Superior Court of New Jersey

Appellate Division

Docket Nos. A-000629-23, A-001209-23
(Consolidated)

MIRZA M. BULUR, in his official capacity as the Acting Public Safety Director for the City of Paterson and Appropriate Authority, CITY OF PATERSON POLICE DEPARTMENT and ENGELBERT RIBEIRO in his official capacity as the Police Chief of the City of Paterson Police Department, *Plaintiffs,* vs. THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN in his official capacity as Attorney General of the State of New Jersey, OFFICE OF THE ATTORNEY GENERAL JOHN DOES 1-10, MARY DOES 1-10 and XYZ CORPORATIONS 1-10, *Defendants.* *(For Continuation of Caption See Inside Cover)*	CIVIL ACTION ON THE ORDERS OF TRANSFER FROM THE SUPERIOR COURT OF NEW JERSEY, PASSAIC COUNTY DOCKET NOS. PAS-L-2736-23, PAS-L-3290-23 Sat Below: HON. RUDOLPH A. FILKO, A.J.S.C.

JOINT BRIEF FOR PLAINTIFFS-APPELLANTS MIRZA M. BULUR, ENGELBERT RIBEIRO and ANDRE SAYEGH

KINGSTON COVENTRY LLC
Attorneys for Plaintiffs-Appellants Mirza M. Bulur and Engelbert Ribeiro
One Gatehall Drive, Suite 305
Parsippany, New Jersey 07054
(973) 370-2227
chris@kingstoncoventry.com

On the Brief:
CHRISTOPHER J. GRAMICCIONI, ESQ.
Attorney ID# 019762008

FLORIO KENNY RAVAL, LLP
Attorneys for Plaintiff-Appellant Andre Sayegh
125 Chubb Avenue, Suite 310-N
Lyndhurst, New Jersey 07071
(201) 659-8011
eflorio@fkrlaw.com

On the Brief:
EDWARD J. FLORIO, ESQ.
Attorney ID# 025311987
CHRISTOPHER K. HARRIOTT, ESQ.
Attorney ID# 035382001

Date Submitted: March 15, 2024

ANDRE SAYEGH, Mayor of the City of Paterson and ENGELBERT RIBEIRO, *Plaintiffs,* vs. ISA M. ABBASSI, in his Official Capacity as the Officer-in-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, and MATTHEW J. PLATKIN, in his Official Capacity as the Attorney General of the State of New Jersey, OFFICE OF THE ATTORNEY GENERAL, *Defendants.*	:

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PRELIMINARY STATEMENT

The underlying matter arises from two consolidated lawsuits pursuant to which Plaintiffs and Movants Mirza M. Bulur, the duly-appointed full-time interim public safety director of the City of Paterson, Engelbert Ribeiro, the duly-appointed chief of the City of Paterson Police Department who took the oath of office on March 3, 2023, and Andre Sayegh, Mayor of the City of Paterson ("Bulur," "Chief Ribeiro," and "Mayor Sayegh" respectively, and "Appellants" or "Movants" collectively), sought and seek injunctive relief with preliminary restraints to remedy the ultra vires supersession and takeover of the operations of the City of Paterson Police Department by Defendants and Respondents the New Jersey Office of the Attorney General, Matthew J. Platkin, in his official capacity as the Attorney General of New Jersey, and Isa M. Abbassi, in his official capacity as the Officer-in-Charge of the Paterson Police Department ("OAG," "AG Platkin," and "Abbassi" respectively, and "Defendants" or "Respondents" collectively). (The Superior Court of New Jersey, Law Division, Passaic County transferred the underlying matters to this Court upon the application of AG Platkin).

Respondents' unprecedented actions trample upon the constitutional and statutory rights of Plaintiffs and the City of Paterson. Their unprecedented takeover of the daily operations of an entire municipal police department

unlawfully usurps the longstanding authority granted to municipalities by the New Jersey Legislature and State Constitution. Moreover, Respondents point to no existing statutory authority to support such a takeover, and instead rely only on a self-serving, unilateral, revised directive executed mere months before their takeover. Additionally, the appointment of Abbassi, who was not licensed or certified to serve as a police officer in the State of New Jersey, violated the Police Training Act and other applicable state law.

As such, Appellants seek an Order immediately terminating Respondents' command and control of the Paterson Police Department, directing Respondents to, with the exception of the Department's internal affairs function, restore full operational command and control of the City of Paterson Police Department to Plaintiffs, and granting such other and further relief in favor of Appellants as the Court deemed just and proper.

PROCEDURAL HISTORY

On October 6, 2023, Bulur and Chief Ribeiro filed a verified complaint against the OAG, AG Platkin, and several "Doe" individual and corporate defendants, in which they sought, pursuant to the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., a declaratory judgment and injunctive relief in the form of an order: (1) immediately terminating the OAG and AG Platkin's full command and control of the City of Paterson police department; (2) recognizing Chief Ribeiro as the duly-appointed and qualified chief of the City of Paterson Police Department; (3) immediately returning command and control of the City of Paterson Police Department to Bulur and Ribeiro and the appropriate authority in accordance with the Home Rule Act, N.J.S.A. 40A:14-118, the New Jersey State Constitution, New Jersey statutes, and City of Paterson ordinances; (4) requiring the OAG and AG Platkin to provide monthly reports detailing the operations of the City of Paterson Police Department from April 2023 to the present; (5) terminating the OAG's and AG Platkin's use and occupancy of all space taken over within the Paterson Public Safety Department building; (6) expressly limiting the OAG's and AG Platkin's authorized control to the internal affairs function of the City of Paterson Police Department, until such time as deemed appropriate for the Paterson Police Department to resume

said function; and (7) granting such other relief as the Court may deem proper and necessary ([1]Pa1-Pa226).[2]

AG Platkin moved for an order transferring venue to the Appellate Division of the New Jersey Superior Court, which application was granted by order dated October 23, 2023 (Pa229-Pa230). Bulur and Chief Ribeiro timely filed a notice of appeal from the October 23, 2023 order (Pa231-Pa234).

On November 28, 2023, Mayor Sayegh and Chief Ribeiro filed a verified complaint against Abbassi, the OAG, and AG Platkin, in which they sought, pursuant to the Uniform Declaratory Judgments Act, a declaratory judgment and injunctive relief in the form of an order: (1) declaring Chief Ribeiro's reassignment to the Office of the Attorney General as ultra vires and non-binding on Mayor Sayegh and Chief Ribeiro; (2) enjoining the Respondents from instituting any disciplinary action against Chief Ribeiro for his failure to report to the Police Training Commission in Trenton in lieu of his assignment to Paterson City Hall; and (3) declaring that Chief Ribeiro, as the duly-appointed municipal Chief of Police, is not required to report to, nor is subordinate to, Abbassi (Pa239-Pa255). Mayor Sayegh and Chief Ribeiro also filed an order to show cause on November 28, 2023 (Pa239-Pa277).

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[1] "Pa" refers to the Appendix for Plaintiffs-Appellants.
[2] PAS-L-2736-23.

The OAG, AG Platkin, and Abbassi filed a motion to change venue, which was granted by order dated December 8, 2023 (Pa278-Pa279). That same order directed the consolidation of that matter with PAS-L-2736-23 (Pa279). Mayor Sayegh and Chief Ribeiro timely filed a notice of appeal on December 21, 2023 (Pa284-Pa298). Bulur and Chief Ribeiro's motion to consolidate the appeal from the October 23, 2023 order in PAS-L-2736-23 with the appeal from the order dated December 8, 2023 in PAS-L-3920-23 was granted by order of the Superior Court of New Jersey, Appellate Division, dated January 18, 2024.

STATEMENT OF FACTS

Prior to taking the oath of office as the chief of the City of Paterson Police Department on March 3, 2023, Chief Ribeiro, the first Latino chief of police in the history of the City of Paterson, joined the Paterson Police Department in 1996, where he worked his way up through the patrol, major crimes, and narcotics divisions (Pa3; Pa241). Chief Ribeiro served in several supervisory capacities, including ranks of sergeant, lieutenant, captain, and deputy chief (Pa25).

On March 27, 2023, just 24 days after Chief Ribeiro began serving as the police chief, AG Platkin announced via press release an unprecedented expansion of his "supersession authority" as New Jersey's chief law enforcement officer, and directed the OAG to assume full responsibility of the day-to-day operations of the Paterson Police Department, inclusive of the Department's internal affairs function (Pa4; Pa21-Pa22; Pa23-Pa24). AG Platkin and the OAG relieved Chief Ribeiro of his command and appointed a team consisting of an interim officer-in-charge from the New Jersey State Police ("NJSP"), a subordinate NJSP officer, and an OAG Assistant Attorney General (Pa4; Pa23-Pa24). AG Platkin and the OAG also advised Paterson Police Department personnel that a New York City police officer, Abbassi, would be

appointed two months later, in May 2023, to serve as the officer-in-charge of the Paterson Police Department (Pa4; Pa23-Pa24).

The sole bases cited by AG Platkin for the exercise of his purported authority to take those actions were "fiscal challenges," a "revolving door of leadership," and "high-profile cases of misconduct" that had purportedly resulted in a loss of trust between the Department and the community (Pa4; Pa21-Pa22). No statutory authority, implied or express, appears to authorize the actions, and AG Platkin did not refer to or cite to any statutory authority (Pa4; Pa21-Pa22).

On the same day as the press announcement, AG Platkin and other officials met with Chief Ribeiro in his office to inform him of the OAG's and AG Platkin's takeover of the Paterson Police Department. Chief Ribeiro was escorted from his office without prior warning or explanation, asked several times whether he planned to retire under the circumstances, and was not given the opportunity to remove his belongings from his office until later (Pa5; Pa26). No written justification for these actions was ever provided to Chief Ribeiro (Pa26).

NJSP Major Frederick P. Fife ("Major Fife"), who was temporarily placed in charge by AG Platkin, advised Chief Ribeiro that anything that Chief Ribeiro

was currently responsible for would immediately be assumed by Major Fife, but he was unable to say what Chief Ribeiro's role would be going forward (Pa26).

Later that day, in the early afternoon of March 27, 2023, an email and video message was sent to the entire staff of the Paterson Police Department, in which message AG Platkin informed the entire staff of the purported supersession (Pa26). AG Platkin also held a press conference announcing the takeover (Pa26). At no point did AG Platkin reference or identify the statutory authority necessary to undertake this supersession over the entire police department.

On April 23, 2023, Major Fife advised Chief Ribeiro that he was not permitted to attend the swearing-in of the Department's new recruitment class, and that, in substance and in part, the OAG did not want Chief Ribeiro to attend the event and did not want his name on the graduation pamphlet (Pa27).

On April 28, 2023, Chief Ribeiro met with Major Fife and Assistant Attorney General Joseph Walsh ("AAG Walsh") (Pa27). Major Fife advised Chief Ribeiro that he had unilaterally decided to assign Chief Ribeiro to the Division of Criminal Justice Academy in Sea Girt, New Jersey in early May 2023, following Abbassi's arrival (Pa27). In response to Chief Ribeiro's query as to the authority for such an assignment, Major Fife replied, in substance and in part, that since the AG had taken over and was now in charge, "they can assign

[Chief Ribeiro] anywhere they like[d]" (Pa27). Chief Ribeiro stated that he was not ready to retire or relocate, and that he believed that the Paterson City administration would not approve of his sixty-seven (67) mile relocation, as they paid Chief Ribeiro's salary (Pa27). Chief Ribeiro's request to meet with Abbassi to discuss an alternative to the relocation and reassignment was denied on the basis that it was futile because a "decision had been made" (Pa27). Both AAG Walsh and Major Fife reiterated to Chief Ribeiro that as of Friday, May 5, 2023, he would not be permitted to return to the Paterson Police Department or perform any duties there (Pa27). They ended the meeting by advising Chief Ribeiro that they would let him know when he could meet with the director of the DCJ Academy at Sea Girt (Pa27-Pa28).

On May 2, 2023, Chief Ribeiro met with AAG Walsh and Major Fife, who informed him that he would not be reporting to Sea Girt but would be assigned instead to the Division of Criminal Justice Police Training Commission ("PTC") in Trenton (Pa27). Chief Ribeiro again advised AAG Walsh and Major Fife that Paterson City administration would not be supportive and requested an assignment to Paterson City Hall (Pa28).

On May 4, 2023, during a State Police Chiefs' Association meeting, AAG Walsh introduced Chief Ribeiro to the head of the PTC and indicated that Chief Ribeiro would be assigned to work at the PTC following the Police Unity Tour

(Pa28). AAG Walsh further advised Chief Ribeiro that he and Major Fife would meet with Paterson City administration officials to discuss his new assignment at the PTC, in response to which Chief Ribeiro advised them again that Paterson City administration did not agree with his relocation, and suggested that he could be assigned to Paterson City Hall instead (Pa28). AAG Walsh advised that he would convey that information and request to his chain of command (Pa28).

By email dated May 5, 2023, corporation counsel Aymen Aboushi reiterated in writing to Major Fife and AAG Walsh that the City of Paterson did not support the removal of Chief Ribeiro from the City and sending him to Trenton (Pa29). Mr. Aboushi further proposed that Chief Ribeiro be detailed temporarily to City Hall during Abbassi's early tenure (Pa29). No response to this email was ever received (Pa5).

On May 5, 2023, Mayor Sayegh informed Chief Ribeiro that the City's and Chief Ribeiro's request for assignment to Paterson City Hall was rejected, and that he would be reassigned and relocated to the PTC in Trenton (Pa28).

Chief Ribeiro requested to attend certain training courses to remain current in training, but his requests were denied (Pa28).

During a May 9, 2023 press conference, AG Platkin responded to specific questions concerning Chief Ribeiro's employment status and subsequent

assignment: "*I can't speak about personnel decisions . . . that's a City* [of Paterson] *decision*" (Pa6; Pa34).

Notwithstanding AG Platkin's representations that Chief Ribeiro's reassignment was a "city decision," AG Platkin and the OAG unilaterally reassigned Chief Ribeiro, over his and the City of Paterson's objections and specific requests that he not be reassigned outside of Paterson (Pa6). This unilateral reassignment was memorialized, without the consent or approval of the City of Paterson, in a Memorandum of Understanding ("MOU") purportedly dated on or about May 9, 2023 – which is the same date when AG Platkin made public representations at the press conference that the reassignment was a "city decision," and four days after the City of Paterson's request to assign Chief Ribeiro to City Hall was ignored (Pa6; Pa36-Pa38). Neither Mayor Sayegh, Chief Ribeiro, nor any authorized representative of the City of Paterson was a party to or signatory on the MOU (Pa6; Pa39-Pa42). Instead, it was executed by AG Platkin and "counter-executed" by the OAG's designee, who was appointed by AG Platkin as the interim officer-in-charge of the Paterson Police Department upon supersession (Pa6; Pa36-Pa38). The MOU did not reference any statutory provision or otherwise identify any authority relied on by the OAG or AG Platkin to effectuate Chief Ribeiro's reassignment (Pa6; Pa36-Pa38).

On or about May 9, 2023, Abbassi assumed command of the Paterson Police Department, even though, upon information and belief, he is not licensed or certified to serve as a police officer in the State of New Jersey as required by the Police Training Act and other applicable state law (Pa7).

The OAG, AG Platkin, and Abbassi: (1) have never provided a timeline for the cessation of their command and control of the Paterson Police Department; (2) have never provided a transition plan for the transfer of command and control back to the City of Paterson and/or Chief Ribeiro; and (3) failed to report, at least monthly, to Bulur or the City of Paterson on the operation of the police force, as required by state law (Pa7; Pa39-Pa42).

On November 15, 2023, on the date the MOU was set to expire, Chief Ribeiro received an email from Mayor Sayegh directing him to report for duty at Paterson City Hall on Thursday, November 16, 2023 at 8:30 a.m (Pa245; Pa256-Pa261; Pa262). Later that day, however, Chief Ribeiro received an email from Abbassi stating that Chief Ribeiro's "assignment to the DCJ PTC ha[d] been extended through May 15, 2024" and directing him to continue to report to the PTC "as instructed by PTC leadership" (Pa245; Pa256-Pa261; Pa263). Abbassi attached to his email a document that he purported was "an addendum to the MOU" (Pa263; Pa264). That purported addendum bears only the signatures of AG Platkin and Abbassi in his role as "Officer in Charge" of the

Paterson Police Department (Pa264). Neither Mayor Sayegh, Bulur, or any City of Paterson official was a party to or signatory on the purported addendum (Pa246; Pa264).

On November 16, 2023, Chief Ribeiro reported to City Hall in accordance with Mayor Sayegh's directive (Pa246). Later that morning, Mayor Sayegh received an email from Abbassi's chief of staff, James Hagerty ("Hagerty"), ordering Chief Ribeiro to appear for a meeting with Abbassi at 1 p.m. that day (Pa246; Pa265-Pa266). Hagerty's email cited certain departmental rules and regulations directing all members to perform their duties as required or directed by law, departmental rules and regulations, policy or directive, or by lawful order of supervisory personnel (Pa266). Approximately an hour later, Abbassi replied to Hagerty's email in the same email chain and stated that he was "ordering" Chief Ribeiro to appear and that the order "was not a request" (Pa246; Pa265). Haggerty also sent Chief Ribeiro a text message advising of Abbassi's order to meet at 1 p.m. that day, which text included a reference to departmental rules and regulations regarding failure to adhere to orders subjecting Chief Ribeiro to discipline (Pa246; Pa259). Later that morning, Chief Ribeiro received a telephone call from a lieutenant in the department's internal affairs bureau, who stated that he was recording the conversation on the phone

line and with his body-worn camera, and that Chief Ribeiro was being ordered to attend a meeting at 1 p.m. with Abbassi (Pa259).

Chief Ribeiro attended the November 16, 2023 meeting at 1 p.m. (Pa259). Present were AAG Walsh, Hagerty, Captain Louis DeLuca of the Paterson Police Internal Affairs Bureau, and Abbassi (Pa259). Captain DeLuca advised that his body-worn camera was recording the meeting (Pa259). Abbassi stated, in substance and in part, that: (a) as an employee of the City of Paterson and the Paterson Police Department, Chief Ribeiro was required to adhere to and follow the rules and regulations of the Department; (b) AG Platkin had appointed Abbassi as officer-in-charge of the Paterson Police Department, meaning that Abbassi was in command and control and that Chief Ribeiro must follow Abbassi's orders and polices; and (c) that Chief Ribeiro was to follow Abbassi's and AG Platkin's orders, not the orders of "any politician or the mayor" (Pa260).

Abbassi next asked if Chief Ribeiro had received a copy of the addendum to the MOU, and Chief Ribeiro stated that he had (Pa260). Abbassi asked Chief Ribeiro why he had not reported to PTC in Trenton on that date, and Chief Ribeiro advised that he had received conflicting orders about his assignment and the MOU (Pa260) from both Mayor Sayegh and OAG. Abbassi stated that the MOU was not in question and remained valid until a court stated otherwise, and that Chief Ribeiro was to report to PTC or risk being disciplined (Pa260). Later

in the meeting, Abbassi asked Chief Ribeiro if he was reporting to PTC on November 17, 2023, and Chief Ribeiro responded that he planned to take vacation that day (Friday), and all of the following week (Pa260). Abbassi asked Chief Ribeiro who had given him permission to take vacation, and Chief Ribeiro stated that as chief, he was not required to ask for permission (Pa260). Abbassi disagreed and stated that from that point forward, Chief Ribeiro was required to submit leave requests to Abbassi through Haggerty via email, notwithstanding that such requests would bypass Chief Ribeiro's direct supervisor, the Paterson Public Safety Department Director (Pa260).

At the end of the meeting, Abbassi asked Chief Ribeiro what time he had reported that day, and Chief Ribeiro responded that he had reported at 8:30 a.m. (Pa260). Even though only a few hours remained in the workday, Abbassi instructed Chief Ribeiro to report to PTC in Trenton to complete a tour of duty for the day (Pa260). Chief Ribeiro subsequently drove from Paterson to Trenton to report for duty for the remainder of the day; by the time he arrived and reported, approximately one hour remained in the workday (Pa260).

On November 17, 2023, Mayor Sayegh, through Paterson's Corporation Counsel, submitted correspondence to AAG Walsh in which he objected to the continued reassignment of Chief Ribeiro (Pa248; Pa267).

Due to conflicting orders received and the overt threat of disciplinary action conveyed by Abbassi, Chief Ribeiro was forced to submit leave for the date of November 17, 2023 and the week of November 20, 2023 (Pa248).

Due to the overt threat of disciplinary action conveyed by Abbassi, Chief Ribeiro was compelled to report to the PTC on November 28, 2023 (Pa248).

History of the Internal Affairs Policy and Procedures ("IAPP") Directive

In 1991, the New Jersey Attorney General issued the first IAPP Directive, which established statewide standards for the operation of internal affairs units in New Jersey (Pa7). In 1996, The New Jersey Legislature mandated that each law enforcement agency in the State of New Jersey adopt its own policies consistent with the IAPP (Pa7).

The OAG and AG Platkin derive their limited supersession authority from the New Jersey Legislature in certain delineated instances; N.J.S.A. 52:17B-107(a) provides that the Attorney General may:

> (1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding. In such instances, the Attorney General may appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary to promote and safeguard the public interests of the State and secure the enforcement of the laws of the State.

See also IAPP Directive 22-14 with IAPP revisions (Pa43-Pa136). As of the date of the OAG's and AG Platkin's supersession in March 2023, the statute has not been amended to allow for broader supersession authority than that specifically authorized by statute (Pa7).

In November 2022, the OAG issued a revised IAPP Directive, which attempted, without accompanying legislation, to expand the OAG's limited supersession authority in unprecedented fashion (Pa8). The most recent version of the IAPP allows for the OAG to take control of "an entire law enforcement agency" and to "assume any or all of the duties, responsibilities, and authority normally reserved to the chief law enforcement executive and agency" (Pa8; Pa43-Pa136). This latest version of the IAPP – titled IAPP Directive 22-14 - attempts to unilaterally expand the Attorney General's authority to allow for the wholesale takeover of the day-to-day operations of any municipal police executive or agency (Pa9; Pa43-Pa136). N.J.S.A. 52:17B-107(a) remains unchanged.

