

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

NO. 12-1924

CITY OF NEW ORLEANS

SECTION: “E” (2)

ORDER AND REASONS

Before the Court are the Objections to Rule to Show Cause (“Rule”) filed by the City of New Orleans (“City”).¹ The United States Department of Justice (“DOJ”) filed a Memorandum of Law in Opposition to the City of New Orleans’ Objections to the Court’s Rule to Show Cause.²

INTRODUCTION

It is axiomatic that district courts located within the Fifth Circuit are obligated to follow the precedents set by that court. In *U.S. v. Alcoa, Inc.*, the Fifth Circuit reiterated its long-held position that district courts have wide discretion to enforce consent decrees:

These cases reinforce the principle that district courts have the power and ordinarily must hold parties to the terms of a consent decree. . . . And by these cases, district courts have wide discretion to enforce decrees and to implement remedies for decree violations. . . . “[Once] the district court enters the settlement as a judicial consent decree ending the lawsuit, the settlement takes on the nature of a judgment.” . . . “Courts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt. Discretion . . . must be left to a court in the enforcement of its decrees.”³

Because the Rule is an exercise of the Court’s power to *enforce* the terms of the New Orleans Police Department Consent Decree, the City’s objection must be denied.

¹ R. **Doc. 734**. Although the City captioned the pleading as “objections,” the City makes only one objection—that the Court has amended the Consent Decree by making a material change to its terms.

² R. **Doc. 735**.

³ **533 F.3d 278, 284** (5th Cir. 2008) (first quoting *Ho v. Martin Marietta Corp.*, **845 F.2d 545, 548** (5th Cir. 1988)), (then quoting *Cook v. Ochsner Found. Hosp.*, **559 F.2d 270, 272** (5th Cir. 1977)).

BACKGROUND

On July 24, 2012, DOJ filed the complaint in this matter against the City, seeking declaratory and injunctive relief after an extensive investigation of the New Orleans Police Department (“NOPD”),⁴ pursuant to the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141 (“Section 14141”); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (the “Safe Streets Act”); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112 (“Title VI”).

On that same day, July 24, 2012, the City and DOJ filed a Joint Motion and Memorandum for Entry of Consent Decree.⁵ On September 14, 2012, the City and DOJ filed a Joint Supplemental Motion for Entry of Consent Decree incorporating certain agreed upon modifications to the Consent Decree.⁶ The Court approved the Joint Motion for Entry of Consent Decree, as amended, on January 11, 2013.⁷ In 2018, the parties prepared a restated and amended Consent Decree, incorporating all amendments approved by the Court through October 2, 2018. For the convenience and benefit of the public and the parties, the Court approved the Amended and Restated Consent Decree on October 2, 2018⁸ and filed the document in the record that same day.⁹

On or around November 9, 2022, the Public Integrity Bureau for the NOPD (“PIB”) opened an administrative investigation into Officer Jeffrey Vappie, a member of the NOPD Executive Protection Unit.¹⁰ In accordance with the terms of the Consent Decree, the court-appointed Consent Decree Monitor (“Monitor”), in cooperation with the Office

⁴ R. Doc. 1 at ¶¶ 1, 14-16.

⁵ R. Doc. 2.

⁶ R. Doc. 114.

⁷ R. Doc. 159.

⁸ R. Doc. 564.

⁹ R. Doc. 565.

¹⁰ R. Doc. 714-4.

of the Independent Police Monitor, monitored the PIB investigation.¹¹ Although the complaint initiating the PIB investigation centered on Officer Vappie's conduct, the Monitor's review focused on PIB's compliance with the Consent Decree in the course of the Officer Vappie investigation.¹²

Before the investigation was complete, on February 17, 2023, the Monitor sent an Immediate Action Notice¹³ to the Deputy Superintendent of the PIB calling to his attention several ongoing violations of the Consent Decree uncovered in the Monitor's review of the Officer Vappie investigation, including failure to provide close and effective supervision as required by the Consent Decree and failure to adopt policies and procedures that comply with the Consent Decree.¹⁴ The Monitor also noted a likely failure to conduct performance evaluations as required by the Consent Decree in light of the lack of close and effective supervision. The Monitor specifically stated, "Our opinions and recommendations relate only to larger policy/process issues that are unrelated to the forthcoming substantive findings of the Vappie PIB Investigation team."¹⁵ Although the Monitor described the issues as ones "NOPD should address right away,"¹⁶ NOPD did not respond to the Monitor and took no corrective action.

On March 10, 2023, PIB issued its Investigation Report on Officer Vappie.¹⁷ Interim Superintendent Michelle Woodfork approved the discipline imposed on Officer Vappie¹⁸ on June 14, 2023,¹⁹ and, to the Court's knowledge, Officer Vappie did not appeal

¹¹ R. Doc. 714-2.

¹² R. Doc. 714.

¹³ The fact that the Monitor sent an Immediate Action Notice to PIB supports the Monitor's position that its recommendations related to larger policy/process issues within PIB and not just the Officer Vappie investigation.

¹⁴ R. Doc. 714-3.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ R. Doc. 714-4.

¹⁸ Officer Vappie received two letters of reprimand. R. Doc. 735-3 at 140. (Depo. of Sanchez.)

