

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. THE TERRITORY OF THE
VIRGIN ISLANDS; and

2. THE VIRGIN ISLANDS POLICE
DEPARTMENT

Defendants.

C.A. No. 2008-1583

CONSENT DECREE

CLERK OF THE
DISTRICT COURT
ST. THOMAS, V.I.

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CONSENT DECREE

Noting the general principle that settlements are to be encouraged, particularly settlements between governmental entities, and having considered the terms of the measures, set forth herein, that the Defendants agree to undertake to remedy a pattern or practice of conduct by officers in the Virgin Islands Police Department' that deprives individuals of rights, privileges or immunities secured by the Constitution or federal law, it is ORDERED, ADJUDGED AND DECREED that Judgment shall be entered in this matter pursuant to the following terms and conditions:

TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	Background	1
B.	General Provisions	1
C.	Definitions	3
II.	USE OF FORCE POLICIES	5
III.	EVALUATION, DOCUMENTATION, AND REVIEW OF USES OF FORCE	6
A.	General Use of Force Incidents	6
B.	Specific Force Policies	7
IV.	CITIZEN COMPLAINT PROCESS	8
A.	Public Information	8
B.	Means of Filing and Tracking of Complaints	8
C.	Investigation of Complaints	9
V.	MANAGEMENT AND SUPERVISION	11
A.	Risk Management System	11
B.	Oversight	16
C.	Discipline	16
VI.	TRAINING	17
A.	Management Oversight	17
B.	Curriculum	18

VII.	MONITORING, REPORTING, AND IMPLEMENTATION	20
A.	Independent Monitor	20
B.	Independent Monitor Reports	23
C.	Virgin Islands Police Department Reports and Records	24
D.	Implementation	25

I. INTRODUCTION

A. Background

1. In March 2004, the Department of Justice ("DOJ") initiated an investigation of an alleged pattern or practice of excessive force throughout the Virgin Islands Police Department ("VIPD") under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").
2. Virgin Islands officials met with DOJ officials to facilitate the Virgin Islands' cooperation with the Department of Justice investigation and craft a consent decree addressing all the parties' concerns. This consent decree ("Agreement") is the result of a cooperative effort that evinces a commitment to constitutional policing on the part of the Department of Justice; the Territory of the Virgin Islands; and the Virgin Islands Police Department (collectively, "the parties").

B. General Provisions

3. The parties share a mutual interest in promoting effective and respectful policing. They join together in entering this Agreement to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.
4. This Agreement is effectuated pursuant to the authority granted DOJ under Section 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges or immunities secured by the Constitution or federal law.
5. In its investigation of the VIPD, DOJ, in conjunction with two police practices consultants, conducted a detailed fact-finding review, including ride-alongs and tours of the VIPD's facilities, interviews with Virgin Islands officials, VIPD command staff, supervisors, and police officers; and review of more than 25,000 pages of documents. In addition, in October 2005, DOJ sent the Virgin Islands a letter providing detailed technical assistance regarding VIPD practices and policies in the areas of use of force, citizen complaints, investigations, discipline, supervisory oversight, and training. Throughout the investigation, there were numerous problems and delays regarding VIPD's responses to DOJ's investigatory requests, including the unavailability of a number of VIPD documents under the prior administration of the Virgin Islands.