ARGUMENT

POINT I

THE OAG, AG PLATKIN, AND ABBASSI LACKED AUTHORITY TO TAKE OVER THE CITY OF PATERSON POLICE DEPARTMENT (Pa229-Pa230; Pa278-Pa279)

The OAG, AG Platkin, and Abbassi lacked authority to supersede and assume the entire operations of the Paterson Police Department, to remove Chief Ribeiro from office, and/or to reassign and relocate him to a role outside of the City of Paterson. Dispositively, there is no legal authorization justifying Respondents' continued command and control of the City of Paterson Police Department. The New Jersey Legislature has expressly granted to municipalities – not the Attorney General – the authority to run the operations of the Paterson Police Department. N.J.S.A. 40:41A-28. This delegation of authority is aligned with the New Jersey Constitution's broad allocation of powers to municipalities and express espousal of fundamental principles of "home rule." N.J. Const. (1947), Art. IV, § VII, para. 11; N.J.S.A. 40:41A-28, 40:42-4, and 40:48, *et seq*. These fundamental constitutional and legislative principles cannot be trumped by an Attorney General Internal Affairs Directive which, as expressly titled, concerns *internal affairs*.

A) No Authority Exists in Statute or Case Law for the Attorney General to Supersede an Entire City Police Department (Pa229-Pa230; Pa278-Pa279)

Respondents have never provided proper legal justification for their unprecedented takeover of the daily operations of the Paterson Police Department, relying solely on unsupported and conclusory media statements about their hypothetical "supersession authority" as the chief law enforcement officer of the State (Pa5; Pa21). The March 27, 2023 letter from AG Platkin to Mayor Sayegh and Chief Ribeiro (Pa227-Pa228) does not refer to any statutory authority or case law that supports the OAG's purported authority to supersede and take over the day-to-day operations of a municipal police department. Respondents' justification is devoid of any proper legal authority because there is none.

The AG cannot find support for his unprecedented supersession actions in New Jersey caselaw, a review of which reveals his expansive interpretation of the AG's supersession authority is a politically expedient invention. In State v. Winne, 12 N.J. 152 (1953) for example, the Supreme Court analyzed whether a county prosecutor could be prosecuted for nonfeasance. It did not provide for the unilateral supersession of an entire city police department by the Attorney General's office. Williams v. Borough of Clayton, N.J. Super. 583 (App. Div. 2015) addressed the issue of "whether an applicant for Police Chief in such a

jurisdiction is statutorily eligible for that appointment if he or she has not served as an officer within that police department for three years" and did not involve the supersession of a city police department by the Attorney General. Constantine v. Township of Bass River, 406 N.J. Super. 305, 327 (App. Div. 2009) concerned whether or not the Attorney General had the power to direct municipal prosecutors as to the appropriate fees they may charge for furnishing documentary discovery in the municipal courts. To the extent that Constantine mentioned supersession, the court merely referred to Wright v. State, 169 N.J. 422, 437-38 (2001) and Kershenblatt v. Kozmor, 264 N.J. Super. 432, 439 (Law Div. 1993), each in the context of explaining the relationship between the Attorney General and the county prosecutor's office and/or the municipal prosecutor. Constantine did not discuss or authorize the supersession of a city police department by the Attorney General. State v. Ward, 303 N.J. Super. 47, 52-58 (App. Div. 1997) cited N.J.S.A. 52:17b-107a and -103 and addressed a county prosecutor's exercise of authority to dismiss a non-indictable offense. It did not involve the supersession of a city police department by the Attorney General. State v. Downie, 229 N.J. Super. 207, 209 n.1 (App. Div. 1998) involved a question of admissibility of breathalyzer evidence in the municipal courts of four municipalities, and only referred to the supersession of various municipal prosecutors by the Monmouth County Prosecutor. Finally,

Kershenblatt v. Kozmor, 264 N.J. Super. 432, 435-37 (Law Div. 1993) also did not involve the supersession of a city police department by the Attorney General, but simply focused on the powers and duties of a municipal prosecutor. None of these cases mentions, much less authorizes, the supersession of a city police department by an Attorney General.

A review of statutory authority similarly reveals the absence of express or implied authority for the unilateral, unprecedented, and unconstitutional actions of the OAG and AG Platkin described above. N.J.S.A. 52:17B-107(a) is expressly limited in scope, and provides that the Attorney General may:

> (1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding. In such instances, the Attorney General may appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary to promote and safeguard the public interests of the State and secure the enforcement of the laws of the State.

More than one instance of limiting language is evident here. First, to the extent that the Legislature authorized supersession by the Attorney General at all, such supersession is limited to that of a "county prosecutor" and in "any investigation, criminal action or proceeding."

To the extent that Internal Affairs Policy and Procedures Directives promulgated by the Attorney General mere months before these actions can

establish authority for the Attorney General to take any action, it bears noting that the IAPP historically was limited to the establishment statewide standards for the operation of internal affairs units in New Jersey, as the very title of the Directive specifies. In 1991, the New Jersey Attorney General issued the first IAPP Directive. In 1996, the New Jersey Legislature mandated that each law enforcement agency in the State of New Jersey adopt its own policies consistent with the IAPP.[3] As titled, all previously issued IAPP Directives focused squarely on the Attorney General's authority to establish uniform policies and procedures for internal affairs matters but did not speak of supersession of the day-to-day operational functions of a police department. Indeed, all previous IAPP versions issued since its 1991 inception limited the Attorney General's supersession authority to assuming control of a policy agency's internal affairs department when deemed necessary. Under legacy versions of the IAPP, municipal police forces were apprised of their duty to cooperate with the Attorney General and the need to strictly adhere to the Attorney General's internal affairs policy requirements.

Respondents' most recent revision of the IAPP Directive, issued in November 2022, unjustifiably, albeit strategically attempted to expand the OAG's limited supersession authority in unprecedented fashion. This most

[3] See N.J.S.A. 40A:14-181.

recent version of the IAPP allows for Respondents to take control of "an entire law enforcement agency" and "assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and agency" (Pa52-Pa54). This attempt to use an internal affairs directive to unilaterally expand the Attorney General's authority to allow for the wholesale takeover of the day-to-day operations of any municipal police executive or agency, nonetheless, remains without statutory authority, and is contrary to state law.

Curiously, IAPP Directive 22-14 with IAPP revisions (Pa52-Pa54) refers to N.J.S.A. 52:17B-98, 40A:14-181, and 52:17B-107 as the statutory bases for the revised directive's broad overreach. To the contrary, those provisions do not provide such authority.

N.J.S.A. 52:17B-98 provides, in its entirety:

> The Legislature recognizes that the existence of *organized crime* [emphasis added] presents a serious threat to our political, social and economic institutions and helps bring about a loss of popular confidence in the agencies of government. Accordingly, it is hereby declared to be the public policy of this State to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. All the provisions of this act shall be liberally construed to achieve these ends and

> administered and enforced with a view to carrying out the above declaration of policy.

Nothing in this declaration of policy concerning "the existence of organized crime" provides for the supersession by the Attorney General of a city police department not facing any threat of "organized crime."

N.J.S.A. 40A:14-181 provides:

> 10. Every law enforcement agency, including a police department of an institution of higher education established pursuant to P.L.1970, c.211 (C.18A:6-4.2 et seq.), shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.

This provision makes clear that law enforcement agencies are required to implement guidelines for internal affairs policy and procedures, and nothing more. See also Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 94 (2020) (the principle of home rule is legislatively stitched into the fabric of New Jersey government; interactions with the police force must occur through a designated "appropriate authority").

With respect to N.J.S.A. 52:17B-107, moreover, that statutory provision, as discussed above, limits the Attorney General's supersession authority to county prosecutors in specific investigations, criminal actions or proceedings.

In sum, there is no statutory or case authority for the OAG's and AG Platkin's attempt to unilaterally supersede a city police department or decisions negatively impacting and undermining Chief Ribeiro, his location, and his assignment.

B) The "Home Rule" Constitutional Principle Governs and Expressly Grants to the City of Paterson the Authority to Meet the Needs of the Community (Pa229-Pa230; Pa278-Pa279)

The New Jersey State Constitution confers broad regulatory powers on municipalities and counties (known as the historical "home rule" concept):

> The provisions of this Constitution and of any law concerning municipal corporations formed for local government . . . *shall be liberally construed in their favor. The powers of . . . such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto*.

N.J. Const. Art. 4, § VII, par. 11 (emphasis added). The New Jersey Constitution reflects the longstanding "home rule" principle that expressly grants municipalities the "liberally construed" authority to meet the needs of the community. This foundational principle is "legislatively stitched into the fabric of New Jersey government" and "finds expression in the legislative choice to invest the 'police powers of the state in local government.'" Fraternal Order of Police, supra, 244 N.J. at 93. In exalting the principles of home rule, the

Supreme Court in Fraternal Order of Police cited Inganamort v. Borough of Fort Lee, 62 N.J. 521 (1973). The Inganamort Court held:

> home rule is basic in New Jersey government. It embodies the principle that the police power of the state may be invested in local government to enable local government to discharge its role as an arm or agency of the state and to meet other needs of the community. Whether the state alone should act or should leave the initiative and the solution to local government, rests in legislative discretion. Id. at 528.

Furthermore, the Faulkner Act – to which the City of Paterson subscribes – confers upon municipalities the "greatest possible powers of local self-government and home rule consistent with the Constitution of this State." N.J.S.A. 40:69A-30; see also Keuerleber v. Township of Pemberton, 260 N.J. Super. 541, 544 (App. Div. 1992). The New Jersey Supreme Court has consistently maintained that such ordinances adopted pursuant to the well-established police powers granted to municipalities are to be "liberally construed in favor of the municipality." Quick Check Food Stores v. Springfield Twp., 83 N.J. 438, 447 (1980); N.J.S.A. 40:69A-30.

Simply put, the Legislature has expressly granted to municipalities – not the Attorney General – the broad police powers necessary to ensure the health and safety of its citizens. Quick Check Food Stores, 83 N.J. at 447; N.J.S.A. 40:69A-30; see also N.J.S.A. § 40:48-2 (the "police powers" statute); see also N.J.S.A. 40:41A-28 (municipalities "are and shall remain the broad repository

of local police power in terms of the right and power to legislate for the general health, safety and welfare of their residents").

The only limitation to this legislatively-granted power is that municipal action cannot run contrary to statutory or constitutional law. N.J.S.A. 40:69A-30; see also New Jersey Builder's Ass'n. v. Mayor and Twp. Council of E. Brunswick Twp., 60 N.J. 222, 226-27 (1972) (internal quotations omitted).

Mayor Sayegh's, Bulur's, and the City of Paterson's operation and control of the Paterson Police Department, consistent with the codified desires of the City of Paterson, is exclusively vested to them under statutory and constitutional law. Chief Ribeiro was appointed as the chief of the Paterson Police Department pursuant to N.J.S.A. 40A:14-118 and City of Paterson ordinances. Chief Ribeiro had been in office for only 24 days before Respondents' unprecedented and unlawful takeover of the Paterson Police Department. Respondents cannot cure their trampling upon these "legislatively-stitched" principles by pointing to a self-serving revision they strategically made to their own IAPP Internal Affairs Directive, a mere four months before taking over the entire Paterson Police Department.

C) The Appointment of Abbassi Was Without Authority and Violated Existing State Law (Pa229-Pa230; Pa278-Pa279)

Respondents have not offered any evidence that Abbassi was licensed or certified to serve as a police officer in the State of New Jersey as required by

the Police Training Act and other applicable state law. Although Senate Bill No. 3943 (now P.L. 2023, c.94), which took effect on July 3, 2023 and is conveniently retroactive to March 1, 2023, allows the Attorney General to appoint a person as "officer in charge" during the period of time in which the law enforcement agency is superseded even though the person has not previously satisfied the training requirements established by the Police Training Commission, this brand new law does not render Abbassi's appointment legal. First, there is no statutory basis for the supersession of a police department by the Attorney General, as set forth above. Second, nothing in P.L. 2023 permits the Attorney General or the "officer in charge" to ignore or rewrite the obligations of the duly appointed police chief. Neither Abbassi nor AG Platkin provided: (1) a timeline for the cessation of their command and control of the Paterson Police Department; (2) a transition plan for the transfer of command and control back to Mayor Sayegh, Bulur, or any other appropriate authority; or (3) any report, at least monthly, to Bulur or the City of Paterson on the operation of the police force, as required by state law.

D) Appellants Are Entitled to Injunctive and Declaratory Relief (Pa229-Pa230; Pa278-Pa279)

Appellants were entitled, and remain entitled, to interim injunctive relief pending the issuance of a declaratory judgment that: (1) Chief Ribeiro's reassignment is ultra vires and non-binding on Mayor Sayegh and Chief Ribeiro;

(2) Chief Ribeiro, as the duly-appointed municipal Chief of Police, is not required to report to, nor is subordinate to, Abbassi.

Appellants are entitled to injunctive relief in the form of an order: (1) immediately terminating the OAG and AG Platkin's full command and control of the City of Paterson police department; (2) immediately returning command and control of the City of Paterson Police Department to Bulur and Ribeiro and the appropriate authority in accordance with the Home Rule Act, N.J.S.A. 40A:14-118, the New Jersey State Constitution, New Jersey statutes, and City of Paterson ordinances; (3) requiring the OAG and AG Platkin to provide monthly reports as required by law detailing the operations of the City of Paterson Police Department from April 2023 to the present; (4) terminating the OAG's and AG Platkin's use and occupancy of all space taken over within the Paterson Public Safety Department building; (5) expressly limiting the OAG's and AG Platkin's authorized control to the internal affairs function of the City of Paterson Police Department, until such time as deemed appropriate for the Paterson Police Department to resume said function; and (6) granting such other relief as the Court may deem proper and necessary.

Appellants demonstrated entitlement to injunctive relief under R. 4:52-1, R. 4:52, and Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). Where such injunctive relief is sought, a reviewing court must consider the "familiar

standard outlined in Crowe." Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). In Crowe, the Supreme Court established a four-prong test that must be applied in seeking emergent relief, assessing whether: (1) the requested relief is necessary to prevent irreparable harm; (2) the legal rights underlying the claims are settled; (3) there is a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties in granting or denying the relief favors granting the relief. Crowe, 90 N.J. at 132-34. Additionally, when a case presents an issue of "significant public importance," a court must consider the public interest in addition to the traditional Crowe factors. McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003).

The first Crowe factor is met here because Respondents continue to exercise unlawful command and control of the Paterson Police Department (ostensibly in perpetuity in the absence of any timeframe for its supersession to end), despite the appointment of a duly qualified police chief – Chief Ribeiro – via municipal ordinance by the City of Paterson. This creates harm that is considered irreparable in equity. See Crowe, 90 N.J. at 132 (harm is "generally considered irreparable in equity if it cannot be redressed adequately by monetary damages"). Respondents' ongoing violation of the New Jersey State Constitution, the Home Rule Act and various New Jersey statutes constitutes

irreparable harm, and is compounded by the Attorney General's refusal to provide monthly reports on their progress, as required by law.

The lack of legal justification for Respondents' continued command and control of the City of Paterson Police Department meets the second Crowe factor, in that Appellants' legal rights are settled, as more fully discussed infra.

Appellants also satisfy the third Crowe factor, the reasonable probability of ultimate success on the merits. Crowe, 90 N.J. at 133-34. It is clear on the face of the record that all material facts alleged in Appellants' complaints were verified and supported by government records, exhibits, and applicable State statutes. As such, they are self-authenticating, and no extrinsic evidence is necessary to establish authenticity. N.J.R.E. 902. Accordingly, there is no issue of material fact for the Court to settle. Matter of City of Newark, 469 N.J. Super. 366, 378 (App. Div. 2021) (finding that demonstrating "reasonable probability of ultimate success on the merits . . . includes a showing that most of the material facts are not in dispute"). Thus, the matter hinges entirely on an interpretation of legal authority, upon which the AG finds no purchase.

Appellants also meet the fourth and final Crowe factor, which it considers "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134. There is little if any hardship to Respondents in returning command and control to Plaintiffs. Save three individuals appointed by Defendants upon

supersession (Abbassi and two designees), the staffing and constitution of the entire Paterson Police Department remains the same. Unquestionably, considering the professed "extraordinary power" of Respondents and the myriad divisions and offices under their control, Respondents can easily find a place to reassign the individuals they appointed to run the Paterson Police Department.

A Court must also consider the public interest in addition to the traditional Crowe factors. McNeil, 176 N.J. at 486. The public interest in this matter – statewide and within the City of Paterson community – is evident. There are more than 400 municipal police departments across the State of New Jersey, each of which has either a chief of police or director appointed by the municipal governing body. Fundamental principles of Home Rule are at stake; each municipality has a vested interest in the outcome of whether Respondents are to be permitted to, against all existing constitutional and statutory municipal authority, unilaterally decide to seize command and control of an entire municipal police department based only upon a self-serving directive. At any given moment, the OAG could assume control of any municipal police department in the State, without regard to the will of the municipal governing bodies that retain police powers, as provided by the New Jersey Legislature. This notion flies in the face of the historic home rule principle that allows each

municipality to act in a way it believes is best suited to meet the needs of their communities. Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458, 489 (App. Div. 2019) ("[h]ome rule permits each municipality to act in a way it believes will best meet the local need").

This unfounded and unlawful supersession will also create dangerous precedent for future Attorneys General to assume control of municipal police departments based on political motivations or political strategy. It invites appointments of chiefs without appropriate training and experience, bypassing the very municipalities charged with these hiring functions. The public importance of this matter to the citizens of the City of Paterson, who reelected the incumbent mayor with a mandate in May 2022, is equally compelling, as the City of Paterson is organized under the "mayor strong" form of the Faulkner Act, which confers broad executive power to the elected municipal executive.[4] The duly elected mayor, with the support of the municipal governing body, appointed Appellants to oversee public safety and police operations in the City of Paterson, not Respondents. Mayor Sayegh did not consent to this takeover, was not consulted prior to its execution, and is now an Appellant in these proceedings. As such, the public importance of this issue to the City of Paterson

[4] This Court may take judicial notice of Mayor Sayegh's reelection, in which he garnered nearly 50% of the vote while running against four other candidates.

and its citizens is plainly obvious. Similarly, there are hundreds of duly appointed and sworn chiefs of police departments that could find themselves removed from command and reassigned like Chief Ribeiro, without warning or explanation, regardless of their professional experience and history, in favor of a chief law enforcement executive handpicked by Respondents.

For the foregoing reasons, Appellants met their burden in establishing the above-referenced factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

Appellants are also entitled to a declaratory judgment. The Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq. authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity. Chamber of Commerce v. State, 89 N.J. 131, 140 (1982). To maintain such an action, there must be a "justiciable controversy" between adverse parties and a plaintiff must have an interest in the suit. The wholesale seizure of operations of the City of Paterson Police Department without legal authority and failure to comply with the reporting and planning requirements of that role constitutes a basis for declaratory relief. The Declaratory Judgments Act exists for this very reason – to provide "all individuals . . . with a forum to present bona fide legal issues to the court for resolution." In re Fireman's Ass'n Oblig., 230 N.J. 258, 275 (2017). This matter is clearly appropriate for judicial

review as no other remedy for Appellants exist. See N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411 (App. Div. 1997). This Honorable Court should grant this requested relief.

POINT II

RESPONDENTS SHOULD BE ENJOINED FROM CONTINUING CHIEF RIBEIRO'S ASSIGNMENT TO THE PTC (Pa256-Pa277)

Appellants also satisfy all the criteria necessary for this Court to enjoin Respondents from continuing Chief Ribeiro's assignment to the PTC, and/or instituting any disciplinary action against Chief Ribeiro for his failure to report to the PTC (Pa256-Pa265; Pa272). First, the constitutional and statutory violations committed by Respondents cannot be remedied through monetary damages. Second, Appellants can establish a reasonable likelihood of success on the merits as no legal justification for Respondents' continued command and control of the City of Paterson Police Department, particularly with respect to the most recent decision to extend Chief Ribeiro's assignment to the PTC through May 15, 2024 (Pa256-Pa264). Third, the injury to Appellants that will continue to result if Chief Ribeiro is forced to remain stationed at the PTC far outweighs the harm – if any – to Respondents if Chief Ribeiro were to be reassigned to City Hall as desired by Mayor Sayegh (Pa262). Finally, the granting of a temporary injunction in no way harms the public interest.

A) Irreparable Harm is Likely to Result in the Absence of Injunctive Relief (Pa256-Pa277).

Appellants are likely to experience irreparable harm in the absence of injunctive relief. "Irreparable harm" is established by proof of a substantial

injury to a material degree, which cannot be adequately addressed by monetary damages. Crowe, supra, 90 N.J. at 132-33. In matters of public importance, such as the adoption or enforcement of ultra vires resolutions or ordinances, the harm to the public and need for restraints is particularly well-settled. See, e.g., D. Russo, Inc. v. Twp. of Union, 417 N.J. Super. 384, 387 (App. Div. 2010) (granting temporary restraints and then a preliminary injunction against enforcement of an ordinance, which remained in effect throughout the course of the litigation).

Here, irreparable harm exists, and will continue to exist, if Respondents are not immediately restrained and enjoined from continuing Chief Ribeiro's assignment to the PTC and/or instituting any disciplinary action against Chief Ribeiro for his failure to report to the PTC. Respondents' takeover of the Paterson Police Department, and, in particular, the assignment of Chief Ribeiro to the PTC, usurped certain powers vested solely in Mayor Sayegh under statute statutes and local ordinance (Pa267-Pa271). Without immediate restraints, Mayor Sayegh will be prohibited from exercising his statutorily vested right to control the municipal administration and the provision of municipal services in the interest of public safety (Pa267-Pa271). If Respondents are not restrained and enjoined, they will continue to act in violation of the Faulkner Act, other

statutory authority and local ordinance and cause great harm which cannot later be remedied or remediated. N.J.S.A. 40:69A-31, et seq.

Moreover, irreparable harm will not only be suffered by Mayor Sayegh, but it will also be inflicted on Chief Ribeiro, who, unless an injunction is granted, is prevented from exercising his own statutorily vested rights, as well as the residents of the City of Paterson, by wasting taxpayer dollars, depriving them of the form of government they chose democratically. This is harm that cannot be remedied through monetary damages and should be immediately enjoined by this Court. Crowe, supra, 90 N.J. at 132-33

B) Appellants Can Demonstrate a Reasonable Likelihood of Success (Pa256-Pa277).

Again, a party seeking temporary injunctive relief must demonstrate a reasonable probability of eventual success on the merits of the claim. Mere doubt as to the validity of the claim is not an adequate basis for refusing to grant the requested relief. Ibid. In other words, the movant must clearly and convincingly show that the material facts are not in dispute, Anders v. Greenlands Corp., 31 N.J. Super. 329, 338 (Ch. Div. 1954), and the legal claim upon which the application is based is settled or free from doubt. Accident Index Bureau, Inc. v. Male, 95 N.J. Super. 39, 50 (App. Div. 1967), aff'd 51 N.J. 107 (1968). Here, Appellants can demonstrate a reasonable likelihood of success as there is no authority, statutory or otherwise, for Respondents' actions in

extending Chief Ribeiro's assignment to the PTC and threatening him with discipline if he refuses to do so (Pa256-Pa261; Pa265-Pa266). Whether viewed under N.J.S.A. 40A:14-118, N.J.S.A. 40A:14-147 or the Faulkner Act, N.J.S.A. 40:69A-31, et seq., Appellants are likely to prevail on the merits.