¹⁹ Attachment A to this Order and Reasons.

the decision. In its review of the PIB Investigation Report, the Monitor identified multiple instances in which PIB failed to comply with the Consent Decree in the course of the investigation. Among other things, the Monitor found that PIB, in violation of the clear terms of the Consent Decree, did not include all allegations against Officer Vappie in the complaint intake form, specifically PIB did not include the allegation of payroll fraud. As a result, PIB also violated the Consent Decree by not fully investigating the payroll fraud allegation, not giving the payroll fraud allegation a disposition, and not documenting its analysis of the payroll fraud allegation. PIB also violated the Consent Decree by not applying the correct legal standard to all of its findings and not making a credibility determination regarding Officer Vappie.²⁰

The Monitor shared these and other findings with the parties and the Court in its May 3, 2023 Report (“Monitor’s PIB Report”).²¹ The City filed a response to the Monitor’s PIB Report but did not address the Monitor’s substantive findings, except to make conclusory statements that the Vappie investigation did not involve a serious misconduct complaint and that the violations of paragraphs 381, 382, 383, and 424 had been resolved.²²

Even after the Immediate Action Notice and the Monitor’s PIB Report, PIB did not acknowledge that it had violated the Consent Decree in the course of the Officer Vappie investigation in some or all of the ways identified by the Monitor and did not represent that it would correct any deficiencies. Instead, PIB ignored the Immediate Action Notice and has steadfastly denied, without support, that it has violated the Consent Decree in any way. In fact, in its written response to the Monitor’s Vappie Investigation Report, the

²⁰ The specific Consent Decree requirements violated are listed *infra* at pp. 8-11.

²¹ R. [Doc. 694](#).

²² R. [Doc. 697 at 3, 5-6](#).

City denied that violations of the Consent Decree had occurred and, as proof, asserted that the Officer Vappie investigation proceeded in just the same manner as any other investigation.²³ PIB has announced that it handles all investigations the same way it handled the Vappie investigation and that it intends to continue to do so, apparently even if the Monitor has found that its actions violate the Consent Decree.

The violations identified involve core components of the reform of PIB, such as including all factual allegations in the complaint intake form, fully investigating and reaching a disposition on all factual allegations, applying a preponderance of the evidence standard to all its findings, considering all evidence including circumstantial evidence, and making credibility assessments of all witnesses. The importance of these issues strikes at the core of the Consent Decree and go far beyond the significance of the Vappie investigation. In fact, in its investigation of the New Orleans Police Department that led to the entry of the Consent Decree, DOJ cited longstanding and entrenched practices of the NOPD and structural deficiencies in its systems and operations, including its failure to fully investigate allegations of misconduct,²⁴ as justification for the entry of the Consent Decree. The parties and the Court have consistently recognized the importance of the operations of PIB to reform of the NOPD.

After the PIB investigation of Officer Vappie was complete, the Monitor issued its June 15, 2023 Special Report on PIB's handling of the Vappie investigation (the "Monitor's Vappie Investigation Report"), noting that "the NOPD's response to the Monitoring Team's analysis raises serious concerns that we believe require the Court's immediate attention."²⁵ The Monitor identified PIB's violations of the Consent Decree

²³ R. Doc. 697.

²⁴ R. Doc. 1-1.

²⁵ R. Doc. 714 at 1.

and various NOPD policies and procedures in the course of the Vappie investigation. The Monitor also identified the City's refusal to share information and documents with the Monitoring Team, a clear violation of Consent Decree paragraphs 454, 470, and 472.

DOJ filed a response to the Monitor's Vappie Investigation Report;²⁶ in its Response, DOJ expressed its agreement with the Monitor's conclusions.²⁷ The City filed a response to the Monitor's Vappie Investigation Report.²⁸ Rather than respond to the Monitor's findings regarding violations of the Consent Decree, the City's response focused on particular facts relating only to the Vappie investigation and ad hominem attacks against the Monitor. Once again, PIB failed to acknowledge that it had violated any provisions of the Consent Decree and failed to express any intent to come into compliance.

The Monitor also raised concerns relating to the timeliness of PIB investigations and imposition of discipline in the Monitor's PIB Report, Vappie Investigation Report, 2022 Annual Report (published in 2023)²⁹, and 2023 First Quarter Report.³⁰ The Monitor, in the 2022 Annual Report, explained that the "central focus of the 2022 audit was to determine whether administrative investigations are being completed within times proscribed by the Consent Decree and NOPD policy."³¹ The Monitor also raised concerns about the timeliness of the City's notification to the complainant of the outcome of an investigation. The City and NOPD did not contest the Monitor's findings³² and, instead, stated that these paragraphs "are being addressed and have been addressed and the non-

²⁶ R. Doc. 715.

²⁷ *Id.* at 4.

²⁸ R. Doc. 718.

²⁹ R. Doc. 674.

³⁰ R. Doc. 702.

³¹ R. Doc. 674 at 50.

³² R. Doc. 697 at 5. The City's response did not include any discussion of the audit or its findings.

compliant nature reflects the audited period only and not our current compliance.”³³ At least the City acknowledged these violations, but its repeated but empty promises to correct the violations are no longer sufficient.