6. In its Complaint, the United States alleges that the Territory of the Virgin Islands and the Virgin Islands Police Department (collectively, "the Defendants") are violating 42 U.S.C. § 14141 by engaging in a pattern or practice of excessive force by officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline officers, and the failure to establish consistent policies, procedures, and practices that appropriately guide and monitor the actions of VIPD officers and the VIPD's response to those actions.
7. For purposes of this lawsuit only and in order to settle this matter, the Defendants consent to the entry of a finding that they engaged in a pattern or practice of conduct by VIPD officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States in each area addressed in Sections II-VI of this Agreement. The Defendants are firmly committed to refraining from engaging in any of the predicate acts forming the basis of this pattern or practice of conduct by instituting the remedial measures required by this Agreement.
8. This court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141. Venue is proper in the District of the Virgin Islands pursuant to 28 U.S.C. § 1391, because the Defendants reside in and the claims arose in the District of the Virgin Islands.
9. The parties enter into this settlement jointly for the purpose of avoiding the burdens of litigation and to partner in support of vigorous and constitutional law enforcement. Moreover, joint entry of this Agreement is in the public interest because it provides for expeditious remedial activity, promotes the use of the best available policing practices and procedures, and avoids the diversion of federal and Territorial resources to adversarial actions by the parties.
10. Nothing in this Agreement is intended to alter the lawful authority of the VIPD to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill its law enforcement obligations in a manner consistent with the requirements of the Constitution and laws of the United States and the Territory of the Virgin Islands.
11. Nothing in this Agreement is intended to: a) alter the existing collective bargaining agreements between the VIPD and the Police Benevolent Association and between the VIPD and the Law Enforcement Supervisors Union; or b) impair the collective bargaining rights of employees under Territorial and local law. Nothing in this Agreement is intended to amend or supercede any provision of Territorial or local law.

12. This Agreement shall constitute the entire integrated agreement of the parties. With the exception of correspondence resulting from technical assistance the United States has provided to the VIPD regarding use of force, citizen complaints, investigations, discipline, supervisory oversight, and training, no prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
13. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the Defendants for their conduct or the conduct of VIPD officers; accordingly, it does not alter legal standards governing any such claims, including those under Virgin Islands law. This Agreement does not authorize, nor will it be construed to authorize, access to any Virgin Islands, VIPD, or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the Defendants, and the Monitor.
14. The Territory of the Virgin Islands is responsible for providing necessary support and resources to the VIPD and Police Commissioner to enable each of them to fulfill their obligations under this Agreement.
15. The Defendants, by and through their officials, agents, employees, and successors, are enjoined from engaging in a pattern or practice of conduct by VIPD officers that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States.

C. Definitions

16. The term "Territory" means the Territory of the Virgin Islands, including its agents, officers and employees.
17. The term "VIPD" means the Virgin Islands Police Department, its agents and its employees (both sworn and unsworn).
18. The term "Court" means the United States District Judge for the District of the Virgin Islands presiding over this case.

19. The term "DOJ" means the United States Department of Justice and its agents and employees.
20. The term "deadly force" means any use of force likely to cause death or serious physical injury, including, but not limited to, the discharge of a firearm.
21. The term "force" means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include ordinary, unresisted handcuffing. The term shall include the use of chemical irritant and the deployment of a canine and/or pointing a firearm at or in the direction of a human being.
22. The term "critical firearm discharge" means each discharge of a firearm by a VIPD officer with the exception of range and training discharges and discharges at animals.
23. The term "Monitor" means a person or team of people who shall be selected, pursuant to paragraphs 82 and 83, to monitor and report on the VIPD's implementation of this Agreement.
24. The term "discipline" means a written reprimand, suspension, demotion or dismissal.
25. The term "non-disciplinary corrective action" refers to action other than discipline taken by a VIPD supervisor to enable or encourage an officer to modify or improve his or her performance.
26. The term "police officer" or "officer" means any law enforcement officer employed by VIPD, including supervisors.
27. The term "supervisor" means a sworn VIPD employee at the rank of corporal or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers.
28. The term "complaint" means any complaint by a member of the public regarding VIPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by a VIPD officer.

29. The term "complainant" means any person who files a complaint against an officer or the VIPD.
30. The term "implement" or "implementation" means the development or putting into place of a policy or procedure, including the appropriate training of personnel.

II. USE OF FORCE POLICIES

31. The VIPD will review and revise its use of force policies as necessary to:
 - a. define terms clearly;
 - b. define force as that term is defined in this Agreement;
 - c. incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation;
 - d. advise that, whenever possible, individuals should be allowed to submit to arrest before force is used;
 - e. reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability;
 - f. ensure that sufficient less lethal alternatives are available to all patrol officers; and
 - g. explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.

