UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

Plaintiff,

V.

CITY OF NEW ORLEANS,

CIVIL ACTION NO. 2:12-CV-01924

SECTION E JUDGE SUSIE MORGAN DIVISION 2 MAG. DONNA PHILLIPS CURRAULT

Defendant.

UNITED STATES' RESPONSE TO THE COURT MONITOR'S REPORTS ON NEW ORLEANS POLICE DEPARTMENT'S INVESTIGATION INTO ALLEGATIONS AGAINST OFFICER JEFFREY VAPPIE

As directed in the Court's May 25, 2023 and June 6, 2023 Orders, the United States

submits this response to the Court's Monitor's Report on the New Orleans Police Department

(NOPD) Public Integrity Bureau's investigation into allegations against Officer Jeffrey Vappie

(PIB Vappie Investigation Report)¹ and Section VII.A of the Court Monitor's Report on the

Public Integrity Bureau (PIB Report),² also concerning the investigation of Officer Vappie.

I. BACKGROUND

On November 9, 2022, local news media published allegations that Officer Vappie, an

NOPD member assigned to the Mayor's executive protections detail, may have inappropriately

recorded his work hours and travel expenses.³ The news accounts suggested that Officer Vappie

¹ Doc. 714.

² Doc. 694.

³ See PIB Vappie Investigation Report at p. 1; see also Zurik, Lee, "ZURIK: NOPD investigating officer frequently inside Cantrell's city-owned apartment," Fox 8 Live, Nov. 9, 2022, available at <u>https://www.fox8live.com/2022/11/10/zurik-nopd-investigating-officer-frequently-inside-cantrells-city-owned-apartment/;</u> Outside the Office Series, available at <u>https://www.fox8live.com/news/investigate/lee-zurik/outside-the-office/</u>.

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may have been engaged in a personal relationship while on duty.⁴ NOPD's Public Integrity Bureau (PIB) opened an investigation of Officer Vappie that same day.⁵ On November 14, 2022, University of New Orleans Instructor Dr. Skip Gallagher further alleged that the executive protection detail was involved in "payroll fraud."⁶ As these events unfolded, the Court Monitor declined a request from City Council to investigate the allegations, but it informed the parties that it would be closely assessing the ongoing investigation to ensure compliance with the Consent Decree.⁷

Under the Consent Decree, NOPD is required to provide the Court Monitor with certain investigations "before closing the investigation or communicating the recommended discipline to the subject of the investigation."⁸ Those include investigations of "serious misconduct," which includes "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."⁹ After receiving the investigation, the Court Monitor shall review it, recommend further investigation if it determines the investigation is incomplete or the findings are not adequately supported, and provide written instructions for completing the investigation appropriately within the timeframes mandated by state law.¹⁰

During this investigation, the Court Monitor requested access to the ongoing investigation of Officer Vappie pursuant to Consent Decree Paragraph 454, as well as Paragraphs

⁴ See Outside the Office Series, available at <u>https://www.fox8live.com/news/investigate/lee-zurik/outside-the-office/</u>.

⁵ See Doc. 714, PIB Vappie Investigation Report at p. 1.

⁶ See Doc. 714, PIB Vappie Investigation Report at p. 5. The Court Monitor provided this email to NOPD on December 8, 2022 (*see id.*), though the issue was previously included in public news reporting and the Court Monitor's meetings with NOPD.

⁷ See Doc. 714, PIB Vappie Investigation Report p. 14.

⁸ Doc. 565, Consent Decree Par. 454.

⁹ Id.

¹⁰ Id.

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470 and 472, the general access provisions of the Consent Decree.¹¹ NOPD asserted that the allegations against Officer Vappie did not concern "serious misconduct" as defined by Consent Decree Paragraph 454, and, therefore, refused to provide the Court Monitor with access to the ongoing investigation.¹² On April 3, 2023, after the close of the investigation, NOPD provided the investigative report to the Court Monitor.¹³ On April 7, pursuant to Consent Decree Paragraph 454, the Court Monitor provided a written assessment of the investigation.¹⁴ NOPD responded to that assessment on April 24, 2023.¹⁵ The Court Monitor included an initial assessment of the investigation in its May 3, 2023, PIB Report, noting that the discipline phase of the investigation was not yet complete, so the Court Monitor could not yet share its full assessment and recommendations.¹⁶ On May 19, 2023, the Court Monitor provided an advance copy of the PIB Vappie Investigation Report to the parties so they could prepare for the planned June 7, 2023, status conference, but did not issue it publicly because the discipline process was still ongoing.¹⁷

In its reports to the Court, the Court Monitor concluded that: (1) the allegations against Officer Vappie—specifically untruthfulness and theft by timecard fraud—amounted to "serious misconduct," and NOPD violated Consent Decree Paragraph 454 in refusing to provide the Court Monitor with the open investigation when requested;¹⁸ (2) NOPD violated Consent Decree Paragraphs 470 and 472 in refusing to provide the Court Monitor with access to investigative documents that the Court Monitor reasonably deemed necessary to carry out its assigned

¹¹ See Doc. 714, PIB Vappie Investigation Report at pp. 8-11.