On Thursday, June 21, 2023, this Court held an in-court status conference to hear from the Monitor regarding its review of PIB’s investigative processes and its concerns about violations of the Consent Decree revealed in the course of the investigation into allegations against Officer Vappie.³⁴ At the status conference, the Monitor stated that the Monitor’s work on these issues was not a review of Officer Vappie but was a “review of PIB’s processes and procedures and how PIB undertook the investigation.”³⁵ The Monitor presented substantial evidence of violations by the City of Consent Decree paragraphs 399, 415, 414, 413, 454, 470, 472, 409, 419, 306, 313, 403, and 420.³⁶

RULE TO SHOW CAUSE

On July 21, 2023, the Court issued a Rule to Show Cause why the City should not be found to have violated eight provisions of the Consent Decree with respect to the conduct of Public Integrity Bureau (“PIB”) investigations and two provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.³⁷

The Rule is the result of substantial evidence presented by the Monitor in its Immediate Action Notice and the reports described above, as well as at the status

³³ *Id.* at 6. Despite the City’s repeated assurances that the timeliness of PIB investigations, its imposition of discipline, and the notification of complainants is being addressed, the Court has seen no evidence that these clear violations of the Consent Decree are being corrected. Instead, the violations remain with no resolution in sight.

³⁴ R. **Doc. 726**.

³⁵ *Id.* at p. 7.

³⁶ *See generally* R. **Doc. 726**.

³⁷ R. **Doc. 729**.

conference on June 21, 2023,³⁸ that the City and NOPD have violated all or portions of thirteen paragraphs of the Consent Decree.

The relevant portions of the Consent Decree paragraphs in question are italicized below:

Paragraph 399: *NOPD agrees to develop and implement a complaint classification protocol that is allegation-based rather than anticipated outcome-based to guide PIB in determining where a complaint should be assigned. This complaint classification protocol shall ensure that PIB or an authorized outside agency investigates allegations including:*

- a)** *serious misconduct, including but not limited to: criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft;*
- b)** *misconduct implicating the conduct of the supervisory or command leadership of the subject officer; and*
- c)** *subject to the approval by the Deputy Superintendent of PIB, allegations that any commander requests be conducted by PIB rather than the subject officer's District/Division.³⁹*

Paragraph 415: *The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:*

- a)** *"Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did not occur or did not involve the subject officer;*
- b)** *"Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;*
- c)** *"Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred; or*
- d)** *"Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate NOPD policies, procedures, or training.⁴⁰*

Paragraph 414: *The resolution of any misconduct complaint must be based upon the preponderance of the evidence. A misconduct investigation*

³⁸ See R. Doc. 726.

³⁹ R. Doc. 726 at 9-10.

⁴⁰ *Id.* at 15-16.

shall not be closed simply because the complaint is withdrawn or because the alleged victim is unwilling or unable to provide additional information beyond the initial complaint. In such instances, the investigation shall continue as necessary within the allowable investigation timeframes established under this Agreement to resolve the original allegation(s) where possible based on the evidence and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense shall not be the deciding factor as to whether an NOPD officer committed the alleged misconduct, nor shall it justify discontinuing the investigation.⁴¹

Paragraph 413: *In each investigation, NOPD shall consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations based upon that evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will NOPD disregard a witness' statement merely because the witness has some connection to the complainant or because of any criminal history. NOPD shall make efforts to resolve material inconsistencies between witness statements.*⁴²

Paragraph 454: *City and NOPD shall provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. The Monitor shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence. The Monitor shall provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Superintendent shall determine whether the additional investigation or modification recommended by the Monitor should be carried out. Where the Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing. The Monitor shall provide recommendations so that any further investigation or modification can be concluded within the timeframes mandated by state law. The Monitor may coordinate with the IPM in conducting these use of force and misconduct investigation reviews.*⁴³

⁴¹ *Id.* at 17-18.

⁴² *Id.* at 20-26.

⁴³ *Id.* at 26-31.

Paragraph 470: *To facilitate its work, the Monitor may conduct on-site visits and assessments without prior notice to the City and NOPD. The Monitor shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings. NOPD shall notify the Monitor as soon as practicable, and in any case within 12 hours, of any critical firearms discharge, in-custody death, or arrest of any officer.*⁴⁴

Paragraph 472: *City and NOPD shall ensure that the Monitor has full and direct access to all City and NOPD documents and data that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents or data protected by the attorney-client privilege. The attorney-client privilege may not be used to prevent the Monitor from observing reviews and trainings such as use of force review boards, or disciplinary hearings. Should the City and NOPD decline to provide the Monitor access to documents or data based on privilege, the City and NOPD shall inform the Monitor and DOJ that they are withholding documents or data on this basis and shall provide the Monitor and DOJ with a log describing the documents or data and the basis of the privilege for withholding.*⁴⁵

Paragraph 409: *All misconduct investigation interview recordings shall be stored and maintained in a secure location within PIB.*⁴⁶

Paragraph 419: *All investigation reports and related documentation and evidence shall be securely maintained in a central and accessible location until the officer who was a subject of the complaint has severed employment with NOPD.*⁴⁷

Paragraph 306: *NOPD supervisors shall be held accountable for providing the close and effective supervision necessary to direct and guide officers. Close and effective supervision requires that supervisors: respond to the scene of certain arrests; review each arrest report; respond to the scene of uses of force as required by this Agreement; investigate each use of force (except those investigated by FIT); review the accuracy and completeness of officers' Daily Activity Reports; respond to each complaint of misconduct; ensure that officers are working actively to engage the community and increase public trust and safety; and provide counseling, redirection, and support to officers as needed, and that supervisors are held accountable for performing each of these duties.*⁴⁸

⁴⁴ *Id.* at 31-33.

