

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEWARK,

Defendant.

HON. MADELINE C. ARLEO

Civil Action No. 16-1731 (MCA)(MAH)

**MEMORANDUM OF LAW IN SUPPORT
OF JOINT MOTION FOR PARTIAL
TERMINATION**

The City of Newark (City) and the Newark Police Division's (NPD) approach to policing has significantly evolved over the last decade. NPD has developed new policies and training to ensure constitutional policing, and it has implemented important accountability tools, like body-worn cameras and systems to protect property and evidence. NPD also has shown that these improvements have changed officer behavior. While unconstitutional stops were a driving factor for implementing the Consent Decree, according to the Monitor's reports, officers are now conducting stops in compliance with the Decree's requirements. There are other positive outcomes, as well. As NPD improved its law enforcement practices, the City expanded its public safety systems to account for the important role of the community in preventing violence and crime. NPD and the City have invested in promising and popular public safety programs, including violence interruption, a Community Street Team staffed by non-police personnel, and deeper engagement with clergy. As NPD has implemented the requirements of the Consent Decree, crime in Newark has continued to go down. According to FBI data, by 2022, the last full year of data,

total crime in Newark had fallen by about 40 percent in comparison to 2016, when the Consent Decree took effect.¹

Based on this progress, the United States of America, and the City (collectively, the Parties), file this Joint Motion seeking partial termination of the Consent Decree because the City has sustained compliance with certain portions of the Consent Decree. The Joint Motion seeks to terminate the paragraphs below:

- ¶¶ 5–8, regarding Policy Review and Revision;
- ¶¶ 9–12, regarding Training;
- ¶¶ 14–19 and 21–24, regarding Community Engagement;
- ¶¶ 25–28, regarding Investigatory Stops and Detentions;
- ¶ 43, regarding Stop/Search/Arrest Training;
- ¶¶ 55–62, regarding First Amendment Right to Observe, Object to, and Record Officer Conduct;
- ¶¶ 103–104, regarding In-Car and Body-Worn Cameras; and
- ¶¶ 105–110, regarding Theft and Property.

The Parties agree that significant work remains to ensure that Newark’s progress remains durable, particularly in supervision, officer accountability, and documentation. Going forward, NPD believes that it should prioritize its resources to achieve compliance in those areas. For now, the other requirements of the Consent Decree should remain in effect. Partial termination will

¹ Violent crime and property crime have both declined. In 2016, NPD reported 2,637 violent crimes to the FBI; in 2022, NPD reported 1,582 violent crimes – a difference of 40 percent. In 2016, NPD reported 6,448 total property crimes to the FBI; in 2022, NPD reported 3,668 – a difference of 43 percent. There are many factors beyond policing that may contribute to crime rates in a city, including environmental and economic factors. Still, the reduction in crime is a positive sign that Newark’s investment in public safety and police reform is leading to successful results. Federal Bureau of Investigation Crime Data Explorer (last accessed March 22, 2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>; <https://perma.cc/MS55-MUUQ>.

enable the Parties to focus on the remaining issues and bring NPD into full compliance as efficiently as possible. The City and United States continue to collaborate to chart the best path forward with respect to the remaining provisions of the Consent Decree to ensure those areas can be efficiently and effectively evaluated for compliance and sustainability. The Parties look forward to sharing plans for continued evaluation of the remaining Consent Decree requirements with the Court in the months to come. Moreover, the City and NPD have committed to continuing their efforts to further develop systems for self-monitoring and transparency to ensure that the reforms described in this Joint Motion are lasting.

I. BACKGROUND

A. The United States' Investigation and Findings

In 2014, after a comprehensive investigation by the Justice Department's Civil Rights Division and the U.S. Attorney's Office for the District of New Jersey, the United States found reasonable cause to believe that NPD engaged in a pattern or practice of conduct by law enforcement officers that violated the Constitution and federal law. At the time, a core component of NPD's enforcement strategy focused on pedestrian stops. While the Fourth Amendment permits officers to detain people where there is reasonable suspicion of criminal activity, *Terry v. Ohio*, 392 U.S. 1, 21 (1968), the United States found that NPD officers often failed to adhere to these legal requirements. NPD commonly stopped people in Newark for "milling," "loitering," or "wandering," without any indication criminal activity was afoot. Findings Report at 9.² The number of illegitimate justifications for stops, coupled with supervisors' failure to correct such practices, suggested a tolerance for unconstitutional conduct. *Id.* These practices also damaged

² 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; <https://perma.cc/2URA-5CMY>.

