

# CITY OF MILWAUKEE SETTLEMENT AGREEMENT

First Six-Month Report on Non-Compliant Items

MARCH 2020



PREPARED BY



CRIME AND JUSTICE INSTITUTE

A Division of Community Resources for Justice

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## INTRODUCTION

The Settlement Agreement among the parties in *Charles Collins, et al. v. City of Milwaukee, et al.*<sup>1</sup> stipulates that a Consultant provide the parties an annual report addressing compliance with the terms of the Agreement. In addition, the Agreement states:

*Should the Consultant find that the Defendants are non-compliant with any of the requirements of this Agreement, the Consultant shall submit a report within six (6) months determining whether Defendants have rectified the issue(s). (SA V.A.1)<sup>2</sup>*

The Crime and Justice Institute (CJI), which serves as the Consultant per mutual approval of the parties, submitted our [first annual report in September 2019](#)<sup>3</sup>. This six-month report provides an update on the progress and status of the items deemed non-compliant in our first annual report per SA V.A.1.

Over the past six months, we have worked closely with the Defendants to make progress in a variety of areas including, but not limited to:

- Focusing attention and resources on items that were deemed non-compliant in the first annual report;
- Developing internal procedures that establish or clarify work-flow processes related to the Settlement Agreement;
- Developing detailed, multi-year project plans to work toward full compliance;
- Determining the evidence and documentation that will be needed to demonstrate effective compliance for the individual requirements in the Settlement Agreement;
- Continuing to refine and improve the quality of the required data extractions shared with the Consultant and Plaintiffs' counsel on a quarterly basis; and
- Working to improve collaboration among City agencies and communication amongst parties.

As of the writing of this report, CJI conducts weekly or bi-weekly virtual meetings with:

- Chief Morales
- MPD leadership and staff responsible for elements of the Settlement Agreement

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<sup>1</sup> Order and Settlement Agreement (July 23rd, 2018). *Charles Collins, et al. v. City of Milwaukee, et al.*, (17-CV-00234-JPS) United States District Court Eastern District of Wisconsin, Milwaukee Division.

<sup>2</sup> Citations to a specific paragraph of the Settlement Agreement will appear in this report as SA followed by the paragraph number.

<sup>3</sup> <https://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Reports/Crime-and-Justice-Institute/CJIAnnualReport2019CityofMilwaukeeSettlementAgreement.pdf>

- Members of MPD's Inspections Unit
- FPC Executive Director Aldrete
- FPC staff responsible for elements of the Settlement Agreement<sup>4</sup>

In addition, CJI has monthly calls with:

- Plaintiffs' counsel and affiliated representatives
- Representatives from MPD, FPC, Plaintiffs' counsel, and CJI who are engaged with data aspects of the Agreement

CJI is also in regular communication with the offices of the Mayor, Common Council President, and City Attorney. All of this communication centers on developing and executing plans to implement the necessary procedure and practice changes within the FPC and MPD to achieve compliance with the requirements of the Agreement.

The items reviewed for compliance in our first annual report and reassessed here include Settlement Agreement requirements with specific delivery dates during the first year of the Agreement, as well as items expected at quarterly, six-month or 12-month intervals. The categories of compliance we use in this assessment, unchanged from our first annual report, are as follows:

- **Compliant:** The Defendants have complied fully with the requirement and the requirement has been demonstrated to be adhered to in a meaningful way and/or effectively implemented.
- **In Process:** The Defendants have made sufficient, partial progress toward key components of a requirement of the Settlement Agreement but have not achieved or demonstrated full compliance. The Defendants may have made notable progress to technically comply with the requirement and/or policy, process, procedure, protocol, training, system, or other mechanism of the Settlement Agreement but have not yet demonstrated effective implementation. This includes instances where an insufficient span of time or volume of incidents have transpired for effective implementation in a systemic manner. It may capture a wide range of states, from the Defendants having taken only very limited steps toward compliance to being nearly in compliance.
- **Non-Compliant:** The Defendants have not complied with the relevant requirement of the Settlement Agreement. This includes instances in which the Defendant's efforts may have begun but the Consultant has deemed those efforts insufficient.