⁴⁵ *Id.*

⁴⁶ *Id.* at 33-36.

⁴⁷ *Id.*

⁴⁸ *Id.* 36.

Paragraph 313: *NOPD shall hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and supervisors identify and effectively respond to misconduct, as part of their performance evaluations and through non-disciplinary corrective action, or through the initiation of formal investigation and the disciplinary process, as appropriate.*⁴⁹

Paragraph 403: *All administrative investigations conducted by PIB shall be completed within the time limitations mandated by state law and within 90 days of the receipt of the complaint, including assignment, investigation, review and final approval, unless granted an extension as provided for under state law or Civil Service exemption, in which case the investigation shall be completed within 120 days. Where an allegation is sustained, NOPD shall have 30 days to determine and impose the appropriate discipline, except in documented extenuating circumstances, in which case discipline shall be imposed within 60 days. All administrative investigations shall be subject to appropriate interruption (tolling period) as necessary to conduct a concurrent criminal investigation or as provided by law.*⁵⁰

Paragraph 420: *Each misconduct complainant will be kept informed periodically regarding the status of the investigation. The complainant will be notified of the outcome of the investigation, in writing, within ten business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.*⁵¹

The Court also ordered the City to produce certain documents to assist the Court in evaluating whether the City has violated the paragraphs of the Consent Decree listed above:

1. Any policy, directive, or standard operating procedure that authorizes NOPD to not fully investigate or document all factual allegations of misconduct if the lead investigator makes an early determination that the allegation lacks merit.
2. Any policy, directive, or standard operating procedure that authorizes the City to not fully analyze and give dispositions to all allegations.
3. Policies, standard operating procedures, or other documentation that authorize the City to assign officers on administrative leave to the Orleans Parish Communications District, including concrete examples of when this has occurred previous to the Officer Vappie investigation.
4. The policy, directive, or standard operating procedure authorizing reassignment of officers on administrative leave back to their original duty

⁴⁹ *Id.* at 36-37.

⁵⁰ R. Doc. 694 at 30.

⁵¹ *Id.* at 32.

locations, and information regarding any event that occurred on or around December 21, 2022 that led to Officer Vappie being reassigned on that date.

5. The policy, directive, or standard operating procedure that authorizes the bureau to which an officer under investigation has been reassigned to then immediately further reassign that officer to a different duty location, including concrete examples of when this has occurred previous to the Officer Vappie investigation.
6. All paperwork regarding Officer Vappie's various reassignments over the course of his PIB investigation, and all policies, directives, and standard operating procedures that authorize the manner in which Officer Vappie's reassignments were handled.
7. The "old policies" that "loosely describe" the practice of PIB investigations being reviewed and approved by the Deputy Chief of PIB rather than the Superintendent.⁵²

On July 31, 2023, the City filed an emergency petition for a writ of mandamus to the United States Court of Appeals for the Fifth Circuit.⁵³ In its petition, the City argued that this Court had exceeded its authority with respect to the Consent Decree and requested that the Fifth Circuit vacate this Court's Rule to Show Cause and issue guidance to this Court concerning the limits of its jurisdiction.⁵⁴

On August 2, 2023, the Fifth Circuit denied the writ without prejudice and administratively stayed for fourteen days from the date thereof, to give the district court an opportunity to entertain any objections, requests for extensions, or motions for protective orders that the parties may wish to file in response to the Rule to Show Cause.⁵⁵

On August 7, 2023, the City filed its objection.⁵⁶ The City did not file any request for an

⁵² In its written response to the Monitor's Vappie Investigation Report, the City denied that violations of the Consent Decree had occurred and, as proof, asserted that the Officer Vappie investigation proceeded in just the same manner as any other investigation. Because of the assertions made by the City, including its representation that it conducts all investigations in the same manner it conducted the Officer Vappie investigation, a determination of whether the City is violating the Consent Decree must include an examination of whether, as the City repeatedly asserts, Officer Vappie was treated exactly as any other NOPD officer. R. [Doc. 697](#).

⁵³ *In re: City of New Orleans*, No. 23-30520 (5th Cir. July 31, 2023).

⁵⁴ *Id.* at [Dkt. No. 2](#).

⁵⁵ *Id.* at [Dkt. No. 14](#).

⁵⁶ R. [Doc. 734](#).

extension at that time⁵⁷ or file a motion for a protective order, presumably because the documents to be produced are neither voluminous nor confidential.

