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LORETTA G. WHYTE
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

Plaintiff

v.

THE CITY OF NEW ORLEANS

Defendant

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CIVIL ACTION

NUMBER:

SECTION

12-1924

SECT. E MAG. 2

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JOINT MOTION AND MEMORANDUM FOR ENTRY OF CONSENT DECREE

I. Introduction

The City of New Orleans ("City"), and the United States of America (collectively, "the parties") request that this Court enter the Consent Decree agreed to by the parties ("Consent Decree") as an order of the Court. The United States has filed a Complaint pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112 ("Title VI"). The parties seek to resolve that litigation with entry of the attached negotiated Consent Decree.

Fee _____
Process _____
Died _____

The United States' Complaint alleges that the New Orleans Police Department ("NOPD"), an agent of the City, engages in, *inter alia*, a pattern or practice of subjecting individuals to excessive force in violation of the Fourth Amendment, unlawful searches and seizures in violation of the Fourth Amendment, and discriminatory policing practices in violation of the Fourteenth Amendment, the Safe Streets Act, and Title VI. The City denies these allegations contained in the Complaint. The Consent Decree is intended to ensure that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States.

II. Legal Standard

Settlement via consent decree is to be encouraged. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). To facilitate the proper settling of disputes without resort to contested litigation, when presented with a proposed consent decree, courts should ascertain that the settlement is fair, adequate, and reasonable, and is not the product of collusion between the parties. *Id.* at 1330. In making this determination, judges should "undertake an analysis of the facts and the law relevant to the proposed compromise." *Id.* In considering whether to approve a consent decree, courts should consider the nature of the litigation and the purpose to be served by the consent decree, including whether the decree is consistent with the objectives Congress sought to obtain by the statute. *United States v. City of Miami*, 664 F.2d 435, 441 (Former 5th Cir. Dec. 1981). The court may rely on the judgment of experienced counsel for the parties and, absent fraud or collusion, should be hesitant to substitute its own judgment for that of counsel. *Cotton*, 559 F.2d at 1330 (citing *Flinn v. FMC Corp.*, 528 F.2d 1169 (4th Cir. 1975)).

III. Discussion

The Consent Decree between the City of New Orleans and the United States Department of Justice is fair, adequate, and reasonable. It is fully consistent with the statutes being enforced and the public objectives of those statutes. Congress enacted Title VI because it recognized the need for a statutory nondiscrimination provision such as Title VI to apply across-the-board “to make sure that funds of the United States are not used to support racial discrimination.” 110 Cong. Rec. 6544 (1964) (Statement of Sen. Hubert Humphrey). The Safe Streets Act applies to grants funded by the Department of Justice, and prohibits discrimination in connection with any programs or activity funded in whole or in part with these funds. Congress intended Section 14141 to “close [the] gap in the law” caused by the Justice Department’s lack of authority to address systemic patterns or practices of police misconduct through injunctive relief. H.R. Rep. No. 102-242, pt. 1, at 137 (1991). Section 14141 prohibits law enforcement officers from engaging in a pattern or practice “that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” 42 U.S.C. § 14141. It contains no limitation on the nature of the constitutional or federal rights that it protects. Congress intended to grant the Justice Department the authority to sue police departments to correct the underlying policies that lead to abusive practices. H.R. Rep. No. 102-242, pt. 1, at 137. This need to supplement the Department of Justice’s criminal prosecution authority to prevent constitutional violations by law enforcement officers is thus one of the explicit reasons that Section 14141 exists.

The United States’ extensive 2011 investigation of the New Orleans Police Department provides additional evidence that the Consent Decree furthers the objectives of Section 14141, the Safe Streets Act, and Title VI. The investigative team consisted of lawyers and other staff

from the Civil Rights Division's Special Litigation Section, working closely with police professionals with expertise in the areas on which the investigation focused. With due regard for on-going criminal prosecutions, the investigation was one of the most extensive investigations of a law enforcement agency ever conducted by the Department of Justice's Civil Rights Division. The investigation was conducted with the full cooperation of the City and NOPD.

The Special Litigation Section and its police experts gathered information through many interviews and meetings with NOPD officers, supervisors and command staff, as well as members of the public, City and State officials, and other community stakeholders. The investigation included on- and off-site review of a wide array of documents, including policies and procedures, training materials, incident reports, use of force reports, crime investigation files, data collected by NOPD, complaints of misconduct, and misconduct investigations. Special Litigation representatives and experts participated in ride-alongs with officers and supervisors, attended COMSTAT meetings, observed police activity, and met with representatives of police unions/fraternal organizations and several larger group officer "round tables" to elicit officer concerns and ideas about how to improve services provided by NOPD.