III. EVALUATION, DOCUMENTATION, AND REVIEW OF USES OF FORCE

A. General Use of Force Incidents

32. The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each use of force. Use of force reports will include a supervisor's narrative description of the events preceding the use of force, and include the officer(s)' narrative description of events and the officer(s)' audiotaped statement.
33. Officers shall notify their supervisors following any use of force or upon the receipt of an allegation of excessive force. Supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject receives needed medical attention.
34. Supervisors will review, evaluate, and document each use of force, and will complete the supervisor's narrative description section of the use of force report. The supervisor's narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the supervisor will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, or whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, will not be eligible to review the incident.
35. The parties agree that it is improper interview procedure during use of force reviews to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness statements. The VIPD will train all of its supervisors on the factors to consider when evaluating credibility.
36. Supervisors shall conduct a performance review of all uses of force or an injury resulting from a use of force by any officer under their command. In a performance review, supervisors shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors shall ensure that all officer witnesses provide a

statement regarding the incident. Supervisors shall ensure that all use of force reports identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors shall ensure that all reports indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.

37. A Deputy Chief will evaluate each performance review conducted by supervisors, identify any deficiencies in those reviews, and require supervisors to correct any deficiencies. Supervisors will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action.
38. The VIPD will investigate or review as appropriate all critical firearm discharges. The VIPD will ensure that the investigation or review accounts for all shots and the locations of all officers who discharged their firearms. The VIPD will conduct all ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.

B. Specific Force Policies

39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated.
40. The VIPD shall revise its policies regarding off-duty officers taking police action to:
 - a. provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem;

- b. provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.
 - 41. The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.
- IV. CITIZEN COMPLAINT PROCESS**
- A. Public Information**
- 42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.
 - 43. The VIPD will make complaint forms and informational materials available at appropriate government properties such as VIPD district stations, substations, and mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish and where deemed necessary in French or French Patois to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms, in English, Spanish, and French Patois translation, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.
- B. Means of Filing and Tracking of Complaints**
- 44. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will

be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

45. Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit ("IAU") within five business days.

C. Investigation of Complaints

46. Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.
47. The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.
48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.
49. The VIPD will institute a centralized numbering and tracking system for all complaints, and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.

50. The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.
51. The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.
52. The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.
53. The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.
54. In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.
55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or

the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

56. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.
57. Each allegation in an investigation will be resolved by making one of the following dispositions:
 - a. "Unfounded," where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred;
 - b. "Sustained," where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
 - c. "Not Sustained," where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and
 - d. "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.
58. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate VIPD entity.

V. MANAGEMENT AND SUPERVISION

A. Risk Management System

59. The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.
60. The new risk management system will collect and record the following information:
- a. all uses of force;
 - b. canine bite ratios;
 - c. the number of canisters of chemical spray used by officers;
 - d. all injuries to prisoners;
 - e. all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business;"
 - f. all critical firearm discharges, both on-duty and off-duty;
 - g. all complaints (and their dispositions);
 - h. all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel;

- I. all vehicle pursuits;
 - j. all incidents involving the pointing of a firearm (if any such reporting is required); and
 - k. all disciplinary action taken against officers.
61. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).
62. Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.
63. The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.
64. The protocol for using the risk management system will include the following provisions and elements:
- a. The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit.
 - b. The protocol will require the automated system to analyze the data according to the following criteria: 1) number of incidents for each data category by individual

officer and by all officers in a unit; ii) average level of activity for each data category by individual officer and by all officers in a unit; and iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit.

- c. The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.
- d. The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity.
- e. The protocol will require that VIPD deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system.
- f. The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above).
- g. The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system.
- h. The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units.
- i. The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk.

- j. The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above.
 - k. The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.
65. The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.
66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule:
- a. Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP).
 - b. Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system.
 - c. Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.

- d. Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of: i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; ii) necessary data base software installed and configured; iii) data structures created, including interfaces to source data; and iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system.
 - e. The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.
67. Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.
68. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.
- B. Oversight
69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.
- C. Discipline
70. The VIPD will continue to utilize a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force,

improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.

71. VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.
72. Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. In a case where discipline has been imposed on an officer, the VIPD must also consider whether non-disciplinary corrective action is required.

