

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
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
MONITOR’S COMPLIANCE STATUS
REPORT AND MEMORANDUM IN
SUPPORT OF THE CITY OF SEATTLE’S
MOTION TO DECLARE IT IN FULL AND
EFFECTIVE COMPLIANCE WITH THE
CONSENT DECREE**

(Noted on Motion Calendar for
October 20, 2017)

I. INTRODUCTION

After much work over more than five years, the City of Seattle has reached a significant milestone in complying with the Consent Decree. As the Court is aware, the United States and the City of Seattle began compliance efforts as soon as the Court approved the Decree in September 2012.¹ As set forth in greater detail below, the City of Seattle has successfully put in place policies that require

¹ On July 27, 2012, the parties entered into both a Consent Decree and a simultaneous Memorandum of Understanding (hereinafter “MOU”). Per its terms, the MOU expired on or about July 27, 2015. Throughout, the United States has acted to comply with its obligations under the Consent Decree and MOU through the Department of Justice, Civil Rights Division, in Washington, D.C., and the United States Attorney’s Office, in Seattle (hereinafter “DOJ”).

1 constitutional policing and trained its officers on those policies. The net result is that SPD's use of
 2 force, stops, and related data show that it has complied with all of the terms of the Decree, and has
 3 eliminated the pattern or practice of unconstitutional policing that led to DOJ's investigation and
 4 findings.² The United States has come to this conclusion because of the ten assessments conducted
 5 by the Monitor – assessments that covered all of the requirements of the Consent Decree. The United
 6 States respectfully submits that the City of Seattle has successfully met its obligations under the first
 7 phase of the Consent Decree, and thus supports the City's Motion to Declare It in Full and Effective
 8 Compliance with the Consent Decree (hereinafter "the City's Motion").³ With the Court's continued
 9 oversight, we look forward to the next phase of our work with all involved to ensure the City continues
 10 to comply as required under the Decree.
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13 **II. BACKGROUND ON THE CONSENT DECREE, ITS IMPLEMENTATION** 14 **AND THE ASSESSMENTS**

15 **A. The Fundamental Requirements of the Consent Decree**

16 In July 2012, the Parties agreed to resolve DOJ's allegations that SPD engaged in a pattern or
 17 practice of unconstitutional policing through a Consent Decree that was approved by this Court in
 18 September of that year.⁴ See Dkt. No. 3-1 and 13. The Consent Decree mandated changes to SPD
 19 policies, practices, and training with the goal of ensuring constitutional policing that protects officers,
 20 provides public safety, and has the community's confidence. In order to evaluate whether these changes
 21 have been made, the Consent Decree sets forth a two-phase evaluation of SPD's efforts:
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- 24 • First, an evaluation of whether or not SPD (a) has incorporated the Consent Decree's

25
 26 ² A large measure of credit for this change goes to the diligent and on-going work of the Seattle Police Department
 (hereinafter "SPD") – both its rank and file officers, and the command staff.

27 ³ In this brief, the United States takes no position on the issues raised in *City of Seattle v. Trump, et al.*, Case No. 2:17-
 cv-00497 (W.D. Wash. filed March 29, 2017), or the City of Seattle's compliance with 8 U.S.C. § 1373.

28 ⁴ The filing with the Court was styled as a Settlement Agreement, but because it is an enforceable order of the Court, we
 refer to it throughout as a Consent Decree.

1 requirements into policy and training, and (b) has carried them out in practice -- at
 2 which point SPD can be found in “full and effective compliance” (“Phase I”). *See*
 3 Dkt. No. 3-1 at ¶¶ 184, 186.⁵

- 4 • Second, an evaluation of whether or not SPD has “held” those reforms for at least two
 5 years -- at which point it can move to terminate the Decree (“Phase II”). *Id.* at ¶ 229.

6 The only question that the City has put before the Court in its motion is whether the City has
 7 satisfied the requirements of Phase I of the Consent Decree. The answer is driven by ten assessments
 8 conducted by the Monitor. Before addressing the results of those assessments, the following provides an
 9 overview on how the Parties reached this point in this case.

