

February 13, 2026

Patrick McCarthy
Acting Chief
Special Litigation Section
Civil Rights Division
Department of Justice
Via email: Patrick.McCarthy@usdoj.gov

Re: *DOJ Investigation of the Hennepin County Attorney's Office*

Dear Mr. McCarthy:

We write in response to your December 9, 2025 letter, wherein you “attempt to reengage HCAO in dialogue concerning [the Department’s] investigation of HCAO’s use of its *Negotiations Policy for Cases Involving Adult Offenders*.” Letter from P. McCarthy to M. Satin and K. Pappas (Dec. 9, 2025) (“P. McCarthy Letter”) at 1. We responded to previous communications from the Department of Justice (“DOJ”), and we are happy to do so again.

Since our last correspondence in July, the Hennepin County Attorney’s Office (“HCAO”) has updated its “Negotiations Policy for Cases Involving Adult Defenders” (“Updated Negotiations Policy”) as part of the office’s regular policy review process. The Updated Negotiations Policy clarifies and confirms that HCAO does not authorize or permit prosecutors to treat defendants differently based on race.¹ In any event, as discussed below, your December 9 letter does not refute our argument that the federal pattern or practice statute, 34 U.S.C. § 12601, does not authorize this investigation of HCAO. Instead, your letter cites, for the first time, Title VI of the Civil Rights Act and the Safe Streets Act as grounds for this investigation. But these provisions also do not authorize this investigation. And even if they did, the current requests are unduly burdensome. For all of these reasons, we request that DOJ close this investigation.

¹ A copy of HCAO’s “Updated Negotiations Policy” is attached.

HCAO's Negotiations Policy, both as originally adopted and as updated, does not authorize prosecutors to treat defendants differently based on race. As we stated in our July 3, 2025 letter, the Negotiations Policy's "purpose is to ensure that prosecutorial decision-making is *not* based on race or any impermissible ground and is instead based on the *individual circumstances* of each case." M. Satin and K. Pappas Letter at 1. That purpose grew out of the findings of DOJ's Civil Rights Division that "'MPD unlawfully discriminates against Black and Native American people when enforcing the law.'" *See id.* (quoting U.S. Dep't of Just. Civ. Rts. Div. & U.S. Att'y's Off. Dist. of Minn. Civ. Div., *Investigation of the City of Minneapolis and the Minneapolis Police Department* at 9 (June 16, 2023)).

HCAO's Updated Negotiations Policy clarifies and confirms that prosecutors are not instructed to treat defendants differently based on race. It states, in relevant part:

Hennepin County has a documented history of racial disparities in its criminal legal system, and the existence and perception of those disparities harm our community, lead to distrust, and have a negative impact on community safety. Accordingly, the HCAO will be 'proactive in efforts to detect, investigate and eliminate improper biases' in its work, and prosecutors must be aware of and actively seek to eliminate bias, including race-based bias, in their decision making in each case. *See* ABA Criminal Justice Standard 3-1.6 (Improper Bias Prohibited).

Updated Negotiations Policy at 3. Thus, while we disagree with your suggestion that a "fair reading of [HCAO's original Negotiations Policy] would indicate that defendants are subject to differing treatment based upon their race" (P. McCarthy Letter at 2), the Updated Negotiations Policy leaves no doubt: prosecutors may not treat defendants differently based on race. Rather, it instructs prosecutors to be aware of and eliminate their own improper biases so they do *not* treat defendants differently based on race. Accordingly, DOJ should close this investigation.

