

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEWARK,

Defendant.

No.

**MEMORANDUM OF LAW IN SUPPORT
OF JOINT MOTION FOR ENTRY OF
CONSENT DECREE**

Plaintiff, the United States of America, and Defendant, the City of Newark (“City”), (collectively “the Parties”) have agreed upon and jointly move the Court to approve and enter the attached Consent Decree as an Order of the Court. The Consent Decree would resolve litigation initiated by the United States with the concurrent filing of a Complaint under the authority of 42 U.S.C. § 14141 (“Section 14141”).

I. Background

In May 2011, the United States, through the Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the District of New Jersey (“DOJ”), opened a civil investigation of the operations of the Newark Police Department (“NPD”). Following this independent review, DOJ issued a report detailing its investigative findings on July 22, 2014. In that report, DOJ alleges that NPD officers have engaged in a pattern or practice of theft, unlawful stops and arrests, excessive use of force, and retaliation against individuals who exercise their rights under the First Amendment. Also on July 22, 2014, DOJ and the City entered into an agreement in principle that broadly outlined the reforms necessary to address the DOJ’s findings.

Following the announcement of the agreement in principle, the Parties engaged in extensive negotiations to address and resolve DOJ's findings. These negotiations have resulted in the attached Consent Decree, an agreement that mandates reforms of the NPD to remedy the constitutional violations that DOJ alleged in its report and Complaint. In particular, the reforms address allegations that NPD has engaged in: (1) a pattern or practice of effecting stops and arrests in violation of the Fourth Amendment; (2) a pattern or practice of policing which results in disproportionate stops and arrests of Newark's black residents; (3) a pattern or practice of retaliating against individuals who question police actions, in violation of the First Amendment; (4) a pattern or practice of using unreasonable and excessive force, in violation of the Fourth Amendment; and (5) a pattern or practice of stealing citizens' property and money, in violation of the Fourth and Fourteenth Amendments.

By agreeing to enter into the Consent Decree, the City, including NPD, does not admit the truth of, or legal liability for, any of the allegations in the Complaint. Rather, with this Consent Decree, the Parties recognize that the City has committed to implementing reforms that are intended to improve public confidence in law enforcement.

II. Legal Standards

Public policy strongly favors settlement in "complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). When considering whether to approve and enter a consent decree, the court should assess whether the decree is "fair, reasonable, and consistent with the Constitution and the mandate of law." *United States v. Kramer*, 19 F.Supp.2d 273, 280 (3d Cir. 1998); see also *United States v. New Jersey*, No. 10-91 (KSH)(MAS), 2012 WL 3265906, at *7 (D.N.J. Jun. 12, 2012), *aff'd*, 522 F. App'x 167 (3d Cir.

2013); *United States v. New Jersey*, Nos. CIV. 88-5087 (WGB), 88-4080 (MTB), 87-2331 (HAA), 1995 WL 1943013, at *10 (D.N.J. Mar. 14, 1995). The United States and the City have entered into a Consent Decree that they believe is consistent with federal law and the public interest, and that is fair, adequate, and reasonable.

III. Discussion

A. The Consent Decree Is Consistent with Section 14141 and the Public Objectives of the Law.

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.” Pursuant to the authority of Section 14141, DOJ conducted an investigation of the NPD over a period of three years. This investigation was conducted with the cooperation of the City and NPD.

Following its investigation, DOJ issued a report alleging that NPD and its officers had engaged in a pattern or practice of, among other actions, unlawful stops and arrests, theft, retaliation, and excessive force in violation of the Constitution and laws of the United States. DOJ’s investigative findings are contained in its July 22, 2014, Findings Report.¹ Although the City did not concede the accuracy of, or truth of, DOJ’s findings, the Parties entered into negotiations to address them and other concerns raised by the investigation. The fact that the City does not admit DOJ’s findings does not preclude entry of the Consent Decree as an order of the Court. *See, e.g., United States v. Armour & Co.*, 42 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

¹ A copy of the Findings Report is available at: https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf.

