

TENTH ENFORCEMENT REPORT ASSESSING
SETTLEMENT AGREEMENT
IMPLEMENTATION BY MIAMI POLICE DEPARTMENT
October 2019 through March 2020



February 12, 2021

I. INTRODUCTION

In March 2016, the United States Department of Justice (DOJ), the City of Miami (City), and the City of Miami Police Department (MPD) entered into a Settlement Agreement (Settlement Agreement or Agreement) to ensure that police services are provided in a manner that complies with the Constitution and laws of the United States. DOJ took over the responsibility for assessing the implementation of the Settlement Agreement in August 2019, after the Independent Reviewer concluded that the City and MPD had achieved substantial compliance with each provision of the Agreement by May 2019.¹ At that point, the City and MPD had to maintain compliance with each provision for a one-year period before the parties would agree to terminate the Settlement Agreement.²

DOJ's first compliance report (the Ninth Enforcement Report) covered the period from June 2019 through September 2019. We concluded that the City and MPD had maintained compliance with the Agreement. This report covers the period from October 2019 through March 2020. We conclude that the City and MPD maintained compliance through March 2020, and has continued to do so. We commend the City and MPD for the hard work they have taken to reach this juncture and for their sustained commitment to Constitutional policing. Accordingly, we believe the City and MPD have achieved the requirements for termination of the Settlement Agreement.

II. BACKGROUND

Since completing our onsite visit in September 2019, a DOJ representative from the Civil Rights Division participated in an onsite visit in February 2020, meeting with MPD's Executive Staff and members from its Investigative, Professional Compliance, Specialized Operational, and Internal Affairs Sections. We also toured District stations and Neighborhood Enhancement Team (NET) areas, observed roll-call briefings, and participated in ride-alongs with line officers. We also attended an Executive Staff meeting during the February onsite visit.

We reviewed documents and materials that MPD provided, including: policies and procedures; training records; lesson plans and training bulletins; body-worn cameras updates; management and supervision of its specialized units reports; Firearms Review Board memoranda; High Liability Review Board memoranda; Internal Affairs summaries, including disciplinary reports and various after-action reports. We also reviewed the Florida Department of Law Enforcement's investigative report regarding the June 2019 officer-involved shooting involving an MPD officer, and the Miami-Dade State Attorney's Office's closeout documents

¹ Jane Castor served as the Independent Reviewer from March 2016 through August 2019. She issued the first eight enforcement reports.

² See Memorandum of Agreement at Paragraph 92(a).

involving the May 2019 and June 2019 officer-involved shootings.³ We also have reviewed the MPD response to three officer-involved shootings since then.

DOJ also met with the Director and Assistant Director of the Civilian Investigative Panel (CIP) and attended the February 2020 Community Advisory Board (CAB) meeting, answering questions regarding the status of the Settlement Agreement, providing updates on the frequency of DOJ's monitoring reports, and discussing measures, reports, and evidence that DOJ would consider to determine whether MPD continued to comply with the requirements of the Agreement and whether the Agreement should terminate at the end of its term.

In addition, we met in February 2020 with Chief Jorge R. Colina to discuss the steps that MPD has taken to implement the requirements of the Settlement Agreement, and MPD's continued commitment to ongoing improvement. We appreciate Chief Colina's leadership and his staff's collaborative and accommodating approach during the site visit. We also would like to thank community stakeholders who met with us and provided invaluable feedback on MPD's enforcement efforts.

This Enforcement Report is divided into two sections. In the first section, we provide a compliance rating for each provision of the Settlement Agreement. In the second section, we provide a more detailed assessment of MPD's compliance efforts to date in each major area of the Agreement including: (1) Policy Review and Implementation; (2) Officer-Involved Shooting Investigations; (3) Supervision; (4) Specialized Units; (5) Training; and (6) Community Oversight.

III. OPERATIONAL DEFINITIONS OF COMPLIANCE

Section VIII of the Settlement Agreement provides guidance on the differing compliance ratings that have been used to assess and report on MPD's implementation efforts.⁴ In assessing these efforts, we used the following compliance ratings to describe MPD's efforts during this rating period, which covers October 2019 through March 2020:⁵

- **Substantial Compliance:** Indicating that the City has achieved compliance with most or all components of the relevant provision of the Agreement;

³ The Florida Department of Law Enforcement provided its entire case report involving the June 2019 shooting, the Miami-Dade State Attorney's Office provided its close-out memorandum regarding the June 2019 shooting involving Officer Carlos Acuna, and the Miami-Dade State Attorney's Office provided its complaint and arrest affidavit involving the May 2019 shooting involving Officer Johnathan Felix.

⁴ See Memorandum of Agreement at Paragraph 67(a-c).

⁵ The public health crisis associated with the novel coronavirus (COVID-19) has placed significant strains on MPD's resources, delaying it from providing Agreement-related trainings, convening Force Review and High Liability Boards, and completing internal affairs investigations and providing closeout documents involving critical incidents from 2019 to DOJ, which have contributed to the delay in issuing the Tenth Enforcement Report.

- **Partial Compliance:** Indicating that the City has achieved compliance on some of the components of the relevant provisions of the Agreement, but significant work remains; and
- **Non-Compliance:** Indicating that the City has not met most or all of the components of the Agreement or the relevant provision has not been audited yet.

While Section IV of this Report provides a more detailed assessment of MPD’s compliance with the Agreement, the above-referenced ratings are included to provide MPD and Miami community stakeholders with a clear and accurate summary of MPD’s progress to date.