¹² See Doc. 714, PIB Vappie Investigation Report at p. 12.

 ¹³ *Id.* Even though NOPD did not provide the requested material to the Court Monitor, the City inadvertently leaked recordings of some interviews to local media. *See* Doc. 714, PIB Vappie Investigation Report at p.7 n.9.
 ¹⁴ See Doc. 714, PIB Vappie Investigation Report at p. 2.

¹⁵ Id.

¹⁶ See Doc. 694, PIB Report at pp. 14-20.

¹⁷ See Doc. 714, PIB Vappie Investigation Report.

¹⁸ See Doc. 714, PIB Vappie Investigation Report at pp. 3-8.

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duties;¹⁹ (3) the City failed to properly apply the preponderance of evidence standard to the investigation of Officer Vappie as required by NOPD Policy 51.1.2;²⁰ (4) the NOPD Superintendent did not sign the Officer Vappie investigation report as required by NOPD Policy 52.1.1;²¹ (5) NOPD ignored circumstantial evidence that it was required to consider pursuant to NOPD Policy 52.1.2;²² and (6) NOPD failed to adequately respond to shortcomings in the investigation that the Court Monitor identified and for which Consent Decree Paragraph 454 mandated a written response.²³

II. DISCUSSION

The United States has reviewed the PIB Report, the PIB Vappie Investigation Report with all its attachments including the City's April 24, 2023, letter to the Court Monitor,²⁴ and the City's Response to the PIB Report,²⁵ and responds as follows:

- The United States agrees with the Court Monitor's findings set forth above. The Court Monitor's findings are consistent with the factual record that the United States has reviewed concerning this investigation.
- 2. In its April 24 response to the Court Monitor's recommendations, the City disputes whether allegations against Officer Vappie amount to "serious misconduct," within the meaning of

¹⁹ See Doc. 714, PIB Vappie Investigation Report at pp. 8-12.

²⁰ See Doc. 714, PIB Vappie Investigation report at pp. 12-13. *See also* Doc. 565, Consent Decree Par. 454 (requiring the Court Monitor to recommend further investigation of findings not supported by a preponderance of the evidence); Consent Decree Par. 17 (requiring that NOPD "apply policies uniformly and hold officers accountable for complying with NOPD policies and procedures.")

²¹ See Doc. 714, PIB Vappie Investigation Report at pp. 13-15.

²² See Doc. 714, PIB Vappie Investigation Report at pp. 15-17.

²³ See Doc. 714, PIB Vappie Investigation Report at pp. 17-28 (*citing* Consent Decree Par. 454, which reads in operative part: "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").

²⁴ See Doc. 714-6, PIB Vappie Investigation Report, Attachment F.

²⁵ Doc. 697.

Consent Decree Paragraph 454.²⁶ The City's Response asserts that the allegations do not fit into the "plain language" of the Consent Decree's definition of serious misconduct.²⁷ NOPD's assertion that the allegations did not involve serious misconduct is incorrect. The allegations against Officer Vappie were not limited to exceeding the time limits on work in a 24-hour period, but instead included allegations of potential untruthfulness/false statements and theft, among other allegations that meet the definition of serious misconduct. Indeed, the Court Monitor, Office of Independent Police Monitor (IPM), Dr. Gallagher, and public news sources all raised allegations of potential untruthfulness/false statements and theft.²⁸ NOPD's released audio recordings of Officer Vappie's PIB interview demonstrate that the investigation included allegations of a personal relationship while on duty²⁹ and the truthfulness of Officer Vappie's assertions that he was working during the hours listed on his timesheets.³⁰ Accordingly, in this case, the City's assertion that the allegations against Officer Vappie do not amount to "serious misconduct" does not comport with the allegations raised by multiple sources and the investigative questions NOPD itself asked.

²⁶ See Doc. 714-6, PIB Vappie Investigation Report, Attachment F.

²⁷ Id. Later in its Response, the City states that the initial complaint alleged that Officer Vappie "may have violated the 16.35-hour rule"—i.e., exceeding the policy-permitted maximum allowable time to work in a 24-hour period. See id. at 2. See also Doc. 697 at p. 4 (same). While this may be the only charge the City brought against Officer Vappie, this does not mean that the investigation did not involve serious misconduct for the reasons discussed above. NOPD also has an obligation under Consent Decree Paragraph 399 to appropriately classify complaints, 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. Doc. 565, Consent Decree Par. 399(a).
²⁸ See PIB Vappie Investigation Report at pp. 4-7 (describing allegations fitting with "serious misconduct," including payroll fraud and untruthfulness and finding: "At its core, an investigation into payroll fraud is an

investigation into a "serious misconduct complaint," which the Consent Decree defines to include an "untruthfulness/false statements" or a "theft" investigation. (CD at 454) Billing the City for time not worked is inherently a false statement; indeed, if done knowingly, it is likely a criminal false statement.").