In addition to providing updates on non-compliant items, we provide some general reflections on areas of overall progress and challenges that the Defendants have been experiencing during the previous six months. A comprehensive report of the

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<sup>4</sup> Throughout this report, FPC refers to the Executive Director and staff unless the language specifically includes the Commissioners.

Defendants' efforts and status on all aspects of the Settlement Agreement will be included in our second annual report, which is forthcoming in September 2020.

## UPDATE ON NON-COMPLIANT ITEMS

In our first annual report, CJI found the Defendants to be non-compliant with regard to the paragraphs of the Settlement Agreement referenced below. For each of those items we include the relevant Settlement Agreement paragraph and requirement language, a description of why an item was deemed non-compliant in our the first annual report, any progress that has been made in the six months since that report, and an updated compliance status as of the six-month mark.

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### SA Paragraph IV.A.2.c

*"Defendants shall ensure that all no-action encounters are documented in CAD."*

#### Progress Update:

The Settlement Agreement stipulates that the Defendants shall document no-action encounters in CAD, however, MPD modified their initial plan and is documenting no-action encounters in their records management system (RMS). While MPD's reasons for this change may represent the best course of action, the City was required in accordance with SA VIII.2 to consult with the Plaintiffs' counsel and seek agreement before making amendments. In our first annual report, we recommended the Defendants communicate the reasons for the change to the Plaintiffs' counsel and obtain approval. As of the writing of this report, no such agreement between the City Attorney's Office and Plaintiffs' counsel has been brokered, and we find the Defendants to be non-compliant. We continue to encourage the City Attorney's Office to communicate with the Plaintiffs' counsel on this issue and obtain agreement.

**Updated Status:** Non-compliant

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### SA Paragraph IV.A.12

*"Defendants shall ensure that MPD provides to the FPC, Plaintiffs' counsel, and the Consultant the codebooks and data dictionaries for users of TraCS, RMS, and CAD that clearly define every variable captured in records of traffic stops, field interviews, no-action encounters, frisks, and searches, as well as all values that each variable can be assigned."*

#### Progress Update:

While MPD provided data dictionaries and some code tables to the FPC, Plaintiffs' counsel, and CJI to accompany the first three required quarterly data extractions, the

documentation did not clearly define every variable captured in the records nor the values that each variable could be assigned. CJI gave detailed feedback to MPD on the initial dictionaries that highlighted changes needed to bring the data dictionary into compliance. MPD was responsive to that feedback and delivered a revised data dictionary on February 28, 2020 to accompany the fourth quarterly data extraction that clearly defined all variables and the values they could be assigned.

**Updated Status:** Compliant

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### **SA Paragraph IV.C.1.a**

*“All reports of arrests, which are documented in the RMS system, will be reviewed and approved by a supervisor within the time period prescribed by SOP 263 Records Management [within 5 days]. The supervisor will review arrest reports for various matters, including the lawful basis for any traffic stop or field interview that led to the arrest, and the lawful basis for any frisk or search conducted during the encounter.”*

#### **Progress Update:**

CJI noted in our first annual report that MPD was compliant regarding the timeliness of supervisor review, as MPD’s practices comply with state law that requires supervisory approval within 48 hours in order for a court commissioner or judge to conduct a probable cause hearing. However, CJI did not have sufficient documentation as of the first annual report to find MPD compliant regarding supervisors’ review of the lawful basis of a stop that led to an arrest or the lawful basis for any frisk or search.

SA IV.E.6 requires that MPD conduct an audit every six months to assess various aspects of encounters. As part of that auditing process, MPD is reviewing encounters specifically for supervisory review of arrest reports for the lawful basis of the arrest. Based on MPD’s first audits of field interviews and traffic stops (Audits #19-03 and #19-04), in 100% of the audited arrest reports the supervisor reviewed arrest reports for the lawful basis for the field interview or traffic stop and/or any associated frisk or search. CJI has received and reviewed the audit sample of Arrest Detention Reports and Probable Cause Statements (CR-215) that demonstrate supervisors’ review of arrest reports for the lawful basis.

CJI will continue to review a sample of Arrest Detention Reports and Probable Cause Statements on at least an annual basis to ensure compliance with this requirement is maintained.