IV. ANALYSIS OF MPD’S COMPLIANCE TO DATE

<u>Settlement Agreement Areas</u>	<u>Status of Compliance</u>
POLICY REVIEW/IMPLEMENTATION	Substantial Compliance
1. Revision and Development (Paragraphs 27, 29)	Substantial Compliance
2. Action Plan (Paragraph 28)	Substantial Compliance
3. Training (Paragraph 30)	Substantial Compliance
OFFICER-INVOLVED SHOOTING INVESTIGATIONS	Substantial Compliance
1. Administrative Investigations (Paragraphs 33, 34, 35, 36, 37)	Substantial Compliance
2. Firearms Discharge Review Board (Paragraphs 32, 40)	Substantial Compliance
3. Incident Tracking System (Paragraph 38)	Substantial Compliance
4. High Liability Review Board (Paragraph 39)	Substantial Compliance
SUPERVISION	Substantial Compliance
1. Oversight (Paragraphs 41, 46, 47)	Substantial Compliance
2. Span of Control (Paragraphs 41, 42, 43, 44, 45)	Substantial Compliance
SPECIALIZED UNITS	Substantial Compliance
1. Assignment Criteria (Paragraph 48)	Substantial Compliance
2. Specialized Unit Operations (Paragraph 49)	Substantial Compliance

3. Oversight (Paragraph 50)	Substantial Compliance
TRAINING	Substantial Compliance
1. DOJ Training (Paragraph 53)	Substantial Compliance
2. Firearms Training (Paragraph 54)	Substantial Compliance
3. In-Service Training (Paragraphs 55, 56, 57, 58)	Substantial Compliance
COMMUNITY OVERSIGHT	Substantial Compliance
1. Community Advisory Board (Paragraphs 59, 60, 61, 62, 63)	Substantial Compliance
POLICY REVIEW/IMPLEMENTATION	Substantial Compliance
1. Revision and Development (Paragraphs 27, 29)	Substantial Compliance
2. Action Plan (Paragraph 28)	Substantial Compliance
3. Training (Paragraph 30)	Substantial Compliance

A. POLICY REVIEW/IMPLEMENTATION

We previously concluded in our March 13, 2020, report that MPD complied with the Policy Review and Implementation section of the Agreement. *See* Ninth Report at 4; *see also* Agreement, ¶¶ 27-30. During this rating period, MPD has maintained substantial compliance with this section of the Agreement.

MPD has long had a five-member Policy Review Committee (PRC). This committee has been responsible for reviewing and approving policies where MPD identifies an internal need, a change in case law occurs, or national best practices require modifications of practices. The PRC is comprised of three Assistant Chiefs, a Police Legal Advisor, and the Professional Compliance Section Commander. MPD’s Training Director is an ex officio member of the PRC, addressing issues related to policies, training, tactics, or equipment.

As set forth below, from October 2019 through March 2020, the PRC reviewed 16 policies that MPD sought to update. We also reviewed each of these policies during this reporting period to ensure that they comported with the requirements of the Agreement. We found that the PRC carefully reviewed each policy and submitted its recommendations to the Chief of Police. The Chief of Police thereafter reviewed each submitted policy and approved the

PRC's recommendations.⁶ Thus, MPD continues to have a durable policy-review process that includes appropriate procedures, allowing it to review policies on a regular basis as internal needs are identified, change in the law occurs, or national practices or accreditations require modification.

1. Revision and Development

The Policy Review and Implementation section of the Agreement requires MPD to develop and implement policies consistent with the Constitution and best practices. *See* Agreement at ¶¶ 27, 29. MPD is also required to ensure that its agency-wide policies comport with the requirements of the Agreement. *Id.* During this reporting period, MPD submitted 16 Departmental Orders for review and approval: Departmental Order 4.6 (Body-Worn Camera Detail); Departmental Order 5.3 (Records Unit); Departmental Order 5.7 (Red Light Camera Unit); Departmental Order 6-13 (Peer Support Program); Department Order 6.20 (Body Armor); Departmental Order 6-21 (Use of Force Administrative Procedures); Department Order 8.10 (Travel on City Business); Departmental Order 9.7 (Crash Investigations); Departmental Order 9.8 (Traffic Homicide Investigation); Departmental Order 9.9 (Police Vehicle Crash Investigation); Departmental Order 11.23 (Detention Officers); Departmental Order 11.27 (ShotSpotter); Departmental Order 12.1 (Special Events Unit); Departmental Order 14.3 (Property and Evidence Management Section); Departmental Order 15.5 (Baton PR-24); and Departmental Order 15.6 (Expandable Baton).

In our review of these Departmental Orders, we found that MPD conducted thorough reviews, revising various orders to provide clearer direction to officers and civilian staff members. MPD also repealed one of its departmental orders (i.e., Red Light Camera) after the City Council voted unanimously to end the City's red light-camera program.⁷ During this reporting period, MPD also created and implemented a Peer-Support Program to provide confidential support to both civilian and sworn employees experiencing personal or professional crisis. We applaud MPD for creating and implementing this support program and recognizing the need and value for implementing a support program for civilians and officers experiencing personal or professional crisis. Overall, MPD's revised orders were consistent with the requirements of the Agreement and MPD's agency-wide policies on use of force.

We also confirmed that MPD submitted its departmental order changes to the Civilian Investigative Panel (CIP) before it finalized these policies. The CIP is the City of Miami's civilian oversight agency, responsible for independent and impartial civilian oversight including reviewing proposed MPD policies and procedures and making recommendations regarding those policies and procedures to the Chief of Police before MPD implements the new or revised

⁶ The Chief of Police approved the PRC's November 2019 and January 2020 recommendation memoranda.

⁷ David Smiley, *Miami Pulls The Plug On Its Red Light Camera Program*, (December 15, 2017), MIAMI HERALD, <https://www.miamiherald.com/news/local/community/miami-dade/article189812879.html>.

policies and procedures. This collaborative approach has resulted in improved policies and procedures. The process that MPD has implemented to review, revise, and approve departmental orders continues to be effective. MPD remains in compliance with provisions 27 and 29 of the Agreement.

2. Action Plan

The Agreement requires MPD to implement an Action Plan, identifying staff responsible for implementing the provisions of the Agreement. *See* Agreement at ¶ 28. MPD remains in substantial compliance with this requirement. In April 2016, MPD submitted its Action Plan, identifying staff members responsible for implementing each provision of the Agreement and describing its plan for documenting compliance with the Agreement. MPD has consistently provided updates on its plans, documenting compliance efforts since the Agreement was executed. During the past four years, MPD submitted nine Self-Assessment Compliance Reports.⁸ In each of these reports, including the January 2020 and March 2020 Reports, MPD provided detailed accounts of its enforcement efforts and identified responsible parties for ensuring that each provision of the Settlement Agreement is being implemented.