NPD's relationship with the community, making policing "less effective and more dangerous." *Id.* at 4.

The United States made findings in other areas relevant to this Joint Motion. NPD officers sometimes retaliated against people because they lawfully objected to police actions, or they behaved in ways officers found disrespectful. *See id.* at 12–14. The United States also found that NPD failed to protect the personal property of people in its custody. The United States found evidence that officers in NPD's specialized units and in the prisoner processing unit at the Green Street Cell Block stole money and property from Newark citizens. NPD had been aware for years that theft by officers was a serious problem, but it had virtually no methods in place to track, manage, or safeguard property. *See id.* at 2–3, 30–34.

The constitutional violations identified in the United States' investigation resulted, in part, from NPD's failure to provide clear guidance to officers. NPD failed to ensure NPD officers had access to the policies and did not update policies to reflect changes in legal requirements. *Id.* NPD's training was also deficient, and NPD failed to sufficiently track the training that it did provide. *See id.* at 44.

B. The Consent Decree

To resolve the United States' Findings and the Complaint, ECF 1, the Parties entered into, and the Court approved, a Consent Decree to address the root causes of the violations. ECF 5. Since 2016, the City and NPD have worked to implement the Consent Decree's requirements with assistance and oversight from the United States and the Court-appointed Independent Monitor and his staff (the Monitor or Monitoring Team).

The Monitor's principal role has been to determine whether NPD has complied with the requirements of each section of the Consent Decree. The Monitor has conducted "Compliance

Reviews or Audits” that examine whether “the City and NPD have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) implemented the requirement in practice.” ECF 5, at ¶ 173. For each audit, the Monitor has reviewed a significant quantity of data that reflects NPD’s performance across an appropriate span of time. Each of the Monitor’s audit reports describes the methodology of the review and the data relied on. The Monitor describes NPD’s compliance status according to a framework that includes Initial Development, Preliminary Compliance, Operational Compliance, Non-Compliance, Administrative Compliance, and Full Compliance. ECF 275-1, Appendix A at 1–2. These categories account for various stages of reform, from policy development to full implementation. Assessing NPD’s compliance also requires looking at outcomes. Under the Consent Decree, the Monitor must “assess whether implementation of [the Decree] is resulting in the desired outcomes (*i.e.*, policing that is consistent with the Constitution and that engenders cooperation and trust between NPD and the community it serves)” (Outcome Assessments). ECF 5, at ¶ 174. The United States also assesses NPD’s compliance with the Consent Decree by regularly conducting its own reviews of incidents, visiting NPD facilities, speaking to officers, and analyzing NPD data.

To justify termination of certain requirements in the Consent Decree, the City and NPD must demonstrate that they have “achieved full and effective compliance with this Agreement and maintained such compliance for no less than two consecutive years.” ECF 5, at ¶ 215. The Consent Decree defines “Full and Effective Compliance” as requiring “sustained compliance with all material requirements of [the Consent Decree] and sustained and continuing improvement in constitutional policing, as demonstrated pursuant to [the Decree’s] outcome measures, all as determined by the Court.” ECF 5, at ¶ 223. The Consent Decree further permits the Parties to

“jointly stipulate to make changes, modifications, and amendments to [the Consent Decree], which will be subject to Court approval.” ECF 5, at ¶ 218.

For the reasons described below, the Parties agree that the City has achieved and sustained full and effective compliance with certain provisions of the Consent Decree, and that it is appropriate for this Court to terminate those provisions.

II. CONSENT DECREE REQUIREMENTS RIPE FOR TERMINATION

A. Stops

1. *Consent Decree Requirements*

The Consent Decree requires NPD to make comprehensive changes to ensure officers comply with the Fourth Amendment, including when making Stops. NPD must revise its policies and trainings generally, *e.g.*, ECF 5, at ¶¶ 25, 27, improve its documentation of these activities, *id.* at ¶¶ 28, improve training, *e.g.*, *id.* at ¶ 43, and enhance supervisory review practices, *e.g.*, *id.* at ¶¶ 44, 45.