First, Respondents' assignment of Chief Ribeiro to the PTC violates N.J.S.A. 40A:14-118, which states, in pertinent part, that "[t]he governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police force, whether as a department or as a division, bureau or other agency thereof, and provide for the maintenance, regulation and control thereof." Id. The statute further provides that "[a]ny such ordinance, or rules or regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority," among other obligations, "[h]ave, exercise, and discharge the functions, powers and duties of the force;" and "[p]rescribe the duties and assignments of all subordinates and other personnel." Id. Pursuant thereto, it is Mayor Sayegh, and/or his appointed Paterson Public Safety Director, who maintains the authority to "prescribe the

duties and assignments" of police department personnel such as Chief Ribeiro, and not Respondents, generally, – or a state appointee such as Abbassi.

This authority is reinforced and confirmed by Paterson Code § 5-75(E), which provides that:

The Public Safety Director, under the supervision of the Mayor, shall:

(1) Exercise such powers as set forth in the applicable statutes which shall specifically include the powers granted to the appropriate authority pursuant to N.J.S.A. 40A:14-7 et seq., and N.J.S.A. 40A:14-118 et seq., and all other applicable laws, including, but not limited to, promulgation and adoption of rules and regulations for the government of the Office of Emergency Management and the Police and Fire Divisions and discipline of their members.

(2) Supervise the Police Chief, Fire Chief and Director of the Office of Emergency Management, who shall be directly responsible to the Public Safety Director for the efficiency and routine day-to-day operations of the police and fire rank-and-file.

[and]

(4) Prescribe the duties and assignments of all subordinates and other personnel; establish performance criteria for the Department as a whole as well as its individual members and conduct periodic evaluations to assure compliance with those criteria.

Id.

Consistent with N.J.S.A. 40A:14-118 and Paterson Code § 5-76(D), Mayor Sayegh appointed Chief Ribeiro as Chief of the Paterson Police Department. Respondents' decision to assign Chief Ribeiro to the PTC, rather than recognize and honor Mayor Sayegh's intention to assign Chief Ribeiro to City Hall, violates N.J.S.A. 40A:14-118 and Paterson Code § 5-75(E), strips

Mayor Sayegh of his statutory authority and thwarts Chief Ribeiro's ability to perform his sworn duties and responsibilities. Simply put, Respondents' attempt to reassign Chief Ribeiro to the PTC over the directive of Mayor Sayegh, his employer and an "appropriate authority," or else face discipline is unauthorized by existing statute and is in direct contravention of governing state and municipal law (Pa256-Pa266).

Likewise, Appellants can establish a likelihood of success on their claim that Respondents' assignment of Chief Ribeiro violates N.J.S.A. 40A:14-147, which states, in pertinent part:

> no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. Id.

By relieving Chief Ribeiro from his position as the Chief of the Police, without proper cause, and attempting to assign him to a duty station at the PTC in contravention to an order issued by his employer, Respondents have violated N.J.S.A. 40A:14-147.

Similarly, Appellants can establish a likelihood of success on their claim that Respondents' assignment of Chief Ribeiro also violates the Faulkner Act,

N.J.S.A. 40:69A-31, et seq. For example, under the Faulkner Act, Mayor Sayegh exercises the executive power of the City of Paterson and has the ultimate authority and responsibility for the oversight and supervision of each administrative department within the City, including the Department of Public Safety (Pa268-Pa271). Mayor Sayegh also possesses the sole authority to execute any contracts or agreements on behalf of the City (Pa268-271). Also under the Faulkner Act, Mayor Sayegh has the sole authority to appoint Directors of Department heads, such as the Director of Public Safety, and, subject to a 2/3 override by the City Council, has the sole authority to remove Directors or Department heads from their positions. See N.J.S.A. 40:69A-32; N.J.S.A. 40:69A-39; N.J.S.A. 40:69A-40.

By utilizing an unenforceable MOU that was not executed by Mayor Sayegh as a means to relieve Chief Ribeiro from his position as the Chief of the Police and attempt to assign him to a duty station at the PTC in contravention to an order issued by his employer, Respondents have violated the Faulkner Act (Pa262-Pa271); N.J.S.A. 40:69A-31, et seq.

C) The Balance of Equities Weighs in Favor of an Injunction (Pa256-Pa277).

In considering an application for a preliminary injunction, the Court must balance the equities involved to determine whether the possible harm to the defendant resulting from the issuance of an injunction is outweighed by the harm

threatening the plaintiff should the injunction not issue. Zoning Bd. of Adjustment of Sparta v. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

Here, the injury to Appellants that will continue to result if Chief Ribeiro is forced to remain stationed at the PTC far outweighs the harm – if any – to Respondents if Chief Ribeiro were to be reassigned to City Hall as desired by Mayor Sayegh, rather than assigned to the PTC (Pa262-Pa271). Again, if injunctive relief is denied, Mayor Sayegh will be denied his statutory right to deploy administrative personnel, such as Chief Ribeiro, in a manner he deems most appropriate and necessary to the needs of the City. Even if Respondents currently have control of the Paterson Police Department – which is strongly disputed by Appellants – that authority does not include the authority to direct Chief Ribeiro's employment once he has been replaced by Respondents and until this Court has made a final determination of the parties' respective rights.

Rather, Respondents' authority, at best, is limited to substituting a new Officer in Charge for Chief Ribeiro, not making him a subordinate officer to that new Officer in Charge (Pa256-Pa271). The appointment of an Officer in Charge by Respondents did not constitute a de facto demotion of Chief Ribeiro, nor did it place him under the Attorney General's chain of command. At all times, Mayor Sayegh retains the right to assign Chief Ribeiro in a manner that

he best deems fit. The harm that results from those actions far outweighs the harm, if any, that would result if Chief Ribeiro were assigned to City Hall rather than the PTC. There is no indication that Chief Ribeiro is needed at the PTC or that the PTC would be unable to properly function without this present assignment. In fact, Respondents have not offered any explanation for the assignment nor any reason why Chief Ribeiro's assignment to City Hall by Mayor Sayegh would somehow interfere with Respondents' oversight of the Paterson Police Department. Quite frankly, based on the treatment to which Chief Ribeiro has been subjected by Respondents, his assignment to the PTC appears to have been made not out of need, but rather, to punish Chief Ribeiro and banish him to travel 62 miles away from the City of Paterson.

D) <u>There is No Harm to the Public Interest</u> (Pa256-Pa277).

Finally, there is no harm to the public interest which would result if Mayor Sayegh were allowed to exercise his statutory rights to assign Chief Ribeiro to City Hall. In fact, the public interest would more likely be harmed by forcing taxpayers to incur Chief Ribeiro's salary without getting the benefit of his labor, training and experience.

CONCLUSION

By reason of the foregoing, Appellants respectfully request that this Court grant all injunctive and declaratory relief requested by Appellants and/or grant such other and/or further relief in favor of Appellants as it deems just and proper.

Dated: March 15, 2024

/s/Christopher J. Gramiccioni

Christopher J. Gramiccioni, Esq.
(0197620008)
KINGSTON COVENTRY LLC
1 Gatehall Drive, Suite 305
Parsippany, NJ 07054
(973) 370-2227

/s/Edward J. Florio

Edward J. Florio, Esq.
(025311967)
FLORIO KENNY RAVAL LLP
125 Chubb Avenue, Suite 310-N
Lyndhurst, NJ 07071
(201) 659-8011

MIRZA M. BULUR, in his official capacity as the ACTING PUBLIC SAFETY DIRECTOR for the CITY OF PATERSON and APPROPRIATE AUTHORITY, CITY OF PATERSON POLICE DEPARTMENT, and ENGELBERT RIBEIRO in his official capacity as the POLICE CHIEF of the CITY OF PATERSON POLICE DEPARTMENT, Plaintiffs, V. THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN in his official capacity as ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, JOHN DOES 1-10, MARY DOES 1-10, and XYZ CORPORATIONS 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000629-23T2 (CONSOLIDATED) CIVIL ACTION ON THE ORDERS OF TRANSFER FROM THE SUPERIOR COURT OF NEW JERSEY, PASSAIC COUNTY, LAW DIVISION DOCKET NOS.: PAS-L-2763-23, PAS-L-3290-23 SAT BELOW: Honorable Rudolph A. Filko, A.J.S.C.
ANDRE SAYEGH, MAYOR OF THE CITY OF PATERSON and ENGELBERT RIBEIRO, Plaintiffs, V. ISA M. ABBASSI, in his official capacity as the Officer-in-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001209-23T2 (CONSOLIDATED) CIVIL ACTION

THE ATTORNEY GENERAL, and MATTHEW J. PLATKIN, in his official capacity as the ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, Defendants.	

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE ASSOCIATION OF CHIEFS OF POLICE

PORZIO, BROMBERG & NEWMAN, P.C.
100 Southgate Parkway
Morristown, NJ 07960
973-538-4006
Attorneys for Amicus Curiae New Jersey State Association of Chiefs of Police

Of Counsel:
Vito A. Gagliardi, Jr., Esq. (024821989)
vagagliardi@pbnlaw.com

On the Brief:
David L. Disler, Esq. (068112013)
dldisler@pbnlaw.com
Thomas J. Reilly, Esq. (245552017)
tjreilly@pbnlaw.com

Dated: March 27, 2024

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PRELIMINARY STATEMENT

On March 27, 2023, the Attorney General exercised his statutory supersession authority to assume control of the day-to-day operations and internal affairs of the Paterson Police Department. The parties disagree whether the Attorney General has the statutory power to assume control unilaterally over a municipal law enforcement agency. The New Jersey State Association of Chiefs of Police ("NJSACOP") does not for purposes of this *amicus curiae* submission take a position as to the statutory authority or propriety of the Attorney General's supersession of the Paterson Police Department.

NJSACOP's position is that, assuming the Attorney General possesses the authority to supersede municipal police departments and other local law enforcement agencies, his authority must be exercised pursuant to established and articulated rules and standards. Administrative agencies need to define and articulate the standards and principles that govern their discretionary decisions in as much detail as possible. Pursuant to those principles, the Attorney General must promulgate rules, guidelines, or other standards outlining the events or circumstances which trigger his supersession powers, the procedures for invoking and instituting his supersession authority, the events or circumstances which trigger relinquishment of the supersession authority, and the procedures for returning control of a superseded law enforcement agency to its traditional

leaders. Such standards are required under the law to ensure due process for the regulated community, to facilitate effective judicial review of supersession decisions, and to avoid arbitrary and capricious administrative action.

The Attorney General's revised Internal Affairs Policy and Procedures Directive ("IAPP") sets forth the Attorney General's supersession powers, but does not provide any standards or rules governing the exercise of that power. Rather, the IAPP gives the Attorney General unfettered discretion to use the supersession power whenever he deems it necessary. Without appropriate rules and standards outlining the strictures of the Attorney General's supersession authority, there is no way for the regulated community to know when that power may be exercised, and thus no way to know how it may be avoided. Similarly, there is no way for courts to engage in effective judicial review of supersession decisions because there are no pre-established and objective rules by which to assess the Attorney General's decision to supersede a law enforcement agency. In essence, supersession is appropriate so long as the Attorney General, in his sole discretion, believes it is appropriate. Such a standard makes him the sole arbiter of the issue, and provides him with near absolute authority. No principle of administrative law provides, contemplates, or permits an executive branch agency to exercise such unfettered discretion.

On the contrary, New Jersey's courts have held for decades that administrative agencies must establish prospective rules and standards to govern the regulated community, and then apply those rules to the facts as found in an administrative record whenever the agency acts in a quasi-judicial capacity. Without appropriate rules and standards to guide its decisions in any particular matter, an agency's action never can be anything other than arbitrary and capricious.

Again, NJSACOP does not fault the Attorney General for seeking to use his statutory powers to rectify improper conduct in the state's law enforcement agencies. Nor does NJSACOP seek to impede that ability unnecessarily. Rather, it is beneficial to the regulated community that it be put on notice of the events or circumstances which may trigger supersession. Appropriate rules and standards will provide such notice, while also ensuring that the Attorney General acts within the parameters established by New Jersey's courts.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus Curiae New Jersey State Association of Chiefs of Police relies on those certain facts and procedural history which are undisputed between the parties as set forth in their respective briefs. For purposes of NJSACOP's *amicus curiae* brief, the only relevant fact is that the Attorney General exercised his

supersession powers on March 27, 2023, to assume control of the Paterson Police Department's day-to-day operations and internal affairs.

LEGAL ARGUMENT

THE ATTORNEY GENERAL'S SUPERSESSION POWERS MUST BE SUBJECT TO CLEARLY-ARTICULATED RULES AND STANDARDS DEFINING THE CIRCUMSTANCES UNDER WHICH THE ATTORNEY GENERAL MAY BOTH EXERCISE AND RELINQUISH CONTROL OVER THE DAY-TO-DAY OPERATIONS AND INTERNAL AFFAIRS OF LAW ENFORCEMENT AGENCIES.

NJSACOP does not necessarily challenge the Attorney General's right to supersede a local law enforcement agency where supersession is warranted due to extreme or continued misconduct. Indeed, there may be various circumstances that require the Attorney General's intervention to correct inappropriate conduct and to rehabilitate law enforcement agencies which suffer from poor management and bad practices. That said, well-established principles of administrative law require that the Attorney General's Office exercise that power pursuant to understandable and established rules, standards, and procedures. Thus, the Attorney General must establish articulated rules and standards governing the supersession authority to ensure administrative due process for the regulated community, to facilitate effective and meaningful judicial review, and to avoid arbitrary and capricious agency overreach.

A. The Attorney General's Statutory Supersession Powers And The IAPP.

The Attorney General is New Jersey's "chief law enforcement officer" and head of the Department of Law and Public Safety. *See N.J.S.A.* 52:17B-98; *N.J.S.A.* 52:17B-2. His duties include responsibility for "the general supervision of criminal justice" in order to "secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State." *N.J.S.A.* 52:17B-98. Pursuant to that authority, the Attorney General has the power "to adopt guidelines, directives, and policies that bind police departments statewide." *Paff v. Ocean Cty. Prosecutor's Off.*, 235 N.J. 1, 19 (2018).

The Law and Public Safety Act of 1948 charges the Attorney General with formulating and adopting "rules and regulations for the efficient conduct of the work and general administration of police departments, their officers and employees" *N.J.S.A.* 52:17B-4(d). In 1991, the Attorney General exercised that authority, as well as his authority under the Criminal Justice Act of 1970, to establish the first IAPP, which set forth standards, policies, and procedures for the internal affairs function of New Jersey's law enforcement agencies, including the establishment of a viable process for the receipt and investigation of citizen complaints concerning police conduct. *See Fraternal Ord. of Police,*

Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 100-01 (2020) (providing a history of the IAPP).

The Legislature followed suit several years later in 1996, requiring police departments to adopt and implement guidelines consistent with the IAPP. *Id.* at 101. The legislation required all law enforcement agencies in the state to

> adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.
>
> [N.J.S.A. 40A:14-181.]

The Supreme Court noted that this statutory provision "effectively made the AG's IAPP required policy for all municipal law enforcement agencies in New Jersey." *Fraternal Ord. of Police*, 244 N.J. at 101.

The Attorney General's statutory powers and the IAPP combine to give the Attorney General broad authority over all law enforcement agencies and officials in New Jersey. Among those powers is the Attorney General's supersession authority. The Criminal Justice Act of 1970 provides that, whenever "in the opinion of the Attorney General the interests of the State will be furthered by so doing," the Attorney General may: "(a) supersede a county prosecutor in any investigation, criminal action or proceeding, (b) participate in

any investigation, criminal action or proceeding, or (c) initiate any investigation, criminal action or proceeding." *N.J.S.A.* 52:17B-107. The Act does not state expressly that the Attorney General may supersede any law enforcement officer or entity other than a county prosecutor, nor does it expressly empower the Attorney General to use the supersession authority to assume control of a municipal police department's or other law enforcement agency's day-to-day operations and internal affairs function.

In November 2022, the Attorney General issued a revised IAPP. *See Attorney General Law Enforcement Directive No. 2022-14* (Nov. 15, 2022). The revised IAPP states that "*N.J.S.A.* 52:17B-107 grants the Attorney General broad authority to supersede in any investigation, criminal action or proceeding, which includes internal affairs investigations and disciplinary proceedings." *Id.* at 10. Based on this broad understanding of the statutory language, the revised IAPP interprets *N.J.S.A.* 52:17B-107 to allow the Attorney General to "supersede a county prosecutor **or other law enforcement agency** in any investigation, criminal action or proceeding." *Id.* (emphasis added). The IAPP then goes on to state that this authority essentially is unlimited:

> This statutory authority applies fully to any and all aspects of the internal affairs process, and nothing in the IAPP is intended to limit or circumscribe the Attorney General's statutory authority. The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited

> capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. Every member of the agency, including the chief law enforcement executive, has a duty to cooperate fully with the Attorney General during the investigation and adjudication of such matters. Within their respective counties, the County Prosecutors shall be vested with the same authority to supersede possessed by the Attorney General on a statewide basis.
>
> [*Id.* at 10-11.]

The IAPP does not provide clarity or guidance on the events or circumstances that would warrant supersession. It does not list prerequisite events that would require or allow the Attorney General to assume control of a law enforcement agency. It does not provide procedural mechanisms that would allow a local law enforcement agency to challenge supersession. It does not specify the conditions necessary to allow or require the Attorney General to relinquish control of the law enforcement agency once supersession has commenced. In sum, there are no criteria, guidelines, or other standards outlining the factors that would allow or necessitate the Attorney General's use of the supersession authority. Rather, the IAPP provides that supersession may occur "whenever the Attorney General determines that it would be appropriate to do so." *Id.* at 10.

B. Judicial Review Of Final Administrative Agency Decisions Is Based Upon An External Assessment Of The Agency's Quasi-Legislative Or Quasi-Judicial Function As Applied To A Particular Case.

Courts apply a deferential standard to final agency actions and will not overturn them unless the action is arbitrary, capricious, or unreasonable. *In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 246 N.J. 462, 489 (2021). The deferential standard is consistent with "the strong presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility." *City of Newark v. Nat. Res. Council, Dep't of Env't Prot.*, 82 N.J. 530, 539 (1980). Thus, "if substantial credible evidence supports an agency's conclusion, a court may not substitute its own judgment for the agency's even though the court might have reached a different result." *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513 (1992) (citations omitted).

On appeal, the judicial role in reviewing all administrative action generally is limited to three inquiries: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law"; (2) "whether the record contains substantial evidence to support the findings on which the agency based its action"; and (3) "whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." *Allstars*

Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting *In re Stallworth*, 208 N.J. 182, 194 (2011)). *See also In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp.*, 216 N.J. 370, 383 (2013). Although the three-part inquiry applies generally to all administrative agency actions, "it is not a rigid standard. Its application necessarily adjusts to accommodate the kind of agency action in question." *In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 246 N.J. at 490.

Final agency decisions may be quasi-judicial or quasi-legislative. The former applies to "the power to adjudicate individual cases," and the latter applies to "the power to make rules that can have the effect of laws." *Id.* at 490. In some cases, the agency may act in a "hybrid manner," in which the action in question contains "features of rulemaking and adjudication." *Id.* In any case, an agency's determination must rest on a "reasonable factual basis." *Id.* at 491. Moreover, the "arbitrary and capricious standard does demand that the reasons for the decision be discernible," regardless of whether the action in question is quasi-judicial or quasi-legislative. *Id.*

The Attorney General's supersession authority at issue here contains aspects of both quasi-legislative, or rulemaking, administrative action, as well as quasi-judicial administrative action. The IAPP's language stating that the Attorney General has the power to supersede local law enforcement agencies

such as municipal police departments is an exercise of the quasi-legislative function. That is so because the supersession authority pronounced in the IAPP is a rule of general application that applies to a large swathe of the regulated community. As the Supreme Court noted in *Metromedia, Inc. v. Director, Division of Taxation*:

> an agency determination must be considered an administrative rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rule-making process. Such a conclusion would be warranted if it appears that the agency determination, in many or most of the following circumstances, (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These relevant factors can, either singly or in combination, determine in a given case whether the essential agency action must be rendered through rule-making or adjudication.
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> [97 N.J. 313, 331–32 (1984).]

The IAPP's pronouncement on the Attorney General's supersession authority readily meets all of these factors: it applies to a large portion of the regulated community, applies uniformly to all law enforcement agencies, operates prospectively, provides additional powers beyond the express statutory language, reflects a new administrative policy not previously expressed, and reflects the attorney general's interpretation of the Criminal Justice Act.

Where the Attorney General applies that authority to supersede a particular law enforcement agency, the administrative action is more akin to a quasi-adjudicative determination. That is so because the final administrative action applies to an "individual case," rather than a policy decision of general application that affects the whole or a substantial portion of the regulated community. *See In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 246 N.J. at 490-91.

In sum, the IAPP's pronouncement that the Attorney General's supersession authority applies to all local law enforcement agencies can be considered a form of quasi-legislative agency rulemaking. The Attorney General's decision to use the supersession power to overtake any particular local law enforcement agency can be considered a quasi-judicial determination. In any case in which the Attorney General uses the supersession authority to make the quasi-judicial determination that a law enforcement agency should be

superseded, the Attorney General must support that decision by applying the rules and standards promulgated through the quasi-legislative rulemaking function. In essence, the quasi-legislative and quasi-judicial functions work collectively to provide a governing set of principles that the Attorney General must apply to any particular case of supersession. These principles work together also to facilitate effective judicial review by providing an external framework by which the Attorney General must act and by which his decisions can be assessed. If a court cannot assess that framework or if no such governing framework exists, then the agency action in question is by definition arbitrary and capricious. *See Van Holten Grp. v. Elizabethtown Water Co.*, 121 N.J. 48, 67 (1990) (explaining that agencies must articulate the standards governing their review, and must apply those standards to the evidence in the administrative record). No such framework of governing standards and principles exists here to constrain the Attorney General's supersession authority. Thus, every exercise of that authority can be called into question unless this deficiency is remedied.

C. Well-Established Principles of Administrative Law Require That Administrative Agencies Articulate The Standards And Principles Governing Their Decisions.