VI. TRAINING

A. Management Oversight

73. The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.
74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will:
 - a. ensure the quality of all use of force training;
 - b. develop and implement use of force training curricula;
 - c. select and train VIPD officer trainers;

- d. develop, implement, approve, and oversee all in-service training;
 - e. in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures;
 - f. establish procedures for evaluating all training curricula and procedures; and
 - g. conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.
75. The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a team in their use of force training.
76. The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.
77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.
- B. Curriculum
78. The Training Director will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and Virgin Islands Police Department policy. The Training Director will consult with the Attorney General's Office on any additions, changes and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.

79. The VIPD will continue to provide all recruits, officers, supervisors, and managers with annual training on use of force. Such training will include and address the following topics:
- a. the VIPD's use of force model, as described in this Agreement;
 - b. proper use of force decision-making;
 - c. the VIPD's use of force reporting requirements;
 - d. the Fourth Amendment and other constitutional requirements;
 - e. examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making;
 - f. interactive exercises that emphasize proper use of force decision-making;
 - g. de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation even when the use of force would be legally justified;
 - h. threat assessment;
 - I. appropriate training on conflict management.
80. The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.
81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to

ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.

VII. MONITORING, REPORTING, AND IMPLEMENTATION

A. Independent Monitor

82. By 150 days from the date of this Agreement, the Territory and the DOJ shall together select an Independent Monitor, acceptable to both, who shall monitor and report on the VIPD's implementation of this Agreement. The parties recognize that one person, or team of people, may be selected to fulfill the role of Monitor. The selection of the Monitor shall be pursuant to a method jointly established by the DOJ and the Territory. If the DOJ and Territory are unable to agree on a Monitor or an alternative method of selection within 150 days from the date of this Agreement, the DOJ and the Territory each shall submit two candidates who have experience as a law enforcement practices expert or monitor, or as a Federal, state or local prosecutor or judge, along with résumés and cost proposals, to the Court. The Court shall then appoint the Monitor from among the names of qualified persons submitted. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements.
83. The Monitor, at any time after the initial selection of the person or team of persons as the Monitor, may request to be allowed to hire or employ such additional persons or entities as are reasonably necessary to perform the tasks assigned to him or her by this Agreement. Any person or entity hired or otherwise retained by the Monitor to assist in furthering any provisions of this Agreement shall be subject to the provisions of paragraphs 94, 96, and 97, governing testifying, conflicting employment and confidentiality. The Monitor shall notify the Territory and the DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the Territory, through its Department of Justice, and the DOJ agree to the Monitor's proposal, the Monitor shall be authorized to hire or employ such additional persons or entities. The Territory or the DOJ have ten days to disagree with the proposal. If the Territory and the DOJ are unable to reach agreement within ten days of receiving notice of the disagreement, the Court shall resolve the

dispute. The Monitor and any person he or she retains to assist in furthering any provisions of this Agreement must successfully pass a background check by the Virgin Islands Police Department in order to be eligible to carry out his or her role under this Agreement.

84. The Territory shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ and the Territory recognize the importance of ensuring that the fees and costs borne by the Territory are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the reasonableness or payment of the Monitor's fees and costs, the Territory, DOJ and the Monitor shall attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court to resolve such dispute.
85. The Monitor shall only have the duties, responsibilities and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the Governor of the Territory or the Police Commissioner. In order to monitor and report on the VIPD's implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraph 86, *infra*, and such additional reviews regarding the implementation of this Agreement as the Monitor deems appropriate. At the request of the DOJ or the Territory, based on the Monitor's reviews, the Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.
86. In order to monitor and report on the VIPD's implementation of this Agreement, the Monitor shall regularly conduct compliance reviews to ensure that the VIPD has implemented and continues to implement all measures required by this Agreement. The Monitor shall provide reasonable notice to VIPD prior to conducting any on-site compliance reviews.
87. Subject to the limitations set forth in this paragraph and applicable collective bargaining agreements, the VIPD will reopen for further investigation any use of force or citizen complaint investigations the Monitor determines to be incomplete. The Monitor will provide written instructions for completing any investigation determined to be incomplete. The Monitor will provide these recommendations so that the directive given by the Police Commissioner to implement the Monitor's instructions is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this option concerning any investigation the disposition of which has been officially communicated to the officer who is the subject of the investigation.