U.S. 79, 88 (1981) (parties to settlement do not need to admit liability, because doing so “den[ies] the parties their right to compromise their dispute on mutually agreeable terms”).

The proposed Consent Decree before the Court is consistent with the public interest because it requires NPD to reform its practices and deliver police services in a manner that is both constitutional and effective. Through the proposed Consent Decree, the City commits to develop and implement new policies, training, and practices throughout NPD in the areas of community engagement, use of force, search and seizure, bias-free policing, accountability and supervision, and transparency and oversight.

The Consent Decree is an appropriate resolution of the issues raised by DOJ’s findings because voluntary compliance with a negotiated agreement entered as a consent decree is more likely to expediently accomplish agreed upon goals than forced compliance with orders imposed at the end of contested and protracted litigation. Indeed, the DOJ’s investigation and the Parties’ subsequent negotiations already have set in motion a process of reform within NPD. Throughout this process, the City and NPD leadership have expressed a commitment to improve the performance of NPD in its efforts to interact with and protect the safety of the community. The proposed Consent Decree will assist both the City as a whole and NPD officers in achieving that goal.

The Consent Decree establishes the basis for undertaking reform efforts within NPD for the express purpose of better promoting effective community engagement, effective policy guidance, improved training, and closer supervision. The Consent Decree will promote broader officer support and supervision systems and make investigations of alleged misconduct and discipline more fair and constructive. Perhaps most important, the Consent Decree seeks to substantively improve the relationships among NPD and the diverse communities it serves.

Settling this matter in this way thus allows the City, DOJ, and NPD to work together to implement reforms within NPD without the unnecessary delay or expense of protracted litigation.

B. The Consent Decree Is Fair, Adequate, and Reasonable.

DOJ's investigation and subsequent community outreach efforts and the Parties' lengthy negotiations provide evidence that the negotiated Agreement is fair, adequate, and reasonable. The Consent Decree includes provisions that have been extensively discussed and agreed upon in an effort to create sustained and comprehensive reforms.

The Consent Decree takes into consideration and effectively reflects the thoughts and concerns of the community. DOJ organized and participated in community meetings to learn from the citizens of Newark what reforms they wanted for their police department. In those meetings and independently, various individuals and community groups shared their ideas and expectations for the Consent Decree and the selection of an Independent Monitor. In all, the DOJ relied on input from police officers, police unions, subject matter experts, community members and leaders, including representatives from faith-based communities and civil rights organizations, in drafting and negotiating the Consent Decree.

Thereafter, the Parties negotiated in good faith and have reached agreement on numerous reforms to NPD's existing policies, practices, and procedures, as well as its training, oversight, and accountability structures that sufficiently address the concerns of the United States set forth in the Complaint.

Further, the nature and extent of the good faith negotiations that were undertaken in arriving at this Consent Decree provide the Court with additional assurance that it is fair, adequate, and reasonable to remediate the violations alleged in the Complaint, despite the

absence of ongoing litigation. In determining that the Consent Decree is fair, adequate and reasonable, the Court may rely on the judgment of experienced counsel for the parties. *Kramer*, 19 F.Supp.2d at 281.

Counsel for the Parties to this Consent Decree are experienced attorneys who, for many months, engaged in discussions 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.” *Armour & Co.*, 402 U.S. at 681. In reaching a negotiated resolution, both DOJ and the City took steps to guarantee that the concerns of all interested parties were considered in reaching this Agreement and the shared goal of ensuring constitutional policing by NPD.

Counsel for both Parties are familiar with the practices of NPD and spent many hours negotiating the details of the Consent Decree. The DOJ consulted with subject matter experts and NPD leadership to ensure that each remedial measure in the Consent Decree is tailored to require effective and sustainable reforms that address the concerns raised by the DOJ’s investigation and that can be implemented and measured. Thus, the adversarial posture, combined with the respective duties of these government agencies toward those they represent, and the good faith, extensive negotiations among seasoned attorneys, provide further assurance that the Consent Decree is fair, adequate and reasonable.

