

DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2008-158
	)	
THE TERRITORY OF THE VIRGIN ISLANDS,	)	
and VIRGIN ISLANDS POLICE DEPARTMENT,	)	
	)	
Defendants.	)	
	)	

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**ATTORNEYS:**

**Marina Mazor, Esq.**  
 United States Department of Justice  
 Washington, D.C.  
*For the plaintiff,*

**Vincent Frazer, Attorney General**  
**Carol Thomas-Jacobs, Esq**  
 Virgin Islands Department of Justice  
 St. Thomas, VI  
*For the defendants.*

**ORDER**

**GÓMEZ, C.J.**

Before the Court is the motion of the plaintiff to amend the Consent Decree entered in this matter. The parties also jointly request the adoption of an action plan.

On March 23, 2009, the Court approved a Consent Decree in this matter (the "Consent Decree"). The Consent decree set forth various reforms to be implemented by the Government of the Virgin Islands and the Virgin Islands Police Department (collectively, the "Virgin Islands") in order to correct an

alleged systematic violation of constitutional rights through excessive force.

The Consent decree provided that

The Agreement will terminate five years after the effective date of the Agreement or earlier if the parties agree that the VIPD and the Territory are in substantial compliance with each of the provisions of this Agreement, and have maintained substantial compliance for at least two years.

(Consent Decree ¶ 103.)

For nearly a year after the Consent Decree was approved by this Court, little progress was made towards achieving substantial compliance. On October 1, 2010, the Court held a hearing in this matter, at which it urged the parties to submit interim deadlines for partial compliance with the Consent Decree. Thereafter, the parties agreed to some interim deadlines, which they compiled in the "Consent Decree Timetable." Specifically, the Consent Decree Timetable set forth several dates by which the Virgin Islands was to achieve compliance with the major provisions of the Consent Decree. On December 16, 2010, the Court adopted the Consent Decree Timetable and ordered the parties to comply with the deadlines therein.

On April 23, 2012, this matter came before the Court at a hearing. At that hearing, several representatives of the Virgin Islands Police Department (the "VIPD") testified. One member of

the Independent Monitoring Team, created pursuant to the Consent Decree, also testified. These witnesses largely agreed that the Virgin Islands had failed to achieve most, if not all, of the goals set forth in the Consent Decree Timetable. Although significant progress had been made, it was nonetheless clear from this testimony that the Virgin Islands would not be able to achieve and maintain substantial compliance for two years prior to the consent decree's expiration.<sup>1</sup>

In light of this evidence, the United States has moved to amend the Consent Decree. The Court heard arguments on this motion on July 26, 2012. The parties agreed that an extension of the Consent Decree is necessary to achieve the objectives of the Consent Decree. To that end, the Virgin Islands represented that they will be able to achieve substantial compliance on or before June 30, 2013.

At the conclusion of the July 26, 2012, hearing, the Court ordered the parties to jointly formulate an action plan, with concrete interim objectives for the Government of the Virgin Islands to meet on their way to substantial compliance. The Court further ordered that, after the parties have finalized the

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<sup>1</sup> The Court notes that the Consent Decree does not necessarily require two years of substantial compliance prior to its expiration. Notwithstanding that circumstance, as the Court has previously noted, it is clear that the United States contemplated a two-year period of substantial compliance. Indeed, the United States appears to have proceeded under this assumption throughout the pendency of this action.

joint action plan, the parties will jointly submit the action plan to the Court.

On August 30, 2012, the parties jointly submitted an action plan (the "Action Plan"). The Action Plan sets forth deadlines for reaching and maintaining substantial compliance with each and every provision of the Consent Decree that has not yet been satisfied. The Action Plan further provides that the Virgin Islands is to achieve substantial compliance by October 31, 2013. The parties now seek for the Court to approve the Action Plan and to amend the Consent Decree accordingly.

