

**EXTERNAL FORCE INVESTIGATION TEAM'S
(EFIT'S 1) NINTH AND FINAL Quarterly Report**

EFIT 2's SIXTH QUARTERLY REPORT

September 19, 2023 – January 30, 2024

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EFIT Administrator January 30, 2024

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Introduction

1. Please accept this ninth and final quarterly report of the External Force Investigation Team (“EFIT”).¹
2. The EFIT Backlog Team (“EFIT 2” or “Backlog Team”) also herein submits its sixth quarterly report at this time.
3. For the sake of the timing and completeness of this report, the data contained herein covers September 15, 2023, to December 5, 2023, inclusive. Please note that EFIT 2 will file its next quarterly report on or about April 30, 2024.

EFIT 1 Final Report

4. As of this report,² and cumulatively since EFIT went live in July 2021 until December 5, 2023, 55 out of the 987 (5.77%) UOF investigations closed by EFIT/Internal Affairs Force Division (“IAFD”) were found not within the Albuquerque Police Department (“APD”) use of force (“UOF”) policy. Most significantly, 159 out of the 987 (16.10 %) of the UOF investigations closed by EFIT/IAFD were out of compliance when evaluated against the Process Narrative (Doc. 862).³
5. APD was under a federal monitorship since November 2014. With the potential of a Contempt of Court proceeding in early 2021, the DOJ and the City of Albuquerque entered

¹ While the Stipulated Order Establishing EFIT (Doc. 720) and its attendant mandate *did not require* EFIT to file quarterly reports, in the interest of transparency, the EFIT Executive Team (Messrs. Neier, Hurlock and Bone), decided to prepare and file quarterly reports for EFIT. The Order establishing the EFIT Backlog Team (Doc. 906), Statement of Work (“SOW”) requires that the EFIT backlog team prepare and file quarterly reports. For the sake of the timing and completeness of this report, the data contained herein covers September 15, 2023, to December 5, 2023, inclusive. However, EFIT, consistent with past practices, respectfully reserves the right to amend its report if necessary.

² For these statistical purposes EFIT will be using December 5, 2023, as a cutoff date unless otherwise noted.

into a Federal Stipulated Agreement to ensure APD conducted complete and thorough use of force investigations in a timely manner. On February 26, 2021, the United States District Court for the District of New Mexico granted a joint motion filed by the DOJ and the City of Albuquerque with the concurrence of the Independent Monitor Team. By entering a Stipulated Order (See Ex. A), it established an EFIT in the case *United States v. City of Albuquerque*, No. CIV. 14-1025 JB\SMV. (Doc. 720).

6. On May 2, 2021, a preliminary contract was signed between DLG, (Darryl Neier was named the EFIT Administrator), and APD enabling the EFIT Executive team (Darryl Neier, William Hurlock, Deputy Administrator and Darriell Bone, Lead Supervisor) to start providing technical assistance and establishing procedures foundational to the EFIT mission. EFIT executives collaborated with senior APD leadership, field commanders, specialized units, police union officials, and members of the involved community groups to transparently convey the EFIT's vision, mission, and core objectives.
7. Within the first three months, the EFIT, in collaboration with APD executives, developed numerous processes and procedures within the APD Internal Affairs Force Division ("IAFD") that became the foundation of our on-site mentorship and oversight function. The EFIT Executive team assisted in revising and publishing use of force investigation-related policies and temporary operations orders.
8. Additionally, the EFIT Executive team worked with APD IAFD to establish and incorporate a detailed Use of Force Investigative Process Narrative that governed the response and investigative protocols for all Level 2 and Level 3 UOF cases. These documented procedures for an IAFD/EFIT investigation were the basis for EFIT to evaluate IAFD. EFIT filed with the

Court an amended and revised Process Narrative that reflected the revised UOF policies effective January 26, 2023. (Doc. 979 and 981).