During our February site visit, we interviewed various MPD staff members and concluded that these members recognize the importance of durable and sustainable reform in their respective areas of the Agreement. We also learned that staff members from various sections of the department conferred with the Compliance Section Commander throughout the reporting period, ensuring that action items were implemented and updates were provided on an ongoing basis. In our discussions with the Compliance Section Commander, we learned that the process of creating each Self-Assessment Compliance Report is collaborative, ensuring that each section of the Agreement is addressed in each quarterly assessment report.

The compliance reports thus far have been sufficiently informative to satisfy the requirements of the Agreement. The Commander of the Professional Compliance Section serves as a bridge between DOJ and MPD. The Commander continues to serve a critical role in the planning and implementing processes, coordinating document production, arranging follow-up interviews, collaborating with various Section Commanders, answering questions, and serving as the face of MPD's implementation efforts. His work has helped MPD remain in substantial compliance with this provision of the Settlement Agreement.

3. Training

Under the Agreement, MPD is required to ensure that all staff responsible for implementing the Agreement receive training on any new or revised policy, procedure, or manual related to the Agreement. *See* Agreement at ¶ 30. MPD further is required to

⁸ MPD filed Self-Assessment Compliance Reports in July 2016; January 2017; July 2017; January 2018; July 2018; January 2019; July 2019; January 2020; and March 2020.

disseminate any new or revised policies related to this Agreement through roll call briefings and official bulletins. *Id.* We confirmed that MPD conducted agency-wide training on the provisions of the Agreement in April 2017.⁹ MPD provided course-of-business documents (i.e., training slides and sign-in logs), documenting the topics covered and staff members who attended the agency-wide training in 2017. In addition to the April 2017 training, MPD provided documentation showing that its Training Section provided Agreement training in June 2018 and January 2019 to newly promoted supervisors and other staff members – those who did not receive the April 2017 training.¹⁰ MPD’s annual training calendar for the period beginning in October 2020 confirms that MPD is continuing to provide training consistent with the requirements of Settlement Agreement.

During this reporting period, we reviewed documents that confirmed that MPD provided Settlement Agreement training to 75 newly promoted supervisors. In our discussions with MPD’s Training Section Commander and Compliance Coordinator, they assured us that MPD will continue to provide Settlement Agreement training to all new staff members as long as the Agreement remains in effect, ensuring that all employees are aware of the commitment that MPD has made to continue to adhere to the provisions of the Agreement. Both Commanders stressed the importance of standardization in delivering supervisory training, acknowledging that this is the major reason why there is not variability in supervisory oversight throughout the department.

We also reviewed Chief Colina’s “Official Bulletins,” documenting notifications sent to all staff members during this reporting period, detailing policy changes and updates, indicating the effective date of each revised policy, and notifying staff members that revised policies are available on MPD’s Intranet SharePoint. The read-only notifications are sent department-wide via electronic mail to each staff member monthly and as changes in policies, practices, or manuals are approved by the Chief of Police. MPD has continued its practice of issuing bulletins and providing roll-call training on a rolling basis, ensuring that department staff members are notified when policy changes and other updates occur within MPD. We find that MPD remains in substantial compliance with this provision of the Settlement Agreement.

OFFICER-INVOLVED SHOOTING INVESTIGATIONS	Substantial Compliance
1. Administrative Investigations (Paragraphs 33, 34, 35, 36, 37)	Substantial Compliance
2. Firearms Discharge Review Board (Paragraphs 32, 40)	Substantial Compliance
3. Incident Tracking System (Paragraph 38)	Substantial Compliance

⁹ See Independent Reviewer’s Second Report at 6.

¹⁰ See Ninth Enforcement Report at 7.

B. OFFICER-INVOLVED SHOOTING INVESTIGATIONS

In our last compliance report, we identified two incidents in which an MPD officer shot and struck a person in 2019.¹¹ One shooting occurred in May 2019 and involved Officer Johnathan Felix (Felix Shooting). The other shooting occurred in June 2019 and involved Officer Carlos Acuna (Acuna Shooting). We did not report on those shootings in our last report because they were pending review at the Miami-Dade State Attorney's Office. In July 2020, we received updates on the Felix Shooting and Acuna Shooting.

In the Felix Shooting, we learned that the Miami-Dade State Attorney's Office did not provide a closeout memorandum, explaining that Officer Felix was being treated as "a victim of a shooting" and the off-duty shooting was not being reviewed or handled as an officer-involved shooting. As a result, the Felix Shooting was not investigated by the Florida Department of Law Enforcement and was instead investigated by the Miami-Dade Police Department.

In the Acuna Shooting, we learned that the Miami-Dade State Attorney's Office did not conclude its review until May 2020. The Acuna Shooting was investigated by the Florida Department of Law Enforcement and later submitted to the Miami-Dade State Attorney's Office to determine criminal culpability. In its close-out memorandum, the Miami-Dade State Attorney's Office found that Officer Acuna was legally justified in using deadly force, and it did not file criminal charges against Officer Acuna.

MPD's Internal Affairs Section completed its internal investigations of the Felix Shooting and Acuna Shooting in May 2020 and July 2020 respectively. MPD thereafter submitted those final reports to its Firearm Discharge Review Board (FRB) to determine if the officers' conduct violated MPD policy. MPD's FRB reviewed these incidents in August 2020 and September 2020,¹² finding that both shootings were within policy. The FRB also concluded that the officer-involving shooting incidents did not raise concerns or identify deficiencies related to policy, tactics, equipment, training, or supervisory oversight. Below, we have summarized our conclusions from those reviews.

During this rating period we also reviewed two non-shooting incidents that were presented to MPD's High Liability Review Board. Paragraph 39 of the Agreement requires

¹¹ See Ninth Compliance Report at 7-8. MPD had three officer-involved shootings in 2016, five in 2017, and two each in 2018 and 2019.

¹² MPD delayed convening its Force Review and High Liability Review Boards in April 2020 because of the growing public health crisis posed by the spread of the COVID-19. MPD resumed convening the FRB and HLB in August 2020.