2. *Implementation and Assessment of Consent Decree Requirements*

Given the serious issues identified in the Findings Report, NPD prioritized making changes to its policies and practices governing stops. In December 2018, NPD finalized its Stops, Searches, and Arrest policies and began training officers on these areas of the Consent Decree. ECF 144-1, at 13 and 64. In an effort to ensure the quality of legal instruction, NPD retained a former Essex County Assistant Prosecutor to help deliver these required trainings. ECF 135-1, at 49. By April 2019, all NPD officers had received 16 hours of training on Stops, Searches, and Arrests. ECF 158-1, at 175. NPD also improved its documentation of stops, searches, and arrests. Beginning in 2018, NPD began updating its “Field Inquiry Report” and working with a vendor to electronically

track interactions between officers and the public, and to gather the data required by the Consent Decree. By 2021, these upgrades were in place. ECF 311-1, at 20, fn 14.

The Monitor's audits confirm that NPD's reforms have changed officer behavior on the streets of Newark. The Monitor has conducted two audits focusing on NPD's stops' practices and has also reviewed those practices in audits of NPD searches and NPD arrests. In these audits, NPD has demonstrated a high level of compliance with the Stops requirements of the Decree:

The First Stop Audit. The Monitor evaluated a sample of 197 stops made by NPD officers between October 1, 2019, and December 31, 2019, including reviewing all relevant NPD records and body-worn and in-car camera footage, as available. *See* ECF 254-1, at 4. The Monitor found that NPD officers complied with the substantive requirements of the Consent Decree in 92.9 percent of the stops sampled, *id.* at 6, suggesting the stops training was effective at changing officer behavior. Further, where the Monitoring Team found incidents that were not compliant, it attributed these deficiencies to missing body-worn camera footage or an incomplete Stop Report, not unconstitutional conduct. *Id.* at 7.

The Second Stop Audit. The Monitor again assessed NPD's stop practices in a 2023 audit, assessing officer conduct in a sample of 194 incidents occurring between April 1, 2022, and May 31, 2022. Again, the Monitor found a high rate of overall compliance (95.4 percent), and 100 percent substantive compliance, meaning that two years after initial training, officers continued to adhere to NPD policy and procedures when making stops. ECF 346-1, at 130.

In 2023, the Monitor advised that it had no further audits of NPD's Stop practices planned. Although the Monitor indicated that it was not conducting additional stop audits, it emphasized the importance of supervision. *See id.* at 133. Supervisors must consistently review stop reports for completeness and accuracy, and management personnel must implement reliable practices for

inspecting video footage, for the success on the street to be lasting. *Id.* For this reason, the Parties will continue to develop plans to assess these practices. Future review of supervisory practices will allow NPD to demonstrate that supervisors are consistently reviewing video footage, objectively completing stops reviews, and ensuring that officers are properly documenting stops. And if audits discover failures or deficiencies in supervision, NPD will be made to act.

Given the positive trends and NPD's implementation efforts, the Parties agree that NPD has demonstrated compliance with Paragraphs 25–28 and 43 of the Consent Decree and those paragraphs should be terminated. The Parties also recognize the importance of effective supervision and data collection, which will be critical components of future evaluations of compliance with the provisions of the Consent Decree related to supervision.

B. Community Engagement

1. Consent Decree Requirements

To address the breakdown of community trust, the Consent Decree requires NPD to give the Newark community a voice in setting public safety priorities. Among other things, NPD must provide training on the benefits and means to achieve effective community engagement. ECF 5, at ¶ 14. NPD must also assess whether its deployment practices support community engagement, *id.*, at ¶ 15, and assign two officers to each precinct to identify and address community priorities, *id.*, at ¶ 16. NPD also must implement mechanisms to measure the effectiveness of community engagement efforts, *id.*, at ¶ 17, and seek and respond to community input about Consent Decree implementation, *id.*, at ¶ 19.

2. Implementation and Assessment of Consent Decree Requirements

Newark has taken significant steps to enable the community to participate in defining public safety problems and building solutions. As part of this process, and consistent with the

Consent Decree, the City has invested in community-led programs to complement NPD's traditional law enforcement efforts. Some of these programs involve partnership with NPD. Others focus more broadly on the root causes of violence in Newark neighborhoods, such as poverty or lack of access to behavioral health services. In June 2020, following the murder of George Floyd, the City created the Office of Violence Prevention and Trauma Recovery to oversee these efforts. The City headquartered the Office in NPD's former First Precinct, the site of the 1967 Newark Rebellion.³

The Consent Decree recognizes that durable public safety requires engaging the people who are closest to the problem – Newark citizens who experience crime and violence firsthand. For that reason, it is appropriate to consider the City's programs together with NPD's programs when determining whether NPD has “engage[d] constructively with the community to promote and strengthen partnerships” and achieve lasting public safety, as the Consent Decree envisions. *Id.* at 10. It is also appropriate to consider public safety outcomes, such as the significant decrease in crime.