C. The Proposed Monitor Is Well Qualified to Assess the City’s Compliance with the Consent Decree.

In Paragraph 170 on the Consent Decree, the Parties jointly have selected Peter C. Harvey of Patterson Belknap to “assess the City’s progress in implementing, and achieving compliance with, the Agreement; report on the status of implementation to the Parties and the Court; work with the Parties to address any barriers to compliance; and assist the Parties to informally resolve any disputes or differences.” (Consent Decree, Par. 169). The Parties

solicited applications from a wide pool of qualified monitoring teams and engaged in an in-depth and cooperative process to reach agreement as to which of the applicants would be best qualified to serve as Monitor in this case. The process included an in-depth review of all final applications; lengthy in-person interviews of a number of the teams; and multiple follow-up interviews with some of those teams. The Parties agreed that Mr. Harvey is particularly qualified to assess and report on the City's compliance with the Decree and ensure that the City is engaging in effective and constitutional policing.

Mr. Harvey served as Attorney General for the State of New Jersey during the time that the New Jersey State Police was under a federal Consent Decree between the State of New Jersey and the Department of Justice. In this role, Mr. Harvey assisted the State Police in achieving full compliance with all components of the Consent Decree, including requirements related to discriminatory policing. Mr. Harvey possesses a deep understanding of state and local practices and has direct experience overseeing organizational change and law enforcement reforms.

Mr. Harvey will be assisted by a variety of local and nationally recognized experts who are all committed to ensuring constitutional policing and 21st Century policing practices. The Parties agree that the proposed Monitor and the monitoring team will have a depth and breadth of skills to monitor effectively and efficiently NPD's implementation of the Consent Decree. Mr. Harvey has direct experience facilitating police reform, and the team will be comprised of members who have documented expertise in the subject matter areas addressed by the Consent Decree. The Parties respectfully request that the Court approve Mr. Harvey as the Monitor.

IV. Conclusion

The City of Newark and the Department of Justice share the same interest in protecting the constitutional rights of Newark residents, effectively preventing crime, better preparing and protecting officers and have worked cooperatively to achieve this Consent Decree. The Consent Decree resolves between the Parties all issues identified in the Department of Justice's investigation of the NPD. Because the proposed Consent Decree is fair, adequate, and reasonable, and because it promotes the public interest and the purposes underlying Section 14141, the Parties jointly and respectfully move this Court to approve and enter the Consent Decree in its entirety as an Order of the Court.

Respectfully submitted,

For Plaintiff UNITED STATES OF AMERICA:

PAUL J. FISHMAN
United States Attorney
District of New Jersey

s/ Sabrina G. Comizzoli
SABRINA G. COMIZZOLI
Executive Assistant United States Attorney
KRISTIN L. VASSALLO
Deputy Chief, Civil Division
970 Broad Street, Suite 700
Newark, NJ 07102
Tel. (973) 645-2700
Email: Sabrina.Comizzoli@usdoj.gov
Email: Kristin.Vassallo@usdoj.gov

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

s/ Rashida Ogletree
STEVEN H. ROSENBAUM
Chief
CHRISTY LOPEZ
Deputy Chief
RASHIDA OGLETREE
Special Counsel
JEFFREY R. MURRAY
COREY SANDERS
PATRICK KENT
Trial Attorneys
United States Department of Justice
Civil Rights Division
Special Litigation Section

950 Pennsylvania Avenue, NW
Washington, DC 20530
Tel. (202) 305-3712
Email: Christy.Lopez@usdoj.gov
Email: Rashida.Ogletree@usdoj.gov
Email: Jeff.Murray@usdoj.gov
Email: Corey.Sanders@usdoj.gov
Email: Patrick.Kent@usdoj.gov

For Defendant CITY OF NEWARK

s/ Willie L. Parker
WILLIE L. PARKER, ESQ., L.L.M.
Corporation Counsel

AVION M. BENJAMIN
First Assistant Corporation Counsel
Department of Law
Room 316, City Hall
Newark, NJ 07102
Tel. (973)733-3880