The investigation included participation in over 40 community meetings, including meetings held at the request of the United States, as well as regularly scheduled community meetings, including New Orleans Neighborhood Police Anti-Crime Council and Rape Crisis Network meetings, among many others. The investigation further included meetings with judges from the state and municipal courts and members of the Orleans Parish District Attorney's Office, the Orleans Public Defenders, the Civil Service Commission, the New Orleans Office of the Independent Police Monitor, the New Orleans City Council, Louisiana State legislators, the Business Council of New Orleans & the River Region, the New Orleans Police and Justice

Foundation, and the New Orleans Crime Coalition.

Pursuant to this investigation, the United States has reasonable cause to believe that a number of patterns or practices of conduct by NOPD and its officers violate the Constitution and federal statutory law. The United States also alleges that particular policies and practices contribute to and cause the patterns and practices of unlawful conduct. The City denies the existence of any pattern or practice of unconstitutional conduct by the Defendant or its agents, including NOPD and its officers. The parties' disagreement about whether NOPD continues to violate the law does not preclude entry of the Consent Decree. *See, e.g., United States v. Armour & Co.*, 402 U.S. 673, 682 (1971) ("Because the defendant has, by the decree, waived his right to litigate the issues raised . . . the conditions upon which he has given that waiver must be respected..."); *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 (1981) (The parties do not need to admit liability, because doing so "den[ies] the parties their right to compromise their dispute on mutually agreeable terms."); *Cotton*, 559 F.2d at 1130 ("It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute.").

A discussion of some of the evidence underlying the United States' investigative findings is contained in the March 16, 2011 report of that investigation, which is attached and incorporated by reference herein. That investigation establishes a more than adequate factual record supporting the legitimacy of this Consent Decree.

The Consent Decree is thus consistent with and furthers the objectives of Section 14141, the Safe Streets Act, and Title VI because it embodies the agreement of the City and its police department to ensure constitutional policing. The Consent Decree requires the City and its

police department to implement new policies, training, and practices throughout NOPD, including in each of the areas the United States' investigation found problematic: use of force; stops, searches, seizures, and arrests; custodial interrogations; discriminatory policing; community engagement; recruitment; training; performance evaluations; promotions; officer assistance and support; supervision; secondary employment; and misconduct complaint intake, investigation, and adjudication.

Perhaps as importantly, the Consent Decree is appropriate here because voluntary compliance through a consent decree is more likely to accomplish the statutory goals than will orders imposed at the end of bitter and protracted litigation. *United States v. City of Miami*, 664 F. 2d at 441; *United States v. City of Jackson, Miss.*, 519 F.2d 1147, 1152 n.9 (5th Cir. 1975) (“Because of the consensual nature of the decree, voluntary compliance is rendered more likely At the same time, the parties . . . minimize costly litigation and adverse publicity and avoid the collateral effects of adjudicated guilt.”).

Many New Orleans police officers have expressed their desire to continue under the Consent Decree the hard work that has begun, under New Orleans's current Mayor and Police Superintendent, of transforming NOPD into a world class police department. Because of practices that developed under prior administrations, the difficult job of a police officer has been made more difficult in New Orleans by policies that are obsolete or disregarded, training that is inadequate in amount and quality, and accountability that is lax and inconsistent. These poor police practices prevented many NOPD officers from being as effective as they might otherwise have been, and have compromised their ability to garner the cooperation and respect from the broader New Orleans' community that the police profession deserves and that NOPD officers need to be effective at preventing crime. The Consent Decree will assist not only the City as a

whole but in particular the NOPD officers who have continued to work diligently and with integrity despite these difficult circumstances. The Consent Decree will hasten the process of providing NOPD officers better policy guidance, more training, closer supervision, broader officer support systems, and mechanisms to help ensure that accountability and investigations of misconduct are fair and constructive. The Consent Decree will set into motion systems to better prepare and support NOPD officers, and will dramatically improve the relationship between NOPD and the community it polices. Settling this dispute without protracted litigation thus allows the City, the United States, and NOPD officers to achieve one of their primary goals: undertaking extensive and critically needed reform of NOPD without unnecessary delay.