**THE COURT HAS JURISDICTION TO
ENFORCE THE CONSENT DECREE**

In the Court's original Order and Reasons approving the Consent Decree on January 11, 2013, the Court specifically retained jurisdiction over this matter, including the right to enforce the Consent Decree:

The Court retains jurisdiction over this matter, including but not limited to the right to interpret, amend and **enforce** the Consent Decree and to appoint a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure, until the final remedy contemplated by the Consent Decree has been achieved.⁵⁸

In *U.S. v. Alcoa, Inc.*, the Fifth Circuit reiterated its long-held position that district courts have wide discretion to enforce consent decrees:

These cases reinforce the principle that district courts have the power and ordinarily must hold parties to the terms of a consent decree. . . . And by these cases, district courts have wide discretion to enforce decrees and to implement remedies for decree violations. . . . “[Once] the district court enters the settlement as a judicial consent decree ending the lawsuit, the settlement takes on the nature of a judgment.”. . . “Courts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt. Discretion . . . must be left to a court in the enforcement of its decrees.”⁵⁹

The Supreme Court has “long recognized that a district court possesses inherent powers that are ‘governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition

⁵⁷ The City did file a request for clarification of the briefing schedule on August 16, 2023. R. **Doc. 737**. The Court granted the request. R. **Doc. 738**.

⁵⁸ R. **Doc. 159 at** p. 8 (emphasis added). This Order remains in effect.

⁵⁹ **533 F.3d 278, 284** (5th Cir. 2008) (first quoting *Ho v. Martin Marietta Corp.*, **845 F.2d 545, 548** (5th Cir. 1988)), (then quoting *Cook v. Ochsner Found. Hosp.*, **559 F.2d 270, 272** (5th Cir. 1977)).

of cases.”⁶⁰ The Fifth Circuit notes that one inherent power flowing from Article III of the U.S. Constitution is a court’s “power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’”⁶¹ “[T]his power fits most appropriately in the . . . second category of inherent powers[, which] encompasses those ‘necessary to the exercise of all others.’ For the most part, these powers are those deemed necessary to protect the efficient and orderly administration of justice and those necessary to command respect for the court’s orders, judgments, procedures, and authority.”⁶²

“[A] consent decree, although founded on the agreement of the parties, is a judgment.”⁶³ “[A] consent decree is a ‘settlement agreement subject to continued judicial policing.’”⁶⁴ “It is well-settled that a federal court has the inherent authority to enforce its own orders, including consent decrees agreed to by parties and approved by the Court.”⁶⁵ “[T]he [C]ourt has an independent duty to ensure that the terms of the decree are effectuated.”⁶⁶ “Exactly how a court should enforce and protect its orders is an issue largely left to the discretion of the court entering the order, so long as that discretion is exercised reasonably.”⁶⁷ District courts have the power to hold parties to the terms of a

⁶⁰ *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962) and citing *United States v. Hudson*, 7 Cranch 32, 34 (1812)).

⁶¹ *In re Stone*, 986 F.2d 898, 903 (5th Cir. 1993) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

⁶² *Id.* at 902–03.

⁶³ *United States v. City of Miami*, 664 F.2d 435, 439 (5th Cir. 1981) (Rubin, J., concurring) (citing *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975)).

⁶⁴ *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1017 (6th Cir. 1994) (quoting *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983)).

⁶⁵ *Chisom v. Jindal*, 890 F.Supp.2d 696, 710 (E.D. La. Sept. 1, 2012) (Morgan, J.) (citing *United States v. Alcoa, Inc.*, 533 F.3d 278, 287 (5th Cir. 2008)).

⁶⁶ *Sweeton v. Brown*, 1991 WL 181751, at *6 (6th Cir. Sept. 17, 1991) (quoting 10 CYCLOPEDIA OF FEDERAL PROCEDURE § 35.25 at 294 (3d ed. 1984) (citing *Stotts v. Memphis Fire Dep’t*, 679 F.2d 541 (6th Cir. 1982), *rev’d on other grounds sub. nom. Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984))); see also R. Doc. 565 at p. 122, ¶ 486 (imposing a duty on the Court to “ensure that the requirements of th[e] [Consent Decree] are properly and timely implemented”).

⁶⁷ *Chisom*, 890 F.Supp.2d at 711; see also *Alcoa*, 533 F.3d at 287 (“Discretion must be left to a court in the enforcement of its decrees.” (cleaned up)). ¹⁵ *Alcoa*, 533 F.3d at 286.

consent decree and have wide discretion to implement remedies for decree violations, including holding the parties in civil contempt.¹⁵

THE CITY'S ARGUMENTS ARE UNAVAILING

The Rule to Show Cause is not an amendment of the Consent Decree.

In the “Issue Presented” portion of its objection to the Rule, the City states that the Rule “directs that the PIB investigation of one officer will be used to determine NOPD’s compliance with the Decree instead of the outcome assessment and audit tests required by the Decree. . . . This is a material change to the Decree that is far more onerous and inequitable than the agreed upon terms of the Decree.”⁶⁸ “[T]he City again objects to the jurisdiction of the Court to unilaterally change the Decree and issue this Rule.”⁶⁹ Thus, the City’s only objection is that the Court has amended the Consent Decree.

The City highlights the references in the Court’s January 11, 2013 Order approving the Consent Decree to the Court’s continuing jurisdiction to *interpret*⁷⁰ and *amend* it.⁷¹ The City “objects to the jurisdiction of this Court to unilaterally change the Decree and issue this rule.”⁷² The Rule is not an amendment of the Consent Decree. The parties and the Court are well aware of the process for amending the Consent Decree. In fact, approximately 13 motions have been filed and granted to do just that.⁷³

As the Court understands it, the City’s argument is that the Court has made a material change to the Consent Decree by proposing to determine whether the Consent

⁶⁸ R. **Doc. 734 at 5-6.**

⁶⁹ R. **Doc. 734 at 17.**

⁷⁰ The City has not argued the Court is interpreting the Consent Decree. The PIB states that it is following the “plain language” of the Consent Decree.