9. Within the first six months of commencing full operations on July 16, 2021, APD identified that IAFD had a backlog of 667 incomplete UOF investigations. Recognizing the early achievements of EFIT, and the potential that existed to attain closure on outstanding cases, an agreement was reached by the City of Albuquerque and the DOJ to have DLG establish a separate backlog team (“EFIT 2”) to investigate these UOF cases.
10. On March 21, 2022, the Court granted a joint motion filed by DOJ and the City with the concurrence of the Independent Monitor by entering an Amended Stipulated Order (See Ex. B), Establishing EFIT 2 (Doc. 906). The Amended Stipulated Order modifies and supersedes the Stipulated Order previously entered by the Court (Doc. 720).
11. The Amended Stipulated Order restates many of the Original Stipulated Order’s requirements and supplements them in two ways. First, the Amended Stipulated Order requires the City to modify its existing contract to allow EFIT 2 to investigate all UOF incidents occurring from January 1, 2020 through July 16, 2021 that APD did not investigate, in full or in part (“Backlog Force Cases”), in violation of the Court-Approved Settlement Agreement (“CASA”) (Doc. 465-1). Second, the Amended Stipulated Order extends by 24 months, from May 2022 through May 2024, the period during which the City shall continue to engage DLG to assist IAFD to investigate new Level 2 and Level 3 UOF incidents (“New Force Cases”).
12. Pursuant to the relevant documents, EFIT was on call 24/7 and responded to all call outs within one hour of notification. All UOF investigations were completed within 60 days with

an additional 30-day supervisory review period for a total of 90 days from start to finish. Pursuant to the Amended Stipulated Order, EFIT conducted joint investigations with APD IAFD of all Level 2 and Level 3 UOF incidents. This included all tactical deployments, Officer-Involved Shootings (“OIS”) and in-custody deaths where UOF was utilized. EFIT also monitored and mentored civilian investigators and sworn detectives of IAFD, and assisted implementing APD policies concerning the UOF and IAFD personnel training.

13. The EFIT Executive team developed a detailed transition plan, consisting of four (4) phases, to ultimately graduate civilian investigators and sworn detectives using the methodology to accurately conduct UOF investigations without EFIT oversight. This transition plan, approved by APD and DOJ, went into effect on January 17, 2022, with the first detective graduating four (4) phases of comprehensive training and mentorship in June 2022, and a total of 12 detectives/investigators graduated the program.
14. While the EFIT administrator met on a weekly basis with the IAFD Commander, EFIT executives actively participated in, and attended, supervisor meetings, conducted weekly case status meetings (ultimately transitioned to IAFD), and actively participated in roundtable meetings on complex UOF investigations. Additionally, every two weeks the EFIT Executive team and APD Police Reform Bureau leaders met to discuss the progress and develop strategies to overcome any obstacles that would stall the progress of the EFIT, and ultimately the transition of oversight to APD. Initially, the EFIT Administrator met monthly with APD Chief of Police Harold Medina and City Attorney Lauren Keefe. While this was not required by either the Stipulated Order nor Amended Stipulated Order, Mr. Neier believed that transparency was of utmost importance and issued weekly status reports

to DOJ, the IMT, APD executives and City Legal, to provide real-time information and quickly resolve issues.

15. This weekly report was adopted by IAFD and became their responsibility to issue on a weekly basis to the Parties. Additionally, Mr. Neier believes in transparency for the Court, the community groups, and the residents of Albuquerque. Again, EFIT filed eight Quarterly Reports with the United States District Court informing all of EFIT's progress.
16. The EFIT Executive team understood the importance of meeting personally with involved community groups and Community Policing Councils ("CPCs"). Since May 2021, Messrs. Neier and Hurlock participated in monthly meetings with these groups, which typically included updates on the status of the EFIT and the notation of any concerns brought forth by involved community groups and/or CPCs.
17. Additionally, Messrs. Neier and Hurlock participated in public status hearings held by the Honorable James O. Browning, United States District Judge for the District of New Mexico every six months, formally presenting and fielding questions from the Court regarding its Quarterly Reports and APD/IAFD's progress.
18. On November 1, 2023, EFIT started an enhanced transition plan approved by DOJ. On December 5, 2023, five months ahead of schedule and within the contractual budget, the EFIT transitioned UOF Investigations back to APD IAFD. This success was due in large part to the EFIT's implementation of intensive technical assistance, mentorship, and proactive engagement with APD executives, DOJ, and the involved community groups with the cooperation of APD.

19. On December 18, 2023, a Joint Notice (Doc. 1029) was filed by DOJ and the City of Albuquerque announcing the transition from EFIT back to APD and IAFD of all new Level 2 and Level 3 UOF investigations (See Ex. C).
20. The processes established by EFIT, and some now enhanced by IAFD, will remain in place long after EFIT. These processes were memorialized by ADP in a Remedial Action Plan Quarterly Report filed with the Court on December 15, 2023 (Doc. 1028 and Doc. 1028-1) (See Ex. D).
21. During EFIT's tenure (July 2021 to December 2023), 1,102 UOF occurrences were jointly investigated⁴, and 1,544 interviews were conducted jointly by EFIT and IAFD, resulting in the following:

- Low-Level Control Tactics/Non-Force -14
- Level 1 UOF – 17
- Level 2 UOF – 864
- Level 3 UOF – 173
- Level 3 OIS UOF - 34
- Total Call Outs – 836
- Total UOF Cases Closed – 987 (57 or 5.77% Out of APD Policy).

