

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF THE VIRGIN ISLANDS**

UNITED STATES OF AMERICA,	)	
	)	C.A. No. 3:08-CV-158
Plaintiff,	)	
	)	
v.	)	
	)	
1. THE TERRITORY OF THE VIRGIN ISLANDS; and	)	
	)	
2. THE VIRGIN ISLANDS POLICE DEPARTMENT,	)	
	)	
Defendants.	)	

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**REPORT REGARDING DEFENDANTS’ EFFORTS TO COMPLY WITH  
QUARTERLY GOALS DUE MAY 6, 2016**

Pursuant to the Court’s August 21, 2015 Order, Dkt. # 165, the United States Department of Justice (“DOJ”) files this report to assess the efforts of the Territory of the Virgin Islands and the Virgin Islands Police Department (“VIPD”) to meet the quarterly goals due May 6, 2016, and to update the Court regarding the status of the Consent Decree. Of eight goals the VIPD identified for this quarter, the VIPD completed none. In addition, VIPD’s overall compliance with the Consent Decree remains at 31 paragraphs, with 20 not in substantial compliance, marking 21 months—seven quarters—in which VIPD has failed to move any additional paragraphs into substantial compliance. This quarter, though VIPD again made progress toward several paragraphs, VIPD merely managed to bring a single sub-paragraph into compliance, and one paragraph dropped from out of substantial compliance. Because of VIPD’s repeated failure to comply with the Consent Decree, many of the VIPD deficiencies that DOJ identified more than seven years ago that result in constitutional violations remain in place.

### **Quarterly Goals**

In their notice regarding quarterly goals filed February 26, 2016, Dkt. # 200 (“Goals Notice”), the VIPD identified eight paragraphs that were reach to substantial compliance as its goals for the quarter ending May 6, 2016:

#### **Use of Force:**

1. Paragraph 32
2. Paragraph 33

#### **Citizen Complaint Process & Management and Supervision:**

3. Paragraph 44
4. Paragraph 69
5. Paragraph 58
6. Paragraph 70

#### **Training:**

7. Paragraph 73
8. Paragraph 77

In addition, the Goals Notice stated that VIPD agreed to provide to DOJ and the Independent Monitoring Team (“IMT”), by March 11, 2016, a “comprehensive Compliance Plan that it will follow in order to meet the above goals” that was to include “incremental action steps associated with each paragraph listed above, identify the individual responsible for completing each action step, and meet the approval of the United States and the IMT.”

As already noted, VIPD failed to bring any paragraphs into full compliance during the quarter, meaning that the VIPD also failed to achieve any of its eight goals. VIDP stumbled early in the quarter when it failed to provide a Compliance Plan that met the requirements of the Goals Notice. The “plan” that VIPD provided to DOJ and the IMT on March 15 (four days

late) contained no incremental action steps and listed no individuals responsible for completing the goals; lacked detail and specificity; referenced a Goals Management System document, but did not include the document; omitted two paragraphs the plan was required to address (paragraph numbers 69 and 70); and, even though all goals were required to be completed by May 6, included deadlines as late as June 30. By failing to produce an adequate Compliance Plan, VIPD essentially ensured its subsequent compliance failures, as detailed below.

**Paragraph 32:** VIPD failed to bring Paragraph 32 or any of its outstanding sub-paragraphs into compliance. For Paragraph 32, VIPD must meet three outstanding sub-paragraphs: 32-b, 32-c, and 32-f (VIPD complied with other sub-paragraphs in previous quarters). Sub-paragraph 32-b requires that at least 95% of Response to Resistance Reports (use-of-force reports, or “RRRs”) indicate each and every type of force that was used. For the most recent quarter, only 55% of RRRs met this requirement. Sub-paragraph 32-c requires at least 95% of RRRs contain an evaluation, by a supervisor, of each type of force used by an officer. For the most recent quarter, only 36% of RRRs met this threshold. Sub-paragraph 32-f requires that at least 95% of RRS include an audio or videotaped statement. For the most recent quarter, only 33% met this threshold.

**Paragraph 33:** VIPD failed to bring Paragraph 33 or any of its outstanding sub-paragraphs into compliance. For Paragraph 33, VIPD must attain between a 90 and 95% compliance rate for the following requirements: (a) Officer notified supervisor of use of force or allegation of use of force; (b) Supervisor responds to scene; (c) Subject examined for injury; (d) Supervisor interviewed subject for complaints of pain; and (e) Supervisor ensured subject received medical attention if necessary. Regarding each of these requirements, VIPD’s compliance rate was as follows, respectively: 49.6%; 55.0%; 21.6%; 20.8%; and 73.4%.