To the extent DOJ still intends to proceed with this investigation, it has not identified legal grounds to do so. When DOJ first announced its investigation of HCAO on May 2, 2025, it cited the federal pattern or practice statute, 34 U.S.C. § 12601, as legal authority for its investigation. *See* Letter from Harmeet Dhillon to Hon. Mary Moriarty (May 2, 2025) ("H. Dhillon Letter"). On June 3, 2025, DOJ sent us a document request letter, again citing only § 12601 as legal authority for its investigation. *See* Letter from Andrew Darlington to Michael Satin and Katherine Pappas (June 3, 2025) ("A. Darlington Letter"). On July 3, 2025, we responded to DOJ's letter by explaining that § 12601 does not apply to a local prosecutor's office

and therefore does not provide DOJ with legal authority to investigate HCAO. *See* Letter from Michael Satin and Katherine Pappas, to Andrew Darlington (July 3, 2025) at 2-4 (“M. Satin and K. Pappas Letter”). In support of our position, we analyzed the text of § 12601, discussed federal case law, quoted DOJ’s previous statements about § 12601, examined Minnesota law, and evaluated prior pattern or practice investigations. *See id.* at 2-4. DOJ did not respond to our letter for more than five months. That response (your December 9 letter) does not engage with, much less refute, the arguments and authority we cite. *See* P. McCarthy Letter at 1-2. Your letter devotes just one short paragraph to whether § 12601 applies to HCAO. *See id.* And it cites two cases, *Stresemann v. Jesson*, 868 N.W.2d 32, 35-26 (Minn. 2015), and *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), neither of which address the applicability of § 12601 to a local prosecutor’s office.

Unable to refute our arguments that DOJ lacks authority to investigate HCAO under § 12601, DOJ has now cited, for the first time, two other federal statutes as legal authority for this investigation—Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, and the Safe Streets Act, 34 U.S.C. § 10228(c)(3). *See* P. McCarthy Letter at 2. DOJ now argues that these statutes provide DOJ with authority to conduct this investigation because HCAO has received federal financial assistance from DOJ through the Edward Byrne Memorial Justice Assistance Grant Program (“Byrne Grant”). *See id.* But while HCAO has received (minimal) financial assistance through a Byrne Grant, these statutes do not provide legal authority for this investigation. As you concede in your letter, DOJ’s provision of federal funds through the Byrne Grant must relate to the program or activity at issue—in this case HCAO’s Negotiations Policy. *See id.* (arguing that the “police-like investigative tasks” performed by a detective supported by a Byrne Grant are “plainly implicated by HCAO’s *Negotiations Policy for Cases Involving Adult Offenders*”); *see also City of Chicago v. Noem*, No. 25-cv-12765, 2025 WL 325122, at *7 (N.D. Ill. Nov. 21, 2025) (invalidating DHS grant conditions imposed on cities and counties because they “have nothing to do with the grant programs”); 28 C.F.R. § 42.106(c) (requiring a recipient of federal financial assistance to permit access by DOJ of books and records only “as may be pertinent to ascertain compliance with this subpart”).

Here, the Byrne Grant to HCAO does not relate to the Negotiations Policy. The Byrne Grant supports a detective who performs “investigative field work” by “locating victims and/or witnesses, conducting investigative interviews of victims and/or witnesses, gathering contact information and serving subpoenas for Grand Jury presentations and/or trials.” JAG 2023 Budget Narrative and Detail Worksheet, Hennepin County (Aug. 29, 2023) at 3. By contrast, HCAO’s Negotiations Policy provides guidance to *prosecutors* in reaching *plea agreements*; it

does not provide any guidance to a detective engaged in “field work.” In short, the Byrne Grant has nothing to do with the Negotiations Policy.

What is more, the Byrne Grant forecloses this investigation because it *authorizes* HCAO to do the very things DOJ now points to as grounds for the investigation. DOJ opened this investigation because HCAO adopted a Negotiations Policy that mentions “racial identity” and “racial disparities.” See H. Dhillon Letter at 1. In your December 9 letter, you also home in on certain language in the Negotiations Policy, including that it seeks “‘*equitable* outcomes’ by encouraging consideration of a defendant’s ‘*racial identity*’ and directing prosecutors to ‘identify[] and address[] *racial disparities* at decision points, as appropriate.’” P. McCarthy Letter at 2 (quoting Negotiations Policy at 3) (emphasis added). But DOJ’s Solicitation Letter for the Byrne Grant uses *identical language*. It states that DOJ is “committed to advancing work that promotes civil rights and *racial equity*.” See BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program—Local Solicitation (hereafter “DOJ Solicitation Letter”) at 6 (emphasis added). It specifically identifies “advancing *racial equity*” as a “key area[] of priority” for DOJ (*id.* at 8) (emphasis added), and it even includes the following heading: “**Advancing Racial Equity and Support for Underserved Communities.**” *Id.* at 9. It further states that “DOJ is committed to . . . identifying and reducing *disparities* that exist throughout the criminal and civil legal systems . . . for people of color and communities that have been historically underserved, marginalized, and adversely affected by inequality,” and it encourages JAG recipients to utilize funds “to institute more effective and *equitable* criminal justice policies and practices.” *Id.* (emphasis added); see also *id.* (stating “DOJ is committed to advancing bold, effective justice reform solutions that deliver safety, *equity*, and justice for all”) (emphasis added). Thus, DOJ’s own Solicitation Letter authorizes a grant recipient to seek *equitable* solutions that reduce *racial disparities*—the very things that DOJ now points to as grounds for this investigation.²

