

**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.)	

**REPORT REGARDING DEFENDANTS’ EFFORTS TO COMPLY WITH
QUARTERLY GOALS DUE NOVEMBER 4, 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 November 4, 2016, and to update the Court regarding the status of the Consent Decree. This quarter, according to VIPD’s notice regarding quarterly goals filed Aug. 26, 2016, VIPD was obligated to comply with Paragraphs 58, 69 and 77 of the Consent Decree. Dkt. # 231. As of November 15, 2016,¹ VIPD had complied with Paragraphs 58 and 69, while still falling short of compliance with Paragraph 77. However, this past quarter VIPD has also achieved substantial compliance with Paragraphs 32, 71 and 72. VIPD also attained substantial compliance with Paragraph 60 in the preceding quarter. Thus, whereas in August VIPD was on the cusp of seeing two years pass without obtaining substantial compliance with any new

¹ The quarter ended November 4, by which date VIPD had only complied with one of its three goals (moving Paragraph 69 into compliance) and had also moved Paragraphs 32 and 72 into compliance. This Notice covers VIPD activity through November 16, the date this Notice was drafted.

Paragraphs, VIPD has now substantially complied with six new Paragraphs over the past two quarters—bringing its tally to 37 Paragraphs in substantial compliance, while 14 remain short of that mark. In addition, this past quarter, VIPD substantially complied with more than a dozen sub-paragraphs and met more than 100 action steps. Accordingly, while VIPD is unlikely to meet the February 28, 2017 deadline for substantial compliance with the Consent Decree, as outlined in its Comprehensive Compliance Plan filed with the Court July 29, Dkt. # 220, VIPD has nonetheless steadily increased its pace of compliance and has overcome obstacles that left it largely immobile for nearly two years.

Efforts to Meet the Quarterly Goals

This past quarter, VIPD was obligated to comply with Paragraphs 58, 69, and 77, all of which entailed a total of 20 action steps. VIPD completed all 11 action steps associated with Paragraph 58 and all four associated with Paragraph 69. VIPD completed three of five action steps associated with Paragraph 77.

Paragraph 58: Now in Substantial Compliance

Paragraph 58 requires VIPD's unit commanders to evaluate investigations of incidents in order to identify and address underlying problems and training needs. Commanders must forward such matters to the appropriate VIPD entity for resolution. To obtain substantial compliance, VIPD had to show that at least 90 percent of identified problems or training needs were relayed to the appropriate entity and appropriately addressed. While VIPD did not come into substantial compliance with this paragraph until November 15—eleven days after the end of the quarter—the VIPD's success regarding this paragraph is a valuable step forward. To attain substantial compliance with this paragraph, VIPD has, among other measures, established a file in which recommended actions such as policy changes and remedial training

are recorded before being forwarded to the appropriate entity. VIPD also instituted a tracking mechanism to ensure that the appropriate director or supervisor has followed up on such recommendations. According to VIPD's Third Quarter Compliance Audit, the AIU identified nine investigations of incidents that took place during the third quarter. Of those, problems or training needs were identified in three, all of which were forwarded to the appropriate entity and addressed. Moving forward, VIPD should continue to submit documentation to the IMT and DOJ affirming that its system for identifying and addressing problems and training needs is continuing to function effectively.

Paragraph 69: Now in Substantial Compliance

Paragraph 69 requires VIPD to develop a protocol for conducting audits and to establish a fixed schedule “to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.” In the past, VIPD's Audit Inspection Unit (AIU) has been insufficiently staffed and its audits, while thorough, have been late, often by several months. That trend has shifted. VIPD submitted audits for both the second and third quarter of 2016 on time, the latter of which was provided to the IMT and DOJ on November 2. The timely audits notwithstanding, both DOJ and the IMT continue to have concerns about the AIU's staffing—the unit has two full-time, knowledgeable staffers, augmented by part-time staffers on an as-needed basis, and one of the full-time staffers recently (albeit temporarily) assumed the duties of the outgoing Training Director. Because the AIU nonetheless submitted its quarterly audit on time, however, with no apparent reduction in quality, DOJ and IMT now consider Paragraph 69 to be in substantial compliance. Moving forward, VIPD should continue submitting thorough audits in a timely fashion.