10 **B. The Implementation Process Leading up to the Ten Assessments**

11 Beginning in early 2013, with the assistance and oversight of both the Monitor and DOJ, SPD
 12 drafted and revised policies and procedures, developed training programs, and set up the structures of
 13 accountability mandated by the Consent Decree. Consistent with the Consent Decree (and the MOU),
 14 the Community Police Commission (hereinafter “CPC”) also had the opportunity to provide input into
 15 this process.
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17 Specifically, beginning in early 2013, and continuing through May of this year, SPD completed
 18 the following policies required by the Decree, with input from DOJ, the Monitor, and the CPC, each of
 19 which was approved by the Court:
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- 21 • Use of Force (hereinafter “UOF”) (Dkt. No. 107; revised at Dkt. No. 204)
- 22 • Bias-Free Policing and *Terry* Stops (Dkt. No. 116; revised at Dkt. No. 205)
- 23 • Crisis Intervention Training (hereinafter “CIT”) (Dkt. No. 120; revised at Dkt. No.
 24 209)
- 25 • Early Intervention System (Dkt. No. 123; revised at Dkt. No. 202)
- 26 • Office of Professional Accountability (hereinafter “OPA”) (Dkt. No. 156; revised at
 27 Dkt. No. 256)

28 ⁵ The City could also demonstrate compliance with the Decree through the use of outcome assessments. *See* Dkt. No. 3-1, at ¶¶ 186-190, 230.

1 The United States independently reviewed each of these policies to ensure they met Consent
2 Decree requirements. These policies were developed and reviewed with the assistance of nationally-
3 regarded police-practices experts retained by the United States, the Monitor and/or the CPC. These
4 experts were selected based on their work in analogous jurisdictions, expertise in the issues, both locally
5 and nationally, and their track record in assisting law enforcement agencies, among other factors.

7 Thereafter, SPD worked to develop training that would promote the implementation of each of
8 these policies, assisted by DOJ, the Monitor, and the CPC. The DOJ, exercising its independent
9 enforcement obligation, reviewed and commented on the plans for each training program. DOJ also
10 audited many of the programs, including by way of example, the following:
11

- 12 • UOF Phase 1 Training Courses between June 18 and 19, 2014
- 13 • Search and Seizure Training in July 2014
- 14 • Basic and Advanced CIT on September 29 and 30 and November 12, 2014
- 15 • Tactical De-escalation Training on May 12, 2015
- 16 • Supervisor Training (Day 1) on August 2, 2015
- 17 • Rapid Intervention Tactics on September 4, 2015

17 Like the policies themselves, these training programs were developed with the assistance of
18 nationally and locally recognized police-practices experts retained by one of the Parties, or the Monitor.
19 More importantly, SPD ensured that its nearly 1300 sworn officers participated in this training in an
20 orderly and systematic way beginning in 2014, and continuing through the present.

21 In short, over the span of five years, the City “incorporated” the requirements of the Decree into
22 its policies and training programs. *See* Dkt. No. 3-1 at ¶ 184. After this important work, the only
23 remaining question – but the most important of all – was whether these efforts had resulted in the City’s
24 compliance with the Decree, or as the Decree describes it, whether the requirements of the Decree were
25 being “carried out in practice.” *Id.*
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1 **C. The Ten Assessments**

2 In September 2014, the Parties and the Monitor began discussing how systematically to evaluate
 3 whether the Consent Decree required policies and training were being “carried out in practice” and *how*
 4 to “define and measure ‘full and effective compliance.’” *See* Declaration of J. Michael Diaz, Exhibit A
 5 (one page briefing document prepared for the initial meeting in September 2014 between the Monitor and
 6 the Parties). As a result, “compliance work groups” were set up including members of the Monitoring
 7 Team, and DOJ and City attorneys. These work groups met six times in 2014 and 2015, with the purpose
 8 of identifying: (1) all the material requirements of the Consent Decree; and (2) how to determine
 9 compliance with each of them, including (a) what data should be gathered, (b) who should gather and
 10 review that data, (c) when individual assessments and audits⁶ should occur, and (d) how to work out any
 11 disputes. *See* Declaration of J. Michael Diaz, Exhibit B (sample agenda of a compliance workgroup
 12 meeting in October 2014). The Third Year Monitoring Plan (Dkt. No. 195), filed on March 17, 2015,
 13 grew out of these collaborative workgroup meetings and thus enumerated the areas the audits would
 14 cover, and the process that would be used for what became the ten assessments.⁷