22. When EFIT first started with APD in May 2021, approximately 10% of all cases investigated were out of policy, By December 31, 2023, this was reduced to approximately 3%. It stands as a true testament to the collaborative effort of EFIT and APD.
23. EFIT was committed to a successful transition to IAFD and since its first interaction with APD appreciated APDs position that eventually they needed to conduct UOF Investigations without EFIT oversight. EFIT's ground operations ended effective December 5, 2023. EFIT now transitioned all of the EFIT investigators to the backlog team.

⁴ Pursuant to the Stipulated Order EFIT assumed 13 UOF investigations between July 2021 and May 2022. Additionally, on February 7, 2023 EFIT issued a memorandum to the Parties outlining EFIT's disagreement with IAFD and ultimately APD's conclusion regarding a case.

24. EFIT stood shoulder-to-shoulder with APD and looks forward to phasing out the remainder of the final case review on January 31, 2024, with total independence granted to IAFD.
25. EFIT provided extensive training, mentorship, guidance, and technical assistance to APD and IAFD and if the protocols established by EFIT and IAFD are maintained, all parties and the public should have confidence that UOF investigations will be completed timely and at the highest of standards.
26. While EFIT now turns its attention to completing the UOF backlog investigations, on or before May 2024, the EFIT Executive Team remains present to provide any technical assistance requested by APD and/or IAFD.

Amended Stipulated Order and Backlog Force Cases (“EFIT 2”)

EFIT’s Basis and Authority

27. As stated previously, on March 21, 2022, the Court signed the Amended Stipulated Order (Doc. 906) that established and provided the authority for EFIT to investigate the APD UOF backlog cases pursuant to Exhibit 1 (Scope of Work or “SOW”) attached to the Amended Stipulated Order (Doc. 906) (See Ex. B).
28. EFIT 2’s original backlog team consisted of two groups with each group comprising a supervisor and three investigators. In an effort to capture certain efficiencies, the EFIT Executive Team reformed the teams and added a third and fourth team with a supervisor and investigators that were originally assigned to EFIT 1.
29. All members of the EFIT 1 team, and newly hired investigators, are now assigned to the Backlog Teams. These teams are now comprised of four groups. Each group has a supervisor and four Investigators. This reorganization allowed the Backlog Team to review cases more

expeditiously and efficiently, while not sacrificing accuracy. It is important to note that the EFIT Executive team will never sacrifice quality and thoroughness for expediency.

30. In April 2022, EFIT executives, with the assistance of APD, drafted the Backlog Methodology that was circulated to APD, DOJ and the IMT for comment. Final approval was received on April 27, 2022, and the Backlog Methodology was filed on May 16, 2022, by EFIT as an attachment to the EFIT Third Quarterly Report (Doc. 912). Additionally, on June 17, 2022, APD issued Special Order 22-76 Implementation of the External Force Investigative Team (“EFIT 2”).

31. Specifically, EFIT invoked that portion of the Amended Stipulated Order 22-76 as follows:

- A. The City shall enable the EFIT Administrator to establish a Backlog Team to complete investigations of the Backlog Force Cases in accordance with the SOW attached to this Amended Order as Exhibit 1. The Parties shall jointly file a notice with the Court when the EFIT Backlog Team is fully constituted and commences operations.
- B. When the Backlog Team completes an investigation, the EFIT Administrator shall submit the case materials, including narratives and recommendations, to IAFD for final closure. Upon receiving a completed backlog case from EFIT, IAFD shall close the case by performing the administrative steps outlined in the revised IAFD Process Narrative, Doc. 862-1, ¶¶ 59–63.
- C. The Force Review Board (“FRB”) shall review completed EFIT Backlog Team investigations pursuant to the process identified in SOW, ¶ 20. Consistent with the CASA, Doc. 465-1, ¶ 78(b), any Backlog Team investigation reviewed by the FRB shall be presented by the EFIT Administrator or Deputy Administrator.

D. Within 30 days after EFIT completes an investigation pursuant to the SOW, APD shall respond in writing to the recommendations, if any, made by the EFIT Administrator and/or the EFIT Executive Team in that investigation pursuant to the SOW.

