Case No. 25-30053

In the United States Court of Appeals for the Fifth Circuit

UNITED STATES OF AMERICA
Plaintiff-Appellee,

v.

CITY OF NEW ORLEANS
Defendant-Appellant.

On appeal from the United States District Court,
Eastern District of Louisiana, No. 2:12-CV-01924,
the Honorable Susie Morgan

JOINT MOTION TO DISMISS THE APPEAL, VACATE THE ORDER, AND REMAND FOR DISMISSAL FOR MOOTNESS

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required here because, under the fourth sentence of Fifth Circuit Rule 28.2.1, the parties—as "governmental" parties—need not furnish a certificate of interested persons.

/s/ Andrew G. Braniff
ANDREW G. BRANIFF

INTRODUCTION

This case involving the 2013 Consent Decree over the New Orleans Police Department (NOPD) has finally reached its long overdue end. There is no longer an Article III case or controversy, and on limited remand, the District Court (at the United States' request) has dissolved the Consent Decree. This case (including the appeal) is moot. Accordingly, the parties jointly move to dismiss the appeal, vacate the order on appeal, and remand with instructions to dismiss the case as moot.[1]

BACKGROUND

In 2012, the United States filed a Complaint alleging that the City of New Orleans and the NOPD engaged in a pattern or practice of conduct that violated the Fourth and Fourteenth Amendments of the Constitution, as well as Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. *See* Order and Reasons, ROA.2132. In 2013, the District Court entered the Consent Decree proposed by the Parties. *Id*. Over the last

[1] When the District Court dissolved the Consent Decree, it "retain[ed] jurisdiction until the invoices of the court-appointed Consent Decree Monitor have been paid in full." Dist. Ct. ECF 866 at 1 n.3. In the event that this Court grants this motion and remands for the District Court to dismiss the case as moot, the Parties do not object to the District Court's resolving the Monitor's final monthly invoice within 30 days of that remand.

twelve years, the joint efforts of the City, NOPD, the United States, the court-appointed Monitor, and the District Court have established new NOPD policies, training, supervision, discipline and audit procedures.

In August 2022, the City moved to terminate the Consent Decree pursuant to Rule 60(b)(5) (the "2022 Motion"). ROA.12430. The United States opposed that motion at the time. ROA.13990. The District Court declined to rule on the City's 2022 Motion for over two years and, instead, pressured the City to negotiate a new agreement (the "Sustainment Plan"). ROA.21556. The City complied under protest. Eventually, the City moved to enroll additional counsel from the Louisiana Attorney General's Office because it was persuaded by the Louisiana's Attorney General's legal opinion that the City was entitled to dissolution without any new agreement. ROA.21516. The City believed that the Louisiana Attorney General's offer to provide her unique experience with institutional-reform litigation free of charge would greatly benefit the cash-strapped City.

On January 14, 2025, the District Court denied the City's 2022 Motion, the City's motion to enroll additional counsel, and approved the Sustainment Plan as a court order. ROA.21556. The Sustainment Plan

added injunctions to those of the Consent Decree to move toward termination by "allowing [the City] to enter into the two-year 'Sustainment Period' called for by the Consent Decree." ROA.21543. This appeal followed.

After the City filed its opening brief, the United States agreed that Rule 60(b)(5) dissolution was proper and asked the District Court for an indicative ruling on terminating the Consent Decree and the Sustainment Plan. Dist. Ct. ECF 853-1 at 1-2. The District Court indicated that it would grant that relief if this Court would remand. Dist. Ct. ECF 854.

In October, a panel of this Court granted a limited remand for the District Court to implement its indicative ruling. 5th Cir. ECF 93. On remand, the parties filed a new joint motion to dissolve (the "2025 Motion"). Dist. Ct. ECF 861. On November 19, 2025, the District Court granted the 2025 Motion, dissolving the Consent Decree. Dist. Ct. ECF 866.

ARGUMENT

I. THE COURT SHOULD DISMISS THE APPEAL AS MOOT, VACATE THE JANUARY 14 ORDER UNDER *MUNSINGWEAR*, AND REMAND WITH INSTRUCTIONS TO DISMISS THE CASE AS MOOT.

There is no longer an Article III case or controversy here. The parties now agree the Consent Decree should be dissolved and final judgment rendered. The District Court, for its part, has dissolved the Consent Decree. Dist. Ct. ECF 866. The entire case, including this appeal, are thus moot. Accordingly, the Court should dismiss this appeal as moot and follow its "general[]" *Munsignwear* practice to "vacate the judgment and remand for dismissal." *Murphy v. Fort Worth Indep. Sch. Dist.*, 334 F.3d 470, 471 (5th Cir. 2003).

The Supreme Court's and this Court's "*Munsingwear* practice is well settled." *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023); *Voice of the Experienced v. LeBlanc*, No. 25-30322, 2025 WL 2481382, at *3 (5th Cir. Aug. 28, 2025) (quoting *Acheson Hotels*, 601 U.S. at 5). That practice of vacating an order on appeal when the case becomes moot "is commonly utilized in precisely this situation to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41 (1950). That practice "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." *Voice of the Experienced*, 2025 WL 2481382, at *3

(quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 22–23 (1994)).