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 18 Each assessment started with a rigorous discussion between the Parties and the Monitor about
 19 how to conduct the necessary work and what data to consider. Important throughout was the need to
 20 collect a significant quantity of data that reflected SPD’s work over an extended period of time, to ensure
 21 the assessments could effectively and credibly address whether the requirements of the decree were being
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25 ⁶ The United States agrees with the City that the assessments completed in this case were fully compliant with both the
 26 “compliance reviews and audits” and “outcome assessments” referenced in the Decree. *See* Dkt. No. 3-1, at ¶¶ 183-190.

27 ⁷ The Third Year Monitoring Plan described 15 assessments and, while each substantive assessment was in fact conducted,
 28 some of the assessments were collapsed into combined filings, which explains why only 10 were ultimately filed. For
 example, the UOF reporting and investigation assessments were filed as one assessment in September 2015 (Dkt. No. 231),
 rather than as four separate filings; similarly, the qualitative and quantitative use of force assessments were submitted to
 the Court in one filing (Dkt. No. 383), rather than three.

1 carried out in practice and, as “outcome assessments,” whether any patterns of unconstitutional policing
2 still existed. For example, the Third Year Monitoring Plan describes how the assessment on Type I force
3 reporting was to be conducted:

- 4 • the Monitoring Team would provide a draft methodology, including a proposed
5 protocol that individual Monitoring Team members would use to assess each Type I
6 event, and a description of the data to be reviewed;
- 7 • the Parties would confer and agree on that methodology;
- 8 • the City would provide the data including UOF reports agreed to by the Monitoring
9 Team and Parties;
- 10 • the Monitoring Team and the United States would conduct separate simultaneous
11 reviews of that data; and
- 12 • the Monitor and the Parties would confer on the results of those analyses.

13 Dkt. No. 195 at 32-33; *see also* Dkt. No. 231 at 20 (“The methodology used by the Monitoring Team,
14 and summarized here, is consistent with accepted best practices for evaluating use of force reports and
15 investigations employed to evaluate use of force reports and investigations in other jurisdictions.”).

16 Under this approach, as the Monitor conducted each of his assessments, the United States
17 independently reviewed the same issues and data, so that it could independently assess SPD’s progress
18 under the Consent Decree, and contribute meaningfully to the ultimate conclusion of each assessment.
19 As a result, as the Monitor has reported, the ten assessments were collaborative, systemic reviews, “across
20 both a substantial period and a significant number and scope of discrete cases, incidents, or instances,”
21 intended to “formally gauge whether SPD is where it needs to be in complying with the Decree.” Dkt.
22 No. 231 (First Systemic Assessment) at 8-9.

23 The ten assessments were conducted and completed from March 2015 to June 2017. In all ten
24 assessments, the Monitor found the City in initial compliance with the requirements of the Decree, and
25 the United States independently verified the results of these assessments and concurred in the Monitor’s
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1 determination of Consent Decree compliance.⁸

2 **III. ARGUMENT**

3 **A. The Court Should Grant the City's Motion for Full and Effective Compliance.**

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5 The results of the Monitor's ten assessments, along with the United States' independent
6 verification of those assessments, demonstrate that the City's Motion should be granted. As set forth
7 above, when the Parties and the Monitor designed the ten assessments, they intended for them to
8 systematically and thoroughly evaluate SPD's compliance with all its obligations under the Decree. *See*
9 Dkt. No. 231 (First Systemic Assessment) at 4 ("Collectively, these assessments will cover every area
10 of the Consent Decree") (emphasis added); *see also* City's Motion at 7 (collecting citations). From 2015
11 to 2017, the Monitor and the Parties conducted the assessments, and reassessments where appropriate,
12 and the Monitor eventually found the City in compliance with all of the requirements of the Consent
13 Decree. *See* City's Motion at 7-8.