E. Within 90 days after EFIT completes the investigation of all Backlog Force Cases, the City shall provide a written report to the EFIT Executive Team, DOJ, and the Independent Monitor, which includes, at a minimum:

- a. the City's response to the EFIT Administrator's summary report, required by the SOW, ¶ 25, which identifies significant findings in individual cases, trends among all cases, root causes of the backlog, recommendations, and potential solutions to ensure against future IAFD investigations failing to be completed within timelines imposed by the CASA;
- b. the number of APD officers who were involved in a use-of-force event between January 1, 2020, through July 16, 2021, which did not comply with APD policy or the law;
- c. the number of use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that did not comply with APD policy or the law;
- d. the EFIT recommendations made pursuant to the SOW that APD adopted or will adopt, and APD's plan for implementing them; and
- e. the EFIT recommendations made pursuant to the SOW that APD rejected or will reject, and the rationales for APD's decisions to reject each recommendation.

32. The EFIT Executive Team identified additional candidates and added them to the backlog team.

33. While the audit of the backlog cases was completed by IAFD, the EFIT Executive Team expressed concern about the lack documentation and the use of sub-par verbal UOF Narratives for these cases.

34. If the EFIT Investigator cannot make a determination of the force incident, the matter will be reviewed by the team supervisor and if the supervisor concurs, the EFIT Executive Team will temporarily move the case into a category delineated as “Insufficient Documentation for Evaluation” to expeditiously complete those cases for which there is sufficient documentation to make a determination as to force. There were such 10 designations during this reporting period.
35. The EFIT Executive Team monitors this category and makes recommendations as to the investigation and/or closure of these cases. EFIT developed a modified report for all Level Two investigations that EFIT determines to be in-policy, with no unreported uses of force, and no potential criminal conduct.
36. Based upon an agreement between the Parties, the Data Analysis Unit conducted an analysis of the backlog UOF cases that are now considered a Level 1 UOF due to the new policy changes and the Third Amended CASA. These 51 cases are investigated only for any potential criminality, lawful objective, if the force was in or out of policy and for potential policy violations. UOF reporting and data tracking was developed, along with an APD Course of Business (“COB”) memorandum outlining the review process.
37. As of this report, Messrs. Neier and Hurlock presented 19 cases (4 are pending presentation) to the FRB that EFIT determined were out of APD Policy at the time the force was utilized.
38. In addition, during this reporting period, EFIT made no criminal referrals to MATF concerning a Backlog case.
39. The EFIT Backlog Force Case Investigation Teams are comprised of seasoned and experienced attorneys and former law enforcement personnel.⁵

⁵ The four teams previously identified along with the existing EFIT Executive and analytical Support Teams.

40. APD issued a Special Order (SO 22-76) outlining the cooperation expected from all Sworn APD Officers as the EFIT Backlog Team went “live” on June 20, 2022.

41. As previously noted, the Amended Stipulated Order restates many of the Original Stipulated Order’s requirements and supplements them. First, the Amended Stipulated Order requires the City to modify its existing contract to allow EFIT to investigate the Backlog Force Cases, namely, all use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that APD did not investigate, in full or in part, in violation of the CASA, (Doc. 465-1). *See* Exhibit 1: Scope of Work to Remedy the Backlog Force Cases (“SOW”) to the Amended Stipulated Order (Doc. 906, Ex. 1 at 1-2, Para. 6) provides:

“The EFIT Administrator shall, within one month of the entry of the Amended Stipulated Order, provide the City, DOJ, and the Independent Monitor with a written plan for how it will accomplish the requirements of the Order. The plan shall describe, at a minimum, the methodology that the EFIT Backlog Team will use in investigating the Backlog Force Cases and how the EFIT Backlog Team will prioritize its investigations of the force incidents included in the Backlog Force Cases. The City, DOJ, and the Independent Monitor shall provide any comments or suggestions on the written plan to the EFIT Administrator within two weeks of receiving it. The EFIT Administrator shall work in good faith to address the concerns and suggestions provided by the City, DOJ, and the Independent Monitor.”