Community Engagement Training. As required by Paragraph 14, NPD developed training curriculum and lesson plans related to community engagement, with technical assistance from the Monitor. Since March 2019, NPD has required all officers to complete annual community engagement training. NPD's community engagement training was initially developed by the Virginia Center for Policing Innovation, with input from the United States, the Monitor, the New Jersey Institute for Social Justice, and members of the community. *See, e.g.*, ECF 188-1, at 9. The Monitor found NPD in compliance with community engagement training requirements across

³ The Mayor and City Council allocated 5 percent of the Public Safety budget to fund the Office of Violence Prevention and Trauma Recovery. City of Newark: Office of Violence Prevention & Trauma Recovery: Strategic Plan at 9, <https://www.newarknj.gov/departments/ovptr>.

multiple training records audits beginning in 2020. *See, e.g.*, ECF 225-1, at Appendix C, ECF 275-1, at Appendix C.

Staffing Allocation and Personnel Development. Paragraph 15 requires NPD to assess and revise its staffing and deployment practices to support community policing and problem-solving initiatives. Since the Consent Decree was entered, NPD has opened three new police precincts, in Upper Vailsburg, Roseville, and Downtown Newark, which allows for greater engagement in those communities. NPD also instituted a Community Focus Division, staffed by 26 officers who conduct foot and motor patrols in areas designated by NPD leadership to address community concerns and trending crime patterns. The City has implemented many programs to address the root causes of crime and violence in Newark neighborhoods, including programs that do not solely involve law enforcement officers. These programs include Hope One Mobile Outreach, a mobile outreach unit staffed by NPD officers and outreach professionals that provides addiction and recovery services. *See, e.g.*, Exhibit A, at 3, 5, 163, 175-76. The ARRIVE Together Program (Alternative Responses to Reduce Instances of Violence and Escalation) pairs NPD officers with a certified mental health screener when responding to individuals experiencing a mental health crisis, and conducts follow up with individuals following crises. *Id.* at 5, 165. The Newark Community Street Team is staffed by outreach workers and high-risk interventionists who provide support to crime survivors and mediate on-going disputes to help prevent violence and retaliation. And as required by Paragraph 16, NPD has assigned two Community Service Officers to each precinct since 2016.

Measuring Effectiveness of Community Engagement. Paragraph 17 requires NPD to establish systems to ensure the community has a voice in setting public safety priorities. NPD holds regular community meetings at which residents share their views, and NPD has also used

community surveys to receive feedback about NPD services.⁴ At NPD's weekly COMSTAT meetings, Precinct Commanders are required to share updates on community engagement and discuss the breadth, extent, and effectiveness of their community partnerships, problem-solving strategies, and outreach. The Office of Violence Prevention and Trauma Recovery has likewise created systems to enable community to shape public safety efforts, such as its community engagement and advisory group. Furthermore, NPD has prepared Quarterly Community Engagement Reports since 2018, as required by Paragraph 18. And NPD has conducted many town hall meetings to seek input from community stakeholders on the implementation of the Consent Decree. *Id.* at, 24-37. The City and NPD have deployed significant resources toward improving relationships with the community. Newark's significant decrease in crime is a positive outcome that suggests these efforts have been effective.

Transparency Policy. Consistent with Paragraph 21, in February 2019 and again June 2020, NPD updated General Order 13-03, *Transparency Policy*, regarding collecting and making available data related to stop reports, use of force reports, internal affairs data, and the identities of officers who commit serious disciplinary offenses. The Monitor found the policy to be provisionally compliant with the Consent Decree in October 2021, ECF 245-1, at 178. The parties agree that the updated policy satisfies the requirements of Paragraph 21. NPD has established a website to provide these data to people who are interested. Although NPD has struggled with data collection and will continue to improve its data systems pursuant to paragraphs 156 – 163, it has consistently shown a commitment to publishing the available data.

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⁴ As part of the Consent Decree, the Independent Monitor conducted community surveys, and NPD has continued the practice in 2023. *See* ECF 42-1, at 123-69, 171-300; ECF 66-3, 66-5, 66-6; ECF 158-1, at 52-123, 125-73; ECF 165-1, at 71-144, 159-214; and ECF 208-1, at 64-218.