²⁹ A personal relationship while on duty may constitute both theft (payroll fraud) and sexual misconduct, thus meeting Paragraph 454's definition of serious misconduct.

³⁰ See "Fox 8 obtains recordings from NOPD's investigation into Officer Jeffrey Vappie," Fox8Live Mar. 15, 2023, *available at* <u>https://www_fox8live.com/video/2023/03/15/fox-8-obtains-recordings-nopds-investigation-into-officer-jeffrey-vappie/</u> (quoting PIB investigators reportedly questioning Officer Vappie: "Based on this policy, is there a personal relationship based on the definition in this policy?"). *See also* PIB Vappie Investigation Report at p. 7 n.9 (citing audio recorded questions of payroll fraud and truthfulness).

- 3. The City does not dispute that NOPD failed to provide the Court Monitor the complete investigation materials concerning Officer Vappie before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. Once an investigation is closed, NOPD has limited ability to hold an officer accountable for misconduct that should have been charged, but was not. Consent Decree Paragraph 454 requires NOPD to provide access to the *open* investigation in all instances of serious misconduct. The purpose of Paragraph 454 is to ensure that the Court Monitor can provide technical assistance on compliance with the Consent Decree during the course of investigation of allegations of serious misconduct. This protection serves NOPD's interest in ensuring compliance with the Consent Decree and in correcting errors before limiting NOPD's ability to impose discipline when warranted. Paragraph 454 also protects the public interest in ensuring a reliable and transparent accountability system. The City's failure to comply with Paragraph 454 in this instance undermined the Court Monitor's ability to catch and correct errors in the investigation.
- 4. The City did not provide complete access to the investigation to IPM, the City's own oversight agency.³¹ Consent Decree Paragraph 441 requires that the City give IPM this access:

NOPD and the City agree to provide the IPM ready and timely access to the information necessary to fulfill its duties. The IPM shall have all access to confidential information, including all protections and authority of state law, as does New Orleans' Office of Inspector General.

³¹ See Doc. 714, PIB Vappie Investigation Report at p. 2.

IPM requested the open investigation during weekly calls with NOPD,³² and the Consent Decree requires that this access be provided. Accordingly, the City violated the Decree and undercut its own City-created system for oversight and transparency.

- 5. Lastly, in its reports the Court Monitor notes several outstanding issues that still necessitate response from the City. The United States agrees that these issues should be addressed, including:
 - The status of any other investigations into allegations of misconduct by Officer Vappie.³³
 - Whether NOPD has made a referral for a criminal investigation of Officer Vappie. The Court Monitor notes that payroll fraud is a crime under Louisiana law.³⁴ Consent Decree Paragraph 411 requires that when "there may have been criminal conduct on the part of any officer or employee," the PIB investigator immediately must notify the PIB commander who "shall immediately notify the Superintendent, the DA and/or USAO, and the Monitor of the initiation of a criminal investigation."³⁵
 - The status of the investigation of the failure to keep confidential the recorded interviews from this investigation as required by Consent Decree Paragraphs 409 and 419.³⁶

³² See Doc. 714, PIB Vappie Investigation Report at pp. 3-4.

³³ See Doc. 714, PIB Vappie Investigation Report at pp. 5-6 n.7.

³⁴ See Doc. 714, PIB Vappie Investigation Report at p. 7 n.8.

³⁵ See Doc. 565, Consent Decree Par. 411 ("If at any time during complaint intake or investigation the investigator determines that there may have been criminal conduct on the part of any officer or employee, the investigator shall immediately notify the PIB commander. The PIB commander shall immediately notify the Superintendent, the DA and/or USAO, and the Monitor of the initiation of a criminal investigation. The subject officer shall not be compelled to provide a statement to administrative investigation has been completed, unless after consultation with prosecuting agency (e.g., DA or USAO) and the PIB commander, such compulsion is deemed appropriate by the Superintendent. NOPD and the City agree to consult with the DA to develop and implement protocols to ensure that the criminal and administrative investigations can be conducted in parallel as appropriate and are kept separate after a subject officer has provided a compelled statement.")

³⁶ Doc. 714, See PIB Vappie Investigation Report at p. 8 n.11.

The status of any investigation of Officer Vappie's chain of command. Consent
Decree Paragraph 306 requires that "NOPD supervisors shall be held accountable for
providing the close and effective supervision necessary to direct and guide officers."³⁷

³⁷ See Doc. 714, PIB Vappie Investigation Report at p. 8 n.12. The obligation to hold supervisors responsible includes checking daily activity reports, as should have been done for Officer Vappie. Doc. 565, Consent Decree Par. 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.")

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The United States respectfully requests that the Court find that conduct at issue in the

Vappie investigation is "serious misconduct" within the meaning of Paragraph 454 and require

the City to respond to the outstanding Consent Decree compliance issues outlined above.

Date: June 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2023, I filed the foregoing through the Court's CM/ECF system, which will serve a true and correct copy of the filing on all counsel of record in this matter.

/s/ Jonas Geissler