MPD to maintain the High Liability Review Board to review serious uses of force and pursuits. Our review also found MPD in compliance with satisfying this requirement of the Agreement.

1. Administrative Investigations

The Agreement sets forth requirements to ensure that officer-involved shootings are appropriately investigated. In our Ninth Report, we reviewed several investigative files and concluded that MPD had timely completed administrative investigation and maintained substantial compliance with these provisions of the Agreement.¹³ During this rating period, we reviewed investigative files and conclude that MPD has maintained substantial compliance with this section of the Agreement.

The Florida Department of Law Enforcement (FDLE) is responsible for investigating all line-of-duty shootings involving MPD officers and in-custody deaths of arrestees in the control, custody, and care of MPD officers. MPD bears the responsibility for conducting other investigations. The Agreement requires MPD to ensure that officers cooperate with administrative investigations and that officers are given an opportunity to provide a voluntary statement after each shooting within 72 hours, absent exigent circumstances. *See* Agreement at ¶¶ 31-34. MPD's Use of Force and Administrative Procedures Departmental Order incorporates these requirements in policy, and MPD has effectively implemented the policy in practice.

MPD and its FDLE partners have consistently provided officers involved in shootings the opportunity to provide voluntary statements after shootings. While our review showed that officers generally did not provide voluntary statements to investigators after officer-involved shootings, they were given an opportunity to do so consistent with the Agreement's requirements.

During this reporting period, we spoke with representatives from FDLE, confirming that MPD officers rarely gave voluntary statements after officer-involved shootings, and this refusal did not impact FDLE's ability to complete its critical firearm discharge investigations. Files also showed that officers did appear for mandatory interviews with investigators or an employee representative.

Under the Agreement, MPD is required to continue its efforts to complete its administrative investigations notwithstanding the potential for a criminal investigation or prosecution. *See* Agreement at ¶ 35. MPD is also required to complete administrative investigations within 180 days. *See* Agreement at ¶ 36. During this reporting period, MPD reviewed the Felix Shooting and Acuna Shooting. In both incidents, an outside entity completed the initial investigations before submitting its findings to the State Attorney's Office. In the Felix Shooting, the Miami-Dade Police Department conducted the initial investigation. In the Acuna Shooting, the FDLE conducted the initial investigation. We spoke with representatives

¹³ *See* Ninth Compliance Report at 8.

from the Miami-Dade State Attorney's Office, learning that it was not atypical for its office to conduct internal reviews of shooting cases for more than 180 days. It told us that both the Felix Shooting and Acuna Shooting were thoroughly investigated by outside agencies, which enabled it to complete its internal review in less than six months after the final investigations were submitted to its office.

Once the State Attorney's Office completed its review, MPD conducted its internal investigations. MPD conducted thorough and objective investigations, completing each investigation in less than 180 days. We therefore concluded that MPD maintains compliance with this requirement of the Agreement.

The Agreement also requires MPD to conduct return-to-duty determinations before an officer involved in a shooting can return to active duty status. *See* Agreement at ¶ 37. In order to achieve this goal, MPD developed and implemented a Departmental Order outlining processes for assessing and determining when an officer involved in a shooting should return to active duty status. *See* Departmental Order 6.21 (Use of Force and Administrative Procedures). MPD adhered to this policy in both the Felix Shooting and Acuna Shooting. We confirmed that both officers were removed from assignment after the shootings, reassigned to administrative duty for a minimum of three days, and received counseling pending administrative reviews.

The Chief of Police did not require either Officer Felix or Officer Acuna to attend refresher training before returning to active duty after either officer-involved shooting. Regarding the Felix Shooting, the FDLE did not respond to the scene because it determined that the shooting occurred while the officer was off-duty. In that incident, MPD's Internal Affairs investigators arrived on the scene and spoke with the lead investigator from the Miami-Dade Police Department about the facts and circumstances involving the Felix Shooting. Regarding the Acuna Shooting, we were able to confirm that MPD participated in multiple post-incident briefings with FDLE, with the initial briefing occurring within 24 hours of the Acuna shooting. In this briefing, we were able to confirm that FDLE provided a general overview of the facts and circumstances concerning the Acuna Shooting. The FDLE conducted a follow-up executive briefing of the Acuna Shooting with MPD officials including, but not limited to, the Chief of Police, the Deputy Chief, Internal Affairs Section Commander, and various Assistant Chiefs, discussing its initial response and case synopsis; crime scene activities; video evidence reviews; law enforcement interviews; civilian witness interviews; preliminary lab results; and medical examiner's preliminary results. We therefore find that MPD complies with requirements of Paragraph 37 of the Settlement Agreement.

2. Firearms Discharge Review Board

Once the Internal Affairs Section completes its administrative investigation of officer-involved shootings, the incident is submitted to the FRB for review and disposition. The FRB is responsible for identifying violations of policy, officer-safety issues, equipment and training

needs, and supervisory oversight. *See* Agreement at ¶¶ 32-40. In our previous Report, we found that MPD reached substantial compliance with this section of the Agreement.¹⁴ MPD has maintained substantial compliance with this requirement during this rating period.

During this rating period, DOJ reviewed the Felix Shooting and Acuna Shooting, which were submitted to the FRB for review. The FRB files contained the following facts:

- In May 2019, off-duty MPD Officer Johnathan Felix shot Antwan Brown three times. Officer Felix had driven a friend, Ms. Diamond Watts, to Mr. Brown's house, dropped her off, and was waiting for her in front of the house. Mr. Brown approached Officer Felix's vehicle, yelling and screaming at him. At some point during the encounter, Mr. Brown reached inside his waistband and pulled out a firearm, pointing it at Officer Felix, who was sitting in the vehicle. Officer Felix then retrieved his duty weapon and fired multiple shots at Mr. Brown, striking him in his arm, leg, and buttocks. Mr. Brown was taken to the hospital and was treated for multiple gunshot wounds. Mr. Brown was later charged with attempted first-degree murder and possession of a firearm by a convicted felon.
- In June 2019, Officer Carlos Acuna shot and killed Daniel Angel Gonzalez. Five officers had responded to a call from a neighbor, who reported that Mr. Gonzalez had stabbed his wife in the neck and was threatening to kill her and their child. Officers attempted to enter the apartment through the front door, but they were unsuccessful. Shortly after their unsuccessful attempt to enter the apartment, Mr. Gonzalez's wife, Claudia Broche Castro, exited the apartment. Mrs. Castro had been stabbed in the neck and body by Gonzalez, and she informed officers that Mr. Gonzalez was inside the residence threatening to kill himself. Four officers then entered the apartment and encountered Mr. Gonzalez, who threatened to kill officers and refused to drop his weapon and exit the apartment. The officers then retreated and Mr. Gonzalez followed the officers outside the apartment. Once Mr. Gonzalez came outside the apartment, officers commanded him to drop what appeared to be a revolver, but he refused. Officer Acuna fired his weapon six times at Mr. Gonzalez, striking him in the chest, neck, and wrist. Mr. Gonzalez was taken to the hospital where he was pronounced dead.

In both of these reviews, the FRB carefully evaluated the facts and circumstances surrounding each shooting. In the Felix Shooting, the FRB evaluated issues involving Officer Felix's off-duty status and raised concerns about whether he should have driven his friend, Ms. Diamond Watts, over to Mr. Brown's house, knowing that Mr. Brown had a history of violence. In the Acuna Shooting, the FRB discussed issues involving the number of times Officer Acuna

¹⁴ *See* Ninth Compliance Report at 9-10.

shot Mr. Gonzalez, whether an urgency existed to enter the residence, whether less-lethal options were available and whether officers should have used those tools, and whether displaying a firearm while holding a ballistic shield was tactically sound. The FRB also assessed whether Officer Acuna's actions were within policy, concluding that there were no deficiencies or concerns related to training, equipment, tactics, or supervision. The FRB found the conduct of Officers Felix and Acuna was within policy.

We were impressed with the thoroughness of each review and the standardization of the FRB's proceedings, findings, and recommendations, ensuring a consistent application of standards. The FRB's reviews continue to illustrate a functional internal accountability system that is willing to ask probing questions, seeking alternative ways to respond to low-frequency critical events, and assessing whether de-escalation tactics could have been used to reduce the likelihood of using deadly force. We therefore find that MPD has maintained substantial compliance with this provision of the Settlement Agreement.

3. Incident Tracking System

The Agreement requires MPD to maintain a system to track officer-involved shootings. *See* Agreement at ¶ 38. This system must also enable supervisors to identify and monitor officers who engage in misconduct. *Id.* In our last report, we found that MPD had developed and implemented a tracking system that complies with this requirement. *See* Departmental Order 2.5 (Early Intervention-Incident Tracking System). MPD currently uses the Blue Team Early Intervention platform (EI-ITS) to assist in identifying and monitoring officers. The current platform is configured as an online dashboard, enabling supervisors to monitor officer conduct in real time.

During our February 2020 site visit, we interviewed multiple supervisors, all of whom told us that they review the EI-ITS system daily, focusing on trends, patterns, and reported officer conduct. They also told us that they used the EI-ITS system to identify, assist, and monitor their subordinates' interactions and conduct. During this reporting period, we reviewed a sampling of MPD's quarterly assessments used to monitor officer performance thresholds. Our review found that supervisors were using multiple sources of data to identify and monitor officer's performance. This allowed supervisors to intervene more quickly and allowed supervisors to address issues as they occur.

We also reviewed an EI-ITS intervention involving an officer from a specialized unit. We agreed that a supervisory intervention was appropriate based on the number of issues (i.e., triggers) identified through the EI-ITS system. We were pleased to see that the first-line supervisor documented the intervention and provided various recommendations to ensure that the officer's performance could improve. Although this was the only reported intervention during the reporting period, we were pleased with how the supervisor handled the intervention. MPD remains in sustained compliance with this provision of the Settlement Agreement.

4. High Liability Incident Review Board

MPD’s High Liability Incident Review Board (HLB) serves to review, discuss, and investigate particular kinds of incidents and address department deficiencies and make corrective recommendations to the Chief of Police. The HLB focuses on incidents that have a potential for high liability and/or high risk. The HLB is designed to assist the Department in assessing both positive and negative aspects of high-liability incidents. The HLB does not focus on discipline, but instead on identifying and incorporating best practices at MPD. Under the Agreement, MPD is required to maintain a Professional Compliance Section, responsible for overseeing the HLB and reporting directly to the Chief of Police. *See* Agreement at ¶ 39.

During this reporting period, we reviewed two non-shooting incidents that MPD presented to its HLB. These were: (a) an officer deploying an electronic control weapon at a dog; and (b) officers using less-lethal force against an uncooperative person who refused to follow officers’ commands, elbowed an officer in the face, and caused a disturbance at a concert. In both of these incidents, the HLB concluded that the officers’ actions were within policy.

Although the HLB did not find any policy violations in either of these incidents, it identified performance deficiencies, officer safety concerns, and high-liability issues in both incidents. The HLB thereafter recommended remedial training for officers involved in both cases. MPD’s documents confirm that the officers identified in both incidents received additional training, and MPD’s Training Division verified that those officers received the training.

We commend the HLB for its thorough and objective reviews of these high-liability incidents, and it identifying performance deficiencies, officer safety concerns, and high-liability issues in both incidents. Moreover, we applaud MPD’s Training Division for ensuring that it closed the feedback “confidence” loop by providing the training that the HLB recommended. The HLB has consistently conducted high-quality and self-critical reviews, and we expect the HLB to continue conducting these internal reviews prospectively.

The Professional Compliance Section Commander played a critical role in ensuring that the materials presented were provided to HLB members in advance of each presentation and that the HLB was conducted in an orderly and comprehensive manner. Lastly, we note that the Commander reported each HLB finding directly to the Chief of Police along with the HLB’s recommendations, consistent with the requirements of the Settlement Agreement. MPD remains in sustained compliance with this provision of the Settlement Agreement.