The City and NPD's community engagement efforts demonstrate how far Newark has come from the enforcement-first mindset that resulted in the constitutional violations described in the Findings Report. Since the inception of the Consent Decree, Newark has placed more attention and resources on outreach and providing alternative services within the community. From traditional programs like Coffee With a Cop and the Police Explorer programs, to more innovative ones like the Hope One Mobile Outreach Team, the ARRIVE Together program, and the Newark Community Street Team, Newark should be credited for developing a multifaceted approach to public safety that prioritizes building community relationships.

C. Retaliatory Arrests and Force

1. Consent Decree Requirements

The Consent Decree requires NPD to provide training on First Amendment protections, ECF 5, at ¶ 55, prohibits officers from detaining or arresting – or threatening to detain or arrest – onlookers or bystanders for engaging in First Amendment protected activity, *id.*, at ¶ 56, prohibits officers from taking law enforcement action against a bystander with few exceptions, *id.*, at ¶ 57, and requires officers to allow people to observe and record law enforcement activities without threats, intimidation, detention, or arrest from NPD officers, *id.*, at ¶¶ 58–61. The Consent Decree also prohibits NPD from seizing, destroying, or coercing a bystander into relinquishing recorded sounds or images of officers performing law enforcement duties except in very limited circumstances. *Id.*, at ¶ 62. In those limited circumstances where an officer has a reasonable belief that a bystander captured a recording of critical evidence related to a felony, NPD may only seize the sounds or images for as long as necessary to obtain a lawful search warrant, subpoena, or court order for them. *Id.*

2. *Implementation and Assessment of Consent Decree Requirements*

NPD has made considerable improvements to ensure that officers respect of the First Amendment. By September 2021, NPD had completed the required policy revisions through General Order 18-14, *Consensual Citizen Contacts and Investigatory Stops* and General Order 18-12, *First Amendment Right to Observe, Object to, and Record Police Activity* and provided officers with an 8-hour block of training on the policies.

The Monitor assessed potentially retaliatory practices in four audits from 2021 to 2023:

The First Stop Audit. As described above, the Monitor reviewed 197 stops made by NPD officers between October 1, 2019, and December 31, 2019, and found NPD officers complied with the Fourth Amendment 92.9 percent of the time. *See* ECF 254-1, at 4. In conducting this assessment, the Monitor also looked for whether any of the incidents involved potentially retaliatory practices. The Monitor found no such instances.

The Second Stop Audit. In assessing officer conduct between April 1, 2022, and May 31, 2022, the Monitor reported that “NPD officers routinely demonstrated an understanding of policies and legal principles relating to First Amendment rights and protections for bystanders who observe and record police activity.” *See* ECF 346-1, Appendix G, at 131.

The First and Second Arrest Audits. In two audits of NPD’s arrest practices issued in November 2022 and October 2023, the Monitor reviewed samples of 201 and 225 arrests, respectively. (*See* ECF 311-1, at 11-13; ECF 351-1, at 16). The Monitor noted in both audits that NPD officers “demonstrate[d] a strong understanding of policies and legal principles relating to First Amendment rights and protections for bystanders who observe and record police activity.” Indeed, in the second arrest audit, the Monitor found NPD substantively compliant with the

Consent Decree provisions in 223 of 225 arrests, or 99.1 percent of incidents reviewed. *See* ECF 351-1, at 16.

There are other positive outcomes as well. Like many cities across the country, Newark experienced large protests following the murder of George Floyd in May 2020. While some city police departments responded with aggressive tactics, including significant force and mass arrest of protesters, the Monitor noted that “NPD’s response to Newark protestors was of a distinctly different character than that observed in other cities. NPD officers marched alongside protestors, as community leaders helped ensure the demonstrations remained peaceful.” ECF 197-1, at 8. The Monitor also stated that, in its response to the protests, “NPD—and the City of Newark—differentiated itself from police departments across the nation by the manner in which it engaged with protestors, and also from its own history of violent responses to protests . . .” *Id.* This approach was effective. As widely reported, at protests where more than 12,000 people took to Newark’s streets in May 2020, NPD officers made no arrests, and the City experienced minimal property damage or violence, even when crowds demonstrated outside NPD’s First Precinct—the central location of protests over police brutality during the 1967 Newark Rebellion.⁵ NPD’s approach to these protests provides more evidence that its officers have made commendable progress in this area.