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16 The Monitor's findings of "initial compliance" provide the Court with a rigorous and reliable
17 basis for finding the City in full and effective compliance with the Consent Decree. All ten
18 assessments are based on data that reflect not just a single moment in time, but SPD's operations on a
19 day-in and day-out basis. As a result, they confirm precisely what the Court is required to consider –
20 whether the City has fully complied with the Decree and, alternatively, whether there continues to be
21 a pattern or practice of unconstitutional policing. Moreover, the United States verified the results of
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25 ⁸ On September 24, 2015, the Monitor initially found that the City was not yet in compliance for Type II Force Investigation
26 and Review, and the United States concurred in that result. On January 27, 2017, this issue was reevaluated by the Monitor
27 after the City had taken further steps to implement the requirements of the Consent Decree, and that later reevaluation
28 found the City in compliance with the requirements of the Consent Decree on those issues. The United States agreed with
that reevaluation. Additionally, it is important to note that several of the assessments were not intended to evaluate
compliance with a specific term of the decree, as much as to provide the Court and the community at large context for the
changes taking place at SPD. *See, e.g.*, Dkt. No. 263 (Public Confidence Assessment) at 5 ("Nor is it the purpose of this
assessment to determine compliance with specific requirements under the Consent Decree.").

1 each of the assessments based on its independent obligation to ensure compliance with the Consent
 2 Decree. The DOJ specifically:

- 3 • Evaluated the Monitoring Team’s draft methodology (including the proposed protocol
 4 and evaluative instrument) used to conduct each assessment of compliance.
- 5 • Evaluated the most appropriate data to be reviewed to determine whether compliance was
 6 achieved.
- 7 • Conferred and collaborated with the Monitor and the City on the methodology, protocols
 8 and instruments for determining whether compliance had been achieved.
- 9 • Most importantly, conducted a separate parallel review of the selected data with
 10 nationally- and locally-recognized subject matter experts.
- Conferred and collaborated with the Monitor and the Parties on the results of those
 analyses.
- Reviewed and commented on various drafts of the Monitor’s assessment reports.

11 In short, DOJ engaged actively in every step of the assessment process to independently determine
 12 whether the City was in compliance with the Decree.

13 Finally, in addition to its role in the assessments, DOJ continually met with and heard from
 14 organizations and individual members of the greater Seattle community about their views on the
 15 reform process. This was in addition to its bi-weekly attendance at Community Police Commission
 16 meetings to hear from community members and leaders there. These organizations included advocacy
 17 and social services organizations, the SPD’s own demographic and precinct-based advisory councils,
 18 and young people from across the City. Those meetings have given DOJ (a) direct feedback from the
 19 community that it can take into account in assessing SPD’s progress under the Decree, and (b) the
 20 opportunity to provide community members the most current information about the status of the
 21 Decree.
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25 **B. The “Outstanding Elements” in the Monitor’s Report Do Not Undermine His
 26 Compliance Findings in Each of the Ten Assessments.**

27 The United States agrees with the City that the “outstanding elements” that the Monitor describes
 28 in the Compliance Status Report are not barriers to finding full and effective compliance and should be

1 considered as part of the Phase II assessment of whether the City has sustained compliance with the
2 Decree. *See* City’s Motion at 13-22. Many of the “outstanding elements” were known to the Monitor
3 and the United States at the time that the assessments were conducted, and the Monitor and the United
4 States nevertheless concluded that the City was in compliance with the Decree.
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6 Although the Monitor previously found the City in “initial compliance” -- albeit with some
7 areas of improvement -- he now claims these same areas of improvement are barriers to compliance.
8 This does not withstand scrutiny. In his First Systemic Assessment, the Monitor made clear how he
9 would distinguish between issue areas that were in compliance and those that were not:
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11 “Where the results of one of the Monitor’s independent assessments indicate that SPD has
12 **not** yet reached ‘initial compliance’ with a particular area of the Consent Decree, the
13 reports on those assessments will typically make specific recommendations on what the
14 Department can do to get to where it needs to be.

15 Even where the Monitor believes that SPD **is** performing well [*i.e.*, finds initial
16 compliance], the reports may still outline recommendations for improvements that can
17 further strengthen the Consent Decree’s systems and objectives.”