42. The EFIT Executive Team conducted a number of meetings with APD’s Accountability Bureau, including the Compliance and Oversight Division, and Data Analytics Division

43. calculated normative thresholds for UOF incidents to identify the Officer(s) who utilize force over the expected incident rate and are thus considered High Incident Officers.
44. With assistance from APD's Accountability Bureau, the EFIT Executive Team obtained the data on all Backlog Force Cases identified in the Amended Stipulated Order (Doc. 906).
45. Additionally, the EFIT Executive Team worked with members of the Accountability Bureau to develop a dashboard that is similar to the current IAFD case tracking and management dashboard, stratifying the data distributed to APD, DOJ and the IMT when reporting on the Backlog Force Case investigations. This dashboard was successfully tested by the Data Analytics Division and EFIT.
46. Backlog investigations review whether the Officers' actions were reasonable, necessary, proportional, minimal and within APD guidelines and SOPs and if the UOF was outside of APD's policies.
47. As of this report, EFIT assigned 596 UOF investigations to the backlog team for investigation. Prior to closure, each case is reviewed by the EFIT Executive Team and forwarded to APD and DOJ.

Backlog Findings:

48. The backlog teams completed their investigation of all backlog cases involving OIS and High Incident Officers.
49. EFIT found, as of as of January 20, 2024, that 24 of the 515 (4.60%) backlog cases investigated by EFIT were out of APD guidelines and policies. 58.25% of the cases were Level 2 UOF, 17.66% were Level 3 UOF, 1.55% were Level 3-OIS, and 17.86% were Level 1 UOF.

EFIT BACKLOG INVESTIGATIONS AS OF – January 20, 2024	
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Total Backlog	667
Assigned to EFIT Investigators	596
EFIT Investigators - UOF Investigations Closed	515
Total Cases with Insufficient Documentation to Investigate	10
Total Completed	525
Investigations Pending	142

50. Pursuant to the SOW, EFIT, when appropriate and/or warranted, will make observations and recommendations in its reports. The final reports and recommendations were sent to Deputy Chief Lowe who responded to EFIT, in writing, within 30 days. Deputy Chief Lowe was extremely responsive to EFIT's recommendations. Due to the retirement of Deputy Chief Lowe on December 31, 2024, the UOF final reports and any recommendations will now be submitted to Deputy Chief Smathers.

The following table captures the highest level of force applied

Level of Force Applied	Number of Cases
Low Level Control	18
Level 1	92
Level 2	300
Level 3 – OIS	8
Level 3	91
Non-Force	6
Sub-Total	515
Insufficient Documentation	10
Total	525

The following table captures the highest level of force applied and the number of out of policy findings:

Type of Force Applied	Number of Cases	Cases Out of APD Policy
OIS	8	2
Intermediate Weapon System	69	15
Empty Hand Takedown	256	3
Empty Hand Control	99	1
Handcuffing w/ Injury	21	1
SOD	23	0
K-9	14	0
Low Level Control/Non-Force	23	0
PIT	2	2
Total	515	24

51. While not a requirement in the SOW, EFIT Executives discussed with Deputy Chief Lowe the need to issue a letter to the involved Officer(s) similar to the letter recommended by EFIT that is utilized by IAFD when a case is closed. This letter will include whether the closed case was within or outside APD policy, EFIT's observations and recommendations and any administrative investigations that would have occurred if the investigation were completed in a timely manner. This letter serves not only as notification to the Officer(s), but as a best

practice to facilitate Constitutional policing.

52. If an APD Officer is identified as a High Incident Officer, upon completion of all cases involving the Officer, the EFIT Executive team will review and issue a memorandum detailing any patterns or practices identified.

53. The City responds to the EFIT Administrator's summary report, required by the SOW, ¶ 25, which identifies significant findings in individual cases, trends among all cases, root causes of the backlog, recommendations, and potential solutions to ensure against future IAFD investigations failing to be completed within timelines imposed by the CASA.

- A. the number of APD officers who were involved in a use-of-force event between January 1, 2020, through July 16, 2021, which did not comply with APD policy or the law;
- B. the number of use-of-force incidents occurring between January 1, 2020, through July 16, 2021, that did not comply with APD policy or the law;
- C. the EFIT recommendations made pursuant to the SOW that APD adopted or will adopt, and APD's plan for implementing them; and
- D. the EFIT recommendations made pursuant to the SOW that APD rejected or will reject, and the rationales for APD's decisions to reject each recommendation.

(Amended Stipulated Order Paras. C7 through C11) (See Ex. B).

Upcoming Dates

54. EFIT looks forward to presenting the final EFIT Backlog Quarterly Report to the Court and all parties in June 2024.

55. Once again, we thank the Court for the opportunity to submit this report. I, and my team, are available should the Court have any questions or need any additional information concerning EFIT, EFIT 2 or their attendant mandates.

Respectfully submitted,

Darryl S. Neier

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Encls.