Given these outcomes, demonstrated by the Monitor’s audits and the practical application of NPD’s policies during day-to-day encounters or large-scale protests, the Parties believe that NPD has addressed the substantive issues outlined in the Findings Report relating to First Amendment protections, and seek to terminate Paragraphs 55 through 62 of the Consent Decree.

⁵ Tracey Tully and Kevin Armstrong, *How a City Once Consumed by Civil Unrest Has Kept Protests Peaceful*, THE NEW YORK TIMES (June 1, 2020), <https://www.nytimes.com/2020/06/01/nyregion/newark-peaceful-protests-george-floyd.html>.

D. Theft and Property

1. Consent Decree Requirements

The Consent Decree requires NPD to undertake comprehensive efforts to prevent officer theft. In particular, it requires NPD to overhaul its policies and procedures for the intake, storage, and release of property, to conduct periodic inspections of the property room, and to immediately correct any deficiencies. ECF 5, at ¶¶ 109–111. These remedies are intended to ensure that NPD safeguards property and evidence, and that NPD takes steps to prevent theft from occurring.

2. Implementation and Assessment of Consent Decree Requirements

NPD has made considerable improvements to its systems for handling property and evidence. In 2019, NPD updated its policies and procedures in accordance with the Consent Decree and it continues to provide training on those policies. NPD no longer relies on outdated methods of cataloging evidence and property. In 2019, NPD implemented a new computerized, bar-code-based system for tracking evidence and property at every stage – from the intake and processing of the property at a precinct, to the transfer of the property to a modern and secure facility.

The Monitor has completed two audits of NPD’s property and evidence practices:

The First Property and Evidence Audit. In its first audit report, issued in December 2021, the Monitor evaluated 149 property and evidence items from May 1, 2021, through June 30, 2021. The Monitor found 99.3 percent compliance with respect to NPD’s “system-to-shelf” procedure – the Monitor confirmed that for 148 out of 149 events, NPD had stored the property or evidence in the secure location documented in its tracking system. The Monitor could locate 398 of 399 individual pieces of property or evidence encompassed by its sample of 149 events. This included all firearms, narcotics, currency, and arrestee property.⁶ The Monitor also found that NPD properly

⁶ NPD later located the one piece of evidence that the monitor could not find during the audit.

documented the property of arrestees taken into NPD custody and complied with all the controls required by policy.

The Second Property and Evidence Audit. The Monitor reached a similar conclusion in its second property and evidence audit in 2023, finding 100 percent system-to-shelf compliance for 143 events in a sample covering May 1, 2022, through June 30, 2022. NPD improved its property intake procedures, such as requiring two officers sign off on property documents and restricting access to property rooms.

In August 2023, attorneys for the United States conducted a site visit of the Municipal Arrest Processing Section and the evidence storage location and interviewed officers involved in processing evidence and property. During the site visit, NPD personnel showed familiarity with property/evidence procedures and demonstrated how they work in practice, providing further support of NPD's progress in this area. The United States also confirmed the presence of cameras and limitations on access, among the security measures required by Paragraph 110 of the Consent Decree.

In light of the Monitor's findings and the United States' observations, the Parties believe that NPD has met the Consent Decree's substantive requirements for property and evidence and therefore seek to terminate these requirements.

E. In-Car and Body-Worn Cameras

1. Consent Decree Requirements

The Consent Decree requires NPD to implement various systems, including body-worn and in-car cameras, to "increase officer accountability, improve NPD legitimacy in the community, and augment NPD's records of law enforcement activities." ECF 5 at 38. The Consent Decree requires NPD to equip all patrol cars with in-car cameras, and to require all patrol officers to wear

body-worn cameras to record their encounters with members of the public.⁷ The Consent Decree further requires NPD to develop a robust body-worn camera policy that addresses, among other things, requirements for activating cameras, documenting reasons that an encounter that otherwise should have been recorded was not recorded, a download and retention protocol, random review of videos, and review of all incidents involving use of force or consent searches. *Id.* at ¶ 104.