Paragraph 77: Now in Partial Compliance

Paragraph 77 requires VIPD to maintain training records for each officer that, at a minimum, include each course the officer has completed as well as the duration of that course, the instructor's name, and the course curriculum. By November 4, the last date of this past quarter, VIPD had made scant progress on this paragraph and had met none of the five action steps associated with it. Since then, however, VIPD has belatedly met three of the five action steps. Specifically, VIPD's training director audited the records currently housed in Power DMS (VIPD's training database), identified missing training records, and established a work plan to upload them into the system. The plan lists specific target dates for incrementally uploading records throughout the upcoming quarter as well as personnel responsible for the tasks. However, until at least 95 percent of completed training records for the past two years have been uploaded, IMT and DOJ consider this paragraph to be out of compliance. DOJ expects VIPD to attain substantial compliance with this paragraph by the end of the next quarter.

Other Compliance Efforts

In addition to its work moving Paragraphs 58, 69, and 77 toward compliance—as required by this quarter's goals—VIPD has simultaneously been moving other paragraphs toward compliance, with a degree of success not seen since 2014. As previously noted, in addition to moving two quarterly goals paragraphs into substantial compliance this quarter, VIPD also moved paragraphs 32, 71 and 72 into substantial compliance, as detailed below.

Paragraph 32: Now in Substantial Compliance

Paragraph 32 requires VIPD to document all uses of force in detailed reports; supervisors must then evaluate and assess those uses of force. In order to obtain compliance with this paragraph, VIPD must comply with three outstanding sub-paragraphs: 32-b, which

requires that at least 95 percent of force reports indicate each type of force that was used; 32-c, which requires at least 95 percent of force reports to contain an evaluation, by a supervisor, of each type of force used; and 32-f, which requires that at least 95 percent of force reports include an audio or videotaped statement. VIPD's Comprehensive Compliance Plan, Dkt. # 220, lists 26 action steps designed to catapult VIPD into compliance. These steps include weekly reviews of force reports by the Use of Force Working Group; supervisory training in reporting, reviewing, and investigating force; requiring supervisors from other districts to respond to force incidents when no supervisors from that district are available; and coordinating with the information technology department to upload audio and video files.

VIPD completed the required action steps and thus has in place the structural foundation needed to meet the 95 percent threshold for complete, accurate, and timely force reports and reviews. Accordingly, DOJ and IMT consider VIPD to be in compliance with this paragraph. To be clear, however, though the structure is in place, VIPD is not yet producing force reports that consistently describe the force used; include a thorough, timely review by the supervisor; and that include an audio or videotaped statement from the officer. Indeed, supervisors at times do not even respond to force incidents—a problem that has plagued the department for years. Like other paragraphs of the Consent Decree, DOJ and IMT will evaluate the quality of force reports and reviews under Paragraph 100, which requires VIPD to implement “each and every provision” of the Consent Decree. Thus, among many other tasks related to other paragraphs, in order to move Paragraph 100 into compliance, VIPD must ensure that officers are properly completing force reports and supervisors are thoroughly investigating those uses of force.

Paragraph 71: Now in Substantial Compliance

Paragraph 71 requires VIPD to have in place a policy requiring timely completions of the complaint adjudication process and prohibits investigation extensions absent exigent circumstances. If an investigator seeks an extension, the commissioner must approve the request and the complainant must be notified. VIPD has had the requisite policy in place for some time. To obtain substantial compliance with the entire paragraph, VIPD had to ensure that in at least 90 percent of the cases where investigators sought extensions, the extensions were approved by the commissioner. On October 25, VIPD submitted a report to IMT and DOJ verifying that all extensions had been handled appropriately and received the commissioner's approval. To maintain compliance, VIPD must continue to provide documentation showing that the commissioner signs off on all investigatory extensions and that the relevant complainants are notified.

