.” This mutually agreed upon policy reflects the different constitutional and practical obligations that each party maintains in this relationship.

This language reflecting different disclosure requirements for SFDA than SFPD changed in the 2021 MOU, per your office’s request. That specific request to require rolling disclosure of evidence to SFPD further make clear that the 2019 MOU did not require our office to do so, as explained above. Nonetheless, I welcome the opportunity to discuss your understanding of the MOU, and wish that you had raised this with me first rather than unilaterally withdrawing from the current MOU.

On December 14, 2020, an arrest warrant was issued for the arrest of Officer Stangel and on December 17, 2020, he was charged with four felony counts alleging his use of excessive force. On January 15, 2021, Officer Stangel was arraigned on a Complaint. SFDA provided discovery to the defense from the DAI file. Among the discovery items were the full audio of the 911 callers’ calls, along with 9 audio interviews, including both interviews of the 911 caller – the one by SFPD and the one by DAI. Thus, the defense has had in its possession the full interview conducted by the SFDA Inspector at all times since the case was charged. This interview was never withheld from Officer Stangel’s defense counsel.

Two separate judges—in addition to the first judge who signed the arrest warrant—determined there was probable cause to charge Officer Stangel. A preliminary hearing was held over three days in February and early March 2021 before the Honorable Linda Colfax. During the hearing, the POA attorney for Officer Stangel cross-examined the DA Inspector extensively about the contents of her arrest warrant affidavit, including questions about ME’s two statements – one to Sgt. O’Connor and one to the DAI. Based on the evidence presented by both parties, the judge found probable cause to hold Officer Stangel to answer on all counts charged. Following the filing of the Information, Officer Stangel’s defense counsel filed a motion asking another judge to review the evidence set forth in the preliminary hearing and to set aside the Information. The Honorable Judge Sharon Reardon denied the defense’s motion, finding that there was probable cause of the offenses charged. Thus, three separate judges have found probable cause to believe that the SFPD officer committed multiple felonies in an unlawful use of force against an unarmed man.

SFPD’s Violations of the MOU in this Case

It bears mentioning that SFPD has, in critical ways, violated the MOU. As the transcript of the hearing that you have reviewed shows, SFPD failed to turn over to SFDA Sgt. O’Connor’s entire Chronological of Investigation regarding the ancillary investigation. The SFDA had to ask the SFPD for it again in December of 2021.

This is just one example of a violation of the MOU. These are other materials the SFPD did not turn

over in this case until January 2022:

- Photos of the victim in the hospital;
- Over 100 pages of emails from the SFPD regarding this incident;
- Officers' notes, including dozens of notes from Sgt. O'Connor; and
- Police reports, including other officers' chronological of investigation.

Thus, claiming that the DA Inspector's failure to disclose to the SFPD an interview⁶ violated the MOU without noting that the SFPD violated the MOU by not disclosing its investigation, including the entire Chronological, is misleading. As stated above, the 2019 MOU had specific timelines for disclosure by SFDA; yet the same MOU explains that SFPD must share evidence promptly.

Despite these violations of the MOU by SFPD, I have not withdrawn from the MOU. I believe that this lack of compliance must be addressed—and can be done so through a good-faith conversation. In turn, I am also open to discussing differences in interpretation of SFDA's obligations under the 2019 MOU. Again, I hope that we can engage in this conversation and can agree to continue operating under the MOU.

Allegations of Pressure

Although it has absolutely no bearing on the MOU, I also wanted to address an additional allegation made by DAI Hayashi. While represented by a POA lawyer, Hayashi made allegations that she felt pressure to withhold exculpatory information in writing her arrest warrant --an arrest warrant that she submitted under penalty of perjury. Despite the fact that a summary of the statement was in the warrant and the evidence was not exculpatory,⁷ these are serious allegations indeed. However, there was absolutely no evidence presented to support these allegations. On February 7, 2022, after considering this testimony, the judge denied the defense's motion to dismiss. I am confident that these allegations are unfounded and that an investigation being undertaken will reveal this to be the case.

If there is office pressure, it is to only charge cases that we feel we can prove beyond a reasonable doubt. This is our ethical obligation and is stated in our MOU. Indeed, over the course of the MOU, my office has been presented with many allegations of unlawful conduct by SFPD; we have declined

⁶ Again, this entire recorded interview was disclosed to Officer Stangel's counsel at the arraignment of Stangel.

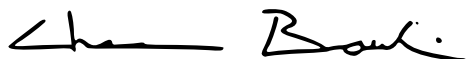
⁷ The judge held that the evidence that was allegedly "withheld" from the arrest warrant – an interview with a witness that was summarized in the arrest warrant – was both duplicative and not exculpatory.

to prosecute more cases than we have filed.

Conclusion

Our office is doing its job in seeking accountability through our prosecution of Officer Stangel. Three separate judges have found probable cause to believe that Officer Stangel beat a man unlawfully, and we are prosecuting him accordingly. Despite these serious charges, Officer Stangel remains an SFPD officer who, as far as I am aware, faced no discipline from SFPD. This raises concerns about the adequacy of internal discipline processes and reinforces the importance of other ways of ensuring accountability.

That we have so far to go to achieve true accountability and reform demands that we not go backwards. Our joint MOU is a tremendous accomplishment that reduced police violence; promoted police reform; and ensured police accountability. We must continue to work together to achieve the reforms that San Franciscans have demanded and which they deserve. We trust and hope that together we can work to do just that.



Chesa Boudin
San Francisco District Attorney

CC:

Police Commission President Malia Cohen
Police Commission Vice-President Cindy Elias
Commissioner John Hamasaki
Commissioner Max Carter-Oberstone
Commissioner Larry Yee
Commissioner James Byrne
Commissioner Jesus Gabriel Yanez