2. Implementation and Assessment of the Consent Decree Requirements

When NPD began the work of implementing the Consent Decree, it did not have a body-worn camera program. *See* ECF 31, at 13. Using funds obtained from the Justice Department and a donation from a corporate vendor, NPD began a body-worn camera pilot program in its Fifth Precinct in May 2017. ECF 122-1, at 5. Since that time, the City, and NPD have worked diligently to expand the use of cameras throughout NPD and implement the camera-related provisions of the Consent Decree:

- NPD developed policies for in-car and body-worn cameras as required by the Consent Decree. *See* ECF 122-1, at 3. The policies were initially finalized and approved on June 5, 2018. *Id.* *See also* General Order 18-05, *Body Worn Cameras*; In-Car Camera policy, General Order 18-06, *In-Car Cameras*.
- NPD began rolling out body-worn cameras in May 2017. By October 2017, it had “equipped 427 body-worn cameras and 65 in-car cameras, representing full deployment in the First, Second, Fourth and Fifth Precincts, as well as to a number of officers who are not assigned to a specific Precinct.” ECF 135-1, at 46.

⁷ The Consent Decree also requires NPD to develop a policy for any exceptions to this rule – the policy must designate cars and personnel who will not be equipped with cameras or who will be equipped with concealed cameras. (¶ 103); *See* Body Worn Cameras policy, NPD G.O. 18-05; In-Car Camera policy, NPD G.O. 18-06.

- NPD developed and delivered a training for all officers using cameras on the requirements of its camera policies. ECF 122-1, at 4. By August 2019, the Monitor reported that all relevant NPD officers had received the training. ECF 158-1, Appendix E.

The Monitor has conducted five audits of NPD's in-car or body-worn cameras from 2019 to 2023, to assess whether officers complied with NPD policies and the Consent Decree:

The First Body-Worn Camera Audit. The Monitor first assessed NPD's use of body-worn cameras in 2019. ECF 182.1, Appendix E. Reviewing over 300 videos from nearly 200 incidents that took place between May 1 and June 30, 2019, the Monitor evaluated whether NPD officers activated and deactivated their cameras appropriately, notified members of the public they were recording, and accurately categorized each recording in accordance with policy requiring them to select classifications within NPD's video system that include categories like calls for service, motor vehicle, or pedestrian stops, frisks or searches, and arrests. *Id.* at 2, 8. The Monitor found NPD officers complied with the activation requirements in 90.7 percent of incidents, deactivation requirements in 96.6 percent of incidents, and categorization requirements in 95 percent of incidents. *Id.* at 3. But the first audit found compliance with requirements to notify persons being recorded in only about 78.0 percent of incidents. *Id.*

The Second Body-Worn Camera Audit. The Monitor audited NPD's use of body-worn cameras again in 2021, using the same method to review over 250 videos associated with 131 incidents that occurred between June 1 and June 30, 2021. ECF 275-1, Appendix B, at 4. The audit found NPD officers complied with the activation, deactivation, and categorization requirements in 95.1 percent, 100 percent, and 98 percent of incidents, respectively. *Id.* at 3. The Monitor continued to find that some officers did not comply with the notification requirement. Officers notified the public of the recording in 78.6 percent of incidents. *Id.* at 3.

The Third Body-Worn Camera Audit. In the Monitor's third BWC audit, the Monitor reviewed 220 videos from 181 incidents that occurred between June 1 and June 30, 2022. ECF 311-1, Appendix E, at 2, 5. Because NPD had established compliance related to activation, deactivation, and classification, the Monitor only reviewed body-worn camera videos in the third audit for compliance with the notification requirements. The Monitor found that officers complied with notification requirements in 84.6 percent of incidents reviewed, an improvement of almost six percentage points. *Id.* at 5.

The First In-Car Camera Audit. In 2021, the Monitor assessed NPD's use of cameras mounted inside NPD patrol cars. Looking at over 160 videos from incidents that took place in between June 1 and June 30, 2021, the Monitor evaluated whether in-car cameras were activated and deactivated according to NPD policy and, when officers transported people in NPD vehicles, whether video and audio of the transport was available for review. ECF 275-1, Appendix B, at 8. The Monitor found that NPD officers complied with deactivation requirements 100 percent of the time, and activation requirements almost 84.3 percent of the time. The Monitoring Team also inspected 26 vehicles at the Third and Fifth Precincts and found that only one vehicle was not equipped with an in-car camera system, meaning that 96.2 percent of vehicles were compliant with the Consent Decree's requirements. *Id.* at 9–10.