² Until recently, DOJ’s own regulations required a recipient of federal financial assistance to take “affirmative action to overcome the effects of prior discrimination” where the recipient “has previously discriminated against persons on the ground of race, color, or national origin.” 28 CFR § 42.104(b)(6)(i). Although DOJ adopted a rule rescinding 28 CFR § 42.104(b)(6) on December 10, 2025, the now-rescinded regulations were in effect both at the time HCAO enacted its original Negotiations Policy and at the time DOJ opened this investigation. In any event, HCAO’s Negotiations Policy, both as originally adopted and as updated, does not authorize prosecutors to treat defendants differently based on race. See *supra* at 2.

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Finally, even if DOJ had a factual and legal basis to conduct this investigation (which it does not), DOJ should not burden a local prosecutor's office that handles 10,000 cases each year by demanding, among other things, a copy of "all plea offers" that have been extended since April 28, 2025, and for each plea offer, nine categories of documents related to each case. Nor should DOJ demand that HCAO provide copies of its internal policies as well as detailed explanations about them. HCAO has an important job to do for its community; it cannot and should not be forced to divert limited prosecutorial resources to search for and produce troves of documents and information that are plainly consistent with federal law, DOJ grant materials, and DOJ regulations.

HCAO continues to support the Civil Rights Division's mission "to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society." U.S. Dep't of Just. Civ. Rts. Div., <https://www.justice.gov/crt/our-work> (last visited Jan. 26, 2026). Because there was and is no legal or factual basis for DOJ's investigation of HCAO, DOJ should close this investigation.

Sincerely,



Michael J. Satin

Katherine Pappas

Counsel for the Hennepin County Attorney's Office



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
MARY F. MORIARTY COUNTY ATTORNEY

Title: Negotiations Policy for Cases Involving Adult Defendants

Effective Date: April 28, 2025

Updated: February 2026

Purpose

The purpose of this policy is to achieve safe, equitable, and just outcomes that center the healing of victims while improving community safety through individual and system accountability.

Policy

It is the policy of the Hennepin County Attorney's Office that assigned prosecutors on cases involving adult defendants have full authority to negotiate a resolution consistent with the law, except for the following situations:

1. Senior Attorney, Managing Attorney, Criminal Division Director or Deputy County Attorney support is required to:
 - a. Dismiss the entirety of a criminal complaint (except in the case of a "one-for-one" disposition)
 - b. On a case involving domestic violence or sexual assault against a victim: offer a dispositional departure or a durational departure or amend a complaint to a gross misdemeanor or misdemeanor from a felony
 - c. Seek consecutive sentences due to eligible crimes or the presence of multiple victims
 - d. Seek an upward departure at sentencing based on *Blakely* factors
2. Managing Attorney, Criminal Division Director or Deputy County Attorney support is required to:
 - a. Convene a Grand Jury to investigate or indict
 - b. Convey an offer in a case involving death or civil unrest
 - c. Request a prison sentence following trial where the offer on the same charge was a dispositional departure prior to trial

- d. Make an offer to resolve any case specifically identified by the County Attorney, Deputy County Attorney, Criminal Division Director, or a Managing Attorney in Procasse

Procedural Considerations

1. Encouraging collaboration and coaching.

This policy reflects the expectation and belief that all prosecutors are charged with seeking a just outcome in each matter that they work on. However, no individual can be expected to do this alone and seeking just outcomes will require prosecutors to engage in dialogue, collaboration and consultation with colleagues and other stakeholders.