⁷¹ *Id.* at 12. See note 13 (*emphasis added*).

⁷² *Id.* at 17.

⁷³ The City of New Orleans filed unopposed *ex parte* motions to amend the consent decree at R. Docs. 362, 494, 504, 519, and 620. The City of New Orleans and the United States of America filed joint motions to amend the consent decree at R. Docs. 335, 389, 467, 506, 530, 546, and 561. On October 2, 2018, an Amended and Restated Consent Decree was filed by the Court. R. **Doc. 565.** On March 8, 2022, the City of New Orleans filed an unopposed *ex parte* motion to amend the consent decree at R. **Doc. 620.**

Decree has been complied with based *solely* on the Vappie investigation. The City argues the Court is requiring “the City to show it should not be held in contempt of court based on a single investigation by PIB.”⁷⁴ This is a mischaracterization of the Rule which clearly states that the City must “show cause why it should not be found to have violated (1) the eight provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above, and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.”⁷⁵ The focus of the Rule is not the Officer Vappie investigation. The Court will not use this individual event to deem NOPD non-compliant with the Consent Decree and in contempt of court. The Rule will be decided based on the substantial evidence of non-compliance with specific provisions of the Consent Decree in the Monitor’s Immediate Action Notice,⁷⁶ the Monitor’s PIB Report,⁷⁷ the Monitor’s Vappie Investigation Report,⁷⁸ the Monitor’s 2022 Annual Report,⁷⁹ and the Monitor’s 2023 First Quarter Report,⁸⁰ as well as any evidence of compliance offered by the City or of non-compliance offered by DOJ.

The City incorrectly labels the Rule as an “investigation” based on one specific PIB investigation.⁸¹ The Rule is not an investigation into Officer Vappie’s actions or the discipline imposed on him.⁸² Officer Vappie’s disciplinary action was completed and discipline was imposed on June 15, 2023.⁸³ There is no longer an Officer Vappie

⁷⁴ R. Doc. 734 t 16.

⁷⁵ R. Doc. 729 at 11.

⁷⁶ R. Doc. 714-3

⁷⁷ R. Doc. 694.

⁷⁸ R. Doc. 714.

⁷⁹ R. Doc. 674.

⁸⁰ R. Doc. 702. It is likely many if not all of these violations have been included in other audits and reports, but those listed are the most recent examples.

⁸¹ R. Doc. 734 at 14, 16.

⁸² Nevertheless, a single incident may demonstrate a violation of the Consent Decree if the violation is purposeful. Otherwise, the City and NOPD could pick the cases in which it chooses to follow the Consent Decree and shield those in which it does not from scrutiny.

⁸³ See Attachment A.

investigation and no longer an open Officer Vappie disciplinary action. There is no reason for the Court to investigate Officer Vappie and no way for the Court to have an impact on the discipline imposed on him. The Officer Vappie investigation is relevant only because it revealed PIB's structural deficiencies leading to violations of the Consent Decree and, importantly, PIB has represented that it conducts all investigations in the same way it investigated Officer Vappie and *intends to continue to do so*. This is important because the violations identified by the Monitor involve core components of the reform of PIB, such as including all factual allegations in the complaint intake form, fully investigating and reaching a disposition on all factual allegations, applying a preponderance of the evidence standard to all its findings, failing to consider circumstantial evidence, and making credibility assessments of all witnesses. These issues strike at the core of the Consent Decree and go far beyond the significance of the Vappie investigation.

The purpose of the Court's Rule is to enforce the paragraphs of the Consent Decree identified by the Monitor as not being in compliance.⁸⁴ "The City acknowledges the equitable powers of the Court to enforce its judgement (sic), including this Decree."⁸⁵ The City does not dispute the Court's continuing jurisdiction to *enforce* the Consent Decree.

The Rule does not implicate Federalism Concerns.

The City argues that the Rule implicates sensitive federalism concerns.⁸⁶ As the City well knows, this argument is misplaced in the context of the City's objection to the Rule. Instead, federalism concerns come into play in the context of a Rule 60(b)(5) motion to terminate a consent decree because its enforcement is no longer equitable.⁸⁷ In

⁸⁴ R. Doc. 729 at 6, 10.

⁸⁵ R. Doc. 734 at 7.

⁸⁶ R. Doc. 734 at 21.

⁸⁷ The City has made these arguments in its pending Motion to Terminate the Consent Decree. R. Doc. 629-1.

Horne v. Flores,⁸⁸ cited by the City in its objection,⁸⁹ the Supreme Court explains that federalism concerns may justify termination of a consent decree under Rule 60(b)(5) but only if the consent decree has been implemented. “If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.”⁹⁰

In the context of a Rule 60(b)(5) motion to terminate a consent decree, the first step in the analysis is to determine whether there is an ongoing violation of federal law. The City has presented no evidence that there are no ongoing violations of federal law. Instead, the City, without support or explanation, claims it is “approximately 90% compliant with *every single subparagraph* the the Decree. . . .”⁹¹ Such a sweeping statement requires support.⁹² In reality, the Monitor’s Report covering the second quarter of 2023 documents extensive material violations, made worse when NOPD “(i) refused to acknowledge them, (ii) refused to engage in meaningful dialogue to remedy them, and (iii) represented that it intended to continue violating some of them.”