A court has the power to amend a consent decree under "(1) its inherent power to enforce compliance with its consent decrees; and (2) its inherent power to modify consent decrees." *Holland v. New Jersey Dep't of Corrs.*, 246 F.3d 267, 281 (3d Cir. 2001). A court's modification power "is long-established, broad, and flexible" and courts should apply "a flexible modification standard in institutional reform litigation . . . ." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 381 & n.6 (1992) (internal quotation marks omitted). It is well within the Court's inherent equitable powers to extend a consent decree. *See, e.g., Chrysler Corp. v. United States*, 316 U.S. 556, 562-64 (1942) (affirming the extension of a consent decree via the district court's exercise of its modification power); *Holland v. New Jersey Dep't of Corrs.*, 246

F.3d 267, 281 (3d Cir. 2001) (holding that district court had authority under either modification power or compliance enforcement power to extend a consent decree); *United States v. Local 359, United Seafood Workers*, 55 F.3d 64, 69 (2d Cir. 1995) (holding that "it was well within the district court's inherent power" to extend parts of a consent judgment decree as an exercise of the court's compliance enforcement power).

However, the Court's powers to enforce compliance or modify a consent decree are not without limits. "[A] court may use its compliance enforcement power to extend one or more provisions of a decree only if such compliance enforcement is essential to remedy the violation and thus provide the parties with the relief originally bargained for in the consent order." *Id.* at 283. (citing *EEOC v. Local 580*, 925 F.2d 588, 593 (2d Cir. 1991)). "[A] district court may modify a consent decree (in response to a request from a plaintiff) only upon making a finding that conditions have change so that the 'basic purpose of the original consent decree' has been 'thwarted,' meaning that 'time and experience have demonstrated' that 'the decree has failed to accomplish th[e] result' that it was 'specifically designed to achieve.'" *Id.* (quoting *Chrysler*, 316 U.S. at 562; *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 249 (1968)) (internal citations omitted).

Here, there is ample justification for extending the Consent Decree under either the Court's compliance-enforcement power or its consent-decree modification power. The parties do not dispute that they originally contemplated that the Virgin Islands would at least have the opportunity to reach and maintain substantial compliance for two years prior to the termination of the Consent Decree. It is likewise undisputed that the Virgin Islands has utterly failed to achieve substantial compliance, and cannot realistically do so until October of 2013, less than a year before the Consent Decree's current termination date.

Although a literal reading of Paragraph 103 of the Consent Decree may suggest otherwise, reading the Consent Decree as a whole, the Court finds that the basic purpose was to not merely reform the practices of the Virgin Islands with respect to excessive force, but to achieve successful, long-lasting reform. As such, the requirement of the Consent Decree, that the Virgin Islands reach and maintain substantial compliance for two years, cannot be disregarded. Reading the Consent Decree to require that the Virgin Islands only achieve substantial compliance for any length of time, or even not at all, prior to its termination, seems contrary to the parties clearly stated goals to achieve permanent institutional reform.

The Court thus finds that the Virgin Islands, by virtue of its failure to reach substantial compliance within two years of the termination date, is in violation of the Consent Decree. The Court further finds that the only means of remedying this violation is to extend the Consent Decree's duration. The Court further finds that the Virgin Islands' failure to reach substantial compliance by March of 2012 has so changed the circumstances that the basic purpose of the Consent Decree has been thwarted. The Court must therefore conclude that some modification of the Consent Decree is in order.

The Virgin Islands, while acknowledging that the Consent Decree must be extended, urges the Court to retain a fixed termination date. The Virgin Islands points to the fact that it has spent, to date, approximately \$3.1 million in its efforts to achieve compliance, over \$2 million of which has gone to pay the fees of a monitoring team tasked with overseeing the compliance efforts. The Court is not persuaded by the Virgin Islands' argument.

It is true that an inordinately large portion of the Virgin Islands' expenditures have gone towards paying the costs of monitoring. It is also true that those costs are only indirectly related to the actual substance of the Consent Decree. Those facts, however, do not justify permitting the Consent Decree to expire at a certain date, irrespective of whether Compliance has

been achieved. Indeed, to allow such an outcome would be to elevate form over substance and illogically undermine the very purpose of the Consent Decree.

The premises considered, it is hereby

**ORDERED** that the Action Plan, appended hereto and incorporated herein by reference is **ADOPTED**, and the parties shall comply with its terms; it is further

**ORDERED** that the Action Plan, appended hereto and incorporated by reference herein, shall be made part of the Consent Decree; it is further

**ORDERED** that the relevant portion of Paragraph 103 of the Consent Decree shall be **AMENDED** to read:

The Agreement will terminate two years after the VIPD and the Territory have achieved compliance with each of the provisions of this Agreement, and have maintained substantial compliance for at least two years.

s\ \_\_\_\_\_  
**CURTIS V. GÓMEZ**  
**Chief Judge**