**Updated Status:** Compliant

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## SA Paragraph IV.C.1.b-d

b. *“Within twelve (12) months of the date of this Agreement, MPD will achieve a practice of supervisory review, correction, and approval of 50% of all documentation of field interviews in RMS consistent with the timeframes set forth in SOP 085.20. Supervisors shall review for completeness, and shall review the stated basis for the field interview and any frisk and/or search conducted in the course of the field interview. Prior to approving reports for submission to RMS, supervisors shall ensure that officers provide any missing information to ensure all information required by paragraph IV.A.3 is documented.”*

c. *“Within twelve (12) months of the date of this Agreement, MPD will achieve supervisory review, correction, and approval of every warning and citation issued by MPD officers in the course of a traffic stop or field interview, as recorded in TraCS within seven (7) days, consistent with the timeframe set forth in SOP 070. Supervisors shall review for completeness, and shall review the stated basis for the traffic stop, field interview, and any frisk and/or search conducted in the course of the traffic stop or field interview. Prior to approving reports for submission to TraCS, supervisors shall ensure that officers provide any missing information to ensure all information required by paragraph IV.A.3 is documented.”*

d. *“Within twelve (12) months of the date of this Agreement, MPD shall achieve supervisory review, correction, and approval of every no-action encounter documented in CAD within fourteen (14) days. Supervisors shall review for completeness and shall review the stated basis for the no-action encounter. Prior to approving reports as complete, supervisors shall ensure that officers provide any missing information to ensure all information required by paragraph IV.A.3 is documented<sup>5</sup>.”*

### **Progress Update:**

As noted in our first annual report, MPD did not reach compliance in a demonstrable way by the first anniversary date of the signed Agreement. This was in part based on MPD’s decision to postpone expectations of supervisory review until after the completion of training in June 2019.

Over the previous six months, MPD has begun designing and implementing processes and systems that will enable them to reach compliance on the above three items. The Department is building new features in their existing systems to allow for centralized, electronic tracking of supervisor review of field interviews, traffic stops, and no-action encounters for completeness and accuracy within the prescribed timeframes. They

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<sup>5</sup> MPD is recording no-action encounters in RMS rather than CAD.

have developed a preliminary plan and remain in the early stages of implementation. While the plan MPD shared with CJI requires significantly more detail, including information about deadlines and deliverables, the documentation received as of the writing of this report indicates MPD is planning to do the following:

- MPD will transition from a hand-written, decentralized system to an electronic, centralized system where supervisors will be able to document non-disciplinary counseling resulting from incorrect or incomplete reports.
- Roll call sergeants will continue to run and review reports on each shift on a daily basis to ensure officers are completing their reports accurately and in a timely fashion. The chain of command will receive a written memo on insufficiently completed reports until a technology solution is in place.
- Shift lieutenants at the Districts will run reports once a week to ensure sergeants are properly reviewing and approving reports.
- A designated Compliance Officer will conduct bi-weekly checks for compliance issues with reports. If they identify any problems that sergeants and lieutenants did not identify and correct, then they will be corrected and a captain will document any subsequent counseling.
- District captains have designated one supervisor to serve as the Settlement Agreement point of contact. After receiving appropriate training, they will be responsible for conducting a cursory review every week at their respective Districts.
- Inspections will distribute a monthly management report to commanders that shows progress or lack thereof on compliance with these Settlement Agreement paragraphs.

MPD has demonstrated that conducting supervisory reviews of field interviews, traffic stops, and no-action encounters in a manner that is consistent with the Settlement Agreement is a priority and is engaging personnel at the district level. However, without centralized, electronic data collection to verify such practices, CJI is not in a position to determine whether MPD is meeting the thresholds for review outlined in the Settlement Agreement. The technology and policy changes currently in development should allow for sufficient documentation of field interviews, traffic stops, and no-action encounters allowing for an assessment by the time of CJI's second annual report. While we deem these items to be in process rather than non-compliant because of the efforts made to date, much more work needs to be done to gain compliance.