Furthermore, “several courts have held that federalism concerns do not prevent a federal court from enforcing a consent decree to which state officials have consented.”⁹³

CONCLUSION

If, as the City argues, the Court is determining the City’s compliance with the Consent Decree based on the PIB investigation of one officer, and this investigation does not reflect the true state of the City’s “institutional level”⁹⁴ of compliance, the City is free to avail itself of the offer made in note 44 of the Rule and repeated herein to assure the

⁸⁸ 557 U.S. 433, 447.

⁸⁹ R. Doc 734 at 21.

⁹⁰ 557 U.S. at 450.

⁹¹ R. Doc. 734 at 19.

⁹² R. Doc. 736 at 10.

⁹³ *Stone v. Ctr. V. Los Angeles Cnty. Metro. Transp. Auth.*, 263 F.3d 1041, 1050 (9th Cir. 2001).

⁹⁴ R. Doc. 734 at 18.

Court that, if there were any violations of the Consent Decree in the Officer Vappie investigation, they have been remedied and to produce to the Court the policies, training, and operational procedures in place to ensure that the City is and will continue to be in compliance with the Consent Decree.⁹⁵ The City's failure to do so, thus far, and its statements that PIB intends to continue conducting investigations in the same way it conducted the Officer Vappie investigation, raised the Court's legitimate concern and led to the entry of the Rule requiring the City to show cause why it should not be found to have violated the Consent Decree.

The New Orleans Police Department Consent Decree is an Order of this Court. This Court has an independent duty to ensure that the terms of its Order are effectuated in an expeditious manner. To preserve the procedures necessary to command respect for the Court's Order and its authority, the Court finds it necessary to deny the City's objection and to schedule a hearing on the Rule to Show Cause. Because of the delay resulting from the City's filing a writ of mandamus to the Fifth Circuit Court of Appeals, the Court will continue the date of the hearing on the Rule and the dates by which the parties must file pre-hearing memoranda and produce documents.

ORDER

The City is required to appear in Court on **August 31, 2023, at 2:00 p.m.**, to show cause why it should not be found to have violated (1) the provisions of the Consent Decree with respect to the conduct of PIB investigations, as set forth above, and (2) the provisions of the Consent Decree regarding timeliness of investigations, imposition of discipline, and notification of complainants.⁹⁶

⁹⁵ R. Doc 729 at 11.

⁹⁶ To the extent the City concedes it has violated any of these provisions of the Consent Decree listed above, see pp.7-10, supra, the City will not be subject to sanction so long as it has remedied the violation and produces the policies, training, and operational procedures put in place to ensure that future violations will not occur.

The City and DOJ may, upon notice to the Court by **August 25, 2023**, present live testimony at the hearing.

The City must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 25, 2023**, addressing the issues raised above and attaching the documents the City has been ordered to produce⁹⁷ and any additional documents the City wishes to rely on at the Show Cause hearing.

The DOJ must file a pre-hearing memorandum, not to exceed twenty-five pages excluding attachments, on or before **August 29, 2023**, addressing the issues raised above and attaching any documents it wishes to rely on at the Show Cause hearing.

A finding that the City has not shown cause why it should not be found to be in violation of these provisions of the Consent Decree may, after notice and hearing, result in the City being held in contempt of Court and sanctioned.

New Orleans, Louisiana, this 19th day of August, 2023.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

⁹⁷ See pp. 10-11, *supra*.



LaToya Cantrell
MAYOR

CITY OF NEW ORLEANS
DEPARTMENT OF POLICE

715 South Broad Street
New Orleans, LA 70119

"to protect and to serve"



Michelle M. Woodfork
SUPERINTENDENT

June 15, 2023

Officer Jeffrey Vappie
2411 Ramsey Drive
New Orleans, LA, 70131

RE: PIB Control Tracking Number: 2022-0513-R
Employee ID# 08913

Officer Jeffrey Vappie:

On Friday November 11, 2022, Captain Kendrick Allen of the Public Integrity Bureau was assigned this investigation by Public Integrity Bureau Deputy Chief Keith Sanchez. You were accused of violating the following policies:

V-1: Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source; to with NOPD Chapter 22.08 Police Secondary Employment Paragraph 32

V-2: Rule 3: Professional Conduct, Paragraph 1: Professionalism

V-3: Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty

The investigation revealed that Captain Kendrick Allen proved beyond a preponderance of evidence that you worked 18 hours in a 24-hour period on September 28, 2022. You also did not conduct yourself in a professional manner when you spent numerous hours alone with the Protectee outside of your regular tour of duty. This goes against the training and ethics of an Executive Protection member, so much so that other officers brought this to your attention and requested you to stop. The investigation also revealed you were not attentive to your duty as an Executive Protection Member when you attended the H.A.N.O meeting as a board member on two separate occasions, March 29, 2022 and August 30, 2022, while still on duty with the New Orleans Police Department.