88. The parties agree that the VIPD will hire and retain, or reassign a current VIPD employee for the duration of this Agreement, to serve as a full-time VIPD Compliance Coordinator. The Compliance Coordinator will serve as a liaison between the Virgin Islands Attorney General's Office, the VIPD, the Monitor and DOJ, and will assist with the VIPD's compliance with this Agreement. At a minimum, the Compliance Coordinator will: coordinate the VIPD's compliance and implementation activities; facilitate the provision of data, documents and other access to VIPD employees and material to the Monitor and DOJ as needed; ensure that all documents and records are maintained as provided in this Agreement; and assist in assigning compliance tasks to VIPD personnel, as directed by the Police Commissioner or his designee. The VIPD Compliance Coordinator will take primary responsibility for collecting the information the Monitor requires to carry out the terms of this Agreement.
89. In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the Police Commissioner and Virgin Islands Attorney General's Office, as well as the DOJ.
90. The Monitor shall have reasonable access to all VIPD employees and facilities that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement. The Monitor shall cooperate with the VIPD to access people and facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes interference with daily operations.
91. The Monitor shall have reasonable access to all Territory and VIPD documents for monitoring purposes only that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents protected by the attorney-client privilege. Should the Territory or the VIPD decline to provide the Monitor with access to a document based on attorney-client privilege, the Territory shall provide the Monitor and DOJ with a log describing the document.
92. For the purpose of implementing this Agreement, the DOJ and its consultative experts and agents shall have reasonable access to all VIPD employees, facilities, and VIPD documents, to the extent permitted by law. The DOJ and its consultative experts and agents shall cooperate with the Territory and the VIPD to access involved personnel, VIPD facilities, and documents in a reasonable manner that minimizes interference with daily operations. Should the Territory and the VIPD decline to provide the DOJ with access to a document based on attorney-client privilege, the Territory shall provide the DOJ with a log describing the document.

93. The Monitor and DOJ shall provide the Territory, the Virgin Islands Attorney General's Office, and the VIPD with reasonable notice of a request for copies of documents. Upon such request, the Territory and the VIPD shall provide the Monitor and DOJ with copies (electronic, where readily available) of any documents that the Monitor and DOJ are entitled to access under this Agreement.
94. All non-public information provided to the Monitor or DOJ, whether by the Territory or the VIPD, shall be maintained in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the Territory or the VIPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document.
95. For the purpose of implementing this Agreement, the Monitor shall have reasonable access to all documents in criminal investigation files that have been closed by the VIPD. The Monitor shall also have reasonable access to all arrest reports, warrants, and warrant applications whether or not contained in open criminal investigation files; where practicable arrest reports, warrants and warrant applications shall be obtained from sources other than open criminal investigation files.

B. Independent Monitor Reports

96. The Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands' compliance with and implementation of each substantive provision of this Agreement. These reports shall be written with due regard for the privacy interests of individual officers and the interest of the Territory and the VIPD in protecting against disclosure of non-public information. At least 16 business days before filing a report, the Monitor shall provide a copy of the draft to the parties for input as to whether any factual errors were made or whether any sensitive data or non-public information is disclosed. The Monitor shall consider the parties' responses and make appropriate changes, if any, before issuing the report. The Monitor may testify in this case regarding any matter relating to the implementation, enforcement or dissolution of this Agreement.
97. Except as required or authorized by the terms of this Agreement or the parties acting together: neither the Monitor, nor any member of their staff, shall make any public statements or issue findings with regard to any act or omission of the Territory, or its agents, representatives, or employees; or disclose non-public information provided to the Monitor pursuant to the Agreement. Any press statement made by the Monitor or any

member of the Monitor's staff regarding their employment must first be approved by DOJ, the Virgin Islands Attorney General's Office, and VIPD. Neither the Monitor nor any member of its staff shall testify in any other litigation or proceeding with regard to any act or omission of the Territory, the VIPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor or their staff may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the Territory or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