**Updated Status:** In process

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## SA Paragraph IV.C.3

*“Defendants shall require MPD command staff to counsel, train, or to refer for re-training, any supervisor (e.g., sergeant or lieutenant) who is found through supervisory review to have failed to properly review and correct patrol officers who conduct an unreasonable, race- or ethnicity-based, unreported, or insufficiently documented traffic stop, field interview, no-action encounter, frisk, or search, or to properly refer such officers to counseling, training, or re-training. Appropriately qualified trainers from the Police Academy shall provide such re-training to the officer within thirty (30) days of such a finding. Every six (6) months, Internal Affairs will prepare a report for command staff of allegations of policy violations described above and any corrective actions taken.”*

### **Progress Update:**

SA IV.C.3 is comprised of several components, including command staff taking action when supervisors fail to properly review and correct officers regarding unreasonable, race- or ethnicity-based, unreported, or insufficiently documented encounters; officers being retrained within 30 days; and Internal Affairs regularly preparing a report of allegations of policy violations for command staff. Our first annual report assessed compliance related to the Internal Affairs report on alleged violations, as it was required to be conducted every six months.

On February 28, 2020, MPD provided CJI a copy of the Internal Affairs Division (IAD) Report, “Allegations of Policy Violations”. The report includes violations of allegations covering the period July 1 through December 31, 2019. The report includes documentation of allegations of policy violations in the Administrative Investigative Management system (AIM) for disciplinary corrective action. The report also summarizes memorandums that address instances from that six-month period documenting non-disciplinary corrective action (including counseling and retraining) related to policy violations by officers and supervisors of Standard Operating Procedure 085 - Citizen Contacts, Field Interviews, Search and Seizure as related to the Settlement Agreement.

Of note, the IAD report states in the summary of findings: “During the stated time period, IAD found that the Department’s current procedures for documenting non-disciplinary corrective action is not sufficient to meet the requirements set forth in the Settlement Agreement. The Department lacks a centralized system that allows for the tracking of non-disciplinary corrective action.” As described above, the Department is currently working on a technological solution that allows for local data entry and central tracking and reporting of these items. Until the technological solution is completed and implemented and officers have been trained, supervisors have been directed to document all non-disciplinary corrective action related to field interviews,

traffic stops, no-action encounters, frisks, and searches through a Department memorandum. The memorandum is to be forwarded to the Internal Affairs Division where they will be reviewed and manually tracked.

MPD completed in-service training on Settlement Agreement requirements in June 2019 and allegations of policy violations included in the report are as of July 1, 2019. The Internal Affairs Division produced and submitted a report on policy violations from July 1 through December 2019. The first “Allegations of Policy Violations” report indicates that the Department understands the Settlement Agreement requirements, has an understanding of the issues that need to be addressed, and is working on a plan toward compliance. The report and communication with relevant MPD personnel demonstrates a recognition for the need to work across divisions and for a collaborative approach that relies on technology solutions for efficiency and accountability. While the first report on “Allegations of Policy Violations” represents an important step toward compliance, a significant amount of work lies ahead on the other components of this paragraph. However, with the improvements made to date and the plans for continued progress, we deem the Defendants to be in process on SA IV.C.3.

**Updated Status:** In process

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## SA Paragraph IV.C.6

*“MPD shall complete a twice per year community policing status report and forward that report to the FPC.”*

### **Progress Update:**

MPD had not developed a community policing status report by the time of our first annual report in September 2019. As of the writing of this report, MPD has provided two documents to CJI representing a community policing status report. CJI provided MPD with written and verbal feedback on ways to strengthen the first document. The Department provided to CJI a revised community policing status report on February 28, 2020.

The Settlement Agreement stipulates that “MPD shall complete a twice per year community policing status report and forward that report to the FPC.” The Settlement Agreement provides no specific direction or explanation of expected content in a status report on community policing. MPD has endeavored to produce a report, but without knowledge of the negotiators’ intent on CJI’s part, it is difficult to assess what is actually expected and whether the reports that MPD has produced meet the intent of the requirement. In our experience across the nation, we have seen community policing reports that vary tremendously in level of detail, the extent to which they are grounded in research and data, the level of community engagement and input, and whether they incorporate long term planning. While it appears that MPD responded to CJI’s suggestions to strengthen the first document submitted, we think it is likely that the breadth of MPD’s most recent report does not represent the intent of the Agreement. It has become clear that gaining additional clarity on the expectations of a community policing status report at the time the Agreement was negotiated would be beneficial to allow CJI to better assess MPD’s submitted report. As such, for the purpose of this six-month report, we find the Defendants to be in process on this requirement.