The Second In-Car Camera Audit. In its second audit of in-car camera systems, the Monitor reviewed 190 videos from incidents that occurred between June 1 and June 30, 2022. ECF 311-1, Appendix E, at 2, 8. The Monitor again found that officers appropriately de-activated the recording in 100 percent of incidents. *Id.* at 8. NPD improved its compliance regarding activation by almost 10 percentage points, to 93.7 percent compliance. *Id.* And, when reviewing a sample of incidents in which officers transported a person in custody, the Monitor found in-car audio and video was

available in 92.9 percent of cases. *Id.* The Monitor notified the Parties in September 2023 that “NPD is in full and substantial compliance with the [in-car camera] requirements of the Consent Decree.” Ex. B (Letter from Peter Harvey to the Parties dated Sept. 4, 2023, at 2).

Based on the effective rollout of NPD’s camera policies and trainings, and the results of the audits, including evidence of continued improvement in the use of cameras, the Parties believe it is appropriate at this time to terminate the body-worn and in-car camera requirements of the Consent Decree.

F. Policies and Training

1. Consent Decree Requirements

The Consent Decree requires NPD to “develop comprehensive and agency-wide policies that are consistent with and incorporate all substantive requirements of” the Consent Decree. ECF 5, at ¶ 5. Policies must be consistent with policing best practices, *id.*, at ¶ 6, readily accessible to all personnel, *id.*, at ¶ 8, and NPD must review all policies annually.

The Consent Decree also requires NPD to provide at least 40 hours of in-service training each year, *id.*, at ¶ 9, an initial training on the requirements of the Consent Decree, *id.*, at ¶ 10, and training on all new policies, *id.*, at ¶ 11. NPD must maintain complete training records for all officers, *id.*, at ¶ 12.

2. Implementation and Assessment of Consent Decree Requirements

During the first two years of the Consent Decree, NPD worked collaboratively with the Monitor and the United States to write and obtain approval for all 13 policies required by the

Consent Decree. ECF 122-1, at 1. The Monitor noted that the policies “were developed transparently, with input from the Newark community.” *Id.*

Similarly, in collaboration with the Monitor and the United States, NPD has developed new trainings consistent with the requirements of the Consent Decree. Shortly after entry of the Consent Decree, NPD conducted the required training on the requirements of the Consent Decree. ECF 122-1, at 4. NPD has worked with subject-matter experts to develop the substantive trainings required by the Consent Decree *see id.* (describing the development of a community-oriented policing training); ECF 135-1, at 46 (describing retaining a former Essex County Assistant prosecutor to deliver training on Stops). The Monitor has confirmed that NPD officers have received the required training. In its most recent audit in 2020, the Monitor found that 97 percent of relevant NPD personnel had taken the bias-free policing training and passed the post-training assessment or received remedial training. See ECF 275-1 at 5–6. The Monitor also found that “[a]ll training records and materials reviewed by the Monitoring Team were accessible and maintained in a satisfactory manner.” ECF 275-1 at 6.

Based on NPD’s successful implementation of the Consent Decree’s requirements related to policies and training, the Parties agree it is appropriate to terminate those requirements from the Consent Decree. The Parties agree that they will continue to work collaboratively to review, revise, and implement policies and trainings as needed to ensure full and effective compliance with the remaining provisions of the Consent Decree.

III. CONCLUSION

Since the entry of the Consent Decree, NPD has worked collaboratively with the United States and the Monitor to implement the requirements of the Consent Decree and has made significant progress to ensure it provides the citizens of Newark with effective and constitutional

policing. While important work remains to be done to bring NPD in full compliance with all of the Consent Decree, the Parties agree it is appropriate at this time to recognize the progress that NPD has made and terminate the following paragraphs from the Consent Decree:

- ¶¶ 5–8, regarding Policy Review and Revision;
- ¶¶ 9–12, regarding Training;
- ¶¶ 14–19 and 21–24, regarding Community Engagement;
- ¶¶ 25–28, regarding Investigatory Stops and Detentions;
- ¶ 43, regarding Stop/Search/Arrest Training;
- ¶¶ 55–62, regarding First Amendment Right to Observe, Object to, and Record Officer Conduct;
- ¶¶ 103–104, regarding In Car and Body Worn Cameras; and
- ¶¶ 105–110, regarding Theft and Property.

The Parties continue discussions related to how best to evaluate the remaining provisions of the Consent Decree and are developing plans for monitoring that will effectively ensure the people of Newark will enjoy fully constitutional policing, while identifying efficiencies. We anticipate sharing those plans with the Court in the coming months.

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Respectfully submitted,

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