

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:12-cv-01282-JLR

**UNITED STATES' RESPONSE TO THE
MAY 21, 2019 ORDER**

Plaintiff United States of America ("United States" or "DOJ") hereby responds to the Court's May 21, 2019 Order Finding City of Seattle Partially Out of Compliance with the Consent Decree. (Dkt. 562) ("May 21, 2019 Order").

In the May 21, 2019 Order, the Court found the City of Seattle ("City") "has fallen partially out of full and effective compliance with the Consent Decree" "in one of its additional areas of responsibility—accountability." *Id.* at p. 2. The Court directed the Parties, with assistance from the Monitor and the Community Police Commission ("CPC"), to "formulate a methodology for (1) assessing the present accountability regime, and (2) for how the City proposes to achieve compliance." *Id.* at pp. 13-14. In footnote 3 of the May 21, 2019 Order,

1 the Court also directed the Parties to submit a report addressing the Seattle Police
 2 Department's ("SPD") use-of-force training related to defensive tactics, and whether that
 3 training had fallen out of compliance with the Consent Decree and Constitution. *Id.* at p. 12
 4
 5 n.3. We address each of these issues in turn.

6 **I. The Proposed Methodology**

7 Following the May 21, 2019 finding that the City had "fallen partially out of full and
 8 effective compliance with the Consent Decree," and the Court's directive that "the City and the
 9 United States, with the assistance of the Monitor and CPC, . . . formulate a methodology (1) for
 10 assessing the present accountability regime, and (2) for how the City proposes to achieve
 11 compliance," *id.*, at pp. 2, 13-14, the United States participated in several meetings with the City,
 12 SPD, the Monitor, CPC, and other stakeholders concerning the City's development of a proposed
 13 methodology. *See* (Dkt. 566 at pp. 4-6) (describing the City's timeline and meetings conducted
 14 in developing a methodology ordered by the Court).
 15
 16

17 The United States maintains its position that the choices and decisions the City makes
 18 with respect to its police accountability system (beyond those expressly stated in the Consent
 19 Decree) are outside the scope of the Consent Decree. *See* Dkt. 422 at p. 2 (noting that the ten
 20 initial assessments conducted by the Monitor constituted "all of the requirements of the Consent
 21 Decree"); Dkt. 429 at p. 9 (explaining that all aspects of accountability required by the Consent
 22 Decree, such as changes to the Office of Police Accountability, had already been completed);
 23 Dkt. 291 at pp. 2-3 (highlighting that the Consent Decree "left many aspects of police
 24 accountability to the discretion of the City and SPD," that the Consent Decree was not intended
 25 to "exhaustively address all aspects of SPD and the City's police accountability systems" and
 26
 27
 28

1 that DOJ's "input is limited to [the accountability system's] intersection with the negotiated
 2 terms of the Consent Decree"). Furthermore, the United States defers to the City concerning its
 3 obligations in conducting labor negotiations and the requirements for collective bargaining
 4 mandated by Washington state labor laws. *Cf.* Consent Decree, ¶ 227 ("The City and SPD agree
 5 to promptly notify DOJ if any term of the [Consent Decree] becomes subject to collective
 6 bargaining consultation. DOJ agrees to work in good faith to accomplish the goals through
 7 alternative means, if necessary.").

8
 9 Still, the United States has reviewed the City's proposed methodology and has no
 10 objection. The City's methodology, including the work proposed and the anticipated outcomes,
 11 is consistent with the requirements of the Consent Decree, and the United States therefore defers
 12 to the City to implement its preferred approach.
 13

14 **II. Defensive Tactics Training**

15
 16 In its Response to the Court's December 3, 2018 Order to Show Cause, the United States
 17 noted that testimony provided in the Officer Adley Shepherd arbitration raised a question
 18 regarding whether certain training – namely, SPD's "Defensive Tactics" training – included
 19 content that ran counter to the requirements of the Consent Decree and resulting use of force
 20 policies that have been approved by this Court and adopted by SPD. *See* Dkt. 528 at pp. 3, 7-9.
 21

22 Accordingly, the United States proposed re-attending the training to ensure that it
 23 continues to be conducted in a compliant manner. *Id.* at 8-9. In its May 21, 2019 Order, the
 24 Court agreed with this proposal and asked the parties to "ensure that the Monitor is also involved
 25 in this re-examination." *See* Dkt. 562 at p. 12 n.3. The Court also directed the parties to file a
 26 report with the Court on this issue once the re-assessment is complete. *Id.*
 27
 28

1 Because the City of Seattle also agreed that a re-examination of Defensive Tactics
 2 training was warranted and appropriate, it facilitated DOJ and the Monitor's re-examination of
 3 this training in advance of the Court's May 21, 2019 Order. On March 21, 2019, representatives
 4 from DOJ and the Monitoring Team attended the Defensive Tactics training course. *See*
 5 Declaration of Christina Fogg at ¶ 2. The course involved hands-on instruction to SPD officers
 6 regarding appropriate uses of force and tactics for facilitating such encounters as arrests of
 7 resistant subjects. *Id.* It included instruction regarding placement of a handcuffed subject into a
 8 patrol car. *Id.* At no point did any instructor state or in any way suggest that counter-assaultive
 9 measures are always necessary when addressing an assaultive subject. *Id.* Indeed,
 10 representatives from DOJ and the Monitoring Team in attendance at the training uniformly
 11 agreed that all instruction provided during this training was consistent with SPD's Court-
 12 approved use of force policies.

13 In follow-up to this training, DOJ also requested and received the written materials that
 14 are used in the classroom portion of the Defensive Tactics training. *Id.* at ¶ 3. The written
 15 materials contain statements consistent with the current handcuffing policy. Namely, the
 16 materials state:

- 21 • Officers may only use reasonable, necessary and proportional force on
 22 restrained subjects (*e.g.* including handcuffed or contained in law enforcement
 23 vehicle);
- 24 • Officers may use reasonable, necessary and proportional force to get subjects
 25 into or out of a law enforcement vehicle only after reasonable attempts to gain
 26 voluntary compliance have failed; and
- 27 • Officers may only use force on restrained subjects that would foreseeably result
 28 in a Type II or Type III investigation under exceptional circumstances when the

subject's actions must be immediately stopped to prevent injury, escape, or destruction of property. All such force shall be closely and critically reviewed.

Id. at Exhibit A (relevant portions of 2019 Operational Update). The United States and the Monitor agreed that these statements are all consistent with the current, Court-approved use of force policy found at Policy 8.200 #6, which became effective on January 19, 2019.

Accordingly, the United States is satisfied that SPD's training on Defensive Tactics and, in particular, with respect to force on restrained individuals, remains consistent with the requirements of the Consent Decree and the related SPD policies. *Id.* at ¶ 4. The deputy Monitor has authorized us to report that he agrees with the United States' assessment.

DATED this 15th day of August, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 15th day of August, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 15th day of August, 2019.

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