**Paragraph 44:** VIPD failed to bring Paragraph 44 into compliance, for which it only has one outstanding requirement: sub-paragraph 44-i, which requires VIPD to resolve all complaints in a timely manner and eliminate its backlog of outstanding complaint investigations. Though VIPD has been unable to provide an exact number of outstanding cases, the total number includes cases from as far back as 2013.

**Paragraph 58:** VIPD failed to bring Paragraph 58 into compliance, for which it has to meet three outstanding sub-paragraphs. Sub-paragraph 58-c requires VIPD to relay at least 90% of identified problems or training needs to the appropriate VIPD entity; sub-paragraph 58-d requires VIPD to document that additional training has been undertaken and documented in at least 90% of instances in which VIPD has determined that such training is required; and sub-paragraph 58-e requires VIPD to document that corrective measures were implemented in at least 90% of cases where VIPD identified policy or equipment deficiencies. VIPD has not met any of these thresholds this quarter (or in previous quarters).

**Paragraph 69:** Though VIPD failed to bring paragraph 69 in its entirety into compliance, it did comply with sub-paragraph 69-a, which requires VIPD to develop a protocol for conducting audits to be used by each officer or supervisor charged with conducting audits. VIPD complied with this sub-paragraph by staffing the Audit and Inspections Unit with two full-time senior VIPD members. However, VIPD has yet to comply with sub-paragraph 69-b, which requires VIPD to establish and adhere to a regular and fixed auditing schedule that covers all VIPD zones. To comply with this sub-paragraph, VIPD must complete audits on time for two consecutive quarters. VIPD has yet to produce a timely quarterly audit.

**Paragraph 70:** VIPD failed to comply with paragraph 70, which requires VIPD to revise and maintain a disciplinary matrix that allows VIPD to impose appropriate punishments

for offenses, including the use of excessive force; improper searches and seizures; discrimination; dishonesty; and a lack of fitness for duty.<sup>1</sup> While DOJ acknowledges that VIPD has sought examples of model matrixes from other departments and is well into its revision process, DOJ notes that VIPD has not yet provided DOJ or the IMT with a revised matrix that has been approved.

**Paragraph 73:** VIPD failed to comply with paragraph 73, which requires VIPD to review all use of force policies and training at least semi-annually to ensure quality, consistency, and compliance with applicable law and VIPD policy. Though VIPD developed a training survey tool and an instructor evaluation form, both of which VIPD will use to evaluate its force training, VIPD is not yet consistently and comprehensively evaluating its use of force policies and training.

**Paragraph 77:** VIPD failed to comply with paragraph 77, which requires VIPD to maintain at least two years of training records on each VIPD officer that track the training each officer has received, including the course description and duration, curriculum, and instructor for each training event. While it seems VIPD may be able to produce two years of in-service attendance records and lesson plans, VIPD is unable to produce a two-year chronology of instructors for courses VIPD officers have taken.

Accordingly, while VIPD has once again made some progress this quarter, it failed to fully meet any of the eight goals it set for itself.

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<sup>1</sup> As noted on page 22 of Appendix A to the IMT's Third Quarter Report for 2015, Dkt. # 182-1, a prior version of VIPD's disciplinary matrix was approved by DOJ, and paragraph 70 was deemed to be in compliance. However, as noted in a DOJ email to VIPD on March 17, 2016, VIPD later implemented a disciplinary policy that included a matrix unlike that which DOJ had approved. As also noted on Page 22 of Appendix A to the IMT's Third Quarter Report for 2015, IMT concluded, and VIPD agreed, that the matrix VIPD has been using is in need of revision.

### **Overall Compliance Efforts**

In recent quarters, DOJ has noted with increasing emphasis that VIPD appeared unlikely to achieve overall substantial compliance with the Consent Decree by August 19, 2016, the deadline VIPD set for itself on June 16, 2015. Given VIPD's failure to bring any paragraph into compliance this quarter—including the eight paragraphs it specifically identified as goals for compliance—the possibility of VIPD meeting its August 19 deadline is now extraordinarily remote.