"The point of vacatur is to prevent an unreviewable decision 'from spawning any legal consequences,' so that no party is harmed by what we have called a 'preliminary' adjudication." *Camreta v. Greene*, 563 U.S. 692, 713 (2011) (quoting *Munsingwear*, 340 U.S. at 40–41). The opposite "would certainly be a strange doctrine that would permit a plaintiff to obtain a favorable judgment, take voluntary action that moots the dispute, and then retain the benefit of the judgment." *Azar v. Garza*, 584 U.S. 726, 729 (2018) (citations omitted).

The *Munsingwear* doctrine is founded on the constitutional limits of Article III to "adjudicate only actual, ongoing cases or controversies." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). As the Supreme Court explained, "Article III denies federal courts the power to decide questions that cannot affect the rights of litigants in the case before them[.]" *Id.* (cleaned up). "To sustain [Article III] jurisdiction in the present case, it is not enough that a dispute was very much alive when suit [or the appeal] was filed[.]" *Id.* at 411. For this reason, courts cannot opine on moot questions. *See Calderon v. Moore*, 518 U.S. 149, 150 (1996).

The January 14 Order is the quintessential candidate for *Munsingwear* vacatur. The "general[]" rule is that, "where the appellee has caused the case to become moot, [a court of appeals] vacate[s] the district court's judgment to prevent the appellee from insulating a favorable decision from appellate review." *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 122 (2d Cir. 2001); *see Staley v. Harris County*, 485 F.3d 305, 312 (5th Cir. 2007) (en banc) (adopting "the '*Russman* approach'"). But "where the appellant has caused the mootness, [this Court] may dismiss the appeal without vacating the district court's judgment." *Staley*, 485 F.3d at 312 (quoting *Russman*, 260 F.3d at 122).

Here, the City did not cause this case to become moot. Since 2022, the City relentlessly has sought termination of the Consent Decree and final judgment of dismissal. *See e.g.*, ROA.12430. The United States originally opposed (ROA.13990), and the District Court agreed (ROA.21542). After the City appealed the January 14 Order and filed its opening brief, the United States agreed to terminate the Consent Decree based on new empirical data and reports from the court-appointed monitor. Dist. Ct. ECF 853. The District Court (again) agreed and,

through the indicative-ruling-and-limited-remand process, has now dissolved the Consent Decree (Dist. Ct. ECF 866), thus eliminating the need for the Sustainment Plan and the City's additional counsel in the first place.

The "three equitable factors" for vacatur "from *Russman*" are present here: (1) the City did not "obtain full relief in the district court, and on appeal, before the opposing party took actions mooting the case," (2) no "party [has] assert[ed] outright that its actions mooting the case were only temporary," and (3) the January 14 Order "ha[s] a greater effect on non-parties to the litigation." *Staley*, 485 F.3d at 312.

1. The City did not obtain full relief in either the District Court or on appeal before the District Court dissolved the Consent Decree. On limited remand, the parties asked the District Court for relief from both the Consent Decree and the order adopting the Sustainment Plan. Dist. Ct. ECF 853. The District Court granted only the first. Dist. Ct. ECF 866. With the Consent Decree gone, along with it went the legal justification for the Sustainment Plan's add-on injunctions required (according to the District Court) to usher in "the two-year 'Sustainment Period' called for

by the Consent Decree." ROA.21543. Since there is no longer a Sustainment Period, there should not be a Sustainment Plan.

Likewise, the January 14 Order's denial (at no party's request) of the City's and the State's right to have the Louisiana Attorney General represent the City as additional counsel continues to collaterally harm both the City and the State. *Id.* The denial of (a) the City's right to select counsel of its choosing and (b) the State's right to assist its political subdivisions in complex federal litigation should not prejudice their rights in other matters just because this Court never had the opportunity to review those issues.

2. No "party [has] assert[ed] outright that its actions mooting the case were only temporary." *Staley*, 485 F.3d at 312. This is not a case of voluntary-cessation mootness. The *Plaintiff* here agreed to termination based on new empirical data and reports from the court-appointed monitor. Dist. Ct. ECF 853. And the District Court granted that permanent relief on that basis. Dist. Ct. ECF 866.

3. The January 14 Order in this structural-reform case "ha[s] a greater effect on non-parties to the litigation." *Staley*, 485 F.3d at 312–13 (collecting institutional-reform and public-interest cases). That Order

is very similar to orders other courts have vacated under "the *Russman* approach"—such as an order holding "that prison failed to provide inmates with constitutionally adequate access to the law library and ordered changes in the library's policies"—and therefore is not "fact and party specific." *Id.* (discussing *Dilley v. Gunn*, 64 F.3d 1365, 1372 (9th Cir. 1995)). Accordingly, *Munsingwear* vacatur of the January 14 Order is in order.

CONCLUSION

Because there is no longer an Article III case or controversy, this case is moot. Accordingly, the Court should dismiss the appeal, vacate the January 14 Order, and remand with instructions to dismiss the case as moot.

Respectfully submitted,

Dated: December 17, 2025

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CERTIFICATE OF SERVICE

I certify that on December 17, 2025, I electronically filed the foregoing notice with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Andrew G. Braniff
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CERTIFICATE OF COMPLIANCE

The attached JOINT MOTION TO DISMISS THE APPEAL, VACATE THE ORDER, AND REMAND FOR DISMISSAL FOR MOOTNESS does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 27(d)(2)(A). The motion was prepared using Microsoft Office Word for Microsoft 365 and contains 1726 words of proportionally spaced text. The typeface is 14-point Century Schoolbook font.

/s/ Andrew G. Braniff
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Date: December 17, 2025