SUPERVISION	Substantial Compliance
1. Oversight (Paragraphs 41, 46, 47)	Substantial Compliance
2. Span of Control (Paragraphs 41, 42, 43, 44, 45)	Substantial Compliance

C. SUPERVISION

The Supervision section of the Agreement requires MPD to ensure that “all supervisors, in patrol as well as specialized units, provide the close and effective supervision necessary for officers to improve as police officers; to police actively and effectively; and to identify, correct, and avoid unnecessary Critical Firearm Discharges.” *See* Agreement Section IV. In order to achieve these outcomes, the Agreement requires MPD to ensure that supervisors direct and guide officers appropriately; to maintain span of control (i.e., supervisor to patrol officer ratio); and to ensure that supervisors are held accountable by Department leaders for the quality and effectiveness of their supervision. *See* Agreement at ¶¶ 41-47. During our last review, we concluded that MPD complied with these provisions of the Agreement.¹⁵ After reviewing MPD’s course-of-business documents, we conclude that MPD remains in substantial compliance with this section of the Agreement.

1. Oversight

MPD has consistently implemented measures to ensure that officers understand, follow, and adhere to departmental orders and Settlement Agreement requirements. Under the Agreement, MPD is required to ensure that supervisors provide close and effective supervision. *See* Agreement at ¶ 41. During our review, we closely examined first-line supervisor oversight regarding patrol officers and members of MPD’s specialized units. We also reviewed uniform police worksheets, covering October 2019 through March 2020. In our review of these worksheets, we were able to conclude that supervisors in both patrol and specialized units provided close and effective supervision of their subordinates. We also found that first-line supervisors were actively engaged in daily operations, including reviewing subordinates’ body-worn camera footage and responding to calls when necessary. *See* Agreement at ¶ 46.

Regarding body-worn camera oversight, MPD has consistently disciplined officers when they failed to adhere to department protocols. MPD disciplined 14 officers during this rating period for failing to follow body-worn camera protocols. MPD imposed discipline ranging from formal counseling to written reprimands, including one written reprimand that included a 10-hour suspension. MPD has demonstrated its commitment to ensuring that its officers are following department-wide body-worn camera protocols.

In addition, we conclude that MPD’s captains and lieutenants have consistently provided close supervision of first-line supervisors. MPD provided monthly Computer Statistic Meeting (COMPSTAT) data that show captains conducting monthly meetings with lieutenants and first-line supervisors. We also spoke with lieutenants who discussed creating and implementing “mini COMPSTAT” meetings to ensure that they are proactively addressing trends and creating strategies to combat crime and evaluate trends on a NET level. We also confirmed that captains

¹⁵ *See* Ninth Compliance Report at 12-14.

were consistently counseling, advising, and providing vital information to subordinate supervisors consistent with the requirements of the Agreement. Lastly, MPD included the quality of use-of-force investigations and the effectiveness of response to uses of force and misconduct in its annual performance evaluations of captains and lieutenants. *See* Agreement at ¶ 47. We therefore conclude that MPD remains in substantial compliance with the Agreement's requirements regarding oversight.

2. Span of Control

Under the Agreement, MPD is required to ensure that its patrol and tactical units have a single and clearly identified supervisor. *See* Agreement at ¶ 41. MPD is also required to ensure that supervisors are not supervising more than eight officers during any given shift. *See* Agreement at ¶¶ 42-43. In our review of MPD's staffing rosters, we determined that each patrol and specialized unit had one clearly identified supervisor for each shift. We also interviewed members from the Compliance Section, learning that MPD implemented mechanisms to ensure that officers are reassigned to another supervisor if a supervisor is expected to be on military or extended leave. *See* Agreement at ¶ 45. The staffing rosters also allowed us to conclude that MPD complied with the Agreement's supervisor-to-officer ratios.

MPD continued to use its Staffing Detail to ensure compliance with the requirements of the Settlement Agreement. *See* Departmental Order 6.15 (Departmental Staffing Detail). MPD's Staffing Detail is responsible for conducting quarterly assessments of Field Operations and Specialized Operations, ensuring that the span of control does not exceed the one supervisor to eight subordinate personnel ratios. *See* Agreement at ¶ 44. During this reporting period, we reviewed quarterly reports covering October 2019 through December 2019 and January 2020 through March 2020. We were able to confirm that MPD conducted quarterly staffing analyses, ensuring that patrol and specialized unit staffing levels comported with the requirements of the Agreement.

We also were able to confirm that these quarterly reports were submitted through the Labor Relations Unit to the Personnel Resource Management Section, ensuring that the span of control compliance is maintained throughout MPD. The Staffing Detail also ensures that officers are assigned to a single, consistent, clearly identifiable first-line supervisor and assesses supervisor assignments.

MPD currently has 72 first-line supervisors assigned to the Patrol Division, supervising approximately 420 patrol officers. These 72 supervisors are assigned to supervise no more than eight patrol officers during any given day or shift. Similarly, we found that MPD ensured that its Investigative Support Section adhered to these same requirements. (*See* Section D., Specialized Units). The Staffing Detail's monthly audits and quarterly reports have helped ensure adherence to Settlement Agreement requirements.

SPECIALIZED UNITS	Substantial Compliance
1. Assignment Criteria (Paragraph 48)	Substantial Compliance
2. Specialized Unit Operations (Paragraph 49)	Substantial Compliance
3. Oversight (Paragraph 50)	Substantial Compliance

D. SPECIALIZED UNITS

1. Assignment Criteria

The Specialized Units section of the Agreement requires MPD to maintain eligibility criteria and selection guidelines for members assigned to its Tactical Operations Section (TOS). *See* Agreement at ¶ 48. MPD is further required to conduct quarterly audits to determine whether staffing needs are sufficient. *Id.* During our last report, we found that MPD adhered to these requirements.¹⁶ MPD dismantled its TOS in February 2018, reassigning many tactical elements, including Tactical Robbery Unit, Felony Apprehension Team, and Tactical Burglary to its Investigative Support Section.¹⁷ MPD’s Special Weapons and Tactics (SWAT), Canine, Marine Patrol, Emergency Management, and Special Events Sections are now part of its Specialized Operations Section (SOS).