Administrative rulemaking and quasi-judicial determinations both require clear and articulable standards to govern the action at issue and to facilitate effective judicial review. As the New Jersey Supreme Court explained in

Metromedia, "without published rules of procedure and substantive criteria for" the taking of the proposed action, affected parties will be "denied any meaningful opportunity for informal response to the proposed action." 97 N.J. at 330. Thus, all administrative agencies must engage in standardized practices and promulgate rules and other guidance so that regulated entities are aware of their rights and obligations in relation to the agency. As the Supreme Court explained in *In re Vey*:

> Although administrative agencies are entitled to discretion in making decisions, that discretion is not unbounded and must be exercised in a manner that will facilitate judicial review. Administrative agencies must "**articulate the standards and principles that govern their discretionary decisions in as much detail as possible**." *Van Holten Group v. Elizabethtown Water Co.*, 121 N.J. 48, 67 (1990). When the absence of particular findings hinders or detracts from effective appellate review, the court may remand the matter to the agency for a clearer statement of findings and later reconsideration. *Application of Howard Sav. Inst.*, 32 N.J. 29, 53 (1960).
>
> [*In re Vey*, 124 N.J. 534, 543–44 (1991) (emphasis added).]

Clear rules, procedures, and standards also ensure that the regulated community receives the due process to which it is entitled. To ensure that the regulated community receives appropriate procedural and other due process protections, agencies must proceed "with the utmost care, caution and clarity in exercising [their] decisional and regulatory responsibilities," must meet the

"salutary" goals of "disciplin[ing] [their] own discretion" by "assur[ing] the greatest possible degree of predictability in [their] own actions," and must articulate "in as much detail as possible" the standards and principles which govern their decisions. *Crema v. Dep't of Env't Prot.*, 94 N.J. 286, 301 (1983). In essence, "[d]ue process means that administrators must do what they can to **structure and confine their discretionary powers through safeguards, standards, principles and rules**. This principle employs no balancing approach but simply holds that **due process requires some standards, both substantive and procedural, to control agency discretion**." *Id.* (emphases added) (internal citations omitted).

In *Crema*, for example, the New Jersey Supreme Court considered a case in which a developer sought to construct a facility in an environmentally sensitive area governed by New Jersey's Coastal Area Facility Review Act. The developer sought approval from the State Department of Environmental Protection. The agency, in turn, granted a permit approving only the "concept" of the development, but did not authorize any actual construction "until all prescribed statutory and regulatory standards were met." *Id.* at 289. The developer challenged the "conditional" permit as an ultra vires exercise of administrative authority permitted neither by the statute or the applicable regulations. *Id.*

Beyond the developer's arguments, the Supreme Court expressed concern that there were no discernible rules or other administrative guidance to allow the regulated community to understand the standards by which they were governed. The Court explained:

> there were no substantive criteria established before the administrative proceedings for determining how to qualify for a "conceptual approval." Thus, **the public and any affected or interested parties were without any firm knowledge of the factors that the agency would deem relevant and that might influence its ultimate decision**. The public had no meaningful opportunity to shape the criteria that ultimately affected their interests. . . .
>
> Finally, **the absence of established standards has contributed materially to a confusing result**. The public impact, indeed, may be unfathomable. As observed by the Appellate Division, the conceptual approval given in this case "is of **so indefinite a nature that it is impossible to foretell what inferences may be drawn therefrom when further applications are made**."
>
> [*Id.* at 302-03 (emphases added).]

The Court thus required the agency to engage in the "advance promulgation of regulatory standards, both substantive and procedural[,]" which "should be determined by agency rulemaking in order that the criteria that underlie their formulation and application can be properly developed and expounded with the maximum involvement of the general public." *Id.* at 303. The Court further concluded that the agency's action "could not properly be

taken in the absence of validly adopted rules and regulations establishing appropriate standards and procedures governing such approvals." *Id.* at 306.

These long-established principles of administrative law create two clear requirements for administrative agencies: (1) the agency must create clear governing rules and standards applicable to the regulated community; and (2) the agency must apply those rules and standards to the facts, as developed and established through an administrative record, whenever the agency engages in quasi-judicial action. If the agency does not "articulate the standards and principles" that govern its decision "in as much detail as possible," and if it does not "support the findings" on which it based the application of those standards through "substantial evidence" contained in the administrative record, then the agency decision at issue is arbitrary, capricious, and unreasonable and must be set aside. *Van Holten Grp.*, 121 N.J. at 67 (remanding matter because agency did not articulate the standards governing its decision and did not base its findings on substantial evidence in the record). In all cases, those standards and findings must be sufficiently clear to "facilitate judicial review." *Id.*

D. The IAPP Lacks The Required Articulated Standards And Principles Necessary To Ensure Administrative Due Process And Effective Judicial Review Of The Attorney General's Supersession Authority.

As noted above, the Attorney General's supersession authority can in certain instances be a useful tool for rectifying and rehabilitating law

enforcement agencies that suffer from poor management and bad practices. That said, the IAPP does not articulate sufficiently the rules and standards governing the Attorney General's exercise of the supersession power. Instead, the IAPP gives the Attorney General unfettered discretion to use the supersession power whenever he deems it necessary. The precise criteria and factors which the Attorney General might use to determine whether supersession is necessary remains unknown. Law enforcement officials and other members of the regulated community have no way of knowing what events, factors, or other circumstances might trigger the supersession authority. Consequently, members of the regulated community have no way to know how to prevent supersession of the their local agencies. Likewise, law enforcement officials have no way to know when supersession will end once it is invoked. There are no factors or other criteria outlining the necessary conditions to cause or require the Attorney General to end supersession of a law enforcement agency and relinquish control of that agency. The lack of any such standards runs contrary to well-established law. *See Crema*, 94 N.J. at 301-03 (holding that agency action was arbitrary and capricious because "the public and any affected or interested parties were without any firm knowledge of the factors that the agency would deem relevant and that might influence its ultimate decision").

Without such rules and standards, law enforcement officials are blind. For all that they know, supersession is subject to nothing more than the Attorney General's whim,[1] and can be invoked for any reason the Attorney General happens to find sufficient. Such unfettered discretion and absolute authority, unbound by knowable rules and standards, never can be anything more than arbitrary. *See In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 246 N.J. at 491 (stating that the "arbitrary and capricious standard does demand that the reasons for [an agency's] decision be discernible"). *See also Crema*, 94 N.J. at 301-03 (stating that agencies must "structure and confine their discretionary powers through safeguards, standards, principles and rules").

Nor can the supersession authority as currently defined and constituted facilitate effective judicial review. Without defined standards governing the supersession authority, there is no way for a court to determine whether the Attorney General acted outside the bounds of his authority, or reached a determination that was arbitrary, capricious, or unreasonable, because there are no standards by which the Attorney General's actions are constricted. *See In re Vey*, 124 N.J. at 543–44 (stating that administrative authority "must be exercised

[1] References in this section to the "Attorney General" refer to the Office of the Attorney General, not to any particular person who has served as Attorney General. Similarly, arguments made herein concerning the Attorney General's "personal opinion" or "whim" are hypothetical and are not intended to imply or impute bad faith in any particular circumstance.

in a manner that will facilitate judicial review," including by "articulat[ing] the standards and principles that govern [agency] discretionary decisions in as much detail as possible"). If the Attorney General has ultimate authority to supersede a local law enforcement agency subject to nothing more than his own personal opinion or whim, then his determination never can be anything other than arbitrary or capricious. In essence, he is correct as long as he believes he is correct.

The lack of general rules and standards also creates a number of practical problems. Law enforcement agencies have no way of knowing whether they are at risk of supersession. If law enforcement agencies do not know the factors that trigger supersession, they cannot work to avoid them or to improve particular bad practices which may cause supersession. This lack of knowledge aids neither the regulated community nor the Attorney General's Office, both of which benefit from proactive measures designed to avoid supersession and improve the day-to-day operations and internal affairs of local law enforcement agencies.

Once supersession begins, local law enforcement agencies have no way to know when it will end. Theoretically, supersession might go on for years, or may never end. For example, the Attorney General exercised his supersession powers to take control of the Clark Township Police Department in July 2020.

See Press Release, State of New Jersey, Department of Law & Public Safety, *Attorney General Platkin Releases Report on Investigation into Allegations of Misconduct by Leaders of Clark Township Government and Police Department*, (Nov. 20, 2023), available at https://www.njoag.gov/attorney-general-platkin-releases-report-on-investigation-into-allegations-of-misconduct-by-leaders-of-clark-township-government-and-police-department/. The Attorney General's Office did not issue a final report on the matter until November 2023, over three years after supersession occurred. Supersession of the Clark Police Department continues to the present day.

To be clear, NJSACOP is not asserting here that the Attorney General's use of his supersession powers was unwarranted either in the case of the Clark Police Department or in the instant matter concerning the Paterson Police Department. Rather, assuming the supersession authority properly can be used to assume control of local law enforcement agencies such as municipal police departments, that authority must be exercised pursuant to clearly articulated rules and standards as described above. Proper rules and standards should govern the events or circumstances which trigger the supersession authority, the procedures for the Attorney General's assumption of control of a law enforcement agency, and the events or circumstances which will require supersession to end. Such requirements conform to well-established principles

of administrative law, and require nothing more than clear standards to ensure administrative due process and to facilitate effective judicial review. More than that, the promulgation of established standards for supersession will assist both the Attorney General's Office and local law enforcement agencies alike, by setting clear expectations and guidance to the regulated community to ensure that law enforcement agencies can engage in best practices designed to *avoid* supersession and enable diligent and competent leadership across the state's law enforcement agencies.

CONCLUSION

For the forgoing reasons, *amicus curiae* New Jersey State Association of Chiefs of Police requests that the Court's decision require that the Attorney General promulgate defined standards and principles governing the Attorney General's use of the statutory supersession authority.

PORZIO, BROMBERG & NEWMAN, P.C.
Attorneys for *Amicus Curiae* New Jersey State Association of Chiefs of Police

By: Vito A. Gagliardi, Jr.

Dated: March 27, 2024

MIRZA M. BULUR, in his official capacity as the Acting Public Safety Director for the City of Paterson and Appropriate Authority, City of Paterson Police Department, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department, Plaintiffs-Appellants, v. THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN in his official capacity as Attorney General of the State of New Jersey, JOHN DOES 1-10, MARY DOES 1-10, and XYZ CORPORATIONS 1-10, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-000629-23 CIVIL ACTION On Appeal From: THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PASSAIC COUNTY Docket No. PAS-L-2736-23 Sat Below: Hon. Rudolph A. Filko, A.J.S.C.
ANDRE SAYEGH, in his official capacity as the Mayor of the City of Paterson, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department, Plaintiffs-Appellants, v. ISA M. ABBASSI, in his official capacity as Officer-in-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, and MATTHEW J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001209-23 CIVIL ACTION On Appeal From: THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION - PASSAIC COUNTY Docket No. PAS-L-3290-23 Sat Below: Hon. Rudolph A. Filko, A.J.S.C.

AMENDED BRIEF AND APPENDIX ON BEHALF OF RESPONDENTS NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN, AND ISA M. ABBASSI

Date Submitted: May 29, 2024

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 080
Trenton, New Jersey 08625
Attorney for Defendants-Respondents
(862) 350-5800
Michael.Zuckerman@njoag.gov

Jeremy M. Feigenbaum (No. 117762014)
Solicitor General

Michael L. Zuckerman (No. 427282022)
Deputy Solicitor General
Of Counsel and on the Brief

Robert J. McGuire (No. 046361992)
Liza B. Fleming (No. 441912023)
Sidney E. Goldstein (No. 162742015)
Elizabeth H. Micheletti (No. 026691995)
Stephanie M. Mignogna (No. 408272023)
Michael R. Sarno (No. 028492004)
Deputy Attorneys General

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PRELIMINARY STATEMENT

On March 27, 2023, acknowledging the "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson," the Attorney General exercised his statutory authority to supersede the Paterson Police Department (PPD). He announced that a decorated 25-year veteran of the New York Police Department (NYPD), Isa M. Abbassi, would serve as the PPD's Officer in Charge (OIC) during the supersession. Since superseding, the State has invested significant resources in reforming the PPD and rebuilding trust between the Department and the people it serves. The results to date have been promising, and public safety in Paterson has improved considerably thus far. Those efforts continue to this day.

Unfortunately, despite that progress, Appellants belatedly challenged the Attorney General's actions, claiming that his supersession of the PPD is beyond his statutory authority; that OIC Abbassi was unlawfully appointed; and that the PPD chief of police Engelbert Ribeiro is not subject to the chain of command. Appellants' claims, however, fail for two independent reasons. As a threshold matter, this suit is untimely twice over. Rule 2:4-1(b) sets forth that a challenge to a final agency decision such as this one must be brought within 45 days of the affected parties receiving notice of that decision. Appellants had unmistakable notice of the supersession the day it began, and the Attorney General's explicit

letter notifying them of his action made the finality of that decision—as well as its factual and legal basis—crystal clear. Yet even though Appellants could have immediately sued, they waited over six months. Given that delay, even were Rule 2:4-1(b) not to apply, laches would bar their claims. The State has invested money, time, and resources into improving the PPD as part of the supersession; OIC Abbasi left employment at NYPD to oversee PPD operations; and a series of significant new public-safety and community-engagement strategies are well underway. Appellants' demanded relief would cause tremendous prejudice and disruption to this work—exactly what laches exists to prevent.

More fundamentally, Appellants' challenge fails on the merits, since state statutes, cases, and historical practice uniformly confirm the Attorney General's ability to supersede law enforcement agencies such as the PPD. Most obviously, in July 2023, the Legislature enacted L. 2023, c. 94 (Chapter 94), a statute that expressly recognizes that the Attorney General may "supersed[e] a law enforcement agency in a city of" Paterson's size. This express recognition is unsurprising: the Criminal Justice Act of 1970 (CJA) has long granted the Attorney General, as Chief Law Enforcement Officer, supervisory power over law enforcement agencies across the State, and it has correspondingly obligated law enforcement to cooperate with and aid him in his duties. Those responsibilities not only include directing law enforcement agencies regarding

the performance of their own duties, but also directly managing agencies or particular cases in which those duties are not properly fulfilled. The Attorney General's supersession authority is also reflected in the Internal Affairs Policy & Procedures (IAPP), which has the force of law for law enforcement agencies, and in extensive precedent. And this authority is reflected in decades of past supersessions by Attorneys General and county prosecutors, undisturbed by any judicial ruling. Chapter 94, the CJA, the IAPP, precedent, and longstanding practice all support the same conclusion: the Attorney General had authority to supersede the PPD and to manage its chain of command.

Finally, Appellants' demand for interim injunctive relief in their plenary merits brief is both procedurally improper and substantively unwarranted. As an initial matter, Appellants have not filed a motion for a stay, the prerequisite for such relief. And on the substance, Appellants have failed to establish that the supersession is causing them substantial, immediate, or irreparable harm, or that the balance of hardships or public interest favors an injunction. The State's considerable investments in reforming the PPD, building community trust, and improving public safety significantly outweigh Appellants' personal interests in exercising control over the PPD. Extraordinary challenges at the PPD required the Attorney General to step in, and Appellants' suit should not be permitted to undermine the positive but inherently fragile progress that is underway.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. Statutory Background.

The CJA, N.J.S.A. 52:17B-97 to -117, establishes that it is "the public policy of this State to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State." N.J.S.A. 52:17B-98. The CJA requires all law enforcement agencies "to cooperate with and aid the Attorney General" in the performance of his duties. N.J.S.A. 52:17B-112(a)-(b). And it ensures that the Attorney General may supersede "any investigation, criminal action, or proceeding" where in his "opinion" "the interests of the State will be furthered by so doing." N.J.S.A. 52:17B-107(a)(1).

The State is aware of at least 26 documented supersessions over the past two-and-half decades. In the early 2000s, for instance, the Attorney General oversaw the Camden Police Department. (Ra1-4).[2] The Attorney General also

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[1] Because they are closely related, these sections have been combined for efficiency and the court's convenience.

[2] "Ra" refers to Respondents' Appendix, filed with this brief; "Pa" refers to Appellants' appendix; "Pb" refers to Appellants' brief; "NJSACOPb" refers to the amicus brief filed in this matter by the New Jersey State Association of Chiefs of Police (NJSACOP); and "T" refers to the transcript of the October 23,

superseded County Prosecutor's Offices (CPOs) on at least eight occasions over the past 25 years, with only two known legal challenges—both of which failed. (Ra7-31). And CPOs have superseded local police departments in at least seventeen instances—often as a result of findings or allegations of misconduct or mismanagement. (Ra32-62). Thus, over the past 25 years, there was an average of roughly one agency-wide supersession in New Jersey each year, few have been challenged in court, and none has been challenged successfully.

On July 3, 2023, the Governor signed into law Chapter 94. See L. 2023, c. 94. Chapter 94 provides that "upon superseding a law enforcement agency in a city of the first class having a population of less than 200,000 according to the 2020 federal decennial census," the Attorney General "may appoint a person who has not previously satisfied the applicable law enforcement officer training requirements … to serve as officer in charge of that law enforcement agency during" the supersession. L. 2023, c. 94, § 1(a). The person appointed must

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2023 hearing in the Law Division on the State's motion to transfer. This Court may take judicial notice of the press releases and news articles contained in Respondent's appendix because they are publicly available sources containing "facts and propositions" of "generalized knowledge" that are "so universally known that they cannot reasonably be the subject of dispute." See N.J.R.E. 201(b)(1); Cohen v. Cmty. Med. Ctr., 386 N.J. Super. 387, 396 n.4 (App. Div. 2006) (judicial notice of recently published news articles in deciding whether to issue cautionary instructions to jury regarding publicity of case); Gen. Motors Corp. v. Linden City, 22 N.J. Tax 95, 156 (2005) (judicial notice of party's announcement in New York Times article).

"have previously served as a superior police officer and possess at least 10 years administrative and supervisory police experience." Ibid. Notwithstanding any other law, "the Attorney General may establish and administer specific training requirements for the person appointed … that take into account the person's prior training, education, experience and qualifications in light of the requirements of the position." Id. § 1(b). Such training must be "completed within one year of appointment," at which time "the appointee shall be deemed eligible to be licensed" as a law enforcement officer under New Jersey law. Id. § 1(c). Chapter 94 is retroactive to March 1, 2023. Id. § 2.

B. The PPD.

On April 27, 2021, concerns about the PPD led the Attorney General at the time to direct the Passaic County Prosecutor's Office (PCPO) to assume responsibility for PPD's Internal Affairs (IA) Division to (1) ensure all IA investigations were conducted properly and (2) undertake a historical review of IA investigations. (Ra63). The Attorney General ordered this oversight after federal authorities arrested two PPD officers for assaulting a victim and then filing a false police report about the incident. Ibid; (Ra64-65).

In September 2022, five PPD officers were sentenced to federal prison for violating the civil rights of individuals in Paterson, including illegally stopping and searching residents without justification and stealing cash and other items

from them. (Ra66-68). PPD Sergeant Michael Cheff—who was found to have supervised the five PPD officers, signed off on their false police reports, and participated in at least one theft—was also sentenced to federal prison. Ibid. Later that month, Ribeiro was appointed from within the PPD to Acting Chief of Police. (Ra69-70). About a week after that, the PCPO prepared a report detailing its oversight of the PPD's IA Division, identifying several deficiencies and detailing changes and recommendations for the future. (Ra71-72).

In February 2023, the Attorney General announced charges against a PPD officer who allegedly shot a man as he was running away from the officer. (Ra73). Less than a month later, a Paterson man was arrested for opening fire on two State troopers who were investigating a break-in, hitting and injuring one trooper. (Ra74). A day later, on March 3, Ribeiro was officially sworn in as Paterson's Chief of Police. (Pa6, Pa26). That same day, while responding to a 911 call of an individual in distress, PPD officers fatally shot a Paterson man, Najee Seabrooks, while he was experiencing a mental-health crisis, sparking community-wide outrage and calls for a federal investigation. (Ra75-80).

C. This Supersession.

On March 27, 2023, acknowledging the "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson," the Attorney General issued a formal letter to

Paterson's mayor, officially exercising his supersession authority and noting that he would be appointing a new OIC. (Pa227). The Attorney General explained the basis for his authority to directly manage the PPD via supersession, noting that the Attorney General's supersession authority is "derived from the Criminal Justice Act of 1970, N.J.S.A. 52:l7B-97 to -117, and N.J.S.A. 2A:158-4 and 5," and is "consistent with both decades of practice by the Attorney General and County Prosecutors, as well as a substantial body of case law recognizing the Attorney General's role in overseeing law enforcement agencies as the chief law enforcement officer in the State and the County Prosecutor as the chief law enforcement officer in the county." (Pa227) (collecting cases).

The Attorney General also released a letter to the members of the PPD, notifying them of his decision. (Pa21). As the Attorney General explained in that letter, the PPD had "suffered fiscal challenges"; had "been subjected to the whims of a revolving door of leadership"; had experienced multiple "high-profile cases of misconduct—some of it being criminal—on the part of a few officers"; and had suffered a loss of community trust. Ibid.

That same day, the Attorney General appointed Abbassi to serve as OIC, beginning in May 2023. (Pa4, Pa23). OIC Abbassi is a 25-year veteran of the NYPD, who successfully managed more than 30,000 members of the force as

Deputy Chief of Police. (Ra82). After the death of Eric Garner during an NYPD arrest, Abbassi was selected by the New York City Police Commissioner to lead the NYPD's efforts to rebuild trust between the Staten Island community and the NYPD. Ibid. In light of his successes in rebuilding trust and improving public safety and police morale, in 2019, the NYPD awarded Abbassi its most prestigious command recognition, the Unit Citation. Ibid. Subsequently, as NYPD's Chief of Strategic Initiatives, Abbassi oversaw policy reforms for the entire NYPD police force. Ibid. Major Frederick P. Fife of the New Jersey State Police was appointed to serve as Interim OIC until Abbassi assumed command, and these leadership changes were set forth in a Standard Operating Procedure (SOP) issued that same day. (Pa23).

On May 9, 2023, the Attorney General and Interim OIC Fife executed a Memorandum of Understanding (MOU) providing for temporary reassignment of Chief Ribeiro from the PPD to the Division of Criminal Justice (DCJ). (Pa36). Chief Ribeiro retained his status as a sworn law enforcement officer and Chief of the PPD, but was assigned to work responsibilities with the DCJ Police Training Commission (PTC) in Trenton. Ibid. The MOU provided the assignment was for a period of six months, which could be renewed for six-month extensions. Ibid. Chief Ribeiro is under DCJ's operational supervision and control but remains under PPD's administrative supervision and control.

Ibid. During this assignment, Paterson continues to pay Chief Ribeiro his salary. (Pa30, 36). The MOU has now been renewed twice, e.g., (Pa264), and Chief Ribeiro's assignment to the PTC currently extends to November 15, 2024.