Paragraph 72: Now in Substantial Compliance

Substantial compliance with Paragraph 72 was a goal set and missed by VIPD in the second quarter of 2016. The paragraph requires VIPD to ensure it is taking disciplinary action—and not merely non-disciplinary corrective action—in cases where the disciplinary matrix calls for discipline to be imposed. In cases where discipline has been imposed, the paragraph requires VIPD to also consider whether non-disciplinary action is also called for. VIPD missed compliance with the paragraph during the second quarter because it failed to produce the necessary documentation to show that disciplinary action had been taken, as appropriate, and that VIPD considered non-disciplinary action in those cases. This past quarter, VIPD provided the required documentation. According to VIPD's third quarter audit, there were 10 administrative cases where discipline was recommended and sustained. In all 10, appropriate disciplinary action was taken and non-disciplinary action was considered,

though none imposed. Moving forward, VIPD should continue to provide documentation showing that VIPD is appropriately considering and imposing disciplinary and non-disciplinary action.

Major Remaining Obstacles and Next Steps

While largely pleased with VIPD's progress over the past quarter, which saw VIPD move five new paragraphs into the "substantial compliance" column, DOJ nonetheless notes that much work needs to be done as VIPD still has a total of 14 paragraphs outstanding related to use of force, citizen complaints, training, and management and supervision.

Regarding the use of force, VIPD's deficiencies remain significant—and remain the same as last year, and the year before that. VIPD has repeatedly failed to produce any adequate force lesson plans and has in place no mechanism to properly assess and refine use of force training. Many supervisory reviews of use of force incidents also continue to be incomplete or otherwise inadequate. In 2016 thus far, of 171 use of force incidents, VIPD has completed 48 of the investigations—less than a third. To its credit, VIPD has recently begun initiating complaints against officers and supervisory personnel for not completing use of force reports and investigations. Moving forward, as has been noted by the IMT in its current and previous quarterly reports, VIPD's Deputy Chiefs should also explore new methods or alternatives to current practices to improve the quality and completion rates of force investigations. VIPD must also complete and finalize acceptable use of force lesson plans and implement a robust mechanism for assessing force training.

Regarding citizen complaints, VIPD remains awash with a backlog of administrative investigations, a fact that has kept VIPD from complying with Paragraph 44 (which requires investigations to be timely). VIPD has outstanding complaints that date back more than four

years, and it continues to fall behind with more recent complaints. In 2015, of 259 complaints, VIPD completed the investigations for 207, or roughly 80 percent. Thus far in 2016, of 153 complaints, VIPD has completed the investigations for 68, or roughly 45 percent. While the investigations of the complaints most recently filed in 2016 are not yet overdue, this year's completion rate is markedly low. At the most recent Summit, VIPD discussed the possibility of hiring retired supervisors to help address the backlog. VIPD should continue to explore this and other options.

Regarding training, as noted above, VIPD gained ground regarding Paragraph 77, which requires VIPD to maintain training records. It is one of four training paragraphs that remain out of compliance. Moving forward, in addition to completing the training records database, VIPD must consistently review all force training to ensure quality, consistency, and compliance with the law; must conduct needs assessments to ensure force training is responsive to the knowledge, skills, and abilities of the officers being trained; and must make supervisory training on leadership and accountability a part of its semi-annual in-service training.

Conclusion

Throughout this past quarter, VIPD has steadily worked toward substantial compliance on a number of Consent Decree paragraphs, an effort that moved five new paragraphs into substantial compliance and edged several other paragraphs closer to compliance. In order to maintain this momentum, VIPD must focus on the quality and completion of its force and citizen complaint investigations; finalize force lesson plans and put into place a reliable mechanism for the review of force training and curricula; and complete the task of assembling training files on all officers. While VIPD is unlikely to meet the February 2017 deadline for

substantial compliance with the Consent Decree, VIPD has shown a renewed drive toward compliance that should eventually propel it into substantial compliance with the remaining 14 paragraphs. As always, DOJ remains ready to assist VIPD in this effort.

Respectfully submitted,

FOR THE UNITED STATES:

November 18, 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 November 4, 2016 was filed electronically on November 18, 2016 using the CM/ECF system, which will send electronic notification to the following:

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