We reviewed various inter-office memoranda from several Specialized Unit Deputy Commanders to the Section Commander regarding eligibility requirements, confirming MPD’s continued efforts in ensuring that it closely monitored and maintained eligibility and selection guidelines for members of the SOS. In addition to the inter-office memoranda, we reviewed “Official Bulletins” issued by the Chief of Police, announcing “open registers” for specialized unit positions. In each open register announcement, MPD ensured that detailed criteria and requirements were listed in the announcements, allowing applicants to know what criteria and requirements MPD intended to review during its selection process.

In addition to the above, we reviewed quarterly reports/audits, confirming command-level reviews of eligibility criteria for members already assigned to specialized units. We therefore conclude that MPD remains in compliance with this requirement of the Agreement.

2. Specialized Unit Operations

MPD is required to ensure that its specialized units’ operating protocols are consistent with its agency-wide use of force policies. *See* Agreement at ¶ 49. The operating protocols are consistent with MPD’s revised use-of-force policy. *See* Departmental Order 6.21 (Use of Force

¹⁶ *See* Ninth Enforcement Report at 14-16.

¹⁷ *See* Independent Reviewer’s Fifth Report at 12-13.

and Administrative Procedures). In our review of various operational plans, we find that MPD did an effective job in providing details in its operational plans. The operational plans were comprehensive, deliberative, and useful, enabling officers to clearly understand the situation and plan for an effective and safe tactical response. All of MPD’s operational plans were in a consistent format and detailed the results of specialized deployments.

MPD’s after-action reports were documented in a consistent format, and contained tactical and incident information, along with written or photographic materials, as required by the Agreement. The reports could be enhanced by including discussion of areas of improvements, lessons learned, and training recommendations.

3. Oversight

The Agreement prohibits SWAT units from conducting general patrol and policing functions while on specialized assignment, unless an exigency occurs. *See* Agreement at ¶ 50. MPD’s departmental policy explicitly prohibits SWAT officers from performing general patrol functions. *See* Departmental Order 12.6 (Special Threat Response Unit).

We found that MPD continues to use a SWAT checklist (activations request form) whenever SWAT activation is requested. The checklist is designed to assess risk factors and provide information to supervisors before deciding whether an activation is appropriate. We reviewed completed checklists for every SWAT activation that occurred during this reporting period, indicating that MPD is consistently using this tool in practice. We also found that MPD used its SWAT units for specialized deployments, and it did not use any of its SWAT units for conducting general patrol and policing functions. We therefore find that MPD complies with these requirements of the Agreement.

TRAINING	Substantial Compliance
1. DOJ Training (Paragraph 53)	Substantial Compliance
2. Firearms Training (Paragraph 54)	Substantial Compliance
3. In-Service Training (Paragraphs 55, 56, 57, 58)	Substantial Compliance

E. Training

1. DOJ Training

The Training Section of the Agreement required MPD to provide initial Settlement Agreement training by March 2017 and provide training at least annually thereafter. *See* Agreement at ¶ 53. The Independent Reviewer found that MPD completed initial Settlement

Agreement training before the March 2017 deadline, and it continues to ensure that officers receive training at least annually.¹⁸

2. Firearms Training

MPD is also required to conduct firearms training at least annually. *See* Agreement at ¶ 54. Officers are required to qualify with each agency-approved weapon, including their agency-issued sidearm, rifle and/or shotgun, and secondary weapons during the weapons qualification phase. During this reporting period, we confirmed that MPD ensured that officers qualified on agency-approved weapons during annual training.

3. In-Service Training

MPD currently requires every officer, sergeant, lieutenant, captain, and reserve and auxiliary officer to attend Miami Agreement Training (MAT) annually, which comports with Paragraph 55 of the Agreement. MPD began its annual MAT training in September 2019 and concluded in April 2020. During this reporting period, MPD provided three-day, bi-weekly training programs, totaling 27 hours of range firing, classroom instruction, and reality-based scenarios. Required subject areas include deadly force and use-of-force training, focusing on Fourth Amendment updates and changes in state and local law; instruction on Controlled-Electronic Weapons; crisis intervention and mental health training; de-escalation training and techniques; defensive tactics; critical casualty care; and computer-simulated training involving active shooters, emotionally disturbed persons, and domestic violence. Officers are also required to qualify with each approved weapon as part of the training program. During this rating period, we reviewed training materials to ensure these materials comport with the Agreement.

In addition to annual MAT training, the Settlement Agreement requires MPD to provide supervisory training for all new supervisors before they assume supervisory responsibilities. MPD is also required to ensure that every supervisor completes supervisor-specific training annually. *See* Agreement at ¶¶ 55-58. In December 2019, MPD began providing Miami Agreement Supervisory Training (MAST) to supervisors, holding the rank of sergeant up to captain during this reporting period. The 40-hour course covered the following topics: first responder integrated tactical training; critical incident management; de-escalation ethics; use of force and investigating misconduct; body-worn camera training; processing and preserving crime scenes and forensic evidence; and completing performance evaluations. MPD provided training records confirming that newly promoted supervisors received initial training after being promoted and that MPD provided annual training to all other supervisors between December 2019 and April 2020. MPD also provided training materials, which we reviewed to ensure that

¹⁸ *See* Independent Reviewer's Fifth Report at 13.

the content was consistent with Agreement requirements. We therefore conclude that MPD complies with these requirements of the Agreement.

COMMUNITY OVERSIGHT	Substantial Compliance
1. Community Advisory Board (Paragraphs 59, 60, 61, 62, 63)	Substantial Compliance

F. COMMUNITY OVERSIGHT

1. Community Advisory Board

Under the Agreement, the City and MPD are required to create a community oversight board aimed at addressing community concerns and promoting greater transparency within MPD. *See* Agreement at ¶ 59. In April 2016, the City of Miami created a 13-member Community Advisory Board (CAB).¹⁹ Unlike the City of Miami’s Civilian Investigative Panel (CIP) discussed above – which has responsibility for conducting investigations and making factual findings related to police misconduct – the CAB is designed to serve as a conduit between MPD and the Miami community. Specifically, the CAB serves in an advisory role, assisting in improving community relations; establishing community public safety priorities; providing the community information related to the Settlement Agreement; and serving as a conduit to convey community concerns to MPD. The CAB has conducted monthly meetings and scheduled trainings on a variety of police-related issues.