This is not to say that VIPD has made no progress. Indeed, this quarter, VIPD has worked with DOJ and especially with the IMT to establish Standard Operating Procedures (“SOPs”) for its Force Investigation Team (“FIT”) and Force Review Board (“FRB”). It has put together multiple appendices to augment both documents (though some are still outstanding) and, in April, relevant VIPD members attended FIT and FRB training on the new SOPs, provided by the IMT. During the Summit in May, VIPD also conducted two trial Force Review Boards under the guidance of the IMT. Other accomplishments this quarter include the completion of an investigative case management log and directive, a non-training issue support form, and the revision of the roll call policy (though further revisions are needed). Though each of these accomplishments better prepares VIPD to comply with additional paragraphs, the fact remains that much work needs to be done for VIPD to attain substantial compliance with the 20 outstanding paragraphs.

Considering the amount of work still left to be done, and the looming August deadline that is certain to pass unmet, it is essential that VIPD redouble its compliance efforts and rethink its strategy. As noted above, VIPD failed to produce an adequate Compliance Plan for this quarter and, as noted in the past several DOJ quarterly reports, VIPD has repeatedly been

unable to construct such plans that lay out a path forward for either outstanding goals or paragraphs. Even VIPD's most recent Quarterly Status Report, provided to DOJ on May 4, 2016, contains many of the same errors DOJ has identified regarding previous VIPD reports, such as erroneous dates and deadlines, a lack of basic information, and progress notes for goals or sub-paragraphs that have merely been copied and pasted into other goals or sub-paragraphs. VIPD should consider outsourcing the development of a Compliance Plan to an entity with more experience regarding project management and planning.

A robust Compliance Plan, once completed, should, among many other things, address those primary impediments that prevented VIPD from complying with any paragraphs this quarter. Regarding VIPD's failure to comply with any force-related paragraphs, VIPD's failure rests largely on the shoulders of supervisors who repeatedly fail to respond to incidents regarding a use of force, fail to ensure their subordinates are properly reporting force, and fail to thoroughly review the officer's decision to use force. Moving forward, VIPD must have in place a plan to ensure supervisors are, as an initial step, at least responding to use-of-force incidents. VIPD recently put into place a plan to notify on-call supervisors whenever a use-of-force incident occurred during a shift when none were working. The plan has had mixed results, and may very well be unnecessary as DOJ recently learned that VIPD has long had in place a written directive requiring supervisors from other districts to cover districts that had no supervisors on duty (a directive that apparently had not been followed). Regardless of the method VIPD chooses to use—and DOJ recommends that VIPD never have a shift in any district during which no supervisors are on duty—VIPD must ensure that supervisors are responding to use-of-force incidents. Until they do so, it is impossible for them to also fulfill their subsequent duties regarding use-of-force reporting and reviews.

As for VIPD's repeated failure to comply with the Consent Decree's requirement regarding the timely investigation of complaints—a failure that has been ongoing despite a concerted effort to address it—VIPD must ensure that it has an adequate number of personnel dedicated to such investigations. DOJ recently learned that there is only one individual in Internal Affairs dedicated to reviewing such cases. Given the lack of personnel devoted to this task, VIPD's inability to eliminate its backlog of complaint investigations is unsurprising.

And regarding VIPD's training deficiencies, VIPD should continue to input the appropriate data regarding instructors and training courses taught into PowerDMS. In addition, the Training Division must consistently identify and assess training needs, develop curricula and lesson plans, deliver the training, and evaluate its success. As the IMT has noted in its First Quarterly Report for 2016, VIPD should consider engaging support from a local university for assistance in developing training objectives, lesson plans, and evaluation strategies with measureable outcomes.

By completing, at a minimum, the tasks outlined above, VIPD will do much to comply with many of those paragraphs it attempted to comply with this quarter.

### **Conclusion**

It has been a year and nine months since VIPD brought into compliance a complete Consent Decree paragraph. This past quarter, VIPD managed only to bring a single subparagraph associated with its current eight goals into compliance. The August 2016 deadline for complete compliance will surely come and go—and at this pace, it will likely go without even a single additional paragraph in compliance. VIPD's efforts, while well-intentioned, are simply not enough. Both this report and the IMT's quarterly report—like so many past reports—have again laid out steps VIPD must take in order to gain compliance. But again,



DOJ fears such steps will remain untaken. VIPD needs to rethink its compliance strategy and should reach out to agencies with expertise in program management and outcome-based evaluation strategies to propel it forward. DOJ and the IMT are ready to assist VIPD in this effort.

Respectfully submitted,

**FOR THE UNITED STATES:**

May 20, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Report Regarding Defendants' Efforts to Comply with Quarterly Goals Due May 6, 2016 was filed electronically on May 20, 2016 using the CM/ECF system, which will send electronic notification to the following:

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