In addition to permitting the City and NOPD to have a larger voice in creating the remedy to correct the patterns or practices of unconstitutional conduct within NOPD, it resolves the dispute without the “loss of ‘the nation’s investment in the resources consumed by the federal agencies in negotiating these decrees....’” *United States v. City of Miami*, 614 F.2d 1322, 1333 (5th Cir. 1980), *aff’d in part, vacated and remanded in part on reh’g*, 664 F.2d 435 (citing *United States v. Allegheny-Ludlum Indus.*, 517 F.2d 826, 851 (5th Cir. 1975)). Consent decrees are important tools in enforcing statutes, since they “maximize[] the effectiveness of limited law enforcement resources” while “avoid[ing] the risks as well as the costs of full scale litigation of each point.” *Jackson*, 519 F.2d at 1151.

The nature and extent of the nine months of negotiations that were undertaken in arriving at this Consent Decree provide the Court with further assurance that it is necessary and adequate to remediate the discovered violations, despite the absence of litigation. While courts must approve consent decrees, they do not “inquire into the precise legal rights of the respective parties.” *Id.* at 1151. Instead, in determining that the Consent Decree is fair, adequate and

reasonable, the Court may rely on the judgment of experienced counsel for the parties. *Cotton*, 559 F.2d at 1330.

The parties in the instant case are experienced litigators who engaged in “a process of compromise in which ‘in exchange for the savings of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.’” *Jackson*, 519 F.2d at 1152, quoting *United States v. Armour & Co.*, 402 U.S. at 682. The Justice Department is tasked with seeing that the law is enforced and took steps to ensure that the concerns of all interested were considered in reaching this Consent Decree. During the course of drafting and negotiating the Consent Decree, the Justice Department consulted with various community stakeholders who may be affected by the Consent Decree, including police commanders, supervisors, and line officers; union leadership; and a broad spectrum of advocacy groups, criminal justice organizations, and related community stakeholders to ensure that their concerns were heard and considered.


The City, while sharing the United States’ goal of ensuring constitutional policing by NOPD, does not wish to give up more control of NOPD than is necessary. Both parties are intimately familiar with the practices of NOPD and spent long hours negotiating the Consent Decree. Both parties consulted with subject matter experts to ensure that each remedial measure in the Consent Decree is tailored to address the concern and may be reasonably implemented. This adversarial posture, combined with the respective duties of these government agencies towards those they represent, provides further assurance that the Consent Decree is fair, adequate, and reasonable, and may be relied upon by the Court in so finding. *See City of Miami*, 614 F.2d at 1332.

IV. Conclusion

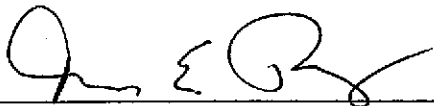
The Consent Decree is fair, adequate, and reasonable and should be entered as an Order of this Court. The goal of the parties in arriving at this Consent Decree is to dramatically and fundamentally reform NOPD to achieve protection of the constitutional rights of all members of the community, improve the safety and security of the people of New Orleans, and increase public confidence in NOPD. It is a compromise arrived at through protracted negotiations conducted by experienced and sophisticated litigants, aided on both sides by subject matter experts, and with an eye towards their shared goals of reform. As with all compromises, the Consent Decree does not incorporate every wish of either party. However, by setting out a road map for reform, to be overseen by this Court with the assistance of a court approved monitor, this Consent Decree furthers the shared goals of the parties, as well as the intent of Congress in enacting Section 14141, the Safe Streets Act, and Title VI to end the pattern or practice of misconduct and discrimination by law enforcement officers. The parties request that this Court enter the Consent Decree as an Order of the Court.

Respectfully submitted this ___ day of _____, 2012

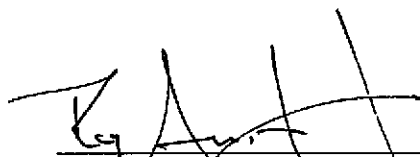
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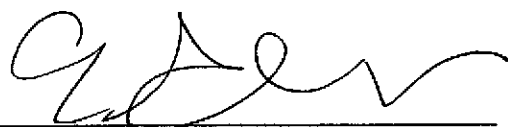


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A handwritten signature in black ink, appearing to read 'R F Cortizas', is written over a horizontal line.

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