After Abbassi started as OIC on May 9, 2023, he announced a strategic vision for the PPD, primarily focusing on four strategies to achieve and maintain fairness, integrity, and inclusiveness. (Ra83-98). First, the strategic vision aimed to rebuild public trust and order by increasing public access to data, enhancing supervisory oversight, and establishing meaningful quality controls. (Ra88-89). Second, it aimed to implement and redefine community policing by soliciting feedback from the community in real time and tailoring its services to community needs. (Ra91). Third, it proposed a top-to-bottom assessment of PPD to identify existing policies and practices that no longer suited PPD's needs and to implement innovative new technologies and best practices. (Ra93). Fourth, the vision aimed to examine recruiting and hiring practices to ensure equity, fairness, and access for all who wish to join the PPD. (Ra94-95). The next month, OIC Abbassi announced the Summer Crime and Quality of Life Strategy, an innovative plan to increase public safety. (Ra99). On September 26, 2023, the Attorney General and Abbassi announced their Strategic Plan for the PPD, which outlined the progress made and built on the strategies outlined in the Strategic Vision. (Ra105-32).

Data indicates that crime in Paterson has fallen markedly during the supersession. Comparing calendar year 2023 with calendar year 2022 shows:

- a 39.3% decrease in murders;
- a 33.3% decrease in shooting incidents (including a 43.5% decrease in the fourth quarter of 2023, compared to the fourth quarter of 2022);
- a 22.6% decrease in robberies; and
- a 15.8% decrease in aggravated assaults.

(Ra100).

The strategies leading to this crime reduction were funded by an allocation of State resources, including "resources, personnel, technology, and nearly $1 million dollars in additional summer funding." Ibid. The State has appropriated $10 million in the Fiscal Year 2024 Appropriations Act for the PPD, with an option to appropriate "such additional amounts as may be necessary." Appropriations Handbook, State of New Jersey, Fiscal Year 2023-2024, at B-165-66, https://tinyurl.com/bdz8v955. Since the supersession began, the State has now invested over $6 million in the PPD.

D. This Litigation.

On October 6, 2023, over six months after the Attorney General issued his order superseding the PPD, Appellants Mirza Bulur (identifying himself as the acting or interim Public Safety Director) and Chief Ribeiro filed a Complaint and order to show cause in the Law Division, directly challenging the Attorney General's authority to supersede the PPD. (Pa1). Shortly after, Andre Sayegh,

Mayor of Paterson, moved to intervene, which the Law Division granted without opposition. (Ra101-02). The Attorney General moved to transfer the suit to this Court, which the Law Division granted on October 23. (Pa229).

Interlocutory motions followed. Appellants initially sought permission to file an emergent motion, which this Court denied. (Ra103-04). This Court found that Appellants' emergency was "self-generated" and that "the magnitude of the threatened harm" did not "warrant adjudicating this matter on short notice." (Ra104). Appellants then moved for an expedited briefing schedule, which this Court also denied. They did not seek a stay pending appeal.

Meanwhile, Chief Ribeiro and Mayor Sayegh filed a second complaint and order to show cause in the Law Division, alleging claims identical to several in the Bulur complaint and additionally challenging Chief Ribeiro's temporary assignment to the PTC. (Pa239). The Attorney General again moved to transfer, which the Law Division again granted. (Pa278). Appellants then filed Notices of Appeal, and in January 2024, the appeals were consolidated.

ARGUMENT

POINT I

THIS CHALLENGE IS UNTIMELY.

Appellants' challenge—filed six months after the Attorney General issued his decision to supersede the PPD—is untimely for two independent reasons.

First, Appellants filed this action outside the 45-day time limit applicable to the review of agency actions under Rule 2:4-1(b). Second, even if this Court were not to apply that Rule, laches would bar these belated claims.

Begin with Rule 2:4-1(b), which provides that "[a]ppeals from final decisions or actions of state administrative agencies or officers ... shall be filed within 45 days from the date of service of the decision or notice of the action taken." That 45-day clock begins to runs when a state agency renders a decision that "give[s] unmistakable notice of its finality." In re CAFRA Permit No. 87-0959-5, 152 N.J. 287, 299 (1997). Appellants concede they are challenging state agency action, see (T29:21-24); accord Prado v. State, 186 N.J. 413, 421-24 (2006), and no longer dispute that the Attorney General's March 27 letter—the premise on which their claims all rest—was unmistakably final under the Rule.

Indeed, the March 27 letter provided unmistakable notice of finality on its face. Agency "action is final where it marks the 'consummation of the agency's decision making process,' and is one from which 'legal consequences flow.'" In re Zion Towers Apartments (HMFA #2), 344 N.J. Super. 530, 535 (App. Div. 2001) (quoting Bennett v. Spear, 520 U.S. 154, 178 (1997)); see also N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 612 (1982) (finality exists if "an administrative decision has been formed and its effects felt in a concrete way"). As Judge Filko correctly observed in granting the State's motion to transfer to this Court, the

Attorney General's statement in the letter that he "has assumed responsibility for the day-to-day operations" represented "a final or a conclusive decision on that day." (T43:10 to 43:14). For one, the letter was express: it made clear the Attorney General had decided to exercise his supersession authority and was not merely considering taking such an action. (Pa227). For another, on the same day he announced his decision to supersede the PPD, the Attorney General also issued an SOP for the PPD and named a new OIC—actions consistent only with a final decision to supersede. (Pa4, Pa23, Pa227). There was thus nothing "conditional, or temporary, or preliminary" about the decision. (T46:23-25). It was final, which means that Appellants should have brought this challenge "within 45 days from the date of service of the decision or notice of the action taken," R. 2:4-1(b)—that is, no later than May 11, 2023.[3]

[3] Below, Appellants made much of the fact that the Attorney General's decision to supersede the PPD has continuing effects on the management of the PPD. But final agency actions usually have continuing impacts. See, e.g., In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 489 (2021) (In re 2020 Directives) (Attorney General directive placing ongoing reporting requirements on law enforcement was properly adjudicated in the Appellate Division as final agency action). Appellants also argued the letter was insufficiently "formal" to be final. But a decision's formality has never been the measure of finality. See id. at 490 (agencies can produce their final action "in an informal fashion," as the Attorney General does in issuing directives to law enforcement); N.J. Civ. Serv. Ass'n, 88 N.J. at 612 (finding agency action was final even though the administrative policy "ha[d] not been formally expressed").

Moreover, the March 27 letter included express factual and legal conclusions that would have facilitated immediate review. See CAFRA, 152 N.J. at 299. In his letter, the Attorney General concluded that supersession was "necessitated by, among other things, the loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson." (Pa227). And as Judge Filko noted, the letter "list[ed] statutory and case law" authority to "support[] [the Attorney General's] decision to take over the Police Department." (T44:12 to 44:14). The March 27 letter explained that his supersession authority is "derived from the [CJA], N.J.S.A. 52:l7B-97 to -117, and N.J.S.A. 2A:158-4 and 5," and is "consistent with both decades of practice by the Attorney General and County Prosecutors, as well as a substantial body of case law recognizing the Attorney General's role in overseeing law enforcement agencies as the chief law enforcement officer in the State and the County Prosecutor as the chief law enforcement officer in the county." (Pa227) (collecting cases).

While Rule 2:4-1(b)'s 45-day limit does not apply to all agency actions, it logically applies here. To be sure, Rule 2:4-1(b) applies to an agency's "quasi-judicial" (adjudicatory) actions and it does not apply to any "quasi-legislative" (rulemaking) actions. Nw. Covenant Med. Ctr. v. Fishman, 167 N.J. 123, 135 (2001). But it is settled law that not all agency actions fit the rulemaking-versus-

adjudication paradigm; "agencies can also act in a hybrid manner, with features of rulemaking and adjudication, or in an informal fashion, without a hearing." In re 2020 Directives, 246 N.J. at 490. Indeed, informal action "constitutes the bulk of the activity of most administrative agencies," In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 518 (1987), and covers myriad agency activities, "including investigating, publicizing, negotiating, settling, advising, planning, and supervising," Covenant, 167 N.J. at 135.

The Attorney General's actions supervising law enforcement agencies are commonly issued as informal actions. See, e.g., In re 2020 Directives, 246 N.J. at 491 (noting Attorney General directives "are not the result of adjudication" and are not "adopted under the rulemaking requirements of the APA"). That is logical: these actions, like other inter- or intra-agency actions, do not "have a substantial impact on … the regulated public," and thus the public "cannot be said to have a legitimate interest" in any pre-decisional process. See Woodland Private Study Grp. v. State, Dep't of Env't Prot., 109 N.J. 62, 74-75 (1987); cf. also In re Carroll, 339 N.J. Super. 429, 442-43 (App. Div. 2001) (characterizing Attorney General policies managing law enforcement agencies as "statements concerning the internal management or discipline of any agency"). Supersession operates much the same: it entails neither a generally applicable regulation nor a quasi-judicial, trial-like proceeding, but is the process by which the Attorney

General fulfills his unique duty to oversee "the general supervision of criminal justice." N.J.S.A. 52:17B-98. And importantly, supersession neither regulates private parties nor grants them any rights; it exclusively directs the work of a public law enforcement agency in New Jersey, whose governmental operations are subject to the "chief law enforcement officer of the State." Ibid.

Informal agency action can trigger Rule 2:4-1(b) in appropriate cases, and this is such a case. There is a good reason why Rule 2:4-1(b) applies to quasi-judicial agency actions but not quasi-legislative ones: for the former, the agency identifies specific affected parties and provides them with notice. See R. 2:4-1(b) (running 45-day clock "from the date of service of the decision or notice of the action taken"). It is thus fair to expect that party to act diligently to protect its rights, but unreasonable to require a member of the general public to know of, and to challenge, any generally applicable rule within that period. So if an agency's informal action affects a specific party expressly and affords them notice, the 45-day rule applies. See Vas v. Roberts, 418 N.J. Super. 509, 525 (App. Div. 2011) (holding letter suspending benefits subject to the Rule, though waiving application of the limit on other grounds); In re Christie's Appt. of Perez as Pub. Member 7 of Rutgers Univ. Bd. of Governors, 436 N.J. Super. 575, 585 (App. Div. 2014) (same for gubernatorial appointment). So it is here. The supersession (and the changes to the chain of command that flowed from it)

concerned specific entities, including Appellants, who received notice the same day. They have given no explanation for failing to act within 45 days.

In fact, Appellants missed the 45-day limit by many months. The time for Appellants to challenge the supersession and appointment of OIC Abbassi began to run on March 27, 2023—"the date of service of the decision or notice of the action taken." R. 2:4-1(b). They sued on October 6—well past the deadline of May 11. Appellants did not seek an extension, nor would one have cured their delay. See R. 2:4-4 (court can grant only one 30-day extension, and only if the extension is sought within that first 45 days). Nor is this "the rare case in which the public interest requires that [the court] exercise jurisdiction and decide the issue presented" despite the untimeliness. In re Perez, 436 N.J. Super. at 585. Appellants are sophisticated parties and are suing to invalidate a major action of which they had notice from day one. And they have given no justification for their delay—including for waiting to sue until after OIC Abbassi left his prior employment for this role, and after the State had invested well over $1 million in PPD operations (and far more since). The public interest thus instead supports holding Appellants to the clear framework set forth by Rule 2:4-1(b).

Alternatively, this appeal is foreclosed by laches. Laches bars a claim "when the party engages in an inexcusable and unexplained delay" in bringing its claims and thus prejudices "the other party." Knorr v. Smeal, 178 N.J. 169,

181 (2003). In determining whether laches applies, courts consider "the length of the delay, the reasons for the delay, and the 'changing conditions of either or both parties during the delay.'" Ibid.; see also Mancini v. Twp. of Teaneck, 179 N.J. 425, 437 (2004) (outlining factors). The application of laches, however, is not based on the number of days of delay alone; instead, "[t]he core equitable concern in applying laches" is whether the other party is harmed by the delay, which can be true even if the delay is measured in months rather than years. See Knorr, 178 N.J. at 181 (holding fourteen-month delay in filing motion to dismiss triggered application of laches, where plaintiffs were "harmed by the significant costs … borne during fourteen months of discovery"); Heinzer v. Summit Fed. Sav. & Loan Ass'n, 87 N.J. Super. 430, 439 (App. Div. 1965) (laches applied due to seven-month delay in challenging sheriff's sale); Dover Shopping Ctr., Inc. v. Cushman's Sons, Inc., 63 N.J. Super. 384, 392 (App. Div. 1960) (same for 16-month delay in asserting fraud in connection with lease).

Laches applies here. Initially, there is an "inexcusable and unexplained delay": Appellants (1) did not challenge the supersession for over six months, (2) even though they received notice the day of the decision, and (3) have never provided any reason to think that filing suit earlier would have been impossible or impractical. And the delay risks prejudice in multiple significant ways. Initially, by the time of the suit, the State had invested over $1 million in the

PPD—not to mention the other resources contributed, or the time spent by officials across the Department of Law and Public Safety. See (Ra100). Appellants seek to have their cake and eat it too—to retain state investments but nevertheless evict the State's oversight and management. See, e.g., Lavin v. Bd. of Educ. of City of Hackensack, 90 N.J. 145, 153-54 (1982) (finding laches applied where delay implicated financial consequences). Second, OIC Abbassi had left employment at the NYPD—relying on the supersession and concomitant decision appointing him as the PPD's OIC. Finally, the State had already implemented significant public-safety and community-engagement strategies—reforms underway when Appellants first sued, see (Ra82-100), that benefit the residents of Paterson, and which this suit would upend midstream. Cf. In re Protest of Cont. Award for Project A1150-08, 466 N.J. Super. 244, 263 (App. Div. 2021) (where "Project has proceeded so far, the equities weigh heavily 'against the provision of relief on the merits'"). A timely suit would have allowed this Court to address these claims before prejudice accrued; this unexplained delay triggers laches. Whether under the terms of Rule 2:4-1(b) or under laches, this suit cannot proceed.[4]

[4] These arguments, it bears emphasizing, apply to all of Appellants' claims, including those related to Chief Ribeiro's reassignment, because those claims flow directly from Appellants' challenge to the supersession. Appellants do not dispute that an authority superior to Ribeiro could have changed his day-to-day

POINT II

THE SUPERSESSION IS LEGALLY VALID.

This Court should reject Appellants' arguments that the Attorney General lacked authority to supersede the PPD and to take related actions to manage its chain of command. This Court's review of administrative actions is "limited," and it may "intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy." George Harms Const. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994). Here, the Attorney General drew on established statutory authority, precedents, and law enforcement practice in superseding the PPD—authority the Legislature itself expressly recognized in a 2023 statute. Moreover, the related actions Appellants challenge—installing Abbassi as OIC for the PPD, and altering Chief Ribeiro's work assignment in the chain of command—are similarly authorized.

A. As The State's Chief Law Enforcement Officer, The Attorney General Has Authority To Supersede The PPD.

A wealth of authority establishes that the Attorney General may exercise the power to supersede law enforcement agencies like the PPD. That authority

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duties; they simply argue that the Attorney General and/or his designee could not do so. (Pb43). But placing Chief Ribeiro "under the Attorney General's chain of command," (ibid.), is precisely what occurred on March 27, 2023, and all of Appellants' quarrels with Chief Ribeiro's assignment are derivative of their challenge to that initial decision to supersede. Their belated challenge can thus be dismissed in its entirety on timeliness grounds alone.

includes a recent and explicit 2023 statute; longstanding laws that govern New Jersey law enforcement; precedents; and longstanding practice. Appellants offer no contrary authority that vitiates the Attorney General's power to supersede.

A 2023 statute alone resolves this case: Chapter 94. That measure, which was signed into law on July 3, 2023, with a retroactive effective date of March 1, 2023, relaxes the rules governing OIC appointments when the Attorney General "supersed[es] a law enforcement agency in a city of the first class having a population of less than 200,000" and appoints that OIC serve "during the period of time during which the law enforcement agency is superseded." Id. § 1(a); see id. § 2 (law "shall expire upon the termination of the period of time during which the law enforcement agency in [such] a city … is superseded by the Attorney General"). That plain language is dispositive. The question this appeal presents is whether the Legislature has granted the Attorney General authority to supersede municipal law enforcement agencies. The statutory text answers that question directly: the Legislature recognized that the Attorney General can do so. See, e.g., DiProspero v. Penn, 183 N.J. 477, 492 (2005) (finding that the "paramount goal" of statutory analysis is legislative intent, and the best indicia of legislative intent is the text).

Nor can there be any doubt that the Legislature was aware of what it was reaffirming. The Legislature swiftly enacted Chapter 94 after the March order

superseding the PPD, making it retroactive to predate this supersession. The legislative history confirms that the Legislature understood that the law applied to the Paterson supersession.[5] Bluntly, the Legislature recognized the Attorney General's supersession and acted to relax some of the rules that otherwise bind appointments, confirming its intent that he has authority to supersede in the first place. Cf. Worthington v. Fauver, 88 N.J. 183, 208 (1982) (when "executive acts pursuant to an express or implied authorization from the Legislature, … the executive action should be 'supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.'" (citation omitted)).

Moreover, Appellants' argument runs headlong into the venerable canon against surplusage. See Goyco v. Progressive Ins. Co., __ N.J. __, 2024 WL 2140293, *18 (May 14, 2024) (courts "do not support interpretations that render statutory language as surplusage or meaningless" (citation omitted)); Fraternal Ord. of Police v. City of Newark, 244 N.J. 75, 99 (2020) ("We assume that when the Legislature drafts a statute, it avoids surplusage."); State v. Drake, 444 N.J.

[5] See June 15, 2023, Assembly Judiciary Committee Hearing at 3:20:00 to 3:30:00, https://tinyurl.com/3zc4utht (discussing training protocols and appointment of new OIC, but not raising any issues with agency-wide supersession); June 12, 2023, Senate Law and Public Safety Hearing at 0:18:20 to 0:22:11, https://tinyurl.com/5bdm5wua (mentioning Paterson supersession without noting any concern).

Super. 265, 271 (App. Div. 2016) (same). Chapter 94 expresses only one object: "an Act concerning an appointment when the Attorney General has superseded a law enforcement agency." It applies in cities in which the Attorney General "supersed[ed] a law enforcement agency"; it applies to officers in charge of the city agency he superseded; and it expires when the supersession of the city law enforcement agency terminates. But if the Attorney General lacks the authority to supersede municipal law enforcement, this law has no application. For that reason, the surplusage on Appellants' view is particularly egregious—it does not merely render a word, sentence, or even subsection surplusage, but instead means that the entire statute the Legislature passed and the Governor signed on July 3, 2023, is a nullity. Appellants have no answer to this problem.

None of Appellants' arguments overcome the clarity of Chapter 94. For one, Appellants protest that the Legislature's decision to adopt Chapter 94 and to make it retroactive is "convenient" for the State's position. (Pb28). But that is hardly a point in their favor: Chapter 94 is convenient to the State's position only because the Attorney General's view of his authority is consistent with the Legislature's intent. And Appellants give no reason why the Legislature would lack the authority to reaffirm his supersession authorities, including in this very instance. For another, they complain that Chapter 94 cannot presume (and thus affirm) the Attorney General's power to supersede agencies like the PPD when

"there is no [other] statutory basis for the supersession of a police department by the Attorney General." (Pb28). That assertion is illogical: if the Legislature wishes to make its intent clearer via a subsequent statute like Chapter 94, it has plenary authority to do so. See Berg v. Christie, 225 N.J. 245, 261, 264 (2016) (recognizing Legislature's "prerogative to revisit its policy choices" and to make new choices "at will"). Indeed, claiming that Chapter 94 cannot operate without a clearer, preexisting statutory source of authority is to embrace the untenable outcome that Chapter 94 would be rendered surplusage.

Although Chapter 94 is fatal to Appellants' claims, the Attorney General's supersession authority is independently clear from preexisting statutes, case law, and unbroken historical practice. As to preexisting statutes, the Legislature has long granted the Attorney General sweeping supervisory authority over criminal justice across the State. Through the CJA, our Legislature chose "to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State." N.J.S.A. 52:17B-98. As Chief Law Enforcement Officer, the Attorney General has responsibility for "the criminal business of the State," alongside county prosecutors, who are charged with the same, subsidiary responsibility within their respective counties. See N.J.S.A. 52:17B-101; see

also N.J.S.A. 2A:158-4 to -5. And thus, in keeping with this legislative vision, the County Prosecutors are statutorily obligated "to cooperate with and aid the Attorney General in the performance of his duties," N.J.S.A. 52:17B-112(a), and "the police officers of the several counties and municipalities of this State and all other law enforcement officers" are in turn obligated "to cooperate with and aid the Attorney General and the several county prosecutors in the performance of their respective duties," N.J.S.A. 52:17B-112(b). These CJA provisions must "be liberally construed to achieve these ends." N.J.S.A. 52:17B-98.

The powers state law assigns the Attorney General include the authority to supersede a law-enforcement agency—to directly oversee law enforcement operations in the rare and unfortunate cases in which that agency falls far short of its solemn responsibilities. As our Supreme Court has noted, the duty to serve as Chief Law Enforcement Officer, to supervise criminal justice across the State, and to require cooperation and aid from all law enforcement agencies inherently includes power to direct law enforcement agencies on the performance of law enforcement responsibilities. See Paff v. Ocean Cty. Pros. Office, 235 N.J. 1, 20-21 (2018) (citing N.J.S.A. 52:17B-97 to -117 in affirming the "Attorney General's statutory power to adopt guidelines, directives, and policies that bind law enforcement"); In re 2020 Directives, 246 N.J. at 482-83 (recognizing his "broad authority over criminal justice matters" within New Jersey); FOP, 244

N.J. at 100 (same). So too the authority to supervise as the Chief Law Enforcement Officer inherently includes power to directly manage agencies or specific cases in which law enforcement duties are not being properly performed, or compliance with these commands—and remediation of extraordinary issues in particular law enforcement agencies, internal affairs, or investigations—cannot be assured.

Indeed, this Court has reasoned that because a county prosecutor serves as "the chief law enforcement officer in the county," that prosecutor has "broad supervisory authority over the operations of municipal police departments," not just the assistant prosecutors within her office. Gerofsky v. Passaic Cty. SPCA, 376 N.J. Super. 405, 417 (App. Div. 2005); see Passaic Cty. PBA Local 197 v. Office of the Passaic Cty. Pros., 385 N.J. Super. 11, 16 (App. Div. 2006) (relying on Gerofsky to confirm that "the County Prosecutor's supervisory authority over all law enforcement activity in the county, including but not limited to county and municipal ... police officers"). And this Court has recognized the direct link between such overarching supervisory authority and "supersession": "a period of time where the office of a county prosecutor directly supervises the day-to-day operations of a local police department within that county." Williams v. Borough of Clayton, 442 N.J. Super. 583, 599 n.2 (App. Div. 2015) (emphasis added). But if a county prosecutor has the power to supersede a local police

department within her county as chief law enforcement officer for that county, all the more so can the Chief Law Enforcement Officer of the State exercise the same authority when "the interests of the State will be furthered by so doing," N.J.S.A. 52:17B-107(a)(1); see also N.J.S.A. 52:17B-112(b).