In our Ninth Report, we concluded that MPD achieved substantial compliance with its obligations to support the CAB.²⁰ In addition to requiring the creation of this body, the Agreement also requires the City and MPD to participate in CAB meetings, ensure that the CAB has reasonable administrative support, and ensure that the CAB’s reports are posted on MPD’s website. *See* Agreement at ¶¶ 60-63. The CAB held its first meeting in August 2016, and MPD representatives have consistently participated. The Assistant Director of the CIP, Rodney W. Jacobs Jr., functions as the City of Miami’s liaison with the CAB. In this role, Mr. Jacobs performs administrative and organizational duties for the CAB. The City has also created a CAB link on its public website, allowing members and community stakeholders easy access to CAB reports and other services that the CAB may have available.

DOJ attended the February 2020 CAB meeting. During this meeting, we discussed our role moving forward and answered questions that the CAB had concerning the status of our enforcement activity, frequency of issuing assessment reports, and factors that we would consider in determining whether and when the Settlement Agreement would be terminated. We

¹⁹ *See* Independent Reviewer’s First Report at 30.

²⁰ *See* Ninth Compliance Report at 17-18.

also spoke with the CAB about the importance of robust and continued civilian oversight. The CAB has existed for the past four years.

The City and MPD have maintained substantial compliance with the CAB provisions of the Settlement Agreement.

G. Ongoing Implementation Efforts

MPD has made tremendous strides in implementing reforms in the Settlement Agreement. These reforms have improved the process for conducting agency-wide departmental order reviews, increased accountability and oversight of officer-involved shootings, improved first-line supervision over patrol and specialized units, enhanced agency-wide trainings, and improved community partnerships.

MPD's Compliance Section continues to ensure accreditation standards, oversee policy and procedure modifications, and evaluate administrative and operational practices. The Compliance Section oversaw the review of 30 departmental policies and forms and provided recommendations to the Chief of Police. The Compliance Section also prepared and presented 10 High Liability Reviews, resulting in six remedial training directives. The Compliance Section conducted 14 internal inspections, assessing administrative and operational activities.

MPD has maintained its certification from the Commission on Accreditation for Law Enforcement Agencies (CALEA). CALEA Law Enforcement Accreditation "focuses on standards that provide best practices related to life, health, and safety procedures for the agency."²¹ In November 2019, MPD built on its CALEA accreditation by obtaining the Tri-Arc CALEA accreditation in three disciplines (Law Enforcement, Training, and Communications). MPD is one of 18 agencies in the United States with this designation.

MPD has continued its efforts in working with the FDLE and the State Attorney's Office in reviewing officer-involved shootings. MPD continues to comply with the February 2015 Memorandum of Understanding that it signed with these partners, covering investigations of officer-involved shootings and in-custody deaths. Given the success of this partnership, MPD has assured us that it will continue to have the FDLE investigate officer-involved shootings and in-custody death incidents prospectively. In 2020, there were two incidents in which an MPD officer shot and struck a person, as well as one incident where an officer shot but did not strike a person.²² The FDLE is currently reviewing the shootings where persons were struck, and MPD's Internal Affairs Section is reviewing the shooting where the person was not struck. The investigations of these shootings are ongoing. We have reviewed the initial reports of these

²¹ CALEA Law Enforcement, <https://www.calea.org/law-enforcement>.

²² MPD reported a shooting in April 24, 2020, and December 31, 2020, where persons were struck by firearms. MPD also reported a shooting on December 25, 2020, where a person was not struck by a firearm.

shootings and determined that MPD is following reporting, referral, and investigative protocols mandated by the Settlement Agreement.

MPD implemented and continues to use an online automated staffing system to assist in managing its staffing levels and agency-wide span of control requirements. TeleStaff is the staffing system that executive staff and first-line supervisors use to monitor appropriate staffing levels and to ensure that span of control requirements are met. MPD's supervisors have continued to work closely with its Staffing Detail to improve productivity, accountability, and staffing levels, enabling supervisors to provide better oversight over their subordinates. MPD has assured us that it will continue to use this online platform to manage its staffing and span of control requirements.

MPD has continued to provide training to its supervisors and patrol officers. MPD's training calendar began in October 2020 and ends in October 2021. We reviewed the training calendar and confirmed that MPD is providing training that is consistent with the requirements of Settlement Agreement. While MPD has adjusted its training calendar over the past nine months because of COVID-19 restrictions, it remains committed to providing annual training to its officers and supervisors. Given the challenges associated with COVID-19, MPD has reduced class sizes, created online training platforms, and delivered in-person trainings (i.e., weapons qualification) in locations where officers adhered to CDC and state-wide COVID-19 guidance. Even with the challenges of COVID-19, MPD has trained over 80% of its officers and supervisors and plans to complete all annual training requirements by the end of the training cycle.

MPD maintained its commitment to community engagement. Community engagement is critical in increasing the public's trust and ensuring police legitimacy. MPD has continued its effort in working with community stakeholders and providing policy revisions to the CIP. In September 2020, MPD announced a joint partnership with the Miami Heat and Dedication to Community, a nonprofit law enforcement and community training organization, focusing on building positive relationships and interactions between law enforcement agents and community members. MPD's leadership and officers attended an eight-hour training course with community stakeholders, addressing issues designed to build police-community trust, to address community concerns related to implicit bias issues, and to implement strategies to fight against racial discrimination. MPD assured us that it is committed to this joint partnership, and it intends to build on the relationships created during this joint partnership.

Lastly, MPD has incorporated the components of the Settlement Agreement in its departmental orders, which demonstrates a commitment to durable and sustainable reforms at the agency. MPD has assured us that the lessons from the past and improvements over the past few years will continue to guide the agency in its commitment to provide Constitutional services to its community.

V. CONCLUSION

MPD has maintained sustained compliance with each provision of the Settlement Agreement during the rating period. We are pleased with MPD's continued improvement and its commitment to ensuring that it maintained substantial compliance since May 2019 with each provision of the Settlement Agreement.