**Updated Status:** In process

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## SA Paragraph IV.E.1.a-d

*“Defendant FPC shall audit data, dashboard camera footage, and body camera footage on traffic stops, field interviews, no-action encounters, frisks, and searches, every six (6) months to identify:*

*a. Officers who fail to conduct these encounters in compliance with constitutional standards and principles set forth in this Agreement;*

*b. Officers who fail to properly document these encounters in accordance with the terms of this Agreement;*

*c. Supervisors who fail to properly review subordinate officers' reports to identify officers who fail to conduct traffic stops, field interviews, no-action encounters, frisks, and/or searches in compliance with constitutional standards and this Agreement, or to ensure that the encounters are properly documented in compliance with the terms of this Agreement; and*

*d. Supervisors who fail to require re-training and/or discipline for subordinate officers who conduct unreasonable, unreported, or insufficiently documented encounters."*

### **Progress Update:**

CJI found the Defendants to be non-compliant on this item in our first annual report largely because, at the time, the FPC did not have access to the data necessary to complete this requirement. However, access to data is only one of many components needed to become compliant. Some progress has been made over the last six months in terms of coordination between MPD and FPC regarding data sharing, but we find the steps taken by the FPC to become compliant in this area to be less than satisfactory. Drafting and refining audit plans, identifying and securing adequate resources, recruiting and hiring in conjunction with the City's Department of Employee Relations, and establishing systems and work-flow processes are all essential parts of this effort and inadequate progress has been made to date.

To be sure, the FPC has taken some initial steps in this area including: engaging a consultant to conduct a staffing and capacity assessment; drafting initial audit plans with timelines and estimated personnel hours; and collaborating with MPD for training on and access to the data and materials necessary to conduct the audits. However, these are relatively small steps towards the significant task of conducting audits on traffic stops, field interviews, no-action encounters, frisks, and searches every six months. In order to fully deliver on this requirement, the FPC needs not only a robust audit plan, but also appropriately trained and experienced staff. Presently the FPC has one trained auditor on staff instead of a more realistic four auditors managed by a seasoned supervisor. CJI hopes that there can be a multi-agency, urgent response to recruit, hire, and train audit staff to implement the proposed plan.

The FPC consultant, Modern Policing, assessed the FPC's audit capacity relative to the requirements of the Settlement Agreement. An initial site visit occurred in January 2020 and a full report from Modern Policing is forthcoming. A draft summary of Modern Policing's initial findings were shared with CJI, and they indicate a significant amount of work remains to be done before FPC will be in a position to conduct the required audits every six months. The FPC's initial audit plans need to be restructured;

additional staff are needed to conduct the audits; training for FPC is needed; and policies and systems need to be established.

**Updated Status:** Non-compliant

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## **SA Paragraph VIII.2**

*“No amendments of this Agreement will be valid unless made in writing and signed by all of the signatories hereto.”*

### **Progress Update:**

During the first year of the Settlement Agreement, CJI found that the Defendants made amendments to the Agreement without consulting or communicating with Plaintiffs’ counsel. In our first annual report we identified three instances of such amendments:

- Documenting no-action encounters in RMS rather than CAD (IV.A.2.c),
- Planned delays in achieving supervisory review thresholds (IV.C.1.a-d), and
- Training conducted by Northwestern University rather than an Internal Affairs supervisor (IV.D.2).

CJI recommended to the Defendants that they communicate with the Plaintiffs’ counsel in writing the reasons for these modifications and obtain written consent to indicate approval of such changes. As of the writing of this report, no agreement has been reached between the City Attorney’s Office and Plaintiffs’ counsel. We find the Defendants to be non-compliant and continue to encourage the City Attorney’s Office to work with the Plaintiffs’ counsel on these issues.

**Updated Status:** Non-compliant

## **AREAS OF PROGRESS AND CHALLENGES**

This report provides updates on the items deemed non-compliant in the first year of the Settlement Agreement. The Defendants have continued to make progress and experience challenges over the last six months beyond what is presented above. We take this six-month report as an opportunity to highlight some of those issues. This is not a comprehensive assessment of the Defendant's efforts toward compliance in all areas but rather presents the highlights of efforts toward compliance with the Settlement Agreement since September 2019.