Appellants' contrary view is illogical. Appellants do not seem to dispute that county prosecutors can supersede a local police department or its particular law enforcement functions or investigations when appropriate. But blackletter law in this State teaches that a county prosecutor's exercise of law enforcement powers "'remains at all times subject to the supervision and supersession power of' the State." Yurick v. State, 184 N.J. 70, 79 (2005) (quoting Wright v. State, 169 N.J. 422, 452 (2001)); see also, e.g., Constantine v. Twp. of Bass River, 406 N.J. Super. 305, 327 (App. Div. 2009) (agreeing that "[e]ach county prosecutor … is under the direct supervision of the Attorney General"); N.J.S.A. 52:17B-107(a)(1) (confirming Attorney General can supersede county prosecutor). The inferential chain confirms what the CJA already shows: if a county prosecutor's authority includes the power to supersede municipal law enforcement, and if the Attorney General's powers include superseding a county prosecutor, then the Attorney General's powers must necessarily include supersession of municipal agencies—precisely as Chapter 94 affirms. See Constantine, 406 N.J. Super. at 327 (stating "the Attorney General's general supervisory powers extend directly

to municipal law enforcement"); see generally State v. Winne, 12 N.J. 152, 168-69 (1953); State v. Ward, 303 N.J. Super. 47, 52-58 (App. Div. 1997).[6]

The Attorney General's authority to supersede a local police department is also confirmed by the IAPP, which carries the "force of law." See In re 2020 Directives, 246 N.J. at 487 (quoting N. Jersey Media Grp. v. Twp. of Lyndhurst, 229 N.J. 541, 565 (2017)); FOP, 244 N.J. at 101 (noting that the text of N.J.S.A. 40A:14-181 makes the IAPP "required policy for all municipal law enforcement agencies in New Jersey"). In November 2022, the Attorney General issued Law Enforcement Directive 2022-14, revising IAPP to provide:

> The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation.
>
> [(Pa43-136 ¶ 1.0.5) (emphasis added).]

[6] Appellants' extensive efforts to distinguish the facts of these various decisions fall short. See (Pb19-21). The State readily admits that none of these precedents specifically involved the Attorney General's supersession of a municipal police department like the PPD. But there is a good reason why: while the Attorney General and county prosecutors have superseded municipal police departments in the past, see supra at 4-5, parties have almost never sued to challenge supersessions—and none have done so successfully. The novelty of Appellants' claim despite historical practice undercuts, rather than supports, their theory. In any event, these cases—involving multiple exercises of supervisory authority—support the common principle that "the Attorney General's general supervisory powers extend directly to municipal law enforcement." Constantine, 406 N.J. Super. at 327. Appellants cannot surmount that overarching rule.

In short, the IAPP has "the force of law" and the IAPP confirms that the Attorney General has the very authority that Appellants claim is legally unavailable.

Nor is there any basis to claim that the IAPP exceeded its proper bounds in recognizing the Attorney General's supersession authority. Supersession—and the Attorney General's supervisory authority—are particularly important for ensuring the proper functioning of a law enforcement agency's internal-affairs process. See supra at 4-5 (discussing historical instances of supersession, many of which involve supersession of internal-affairs function, cited at Ra15, 33, 43). This case is a perfect example: before Attorney General Platkin superseded the PPD in full, his predecessor had, in 2021, ordered the Passaic County Prosecutor to take control of the PPD's internal-affairs function. See (Ra71). Indeed, as Appellants' amicus admits, "there may be various circumstances that require the Attorney General's intervention to correct inappropriate conduct" and "to rehabilitate law enforcement agencies that suffer from poor management and bad practices." (NJSACOPb4). The PPD was such an agency.

Longstanding practice confirms what Chapter 94, the CJA, the IAPP, and case law establish. The "longstanding practice of government" will often inform the court's "determination of what the law is," particularly "in a separation-of-powers case." NLRB v. Noel Canning, 573 U.S. 513, 525 (2014); see Chiafalo v. Washington, 140 S. Ct. 2316, 2326 (2020) ("[l]ong settled and established

practice may have great weight" (cleaned up)). After all, that the government has long implemented its authority in particular ways without objection from the Legislature indicates that the government was indeed acting well within its legal authority. Cf. Macedo v. Dello Russo, 178 N.J. 340, 346 (2004) (noting "long acquiescence on the part of the Legislature" to particular view of state law can be "evidence that such construction is in accord with the legislative intent").

Here, the longstanding law-enforcement practice is overwhelming. The record here includes a prior instance in which the Attorney General superseded a local police department; eight times the Attorney General superseded a CPO; and seventeen times a County Prosecutor superseded a local police department, all in the past 25 years. See (Ra1-7, 7-62). Indeed, the Attorney General's past supersession of the Camden Police Department, (Ra1-8), is impossible to square with Appellants' theory, yet that supersession was well known, and went unchallenged by any court decision or legislation. It is implausible that such substantial historical practice—practice never invalidated by a court, nor overturned by the Legislature—is ultra vires.

Appellants' counterarguments fail to rehabilitate their theory. First, they find no support in N.J.S.A. 52:17B-107(a) (Section 107(a)). See (Pb16-17, 20-21). Section 107(a) confirms the Attorney General "may (a) supersede a county prosecutor in any investigation, criminal action or proceeding, (b) participate in

any investigation, criminal action or proceeding, or (c) initiate any investigation, criminal action or proceeding." Importantly, that statutory text operates to grant authority—not to cabin it. The CJA provides the State's Chief Law Enforcement Officer with overarching authority to supervise and, when necessary, to directly manage any law enforcement agency—including the county prosecutors—and Section 107(a) confirms that this supervisory authority extends to the granular level of an individual case. Indeed, Appellants do not challenge the established practice of county prosecutors superseding police departments or their internal affairs, but that is not directly addressed there either. If Section 107(a) were meant to limit the authority that flows from Chapter 94, the CJA, the IAPP, case law, and decades of practice, the Legislature would have said so clearly.[7]

Second, nothing in N.J.S.A. 40A:14-118 (Section 118) insulates local law enforcement agencies from the Attorney General's supervision, let alone via supersession. As our Supreme Court has explained, Section 118 was intended to solve a specific problem: preventing political interference or influence over a police department by local civilian officials. FOP, 244 N.J. at 98. It thus

[7] Nor does N.J.S.A. 52:17B-106 support Appellants' claims, which may explain why they do not mention it. N.J.S.A. 52:17B-106 addresses what should happen when other, non-law enforcement officials request supersession. It makes clear that when the Governor requests the Attorney General supersede a county prosecutor, the Attorney General must do so; otherwise, the decision is left to the Attorney General's plenary discretion as Chief Law Enforcement Officer, even when other public authorities request that he do so.

specifies "the powers and responsibilities of police chiefs" vis-à-vis a town's civilian leadership, establishing a division of labor "between the executive and legislative branches of government at the municipal level." Ibid.; see also Hawthorne PBA Local 200 v. Borough of Hawthorne, 400 N.J. Super. 51, 59 (App. Div. 2008) (Section 118 "evidences a legislative design for checks and balances and a sharing of power between executive and legislative branches of a municipality"). The law "avoid[s] undue interference by a governing body into the operation of the police force." Paff, 235 N.J. at 21.

Section 118 does not, by contrast, remove local police departments from the State's law enforcement chain of command. Section 118 is explicit on this point: while it allows a municipality's governing body to create a police force and empowers a police chief to manage that force, the municipality and police department must still act "in a manner consistent with … general law." N.J.S.A. 40A:14-118. That is why, although Section 118 "empowers a municipality to create a police department and to appoint a police chief as the head of that department, and generally describes the duties of a police chief," the Attorney General has "statutory power to adopt guidelines, directives, and policies that bind law enforcement throughout our State." Paff, 235 N.J. at 20-21. It also explains why, although Section 118 "limited the authority of municipalities to regulate the internal affairs of police departments," ibid., all agencies remain

bound by the IAPP, N.J.S.A. 40A:14-181. And because New Jersey's "general law" places local law enforcement agencies within the ambit of the Attorney General's supervisory authority, see supra at 25-27, Section 118 cannot exempt them from Attorney General supersession. Appellants' contrary view—which would generate a conflict between Section 118 and the CJA, the IAPP, and Chapter 94 alike—is unsustainable. See Saint Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005) (when "interpreting different statutory provisions," courts "are obligated to make every effort to harmonize them").

Nothing about Paterson's "home rule" powers pursuant to the New Jersey Constitution or the Faulkner Act undermines the Attorney General's supervisory authority either. Home rule in New Jersey is not a freestanding right—rather, as Appellants recognize, (Pb26), "[w]hether the state alone should act or should leave the initiative and the solution to local government, rests in legislative discretion." Inganamort v. Borough of Fort Lee, 62 N.J. 521, 528 (1973). Our Constitution makes clear that municipalities only enjoy such powers as are "not inconsistent with or prohibited by this Constitution or by law." N.J. Const. Art. IV, § VII, ¶ 11 (emphasis added). As our Supreme Court has held, that limit represents an "omnipresent brake on the exercise of municipal authority: where municipal power to act exists, municipal action cannot run contrary to statutory or constitutional law." FOP, 244 N.J. at 93. Here, that "brake" explains why

Paterson cannot invoke home rule to defeat this supersession—because existing state law provides the Attorney General with the authority to supersede local law enforcement agencies. See supra at 22-28. That is, our Legislature already established by general law—and, by recently enacting Chapter 94, again affirmed—that local police departments like the PPD are subject to the Attorney General's supersession authority.

Appellants' and amicus's final and more picayune complaints fall short. For their part, Appellants claim that even if the supersession itself is lawful, the Attorney General or OIC Abbassi violated N.J.S.A. 40A:14-118(e) by failing to make monthly reports, (Pb28), but that misunderstands the legal backdrop entirely. When the Attorney General supersedes a municipal law enforcement agency, he does not report to city officials, and has no obligation under N.J.S.A. 40A:14-118(e) to make monthly reports to the "appropriate authority." Instead, he acts as "chief law enforcement officer of the State" and discharges his duty "to provide for the general supervision of criminal justice." N.J.S.A. 52:17B-98. In any event, even were the Attorney General (or his designee) somehow bound by Section 118, that would be no basis to invalidate the supersession—the crux of this appeal—but simply a basis to require that reports be made to "the appropriate authority in such form as shall be prescribed by such authority." N.J.S.A. 40A:14-118(e). Yet while Appellants say OIC Abbassi does not

provide such reports to them, they have given no reason to believe that reports are not being made as prescribed by the appropriate authority—Public Safety Director Gerald Speziale. See (Ra71-72); Paterson Mun. Code § 5-75. And indeed, the PPD under OIC Abbassi's leadership has been publishing weekly reports of "CompStat" data available to the entire public, via the web, since October 2023. See PPD, CompStat Data, https://tinyurl.com/4ppauy8u.

This Court can easily dispense with amicus NJSACOP's arguments as well. NJSACOP concedes that the Attorney General's agency-supersession authority does exist—meaning that Appellants' sole amicus disputes their central argument. (NJSACOPb5-8). NJSACOP instead urges this Court to mandate a series of procedures before an Attorney General can supersede an agency. (Id. at 17-22). But that argument is not properly before this Court, as amici cannot inject new issues into a case. See In re Request to Modify Prison Sentences, 242 N.J. 357, 396 (2020). Their argument fails on that basis alone.

If this Court nevertheless considers their argument, NJSACOP's position is misguided. NJSACOP appears to believe that since the decision to supersede is not quasi-legislative, it must be adjudicatory in nature—and therefore requires pre-supersession process. But as explained above, that is inaccurate: "the bulk of the activity of most administrative agencies" fall outside the quasi-legislative or quasi-judicial binary, and are instead informal actions. Solid Waste, 106 N.J.

at 518; see supra at 16-17. And by definition, such "informal agency action is any determination that is taken without" the process required only in "trial-like," quasi-judicial actions. Covenant, 167 N.J. at 135. Especially as supersessions reflect the Attorney General's management of law enforcement agencies rather than regulation of the third-party public, Woodland, 109 N.J. at 74-75, imposing administrative or judicial process on the Chief Law Enforcement Officer before he can manage those agencies—at a time when the law enforcement agency may be in dire straits and require swift action—is inappropriate. Nor, tellingly, does NJSACOP suggest it was arbitrary or capricious to find that supersession of the PPD was warranted, given the "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns" that so patently required the Attorney General to step in. (Pa227).

B. OIC Abbassi Is Qualified To Serve As OIC.

Appellants' claim that the Attorney General lacks the authority to appoint OIC Abbassi both ignores the plain language of Chapter 94 and repackages their objections to his general supersession authority. To start, Chapter 94 is fatal to Appellants' claim that OIC Abbassi was not eligible to serve in this role. The statute states that when the Attorney General supersedes "a law enforcement agency in a city of the first class having a population of less than 200,000," he may appoint as OIC "a person who has not previously satisfied the applicable

law enforcement officer training requirements established by the Police Training Commission" so long as the chosen OIC has "previously served as a superior police officer and possess[es] at least 10 years administrative and supervisory police experience." Ch. 94, § 1(a). That applies here. There is no dispute that Paterson is "a city of the first class having a population of less than 200,000." There is no dispute that the Attorney General superseded the PPD—even if the validity of that supersession is hotly contested here. And there is no dispute that OIC Abbassi has "previously served as a superior police officer" and has "at least 10 years administrative and supervisory police experience." So contrary to Appellants' argument, the statutory text is clear that he need not "satisf[y] the applicable law enforcement officer training requirements established by the Police Training Commission." It is difficult to imagine how this law could have been clearer—it applies perfectly to this situation, was made effective on March 2023, and applies so long as the agency remains in supersession.

Appellants' responses are puzzling. Appellants do not claim OIC Abbassi falls outside the statute. Nor do they dispute that the Legislature made Chapter 94 retroactive or lacks authority to adopt retroactive civil legislation. Instead, Appellants first argue "there is no statutory basis for the supersession of a police department by the Attorney General." (Pb28). But that simply restates their erroneous challenge to the supersession. See supra Point II.A. Nor is it clear

what Appellants mean when they contend that Chapter 94 does not permit "the Attorney General or the [OIC] to ignore or rewrite the obligations of the duly appointed police chief." (Pb28). It is entirely within the Legislature's power to determine whether particular officials need to have particular qualifications, and the Legislature determined that the usual qualifications for a police chief do not apply to the Attorney General's appointment of an OIC in circumstances like this one. That does not mean the Attorney General or the OIC are ignoring or rewriting obligations; they are simply subject to different, legislatively chosen qualifications, and they satisfy those statutory qualifications in full.

C. Chief Ribeiro Was Not Removed Or Unlawfully Reassigned.

Appellants' claim that Chief Ribeiro cannot be assigned to perform work at the PTC during the supersession also fails. As this Court has observed, when an agency has been superseded, the official who was running it "no longer ha[s] the power of control over the day-to-day operations." Yurick, 184 N.J. at 83. It could scarcely be otherwise; if a supersession did not affect the supervision and oversight of the agency, it would have limited real-world impact. See Williams, 442 N.J. Super. at 587 (the supersession entails a chief law enforcement officer "directly supervis[ing] the day-to-day operations of a local police department"). That is why Chapter 94 recognizes that the Attorney General can appoint an OIC "to serve as officer in charge of that law enforcement agency during the period

of time during which the law enforcement agency is superseded," L. 2023, c. 94, § 1(a)—acknowledging a preexisting chief no longer has "charge of that law enforcement agency during" that time period, see ibid. Otherwise, tremendous problems would arise: notwithstanding the need for a single chain of command within law enforcement agencies, police officers could find themselves subject to competing demands of the OIC and a preexisting chief. See (Pb43) (insisting Chief Ribeiro is not "under the Attorney General's chain of command").

The Attorney General acted consistent with that authority and core legal principles. Having superseded the PPD, the Attorney General found that crucial reforms envisioned for the PPD would be better developed and implemented by a new OIC with deep experience building community trust, rather than someone who had served as "sergeant, lieutenant, captain, and deputy chief," (Pb6), during the period in which the PPD suffered a "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns," (Pa227). He thus appointed OIC Abbassi to oversee the PPD, placing Chief Ribeiro within the Attorney General's and OIC's chain of command. As a result, the Attorney General and the OIC—the top of that chain of command while the supersession is in effect—have "authority to prescribe the assignments of all subordinates and other personnel." Gauntt v. City of Bridgeton, 194 N.J. Super. 468, 489 (App. Div. 1984). And they assigned Chief Ribeiro to the PTC,

where he can fulfill other law enforcement duties, without the aforementioned risks of competing demands disrupting the chain of command.

Appellants' legal objections misunderstand the law. Appellants primarily claim that it was for "Mayor Sayegh, and/or his appointed Paterson Public Safety Director" to decide the Chief's assignments, not for the Attorney General even in cases of plenary supersession. (Pb39-40). But the Mayor has never enjoyed that authority. Although the civilian governing body unquestionably "has the power to appoint and promote members of the police force," the distinct "power to assign members and conduct the day-to-day operations of the force" lies with the law enforcement chain of command. Falcone v. De Furia, 103 N.J. 219, 224 (1986) (emphasis added); see also supra at 33-34 (emphasizing aim of Section 118 is preventing political interference or influence over a police department by local civilian officials). In normal circumstances, that means the "police chief," ibid., has "authority to prescribe the assignments of all subordinates and other personnel," Gauntt, 194 N.J. Super. at 489, not Mayor Sayegh. And so long as the supersession is ongoing, the Attorney General and his designee stand in the Chief's place as the top law enforcement executives for the PPD.

Appellants' complaint that the statutes do not spell out this assignment authority verbatim misses the point. (Pb38-39). As explained in Point II.A, New Jersey law—Chapter 94, the CJA, the IAPP, precedent, and practice—all

make clear that the Attorney General has the power to supersede and take over "the day-to-day operations" of the PPD, Williams, 442 N.J. Super. at 587, a "supervisory power[]" that "extend[s] directly to municipal law enforcement," Constantine, 406 N.J. Super. at 327. But to maintain supervisory power over a law enforcement chain of command is to have power to determine subordinates' operational assignments; a contrary rule would be self-defeating. Indeed, it is hornbook law that the "grant of an express power is always attended by the incidental authority fairly and reasonably necessary or appropriate to make it effective." Cammarata v. Essex Cnty. Park Comm'n, 26 N.J. 404, 411 (1958); see also A. A. Mastrangelo, Inc. v. Comm'r of Dep't of Envtl. Prot., 90 N.J. 666, 683-84 (1982) ("[T]he absence of an express statutory authorization in the enabling legislation will not preclude administrative agency action where, by reasonable implication, that action can be said to promote or advance the policies and findings that served as the driving force for the enactment of the legislation."). That is especially so here, where the authority to set a subordinate law enforcement officer's assignments is not merely reasonably implicit in the power to supersede the chain of command, but intertwined.

Appellants' remaining attempts to take Chief Ribeiro out of the Attorney General and the appointed OIC's chain of command likewise collapse. For one, contrary to Appellants' confusion, N.J.S.A. 40A:14-147—which governs

removal of officers—is not implicated. As this Court has held, "[s]upersession simply is not the equivalent of removal from office." Yurick, 184 N.J. at 83. Instead, the superseded executive "technically continue[s] to hold his office; however, he no longer ha[s] the power of control over the day-to-day operations of" that office, and the established supersession process "permit[s] the wresting of that control from him." Id. at 82. The law is thus clear that Chief Ribeiro has not been removed—he holds the same title and he receives the same salary. (Pa30, 36). All that has changed are his day-to-day assignments.

Next, Appellants' assertions regarding Section 118, the Faulkner Act, and Paterson Code § 5-75 all fail for the same reasons: the municipality's authority neither forecloses nor trumps the Attorney General's supersession power. See supra at 33-35. Section 118 preserves checks-and-balances at the local level and allows municipalities to create and manage police forces "in a manner consistent with … general law," N.J.S.A. 40A:14-118—law that independently recognizes the Attorney General's supersession authority. As to the Faulkner Act and Paterson Code § 5-75, "municipal action cannot run contrary to statutory or constitutional law." FOP, 244 N.J. at 93. Paterson's authority to manage its police department thus does not surmount requirements imposed by the Attorney General pursuant to state law. See L. 2023, c. 94, § 1(a). None of the City's

law enforcement officers lies outside the statutory authority of the State's Chief Law Enforcement Officer.

Finally, Appellants' argument that the MOU providing for Chief Ribeiro's assignment to the PTC is an unenforceable "municipal contract" because it was not approved by the Mayor, (Pb42), once again misunderstands the Attorney General's authority. As discussed in Point II.A, the Attorney General's power is not cabined by municipal restrictions; the Attorney General is not a municipal officer. Moreover, the MOU is not a municipal contract, but rather an agreement about the scope of an assignment of a member of the PPD during a supersession, no different from any Chief or OIC detailing a department member (as often occurs) to a cooperative task force, like a high-intensity-drug-trafficking task force. The Attorney General was thus not required to obtain the Mayor's approval to prescribe this temporary assignment. Instead, the Attorney General remains free to govern the assignments of subordinate officers as he exercises his responsibilities as Chief Law Enforcement Officer, including to address the "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson." (Pa227).

POINT III

INTERIM RELIEF IS BOTH UNAVAILABLE ON THIS POSTURE AND UNWARRANTED.

This Court should decline Appellants' request for interim injunctive relief because it is both procedurally improper and substantively lacking.

Initially, this demand for "interim injunctive relief" both terminating the supersession and returning day-to-day command to Chief Ribeiro "pending the issuance of a declaratory judgment," (Pb28-29), is contrary to well-established appellate procedures. Appellants are currently challenging final agency actions through a plenary appeal to this Court. See supra at 12. If Appellants wish to seek interim injunctive relief from this Court, they must file a motion that requests a stay pending appeal—one that is "governed by the familiar standard outlined in Crowe." Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (citing Crowe v. De Gioia, 90 N.J. 126 (1982)). Filing such a motion would allow the parties to brief that request, develop record evidence that bears on the propriety of the proposed stay, and be timely reviewed by this Court. See, e.g., Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 516, 519-20 (App. Div. 2008). But Appellants declined to file any such motion—even after this Court's order reminded them of their ability to do so. (Ra104). That alone suffices to reject this improper demand.

In any event, any request for interim injunctive relief is without merit, especially at this late date. In general, such relief exists "to maintain the parties in substantially the same condition 'when the final decree is entered as they were when the litigation began." Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997) (quoting Crowe, 90 N.J. at 134). This litigation began on October 6, 2023, with the supersession already well underway. The status quo, in other words, is what Appellants now seek to disrupt with their request.