As such, in exercising their discretion and authority, assigned prosecutors on cases are expected to consult with Senior Attorneys and Managers, as well as their colleagues. Offers on some cases are easy to discern while others are more complex. Attorneys should be talking to colleagues and supervisors about crafting safe, equitable, and just resolutions. The greatest resource this office has is the people in it – and collaboration and consultation are some of the best ways to tap into it.

To support effective implementation of this policy, supervision will shift to focus on coaching and support, moving away from permissions-based engagement under prior policy and practice. Senior Attorneys and Managers will be expected to meet weekly with their direct reports and should utilize the internal data dashboards to facilitate the meetings and discuss cases.

2. Incentivizing early acceptance of responsibility.

Offers should be made that best reflect the strength of a case and a safe, equitable, and just outcome as early as possible. While cases may later deteriorate, offers should not “improve” over time merely to avoid litigation. Conversely, there is no expectation that an early offer that was rejected be reopened, particularly in situations where litigation has occurred. Seeking early acceptance of responsibility, where appropriate, saves significant resources for the State and may prevent further trauma to victims.

3. Victim input on offers should be considered and incorporated where appropriate.

While prosecutors do not represent victims, it is important to comply with victims’ rights and for offers to consider what may center a victim’s healing throughout the case.

Prosecutors should communicate early and often with victims so they remain informed, even if and especially when victims do not agree with the State's legal approach. Any victim input must be balanced against the other ideals of rehabilitation and public safety.

4. Resolutions should be based on individualized analyses that consider sentencing guidelines and departure grounds (both mitigating or aggravating).

The Minnesota Sentencing Guidelines serve as the starting point in developing an offer in any case. However, there are times when a departure from the guidelines is warranted. These departures should be based on the unique analysis of the case and the person charged, including what would serve long-term public safety. For example, this may include a situation where, although the person charged has previously been to prison on a different matter, it is appropriate to dispositionally depart to a non-incarceration option to achieve public safety. In other words, past criminal history should inform decision making, but not control it.

Hennepin County has a documented history of racial disparities in its criminal legal system, and the existence and perception of those disparities harm our community, lead to distrust, and have a negative impact on community safety. Accordingly, the HCAO will be "proactive in efforts to detect, investigate and eliminate improper biases" in its work, and prosecutors must be aware of and actively seek to eliminate bias, including race-based bias, in their decision making in each case. See [ABA Criminal Justice Standard 3-1.6 \(Improper Bias Prohibited\)](#).

All cases involving a crime committed by someone 17 and younger, including cases that are direct files into adult court, should be handled by attorneys in the Youth Prosecution Division and should be negotiated consistent with the Youth Prosecution Division policies.

While most cases involving Emerging Adults will be handled by the Emerging Adult teams, all prosecutors should be aware of the science and reality of brain development. Science confirms that human brains are generally not fully formed until the mid-20s, and that among the last areas of the brain to fully develop is the pre-frontal cortex. This impacts many important functions including impulsivity, ability to consider risk and consequences, empathy and susceptibility to peer pressure. Prosecutors should be informed by science, research, and evidence-based practices in negotiating resolutions in their cases.

5. A broader range of dispositional options should be considered.

Previous practice in making offers within the HCAO followed a continuum. For example, a drug offender may be offered diversion on the first offense, a 152.18 stay of adjudication on the second, followed by a stay of imposition, then a stay of execution and so on. There may be occasions where additional opportunities to participate in diversion or consecutive stays of adjudication or imposition are appropriate. Stays of adjudication should be considered available for use when appropriate. Offers should be narrowly tailored to the person charged at this point in their life, as well as taking into consideration what is necessary to prevent future harm to the community.

It is important to remember that, regardless of the stay type or charged crime, probation assesses the person charged to determine the appropriate level of supervision.