18 Dkt. No. 231 at 9 (emphases added). Other than as to the Type II use of force assessment, the Monitor
19 did not make any findings of non-compliance in any of his assessments. Each of his now “outstanding
20 elements” were previously characterized as recommendations for improvements that can further
21 strengthen the Consent Decree’s systems and objectives, not impediments to a finding of compliance.
22 This important distinction was understood then, and should be recognized now.

23 To the extent that some of the “outstanding elements” address matters that arose after the
24 relevant assessment was completed, they are simply not relevant to the determination currently before
25 the Court and, instead, should be considered in assessing whether the City has sustained compliance
26 pursuant to Phase II of the Decree. The Parties and Monitor agreed, consistent with the Decree’s
27 express terms, that compliance would be measured through *systematic* assessments of mutually-
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1 | chosen samples of officer activity *over a specific timeframe*. Accordingly, an incident that occurred
2 | outside of that defined period, or one that is not indicative of a systemic issue, is not relevant to the
3 | findings from that period.
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5 | For example, the Monitor is right to identify the officer-involved shooting of Charleena Lyles
6 | as something that must be considered in the context of the Consent Decree. Questions about what
7 | happened, why it happened, and whether actions taken by SPD officers and command staff were
8 | consistent with policy and training are important ones. But that event, as tragic as it is, did not occur
9 | during the timeframe assessed and should not by itself undermine the systemic, data-driven
10 | assessments that the Monitor and DOJ have already completed. It can, however, impact the assessment
11 | of whether SPD has *sustained* reforms since the initial assessment, if it is indicative of systemic issues
12 | -- especially once SPD and others complete their review, and all the relevant facts are known. The
13 | United States will carefully evaluate all the facts related to SPD's actions with respect to the Lyles
14 | shooting and its investigation of the same in determining whether the City has sustained compliance
15 | with the Decree, and expects that the Monitor will do the same.
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18 | **C. Once The Court Finds Full and Effective Compliance, the City Has The**
19 | **Burden to Demonstrate Sustained Compliance.**

20 | The United States agrees with the City that during Phase II of the Consent Decree compliance
21 | process the burden will be on the City to demonstrate that SPD has sustained compliance with Decree for
22 | at least two years. *See* City's Motion at 4-5; *see also* Dkt. No. 3-1 (Consent Decree) ¶ 230; Declaration
23 | of J. Michael Diaz, Exhibit C at 2-3 (Letter to Merrick Bobb dated January 8, 2015) (discussing the
24 | City's burden). To demonstrate its ongoing ability to self-evaluate and sustain the reforms required
25 | by the Consent Decree, the City must produce rigorous, data-driven self-assessments demonstrating
26 | that SPD is continuing to comply with the requirements of the Decree, and those assessments must be
27 |
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1 independently verified by the Monitor and the United States. *See* Dkt. No. 3-1 (Consent Decree), ¶
 2 230; *see also* Declaration of J. Michael Diaz, Exhibit C at 2-3. If the Court finds that those assessments
 3 of sustained compliance demonstrate that the City has maintained compliance with the terms of the
 4 Consent Decree for at least two years, the Consent Decree or portions thereof may then be terminated.
 5 *See* Dkt. No. 3-1 (Consent Decree), ¶¶ 229, 230.

7 But that is not the issue before the Court today. The United States agrees with the City that if
 8 the Court concludes that SPD is in full and effective compliance with the Consent Decree, it should
 9 order the Parties and the Monitor to develop a framework for fulfilling their responsibilities during the
 10 Phase II sustainment period. This framework should be provided to the Court as part of a Sixth Year
 11 Monitoring Plan no later than January 1, 2018.⁹

13 **IV. CONCLUSION**

14 For the foregoing reasons, the United States respectfully requests that the Court grant the City's
 15 Motion to Declare It in Full and Effective Compliance with the Consent Decree.

18 Respectfully submitted this 13th day of October, 2017.

20 For the UNITED STATES OF AMERICA:

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s/ Timothy D. Mygatt
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27 ⁹ The City also proposes that the Parties and the Monitor consider amendments to the Consent Decree. *See* City's Motion
 28 at 2, 6, & 12. The United States is open to considering any specific amendments the City proposes in accordance with
 Paragraphs 175 and 225 of the Decree.

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CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 2017, 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 13th day of October, 2017.

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