Nor can Appellants satisfy the traditional factors, which require them to show a likelihood of success on the merits; that they will otherwise suffer an "irreparable injury" that "is substantial and imminent"; that "a balancing of the equities and hardships favors injunctive relief"; and that "that the public interest will not be harmed" by such an order. Waste Mgmt., 399 N.J. Super. at 519-20. As explained above, Appellants have no likelihood of success on the merits, because their challenges are untimely and inconsistent with well-established law. See supra at Point I (timeliness); Point II (merits). That is a dispositive basis to deny interim relief. See Waste Mgmt., 399 N.J. Super. at 520 (explaining that "each of" the Crowe factors "must be clearly and convincingly demonstrated"). But should this Court also consider the equitable factors, they also demonstrate why Appellants are not entitled to interim relief.

Appellants have not identified any irreparable injury. To begin with, their long delay undermines any claim of immediate, irreparable harm. See Pharmacia Corp. v. Alcon Labs., Inc., 201 F.Supp.2d 335, 382-83 (D.N.J. 2002) (delay can "knock[] the bottom out of" demands for a preliminary injunction and instead can offer a "dispositive basis" for rejecting such relief). Notwithstanding that delay, they assert four harms: (1) the Attorney General's allegedly "unlawful command and control of the [PPD]," (Pa30); (2) his allegedly "ongoing violation of the New Jersey State Constitution, the Home Rule Act and various New Jersey statutes," (Pb31); (3) Chief Ribeiro's "assignment to the PTC," (Pa37); and (4) "forcing taxpayers to incur Chief Ribeiro's salary without getting the benefit of his labor, training and experience," (Pb44). But the first two harms simply restate Appellants' merits claims, and thus fail as discussed above. See supra at Point II.A. And regardless, the fact that a challenger believes an agency is violating the law cannot alone show irreparable harm. To argue otherwise is to collapse Crowe's distinct prongs.

Nor is Chief Ribeiro's assignment an irreparable harm. Precedent is clear that the "transfer to another shift amounts to nothing more than inconvenience," even though it is "involuntary," and thus does not constitute irreparable injury. Moteles v. Univ. of Pa., 730 F.2d 913, 919 (3d Cir. 1984). Because all that has happened is Chief Ribeiro's day-to-day responsibilities have been temporarily

altered, he is not suffering the sort of substantial, irreparable harm sufficient to justify a court-ordered stay of the supersession midstream. Subcarrier Commc'ns, Inc., 299 N.J. Super. at 638. Appellants also claim Chief Ribeiro would suffer harm through a disciplinary action for "failure to report to the PTC," (Pb37), but this alleged harm is not imminent at all, as no action is pending. And Appellants also get no further by arguing that Paterson taxpayers still "incur Chief Ribeiro's salary." (Pb44). To the contrary, Paterson taxpayers benefit tremendously: OIC Abbassi is overseeing the PPD on the State's payroll, and the supersession has yielded a massive influx of state funding (along with technology, personnel, and other resources): over $6 million invested to date, with a total of $10 million appropriated for 2024. (Ra100). That hardly suggests irreparable harm.[8]

The balance of hardships and public interest also weigh overwhelmingly against interim relief. Courts regularly assess whether the relief sought would disrupt projects on which significant progress has already been made. See, e.g.,

[8] Appellants' hypothetical fears about future supersessions also cannot establish irreparable harm. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 655 (3d Cir. 1994) (injunction not warranted to eliminate potential remote injury). Appellants speculate that other departments could be superseded "[a]t any given moment," (Pb32), or future Attorneys General may supersede "based on political motivations" or appoint OICs "without appropriate training and experience," (Pb33). But none of that describes the reality of this supersession—the only agency action being challenged in this Court.

McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007) (injunction improper if movant could have sued "much earlier" and "without the potential of additional costs to the public and disruption"); cf. In re Protest of Cont. Award for Project A1150-08, 466 N.J. Super. at 263 ("Because the Project has proceeded so far, the equities weigh heavily 'against the provision of relief on the merits.'"); Statewide Hi-Way Safety, Inc. v. N.J. Dep't of Transp., 283 N.J. Super. 223, 225 (App. Div. 1995) ("Any order of this court to terminate the project at this juncture would be contrary to the public interest.").

Those interests are compelling here. The State's reform efforts at the PPD are well underway. The State has already, of course, invested significant funds, technology, and personnel resources in the Department. But far more than mere resource investments, the State's efforts have also featured significant reforms at the PPD. Through OIC Abbassi, the State is making significant organizational changes, including new leadership appointments. (Ra118). And it implemented new policies to address recurring challenges with extreme misconduct by limited PPD officers that have tarnished the good name of the others—including by both improving supervisor accountability and ensuring supervisors' presence in the field. (Ra122). And it instituted programs to improve policing in Paterson, not only to reduce crime, but also to improve relations between the PPD and the community. Ibid. These myriad changes were needed to address the very "loss

of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns" that prompted the supersession. (Pa227).

Although the reforms of course remain in progress, gains in public safety cannot be denied. Indeed, by the end of 2023, compared against the previous year, shooting incidents had fallen by 33.3%; murders had fallen by 39.3%; robberies had fallen by 22.6%; and aggravated assaults had fallen by 15.8%. (Ra100). Like all reform efforts, however, this progress is inherently fragile; ending the supersession overnight would damage morale, disrupt the chain of command, and endanger the progress being made for the people of Paterson. Appellants' purported personal rights to control the PPD, (Pb30-33, 36-38), cannot outweigh these substantial public interests. Instead, the status quo and the public-safety progress it has generated should be allowed to remain in place until this Court issues its merits decision in this appeal—at which time it should reject these challenges to the ongoing supersession.

CONCLUSION

This Court should dismiss Appellants' appeal.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ Michael L. Zuckerman
Michael L. Zuckerman (No. 427282022)
Deputy Solicitor General

Dated: May 29, 2024

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE SOLICITOR GENERAL
PO BOX 080
TRENTON, NJ 08625

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

JEREMY M. FEIGENBAUM
Solicitor General

July 5, 2024

VIA ELECTRONIC FILING
Joseph H. Orlando, Esq., Clerk
Superior Court of New Jersey, Appellate Division
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 006
Trenton, New Jersey 08625

Re: Mirza Bulur, et al. v. New Jersey Office of the Attorney General, et al.
Docket No. A-629-23
Andre Sayegh, et al. v. Isa M. Abbassi, et al.
Docket No. A-1209-23

Sat Below: Hon. Rudolph A. Filko, A.J.S.C.

Letter Brief of Respondents in Response to Brief of Amicus Curiae New Jersey State League of Municipalities

Dear Mr. Orlando:

This letter brief is submitted in lieu of a formal brief on behalf of Respondents the New Jersey Office of the Attorney General, Attorney General of New Jersey Matthew J. Platkin, and Officer-in-Charge (OIC) of the Paterson Police Department Isa M. Abbassi.

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PRELIMINARY STATEMENT

The Attorney General's order superseding the Paterson Police Department (PPD) on March 27, 2023, was a valid exercise of oversight authority provided by statute and confirmed by precedent and longstanding practice. Supersession was especially warranted given the public's "loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson"—a reality that neither amicus disputes.

The arguments New Jersey State League of Municipalities (NJLM or amicus) advances do not justify reversal. NJLM primarily resists the Attorney General's supersession authority, but its argument runs headlong into the text of a 2023 statute and decades of established law. NJLM also echoes the argument raised by amicus New Jersey State Association of Chiefs of Police (NJSACOP) that additional pre-supersession process was required. This theory, however, is not properly before this Court, and it misapprehends the nature of the Attorney General's supersession authority, which involves no regulation of the public, but instead involves supervising governmental, law enforcement entities.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondents rely on the statement of facts and procedural history set forth in their amended brief filed with this Court on May 29, 2024.

ARGUMENT

POINT I

THE ATTORNEY GENERAL CAN SUPERSEDE A LAW ENFORCEMENT AGENCY.

The Attorney General's authority to supersede the PPD is confirmed by recent and longstanding statutes, case law, and the Internal Affairs Policy & Procedures manual (IAPP). Though NJSACOP tacitly recognized this authority, (NJSACOPb4, 5-8), NJLM contends that "it would take an act of the legislature to authorize" such action. (NJLMb3).[1] State law forecloses NJLM's claim.

Begin with Chapter 94, which alone disposes of NJLM's theory. See (Rb21-25). The law was enacted in July 2023, after hearings that discussed the supersession explicitly, and was made retroactive to March 1—the same month the supersession of the PPD began. Chapter 94 relaxes the rules governing OIC appointments when the Attorney General has "supersed[ed] a law enforcement agency in a city of the first class having a population of less than 200,000"—a designation that covers Paterson. See L. 2023, c. 94 § 1(a); see also id. § 2 (referring to "the period of time during which the law enforcement agency in [such] a city … is superseded by the Attorney General"). It is thus clear that the

[1] "Rb" refers to Respondents' brief; "Ra" to Respondents' appendix; "Pa" to Appellants' appendix; "NJLMb" to NJLM's amicus brief; and "NJSACOPb" to NJSACOP's amicus brief.

Legislature intended the Attorney General to have supersession authority, or else Chapter 94 would be surplusage. Indeed, NJLM admits that Chapter 94 applies to "relax the rules" for OIC appointments when "the AG supersedes" a local law enforcement agency, (NJLMb7), but ignores the import: he must in fact be able to supersede such a department in the first place.

Although NJLM claims Chapter 94 only ratified the Attorney General's "supersession authority over local law enforcement's internal affairs" function, (NJLMb9), its explanation is unmoored from text and logic. For one, nothing in Chapter 94's text limits supersession authority to internal affairs. Chapter 94 instead refers to "superseding a law enforcement agency in a city" of Paterson's size and appointing an "officer in charge of that law enforcement agency during the period of time during which the law enforcement agency is superseded," L. 2023, c. 94 § 1(a) (emphases added); it does not even mention "internal affairs." For another, the reading makes no sense: the Attorney General does not hire an OIC where the Attorney General supersedes the internal affairs function alone, and in any event, the Legislature that enacted this law was well aware the PPD supersession was department-wide. Strikingly, NJLM cites no evidence that the Legislature limited its statute to internal affairs. NJLM's claim lacks merit.

Although Chapter 94 suffices to resolve this case, the Attorney General's supersession authority is also clear from preexisting state statutes, case law, and

practice. See (Rb25-29). Through the Criminal Justice Act of 1970 (CJA), the Legislature chose "to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State," N.J.S.A. 52:17B-98, and relatedly to require all law enforcement within New Jersey "to cooperate with and aid the Attorney General" in his duties, N.J.S.A. 52:17B-112(a)-(b). These provisions, which must "be liberally construed," N.J.S.A. 52:17B-98, thus permit the Attorney General, and the County Prosecutors within their respective counties, to "directly supervise[] the day-to-day operations of a local police department." See Williams v. Borough of Clayton, 442 N.J. Super. 583, 587 n.2 (App. Div. 2015); Constantine v. Twp. of Bass River, 406 N.J. Super. 305, 327 (App. Div. 2009) (agreeing "the Attorney General's general supervisory powers extend directly to municipal law enforcement").

Neither of NJLM's arguments undermines this conclusion. First, NJLM's claim that N.J.S.A. 52:17B-98 "limits" the Attorney General's authority solely to issuing "guidelines, directives, and policies," (NJLMb7-8), imposes a limit that does not appear in the statutory text that NJLM cites; flips the CJA's liberal construction on its head; and is impossible to square with the extensive history of supersessions across the past 25 years—none of which was held unlawful by a court or overturned by the Legislature. See N.J.S.A. 52:17B-103, -107(a)(1),

-112; (Rb4-5; Rb30-31) (record evidence of 26 supersessions);[2] DiProspero v. Penn, 183 N.J. 477, 492 (2005) (courts read statutes "in context with related provisions so as to give sense to the legislation as a whole").

Second, NJLM errs in contending that because N.J.S.A. 52:17B-107(a)(1) confirms the Attorney General's authority over county prosecutors specifically, it excludes local police departments from that authority. (NJLMb6). State law proves the opposite. No one disputes that a County Prosecutor serves as "the chief law enforcement officer in the county," and thus has "broad supervisory authority over the operations of municipal police departments," Gerofsky v. Passaic Cnty. SPCA, 376 N.J. Super. 405, 417 (App. Div. 2005), including the power to supersede a local police department, Williams, 442 N.J. Super. at 599 n.2. But the county prosecutor "'remains at all times subject to the supervision and supersession power of the State." Yurick v. State, 184 N.J. 70, 79 (2005) (cleaned up); see also N.J.S.A. 2A:158-5; N.J.S.A. 52:17B-112(a)-(b) (ordering county prosecutors "to cooperate with and aid the Attorney General," and local law enforcement "to cooperate with and aid" both the Attorney General and the

[2] One of these involved the Clark Police Department. Though NJSACOP misidentified that as an Attorney General supersession, (NJSACOPb20-21), it was in fact the Union County Prosecutor's Office that took responsibility for the department's day-to-day operations. (Ra42). Amici's theories, however, are equally impossible to square with the 17 times a County Prosecutor superseded a local police department in the past 25 years. See (Rb31).

relevant County Prosecutor). The result is clear: because the Attorney General can supersede any County Prosecutor, and because any County Prosecutor can supersede any local police department within her county, the Attorney General can supersede a local department, too—just as Chapter 94 affirms.

Finally, the Attorney General's supersession authority is confirmed by the IAPP, which carries the "force of law." See In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 488 (2021); see also N.J.S.A. 40A:14-181 (giving the IAPP force of law). The IAPP provides that "[t]he Attorney General may supersede and take control of an entire law enforcement agency," (Pa62), and confirms that the Attorney General has the very authority that NJLM claims is missing. NJLM replies that the particular version of the IAPP in place when the Legislature first enacted N.J.S.A. 40A:14-181 did not include this language. (NJLMb8-9). But nothing in Section 181 suggests it meant to freeze the IAPP in time. Cf. El Encanto, Inc. v. Hatch Chile Co., Inc., 825 F.3d 1161, 1164 (10th Cir. 2016) (statutory reference to Federal Rules of Civil Procedure incorporated subsequent changes to the Rules). Instead, the Attorney General has repeatedly amended the IAPP in the years since, and courts have consistently required law enforcement agencies to comply with the updated terms. See, e.g., In re 2020 Directives, 246 N.J. at 483-84 (noting revisions to the IAPP over the years); Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75,

100 n.11 (2020) (relying on 2017 version of the IAPP); cf. also L. 2023, c. 94 (confirming authority to supersede a police department after relevant amendments to IAPP, see supra at 2-3). The IAPP reinforces what statutory law already makes clear: the supersession is valid.

POINT II

THE LAW DOES NOT REQUIRE ADDITIONAL PRE-SUPERSESSION PROCESS.

NJLM also adopts NJSACOP's erroneous claim that the Attorney General must promulgate new standards and procedures before he can supersede any law enforcement agency. See (NJLMb10). That fails on multiple grounds.

As an initial matter, the demand for additional standards and procedures is not properly before this Court; it has not been asserted by any party and has been raised only by amici. Courts do not generally consider arguments offered only by amici, see, e.g., In re Request to Modify Prison Sentences, 242 N.J. 357, 396 (2020), and there is no basis for doing so here. That is dispositive.

In any event, the theory is misguided. For one, it relies on the premise that because a decision to supersede is not quasi-legislative, it must be quasi-adjudicatory, and therefore must require the trial-like process that often attaches to such decision-making. Compare (NJSACOPb12-13). The premise is wrong:[3]

[3] In any event, if such orders were quasi-adjudicatory, they would plainly trigger Rule 2:4-1(b)'s 45-day limit. See (Rb12-18).

agency actions often fall outside the rulemaking/adjudication binary. See (Rb15-17); In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 518 (1987) (informal action "constitutes the bulk of the activity of most administrative agencies"). Indeed, actions that do not "have a substantial impact on … the regulated public" are especially likely to fall outside this binary, and because they do not so impact the public, the public "cannot be said to have a legitimate interest" in additional pre-decision process. See Woodland Private Study Grp. v. State, Dep't of Env't Prot., 109 N.J. 62, 74-75 (1987).

For that reason, the Attorney General's supervisory actions as Chief Law Enforcement Officer often fall outside the legislative/adjudicative binary. E.g., In re 2020 Directives, 246 N.J. at 491 (directives "most closely resemble quasi-legislative action" yet do not require rulemaking procedures). Supersessions, meanwhile, would be an especially poor fit for extra process: they regularly require a swift response to an agency in dire straits. The CJA reflects that need for flexibility by allowing the supersession of any investigation, criminal action, or proceeding "[w]henever in the opinion of the Attorney General the interests of the State will be furthered[.]" N.J.S.A. 52:17B-107(a)(1).

NJLM also goes astray in adopting NJSACOP's suggestion that pre-supersession process and standards are owed to the "regulated community." Compare (NJSACOPb2-4, 11-12, 16-18). Though NJSACOP had invoked

"well-established principles of administrative law," (NJSACOPb4, 13, 21-22), the only cases it had identified for this proposition are plainly distinct. Take Crema v. DEP, 94 N.J. 286 (1983), on which amici most heavily rely. Crema involved a dispute over a "conceptual" approval that DEP had granted a developer. Id. at 289-90. Because there was no preexisting statute or regulation authorizing a "conceptual" approval, the Court considered whether the agency permissibly afforded itself that authority "through administrative adjudication." Id. at 298. The Court found that it did not, explaining that while such authority could "reasonably be implied," if the exercise of that administrative authority "establish[ed] enforceable rights beyond those now provided by the informal review regulations," rulemaking was needed. Id. at 303. That scenario could hardly differ more from a supersession of a law-enforcement agency, which is not "an administrative adjudication"; is already authorized by existing law; does not involve regulating a member of "the general public" like a private developer, but rather involves a separate government agency; and does not grant "enforceable rights" to anyone. Compare id. at 298, 303.[4]

[4] The other two citations that NJLM adopts are even further afield. Compare Matter of Vey, 124 N.J. 534, 544 (1991) (remand where candidate with positive references and evaluations was removed from "eligible list" for police-officer hiring based on asserted psychological unfitness, without any "finding of a recognized mental disorder" or "basis for equating the described personality traits" with "projected job performance"); Van Holten Grp. v. Elizabethtown Water Co., 121 N.J. 48, 66 (1990) (remand in refund dispute between private

Further, "the reasons for" the decision to supersede are already easily "discernible." In re 2020 Directives, 246 N.J. at 491. In his supersession letter, the Attorney General found that this emergency intervention was "necessitated by, among other things, the loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City[.]" (Pa227); see also (Pa21) (explaining in letter to PPD members that supersession was needed due to "fiscal challenges"; a "revolving door of leadership"; "high-profile cases of misconduct—some of it being criminal"; and loss of community trust). NJLM strikingly does not quarrel with these findings, nor has it questioned that such an intervention was needed. Much as Appellants' arguments did not, NJLM's theories give no basis to overturn the supersession.

CONCLUSION

This Court should dismiss Appellants' appeal.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Michael L. Zuckerman
Michael L. Zuckerman (No. 427282022)
Deputy Solicitor General
Michael.Zuckerman@njoag.gov

Dated: July 5, 2024

developer and utility, as Supreme Court could not "discern from the record or … [BPU's] final decision any justification for [a] discrepancy between the amounts of the refunds contemplated by" BPU's "second and third decisions").

MIRZA M. BULUR, in his official capacity as the Acting Public Safety Director for the City of Paterson and Appropriate Authority, City of Paterson Police Department, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department, Plaintiffs-Appellants, v. THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN in his official capacity as Attorney General of the State of New Jersey, JOHN DOES 1-10, MARY DOES 1-10, and XYZ CORPORATIONS 1-10, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-000629-23 CIVIL ACTION On Appeal From: THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PASSAIC COUNTY Docket No. PAS-L-2736-23 Sat Below: Hon. Rudolph A. Filko, A.J.S.C.
ANDRE SAYEGH, in his official capacity as the Mayor of the City of Paterson, and ENGELBERT RIBEIRO, in his official capacity as the Police Chief of the City of Paterson Police Department, Plaintiffs-Appellants, v. ISA M. ABBASSI, in his official capacity as Officer-in-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, and MATTHEW J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001209-23 CIVIL ACTION On Appeal From: THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION - PASSAIC COUNTY Docket No. PAS-L-3290-23 Sat Below: Hon. Rudolph A. Filko, A.J.S.C.

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

Date Submitted: June 7, 2024
Revised: June 26, 2024

FRANK G. MARSHALL, JR., ESQ.
222 W. State Street
Trenton, NJ 08608
Attorney for New Jersey State League of Municipalities
(609) 695-3481
FMarshall@njlm.org

On the Brief:
Frank G. Marshall Jr., Esq. (098762014)

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PRELIMINARY STATEMENT

On March 27, 2023, Attorney General Matthew J. Platkin ("AG Platkin") exercised his purported "supersession authority" as the State's chief law enforcement officer to direct the Office of the Attorney General ("OAG") to assume full responsibility of the day-to-day operations of the Paterson Police Department. In carrying out the OAG's supersession of the Paterson Police Department, duly appointed police chief, Engelbert Ribeiro, and acting Public Safety Director, Mirza M. Bulur, were both relieved of their duties, and New York City police officer, Isa M. Abbassi, was later appointed to serve as officer-in-charge.

It is the position of *amicus curiae*, New Jersey State League of Municipalities ("NJLM") that AG Platkin and the OAG are neither expressly or impliedly authorized to assume the day-to-day control and operations of a municipal police department. Likewise, AG Platkin and the OAG are without express or implied authority to remove a duly appointed chief of police of a local law enforcement agency and replace the police chief with a candidate of their selection with no involvement of the mayor, who in this case is the appointing authority, or governing body.

Statutory law and constitutional principles are clear, the authority to appoint the chief of police for a municipal law enforcement agency rests exclusively with

the mayor, and the authority to run the day-to-day operations of a municipal police department is vested exclusively with the duly appointed chief of police. The action taken by AG Platkin and the OAG are *ultra vires*, and directly violate the express rights of the mayor.

The issue before the court is of significant consequence to New Jersey municipalities. It will determine the extent of our state's long-held principle of home rule as it applies to a local elected official's authority to appoint the chief officer of their local law enforcement agency and to have that officer remain in that role to oversee the day-to-day operations of a municipal law enforcement agency without unauthorized intrusion from the AG or OAG.

Amicus Curiae, New Jersey State League of Municipalities (NJLM) urges the court to maintain the principles of home rule that have been woven throughout statutory law and deny the Attorney General's attempt to unlawfully usurp municipal authority contrary to these principles.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus Curiae New Jersey State League of Municipalities relies on those certain facts and procedural history which are undisputed between the parties as set forth in their respective briefs.