### **Areas of Progress**

Both the FPC and MPD have increased the number of staff who are responsible for working toward compliance with the Settlement Agreement. In the fall of 2019, the FPC hired a new staff member whose primary responsibility is to manage and coordinate the FPC's overall efforts toward compliance. In addition, the MPD has assigned several staff members to focus on compliance efforts at several levels. These staff include a captain with a background in Internal Affairs, Inspections, Patrol, and Administration, a sergeant who is leading the development and monitoring of a Department-wide project management tool, and supervisors from each District who will serve as the point of contact for the Settlement Agreement. This increase in human resources at both agencies is encouraging and signals a focus on the Settlement Agreement. Full compliance will require the participation and commitment from many more at each agency, but identifying individuals to coordinate and manage the work is positive progress.

Both the FPC and the MPD have been working closely with CJI on a weekly basis to develop and maintain overall project management tools. The tools identify responsible entities within an agency, include information about what documentation is necessary to demonstrate compliance, and provide due dates for interim milestones, the status of each item, and overall deadlines. While the Defendants should have instituted such centralized project planning sooner and work remains on refining these project management tools, progress in this area over the last six months is notable. Indeed, without such centralized and detailed plans, gaining full compliance will be extremely and unnecessarily difficult.

The Defendants have also made progress on many of the items assessed in our first annual report as in process. Our second annual report will include a detailed update on the status of all of those in process items. Generally, progress involves the content and quality of the required quarterly data extraction, the publication of raw data on traffic stops, field interviews, and no-action encounters, items related to accepting and processing complaints, and MPD conducting audits.

## Challenges

The Defendants have continued to wrestle with challenges in achieving compliance in several areas. As described in our first annual report and mentioned above under our discussion of SA IV.E.1a-d (FPC audits), we continue to believe that the FPC does not currently have the capacity to meet the requirements of the Settlement Agreement.

The Defendants have also struggled with how to handle the existence of personally identifiable information (PII) related to private individuals and officers involved in traffic stops, field interviews, and no-action encounters. Considerable time and effort have been dedicated to rectifying this sensitive and thorny issue but work remains. The Defendants have not sufficiently prioritized the issue of redacting PII from the data and this has resulted in delays and an inefficient allocation of resources. Challenges related to PII redaction have resulted in the delivery of quarterly data extractions later than originally planned. We continue to urge the Defendants to develop a clear and efficient process to redact PII from the data.

The Settlement Agreement states that “video footage concerning traffic stops, field interviews, no-action encounters, frisks, and searches shall be easily and quickly made available to the Consultant upon request, and no later than seven (7) calendar days from the date of the request” (SA IV.A.7). MPD has encountered challenges in fulfilling such a request resulting in significant delays over the course of months. Issues, again, related to PII redaction and the timely response of the City Attorney’s Office are some of the reasons for the delays. We are continuing to work with the MPD and the City Attorney’s Office to establish a process such that fulfillment of video requests occurs within the required timeframe.

Lastly, we continue to believe that the infrequency and nature of communication among the FPC, MPD, the City Attorney’s Office, and other City stakeholders is a barrier to the City making progress toward and achieving compliance. Many Settlement Agreement requirements necessitate the FPC staff and MPD working collaboratively to achieve compliance, often with the input from the City Attorney’s Office. We believe increased collaboration and coordination on the part of these three key entities will create efficiencies and improve efforts toward compliance.

## **CONCLUSION**

Of the items deemed non-compliant in CJI's first annual report from September 2019, the Defendants have become compliant in some areas, have demonstrated varying levels of progress in others, and remain non-compliant in others. The increased attention and participation of personnel at various levels within the key organizations is encouraging, as is the development of overall project plans and management tools. As we stated in our first report, this kind of comprehensive and sustainable change is difficult, and challenges and delays are inevitable. Achieving full and effective compliance is a process and Milwaukee's level of compliance varies across the issues. We continue to work with the Defendants toward the goal of full compliance with all requirements of the Settlement Agreement. Our second annual report will go into greater detail on the progress, challenges, and compliance status of the Defendants with respect to the requirements of the full Settlement Agreement.