Based on the preponderance of the evidence, Captain Kendrick Allen recommended the following dispositions:

V-1: Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source; to with NOPD Chapter 22.08 Police Secondary Employment Paragraph 32.....Sustained

V-2: Rule 3: Professional Conduct, Paragraph 1: Professionalism.....Sustained

V-3: Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty.... Sustained

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On Thursday, May 25, 2023, a Commander's Disciplinary Hearing was held by Captain Preston Bax, Captain Precious Banks and Captain Michael Glasser as it relates to the Pre-Disposition portion finding the allegations Sustained. However, a cover letter was authored by Captain Precious Banks indicating she does not concur with the disposition for V-1. It was determined you did work beyond the 16 hours and 35 minutes. However, as a member of the NOPD Executive Protection, overtime was expressly authorized in an email by former NOPD Deputy Chief Paul Noel on February 23, 2021. This email advised that "per the Superintendent the Mayors Security Detail can work overtime as necessary". Captain Precious Banks recommended the following disposition for the below violations of:

V-1: Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source; to with NOPD Chapter 22.08 Police Secondary Employment Paragraph 32.....Exonerated

These Rules/Chapters read as follows:

RULE 3; PROFESSIONAL CONDUCT, PARAGRAPH 1; PROFESSIONALISM

Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department

You violated this rule when you spent numerous hours alone with the Protectee outside of your regular tour of duty. This goes against the training and ethics of an Executive Protection member, so much so that other officers brought this to your attention and requested you stop.

RULE 4: PERFORMANCE OF DUTY

3. DEVOTING ENTIRE TIME TO DUTY

Employees shall not read, play games, watch television/movies, or otherwise engage in entertainment while on duty, except as may be required in the performance of duty, or by authority of their respective Bureau Chief. They shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty.

You violated this rule when you were not attentive to your duty as an Executive Protection Member when you attended the H.A.N.O meeting as a board member on two separate occasions, March 29, 2022 and August 30, 2022, while still on duty with the New Orleans Police Department.

Moreover, your conduct is contrary to the standards as prescribed by Rule IX, Section 1, paragraph 1.1, of the Rules of the Civil Service Commission for the City of New Orleans. This Rule prescribes:

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**RULE IX
DISCIPLINARY ACTIONS
MAINTAINING STANDARDS OF SERVICE**

Section 1.

1.1 When an employee in the classified service is unable or unwilling to perform the duties of his/her position in a satisfactory manner or has committed any act to the prejudice of the service or has omitted to perform any act it was his/her duty to perform, or otherwise has become subject to corrective action, the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service. The action may include one or more of the following: (a) termination from the service. (Amended January 21, 1988, effective February 1, 1988); (b) involuntary retirement. (Adopted June 10, 1982); (c) reduction in pay within the pay grade for the employee's classification, subject to the provisions of Rule IV, Section 3. A reduction in pay includes involuntary time away from work without pay, no matter how brief (e.g., involuntary leave without pay). (Amended September 27, 1990, amended February 17, 2014); (d) demotion to any position of a lower classification that the employee is deemed by the Appointing Authority and the Director to be competent to fill, accompanied by a reduction in pay which is within the pay grade range for the lower classification, subject to the provisions of Rule IV, Section 3. (Amended September 27, 1990); (e) suspension without pay not exceeding one hundred twenty (12) calendar days; (f) fine; (g) letters of reprimand as defined in amended 1. (Amended February 17, 2014); (Section 1.1. (a)-(f) and amended June 10, 1982, effective June 10, 1982, Section 1.1 (c) and (g), amended (February 17, 2014, effective March 1, 2014).

I approve the penalty recommended by the Captains Hearing Panel.

Therefore, in light of the above investigation, a review of any disciplinary record and due to the nature of your violations, you are hereby notified for the **SUSTAINED** violations of:

V-2: Rule 3: Professional Conduct, Paragraph 1: Professionalism.....Sustained/ Level A/1st Offense/ Letter of Reprimand.

Your penalty for this violation is a Letter of Reprimand.

V-3: Rule 4: Performance of Duty, Paragraph 3: Devoting Entire Time to Duty.... Sustained/ Level A/1st Offense/ Letter of Reprimand

Your penalty for this violation is a Letter of Reprimand.

This will serve as your official **Letter of Reprimand**.

You are advised that you may have the right to appeal this decision to the Civil Service Commission for the City of New Orleans within thirty (30) days from the date of this letter. Any such appeal must be in writing and received by the Civil Service Department, located at 1340 Poydras Street, Suite 900, New Orleans, Louisiana 70112, by close of business on the 30th day from the date of this letter.

You are also advised that any future violations of a similar nature may result in more severe disciplinary action taken by this office. A photocopy of this disciplinary letter will be retained in your Personnel file.

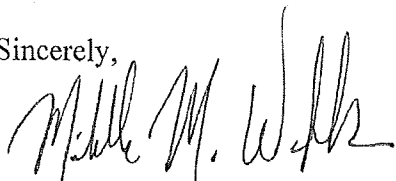
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Jeffrey Vappie

2022-0513-R

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Sincerely,



MICHELLE M. WOODFORK
Superintendent of Police

MMW/jr

cc: Superintendent's Office
Department of Civil Service
NOPD Personnel Office
NOPD Pension Board
Field Operations Bureau
Captain, Fourth District
Public Integrity Bureau

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