LEGAL ARGUMENT

POINT I

THE ATTORNEY GENERAL LACKS THE REQUISITE AUTHORITY TO EXERCISE SUPERSESSION OVER ALL OPERATIONS OF A LOCAL LAW ENFORCEMENT AGENCY.

The Attorney General (AG) lacks authority to supersede and assume the entire operations of a local law enforcement agency. While the powers granted to the AG are broad, they are not unlimited, and a review of the statutory authority reveals no express or implied grant of authority for the AG to exercise supersession over all operations of a municipal law enforcement agency. Indeed, it would take an act of the legislature to authorize the broad action impermissibly exercised by the AG in the City of Paterson.

A) The Attorney General's Limited Authority.

The Criminal Justice Act of 1970 refers to the AG as "chief law enforcement officer of the State." *N.J.S.A.* 52:17B-98. Pursuant to that authority, the AG has the power "to adopt guidelines, directives, and policies that bind police departments statewide." *Paff v. Ocean Cty. Prosecutor's Off.*, 235 N.J. 1, 19 (2018). In addition, the Law and Public Safety Act of 1948 charges the AG with formulating and adopting "rules and regulations for the efficient conduct of work and general administration of the department, its officers and employees." *N.J.S.A.* 52:17B-4(d).

In 1991, the AG exercised his authority under both the Law and Public Safety Act of 1948 and the Criminal Justice Act of 1970 to establish the first Internal Affairs Policy and Procedures (IAPP). The 1991 IAPP established uniform procedures for investigating complaints of police misconduct. It described procedures that must be followed to receive, investigate, and resolve complaints of misconduct. *See Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 244 N.J. 75, 100-01 (2020) (providing a history of the IAPP).

Shortly thereafter, in 1996, legislation was adopted requiring every law enforcement agency across the state to adopt and implement the guidelines consistent with the IAPP. (P.L. 1996, c. 115). As noted by our Supreme Court, this "effectively made the AG's IAPP required policy for all municipal law enforcement agencies in New Jersey." *Id.* at 101. In 2014, P.L.1996, c.115 was amended to specifically include any police department of an institution of higher education. P.L.2015, c.52.

Notably, the IAPP in effect when the Legislature first required every law enforcement agency to adopt and implement consistent guidelines did not include provisions authorizing or related to the AG's complete supersession of the operations of a law enforcement agency. Likewise, no such provision was present in the IAPP when the Legislature adopted amendments to P.L.1996, c.115 in 2015, or in any IAPP issued or in effect between this time. Prior to the version issued in

November 2022, the IAPP as it is so aptly titled, dealt exclusively with the procedures for handling internal affairs investigations. Versions of the IAPP issued prior to November 2022 made no mention or reference to complete supersession of a municipal police department by the AG.

The first instance where the supersession of a local law enforcement entity by the AG appears is in the IAPP issued in November 2022 in section 1.0.5. The relevant portion of this section provides:

> The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. (emphasis added)

The November 2022 IAPP does not reference statutory authority related to the AG's purported power to supersede control of an entire law enforcement agency or over any and all duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. Quite simply, the reason why no authoritative reference is provided is because none exists.

B) There is no express authority granting the AG or OAG the power to supersede the operations of a local law enforcement agency.

A reading of the Criminal Justice Act of 1970 reveals no express authority

for the supersession of a municipal police department by the AG. Interestingly, the Act does provide that, whenever "in the opinion of the Attorney General the interest of the State will be furthered by so doing," the Attorney General may: "(a) supersede a county prosecutor in any investigation, criminal action or proceeding, (b) participate in any investigation or proceeding, or (c) initiate any investigation, criminal action or proceeding." *N.J.S.A.* 52:17B-107. The Act does not state expressly that the AG may supersede any law enforcement officer or entity other than a county prosecutor, nor does it expressly empower the AG to use the supersession authority to assume control of a local law enforcement agency or any other agency's day-to-day operations.

The inclusion of specific authority for the AG to supersede the operations of a county prosecutor's office is telling. If the Legislature intended the AG to have authority to supersede a municipal police department, they could have just as easily included such a specific provision in the Act, similar to what they have done for a county prosecutor's office. By providing specific authority for the AG to take over a county prosecutor's office but nothing similar for a municipal police department, one can only be led to the conclusion that the Legislature did not wish to provide such authority.

Similarly, a review of the Law and Public Safety Act of 1948 also reveals no express authority for the supersession of an entire law enforcement agency.

More recently adopted legislation, namely P.L. 2023, c.94, which was signed into law on July 3, 2023, with a retroactive effective date of March 1, 2023, is the only statutory authority that even mentions the supersession of a law enforcement agency by the AG. However, Chapter 94 also does not expressly authorize the AG to supersede a municipal law enforcement agency.

The limited purpose of Chapter 94 is to relax the rules governing Officer in Charge (OIC) appointments when the AG supersedes a law enforcement agency in a city of the first class having a population of less than 200,000 according to the 2020 federal decennial census. In short, Chapter 94, in very limited circumstances, relaxes the rules related to police licensing. It says nothing about providing supersession authority to the AG.

C) There is no implied authority granting the OAG and AG the power to supersede the operations of a local law enforcement agency.

No reasonable argument can be made that there is implied authority granted to the AG to supersede the day-to-day operations of a local law enforcement agency. Nor is it appropriate for such an important policy decision by the Legislature be implied. Such a policy should be reserved for clear and express legislation.

The declared policy of the Criminal Justice Act of 1970 is instructive on the limits of the authority granted to the AG. Specifically, *N.J.S.A.* 52:17B-98 provides:

> The Legislature recognizes that the existence of organized crime presents a serious threat to our political, social and economic institutions and helps bring about a loss of popular confidence in the agencies of government. Accordingly, it is hereby declared to be the public policy of this State to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. All the provisions of this act shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the above declaration of policy. (emphasis added)

This policy has been interpreted by the court to allow for the AG to issue guidelines, directives, and policies concerning the appropriate application of the State's criminal laws. *See In Re Carrol,* 339 N.J. Super. 429, 439. The court has also interpreted this policy to uphold the production of guidelines such as plea offer guidelines, sex offender registration guidelines, drug screening guidelines, and the guidelines assisting prosecutors in rendering uniform decisions concerning drug testing. *Ibid.*; *see also, e.g. State v. Henderson*, 397 N.J. Super. 398 (2008).

The court has never gone so far as to interpret this policy to allow for the complete suppression of a municipal police department by the AG.

As noted above, the IAPP in place when the Legislature adopted P.L. 1996, c. 115, which required all law enforcement agencies in the State to adopt and implement consistent policies, did not include a provision authorizing the AG to

take over the entire operations of a local law enforcement agency. The IAPP in place at the time dealt exclusively with the AG's limited authority over internal affairs investigations.

When adopting P.L. 1996, c.115, the legislature could not have approved or tacitly agreed to accept the AG's power to supersede a municipal police force beyond the operations of internal affairs because no IAPP prior to the November 2022 IAPP included such an overreach of authority.

Similarly, Chapter 94 does not provide implied supersession authority to the AG. Such an interpretation of Chapter 94 does not render the statutory language as surplusage. Indeed, the authority of the AG to supersede the operation of a local law enforcement agency's internal affairs remains. In other words, when adopting Chapter 94 the Legislature was not giving new authority to the AG to supersede the entire operations of a local law enforcement agency, nor were they ratifying any such implied authority that the AG argues exists. The intent of the legislature was simply to relax rules related to the appointment of an OIC related to the AG's limited supersession authority over local law enforcement agency's internal affairs operations – the limited supersession authority the Legislature has given to the AG.

The Legislature could of course provide the AG with the authority to supersede the full operation of a municipal police department but to date they have not done so. No statutory authority conveys such power to the AG and an

important policy question such as it should not be left to vaguely implied statutory interpretation. If such power should be conveyed to the AG the Legislature could have easily adopted legislation clearly effectuating as much.

POINT II

ASSUMING, ARGUENDO, THAT THE AG DOES HAVE THE AUTHORITY TO SUPERSEDE A MUNICIPAL POLICE DEPARTMENT, THOSE POWERS MUST BE SUBJECT TO CLEARLY ARTICULATED RULES AND STANDARDS DEFINING THE CIRCUMSTANCES UNDER WHICH THE AG MAY BOTH EXERCISE CONTROL OVER THE DAY-TO-DAY OPERATIONS AND INTERNAL AFFAIRS OF LAW ENFORCEMENT AGENCIES.

Amicus Curiae NJLM has reviewed, agrees with, and incorporates by reference herein the arguments submitted by *Amicus Curiae* New Jersey State Association of Chiefs of Police in their brief.

CONCLUSION

For the aforementioned reasons, A*micus Curiae* New Jersey State League of Municipalities requests that the Court's decision find that the Attorney General lacks the requisite authority to supersede the entire operations of a local law enforcement agency. In the alternative, should the Court find such authority has been granted to the Office of Attorney General, that the Court's decision require that the Attorney General promulgate defined standards and principles governing the Attorney General's use of suppression authority.

Respectfully submitted,

Dated: June 26, 2024

By: **S/ Frank Marshall**
Frank G. Marshall, Jr.

Associate General Counsel
New Jersey State League of Municipalities

Christopher J. Gramiccioni
Admitted to practice in NJ, NY, SC, DC
Email: chris@kingstoncoventry.com

KINGSTON COVENTRY LLC

Deborah L. Gramiccioni
Admitted to practice in NJ, NY, SC
Email: deb@kingstoncoventry.com

July 12, 2024

Via electronic filing

Honorable Judges of the Appellate Division
Superior Court of New Jersey, Appellate Division
25 Market Street
Trenton, New Jersey 08625

Re: Bulur, et al. v. New Jersey Office of the Attorney General, et al.
Sayegh, et al. v. Abbassi, et al.
Appellate Docket Nos. A-629-23T2 and A-1209-23T2

Dear Your Honors:

Pursuant to R. 2:6-2(b), please accept this letter brief in lieu of a more formal reply brief on behalf of Appellants/Plaintiffs, Mirza M. Bulur, the duly-appointed full-time interim public safety director of the City of Paterson, Engelbert Ribeiro, the duly-appointed chief of the City of Paterson Police Department who took the oath of office on March 3, 2023, and Andre Sayegh, Mayor of the City of Paterson ("Bulur," "Chief Ribeiro," and "Mayor Sayegh" respectively, and "Appellants" collectively), in the above-captioned matter.

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ARGUMENT

POINT I: APPELLANTS' CHALLENGE TO THE SUPERSESSION IS TIMELY AND WARRANTED.

Contrary to the assertions of NJOAG, Appellants' challenge to the supersession is both timely and warranted.

Preliminarily, NJOAG cites to R. 2:4-1(b), which is the time limit for a direct appeal of a final agency decision, yet, at the same time, also cites to portions of Trial Court's decision below in support of its position that the March 27, 2023 letter is a "final decision." NJOAG cannot have it both ways. Either the present appeal is a direct appeal to this Panel – and under which this Panel will determine whether the March 27, 2023 letter is a final decision – and for which R. 2:4-1(b) applies, or it is an appeal of the Trial Court's decision; one which is undoubtedly timely under the Rule. Respectfully but quite simply, if this is a direct appeal governed by R. 2:4-1(b), the Trial Court's findings during the Motion to Transfer hearing are neither relevant nor determinative.

Appellants do not concede that the March 27, 2023 "directive" and/or the "Standard Operating Procedure" is a final order to which R. 2:4-1(b) is applicable. To the contrary, neither suffices as a final order to which the Rule applies. In fact, NJOAG'S position is contradicted by the language of the March 27, 2023 letter which refers to his Office's continuous action as "the first step of a long journey."

Likewise, the dissemination of standard operating procedures cannot meaningfully be construed as any final order; the two-page standard operating procedure memorandum simply appoints individuals to various positions within the Paterson Police Department for an indeterminate period of time. Despite NJOAG'S contentions herein, those documents do not provide Respondents with "unmistakable, written finality," nor do they contain a sufficient factual or legal basis to be considered a final decision to which R. 2:4-1(b) applies. In order to acquire the requisite finality for triggering the protection of the Rule, the "agency decision should contain adequate factual and legal conclusions. The decision also should give unmistakable notice of its finality." Northwest Covenant Medical Center v. Fishman, 167 N.J. 123, 138-39 (2001) (quoting In re CAFRA Permit No. 87–0959–5, 152 N.J. 287, 299 (1997). Stated differently, "a determination by an agency that does not contain proper factual findings and legal conclusions is not a final decision for appeal purposes under Rule 2:4–1(b)." Ibid. See also, Szczepanik v. Department of Treasury, 232 N.J. Super. 491, 498–500 (App.Div.1989) (PERS letter containing insufficient findings of fact and conclusions of law as service of notice of such unmistakable finality.) Again, both the March 27, 2023 "directive" and the subsequent "Standard Operating Procedure" are vague in content, untethered to statute, and of an indeterminate timeframe.

Moreover, NJOAG'S reliance on these statements cannot be squared with the holding in De Nike v. Board of Trustees of Public State Emp. Retirement, System, 34 N.J. 430, 435 (1961), wherein the Supreme Court ruled:

> For a state administrative agency to gain repose from an appeal by virtue of the lapse of time from a decision or action it must give the party sought to be bound unmistakable written notice of the finality of the decision or action. This is especially true with an agency, such as here, where the parties sought to be bound are to a large extent without any practical business or legal knowledge. Although not mandatory, considerate dealing by the administrative body suggests that such notice might as well apprise the party sought to be bound that he has a right to an administrative appeal or hearing, if such exists, together with the time within which such action must be taken.

Id. at 435.

It is undeniable that neither the March 27, 2023 "directive" nor the subsequent "Standard Operating Procedure" make any effort to expressly apprise Respondents that it is a final decision, that Respondents have a right to an administrative appeal or the time frame in which such action must be taken. While, yes, such requirement is not mandatory, one would expect that given the unprecedented circumstances at hand, NJOAG would strive for transparency and clarity in advising the affected parties of the nature and consequence of its anticipated actions. While neither Mayor Sayegh nor Chief Ribeiro are "unsophisticated consumers" such as in De Nike, neither are lawyers themselves nor are the circumstances presented so clearly defined as to place them on notice to take action.

Moreover, even if applicable, R. 2:4-1(b) is not without exceptions. For example, Courts "have been reluctant to impose the time bar of R. 2:4–1(b) where the issues raised involve significant questions of public interest." Rumana v. Cnty. of Passaic, 397 N.J. Super. 157, 171 (App. Div. 2007). See, e.g., Jacobs v. N.J. State Highway Auth., 54 N.J. 393, 396 (1969) (considering untimely challenge to Authority's retirement policy for workers because of "the importance of the public question involved"); In re Rodriguez, 423 N.J. Super. 440, 447 (App. Div. 2011) (declining to dismiss appeal as untimely because it raised allegations of use of excessive force by corrections officers); In re Christie's Appointment of Perez as a Public Member 7 of Rutgers University Bd. of Governors, 436 N.J. Super. 575, 585 (2014). (declining to dismiss untimely challenge to Governor's direct appointment of member to state university board of directors.)

For those same reasons, Appellants should not be barred by the doctrine of laches. See, e.g., Borough of Princeton v. Board of Chosen Freeholders of County of Mercer, 169 N.J. 135, 156 (2001) (declining to apply doctrine of laches in prerogative writ matter challenging award of waste management contract due to presence of important public interests requiring clarification and adjudication." Here, any harm to NJOAG – which is purely monetary – is far outweighed by the irreparable harm incurred by Appellants in the absence of relief from this Appellate Panel.

It remains undeniable that the portion of this appeal which challenges Chief Ribeiro's continued re-assigned to the PTC following the expiration of the original MOU, and over the objection of Mayor Sayegh was timely filed under R. 2:4-1(b). While NJOAG deems this portion of the appeal to be "derivative" of the earlier more generalized challenge to the NJOAG'S suppression, that subsequent Verified complaint and Order to Show was based on separate and discrete facts which occurred after the initial assertion of authority by NJOAG and would provide an independent basis for an actual even in the absence of that earlier challenge. Again, it was on November 15, 2023 that Chief Ribeiro was advised received an email from Abbassi stating that Chief Ribeiro's "assignment to the DCJ PTC ha[d] been extended through May 15, 2024" and directing him to continue to report to the PTC "as instructed by PTC leadership" (Pa245; Pa256-Pa261; Pa263). Abbassi attached to his email a document that he purported was "an addendum to the MOU" (Pa263; Pa264).

It was the following day, November 16, 2023, when Chief Ribeiro was ordered to appear for a meeting with Chief of Staff, James Hagerty ("Hagerty"), and was threatened with discipline if followed Mayor Sayegh's instruction to return to City Hall rather than the PTC. (Pa259-260). It was November 17, 2023, when Mayor Sayegh, through Paterson's Corporation Counsel, submitted correspondence to

AAG Walsh in which he objected to the continued reassignment of Chief Ribeiro (Pa248; Pa267). Mayor Sayegh's Verified Complaint and Order to Show Cause were filed shortly thereafter, on November 28, 2023. (Pa239-Pa277).

Given that this portion of the appeal is timely, it only makes sense for this Appellate Panel, in the interest of judicial economy, and in recognition of the public interest implicated herein, to exercise its discretion to relax adherence to R. 2:4-1(b) to allow this entire matter to be resolved on the merits.

Likewise, the appeal is substantively meritorious. Despite NJOAG's arguments to the contrary, there is no legal authorization justifying Respondents' continued command and control of the City of Paterson Police Department. There is no support in statute or caselaw for NJOAG'S position and its reliance of the IAPP is stretched far beyond what is expressly permitted by those directives. By their own terms, the IAPPs are limited to the finite area of *Internal Affairs* and do not speak to, or contemplate, supersession of a police department as a whole. This overreach runs squarely afoul of principles of Home Rule as well as the Faulkner Act and should not be countenanced by this Appellate Panel.

POINT II: THE CHAPTER 94 LAW DID NOT REPEAL THE EXPRESS CONSTITUTIONAL AND LEGISLATIVE AUTHORITY GRANTED TO MUNICIPALITIES.

NJOAG's reliance on the convenient retroactivity of Chapter 94, signed into

law mere months after the illegal supersession, is similarly misplaced. As NJOAG concedes, this new statute speaks to the AG's *appointment power* but does *not* amend or repeal the still-controlling legislation which squarely limits the AG's *overall supersession authority* to certain specifically delineated instances. See N.J.SA. 52:17B-107(a)(which continues to limit the AG's supersession authority to a "county prosecutor" in investigations, criminal actions or proceedings). Indeed, Chapter 94 only contemplates the scenario "when the Attorney General has [already] superseded a law enforcement agency." 2023 N.J. Ch. 94. By its very terms, Chapter 94 does not authorize supersession of the *daily operations* of a police department, nor does it expressly clarify the scope of the AG's supersession authority as outlined in Section 52:17B-107(a).

Importantly, Chapter 94 does not address the limitations of supersession embedded in Section 52:17B-107(a), and absent any "manifest intent" by the Legislature to repeal Section 52:17B-107(a), it remains an express legislative limitation on the AG's supersession authority. As New Jersey Courts have outlined, the "test as is applicable to a determination whether a later statute impliedly repeals an earlier one -- is the subsequent statute 'plainly repugnant to the former and . . . designed to be a complete substitute for the former,' so that it is impossible to give the two concurrent operative effect? Both laws 'should be given effect if

reasonably possible. . . . The legislative intention to repeal must be manifest; the language must admit of no other reasonable interpretation.'" State v. Gledhill, 67 N.J. 565, 579-580 (1975)(quoting Goff v. Hunt, 6 N.J. 600, 606 (1951) & State v. States, 44 N.J. 285, 291 (1965)); see also New Jersey Ass'n of School Adm'rs v. Schundler, 211 N.J. 535, 555-56, (2012) ("[T]here is a strong presumption in the law against implied repealers and every reasonable construction should be applied to avoid such a finding.") (quoting In re Comm'r of Ins.'s Issuance of Orders A-92-189 & A-92-212, 137 N.J. 93, 99 (1994) (alterations in original)); Abbamont v. Piscataway Twp. Bd. of Educ., 269 N.J. Super. 11, 34 (App. Div. 1993)("[C]ourts properly insist that the legislative intent to repeal an earlier statute be manifest and expressed clearly by the terms of the statute or indisputably reflected in its legislative history")(internal quotations omitted);

For these same reasons, the clarification of the AG's appointment powers spelled out in Chapter 94 does not undercut or repeal prior legislation which expressly granted to municipalities – not the Attorney General – the authority to run the operations of the Paterson Police Department. N.J.S.A. 40:41A-28. Nor does Chapter 94 repeal or undercut the New Jersey Constitution's broad allocation of powers to municipalities and espousal of the fundamental principles of "home rule." N.J. Const. (1947), Art. IV, Sec. VII, para. 11; N.J.S.A. 40:41A-28; 40:42-4 and

40:48, *et seq.* See State v. States, 44 N.J. at 291 ("Repeals by implication are not favored and it is a cardinal rule of statutory construction that both laws should be given effect if reasonably possible.").

POINT III: SUPERSESSION AND TAKEOVER OF AN ENTIRE POLICE DEPARTMENT'S OPERATIONS WITHOUT CONSENT IS UNPRECEDENTED AND WITHOUT LEGAL AUTHORITY.

As a final point, NJOAG offers examples wherein they have exercised their supersession authority without incident. In each of those examples, however, the municipality *consented* to the supersession and takeover, as was the case in Camden, where NJOAG worked collaboratively with the municipality and did not oust its police chief. Without a municipality's consent,

there remains no license or authority for the AG to eviscerate the constitutional concept of home rule and assume the daily operations of any police department, the retroactive appointment provisions of Chapter 94

notwithstanding.

CONCLUSION

In the absence of any controlling authority to expand the AG's supersession authority in this unprecedented manner, Appellants seek an Order immediately terminating Respondents' command and control of the Paterson Police Department, directing Respondents to, with the exception of the Department's internal affairs

function, restore full operational command and control of the City of Paterson Police Department to Appellants, and granting such other and further relief in favor of Appellants as the Court deemed just and proper.

/s/Christopher J. Gramiccioni
Christopher J. Gramiccioni, Esq.
(0197620008)
KINGSTON COVENTRY LLC
522 Washington Blvd., Suite #2
Sea Girt, New Jersey 08750
(973) 370-2227

/s/Edward J. Florio
Edward J. Florio, Esq. (025311967)
FLORIO KENNY RAVAL LLP
125 Chubb Avenue, Suite 310-N
Lyndhurst, New Jersey 07071
(201) 659-8011

Cc: All Counsel of Record