

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.)	
)	

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 defendants to extend the time for completing a required task outlined in the March 23, 2009, Consent Decree (the "Consent Decree") entered in this matter.

The Consent Decree sets forth various reforms designed to remedy the systemic excessive use of force by the Virgin Islands Police Department. Specifically, the Government of the Virgin Islands and the Virgin Islands Police Department (collectively,

the "Virgin Islands") were required to implement the reforms within a certain time frame.

The Consent Decree originally provided that it would terminate in five years or upon the Virgin Islands' reaching and maintaining substantial compliance with the Consent Decree's requirements for a period of two years.

For nearly a year after the Consent Decree was approved by this Court, little progress was made towards achieving substantial compliance. On October 1, 2012, the Court held a hearing at which it urged the parties to submit interim deadlines for partial compliance with the Consent Decree. The parties thereafter agreed to a "Consent Decree Timetable." The Consent Decree Timetable set forth various interim deadlines with the goal of having the Virgin Islands reach substantial compliance no later than March of 2012, or two years before the expiration of the Consent Decree.

On April 23, 2012, the Court held another hearing in this matter. Witnesses for both parties agreed that the Virgin Islands had failed to achieve most of the goals set forth in the Consent Decree Timetable. The parties further agreed that it was no longer possible for the Virgin Islands to maintain substantial compliance for two years prior to the Consent Decree's expiration.

In light of this evidence, the plaintiff, the United States of America (the "United States"), moved to amend the Consent Decree. After a hearing on this motion, the parties agreed to submit an action plan (the "Action Plan") with detailed, new interim deadlines, with an ultimate goal of reaching substantial compliance by June of 2013.

On November 2, 2012, the Court amended the Consent Decree in two general respects. First, the Court adopted the jointly-proposed Action Plan and incorporated its deadlines into the Consent Decree. Second, the Court amended the Consent Decree to provide that it would only expire after the Virgin Islands had maintained substantial compliance with its terms for a period of two years.

Among the various deadlines set forth in the Action Plan were several deadlines pertaining to training of Virgin Islands Police Department ("VIPD") officers in vehicle pursuit policies and policies regarding the use of spike strips--devices used to stop cars by puncturing their tires. Specifically, VIPD officers were to be trained in the use of vehicle-pursuit and spike-strip polices no later than October 31, 2012.

The Action Plan further set forth deadlines for what is referred to as "Blue Team" training. The Blue Team is a component of a risk management system that evaluates the performance of all VIPD officers with respect to uses of force.

Training on the use of the Blue Team system was to have been completed by January 31, 2013.

The Virgin Islands now moves for an extension of these deadlines. The Virgin Islands represents that, until recently, it was not able to obtain trained and certified instructors for vehicle-pursuit and spike-strip policy training. It maintains that several VIPD officers have received training in these fields, and will now be able to instruct all other officers by no later than June of 2013.

The Virgin Islands further represents that technical and scheduling challenges have delayed Blue Team training. Although most VIPD officers on St. Thomas have been trained, most VIPD officers on St. Croix have not received the appropriate training. The VIPD maintains that officers will be fully trained in the use of the Blue Team system by no later than March 15, 2013.

Accordingly, the VIPD requests that the deadlines associated with these training requirements be extended. The United States does not oppose the motion.

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). 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)).

There is no suggestion that the Virgin Islands has not been engaged in a good faith effort to reach substantial compliance by June of 2013 or that they have missed any other deadlines in the Action Plan. The most recent report of the Independent Monitors,¹ while reviewing the last quarter of 2012 before the Action Plan came into effect, is substantially more optimistic than many prior reports.

The extension sought by the Virgin Islands will help it reach the ultimate goal of substantial compliance by June of

¹ Pursuant to the Consent Decree, two Independent Monitors have been appointed to track the Virgin Islands’ progress under the Consent Decree. The Independent Monitors publish quarterly status reports.

2013, by granting it more time to provide its officers with appropriate training. The Court also notes that while training on vehicle pursuits, spike strips, and the Blue Team are undoubtedly important, they comprise only a small portion of the total requirements of the Consent Decree. There has been no suggestion that the Virgin Islands has failed the interim deadlines for the vast majority of the Consent Decree's requirements. The Court thus finds that amending the Consent Decree to grant extensions to these deadlines "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)).

The premises considered, it is hereby

ORDERED that the Virgin Islands' motion to amend the Consent Decree is **GRANTED**

ORDERED that the relevant portions of the Consent Decree shall be amended to provide that vehicle pursuit and spike strip training shall be completed not later than April 30, 2013; and it is further

ORDERED that the relevant portions of the Consent Decree shall be amended to provide that vehicle pursuit and spike strip training shall be completed not later than March 15, 2013.

S\ _____
CURTIS V. GÓMEZ
Chief Judge