C. Virgin Islands Police Department Reports and Records

98. Within 90 days following entry of this Agreement and no later than every three months thereafter until this Agreement is terminated, the VIPD shall file with the Monitor and Virgin Islands Attorney General's Office, with a copy to the DOJ, a status report delineating the steps taken by the VIPD during the reporting period to comply with each provision of this Agreement. The VIPD shall also file such a report documenting the steps taken to comply with each provision of this Agreement during the term of this Agreement 120 days before the end of the Agreement's term.
99. During the term of this Agreement, the Virgin Islands Attorney General's Office and the VIPD shall maintain all records, as applicable, necessary to document their compliance with the terms of this Agreement and all documents expressly required by this Agreement.

D. Implementation

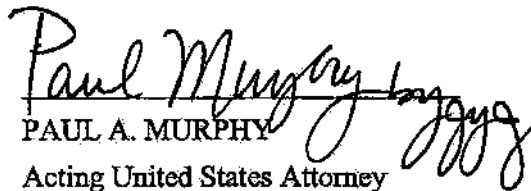
100. The Territory of the Virgin Islands and the VIPD shall implement each and every provision of this Agreement as that term is defined in Paragraph 30 of this Agreement.
101. The VIPD shall implement immediately all provisions of this Agreement that involve the continuation of current VIPD policies, procedures, and practices. The remaining provisions shall be implemented either by the specified implementation date or, for those provisions that have no specified implementation date, as soon as is reasonably practicable and no later than 150 days after this Agreement's effective date.
102. In regard to any provision that provides for DOJ "review and approval," approval will be granted in a timely fashion provided that the VIPD action reasonably satisfies the requirements and standards set forth in the relevant provision(s).

103. The Agreement will terminate five years after the effective date of the Agreement or earlier if the parties agree that the VIPD and the Territory are in substantial compliance with each of the provisions of this Agreement, and have maintained substantial compliance for at least two years. The burden will be on the Territory and the VIPD to demonstrate this level of compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. Noncompliance during a period of declared emergency or acts of God (such as, but not limited to: hurricane, earthquake, tsunami, flood), that makes compliance impossible or impractical will not constitute failure to maintain substantial compliance. Parties to this Consent Decree shall not consider any period of time for which compliance was not possible or impractical due to an act of God in any calculations used in determining substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute substantial compliance.
104. This Agreement will be posted on the web site of the Special Litigation Section of the Civil Rights Division of DOJ.

FOR THE UNITED STATES

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Attorney General


PAUL A. MURPHY

Acting United States Attorney
District of the Virgin Islands


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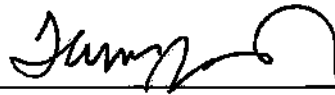


SHANETTA Y. CUTLAR

Chief

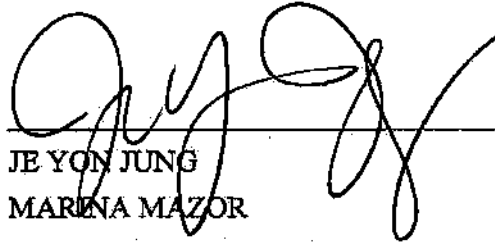
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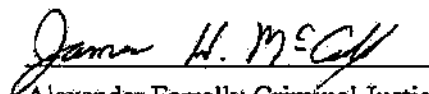
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St. Thomas, Virgin Islands 00802

**FOR THE VIRGIN ISLANDS POLICE
DEPARTMENT:**

JAMES H. MCCALL

Police Commissioner



Alexander Farrelly Criminal Justice Center

Charlotte Amalie

St. Thomas, VI 00802

SO ORDERED this 23 day of March, 2009.



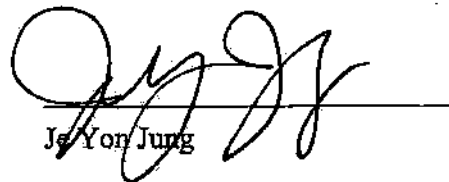
United States District Court Judge for the
District of the Virgin Islands

CERTIFICATE OF SERVICE

I certify that a copy of the Consent Decree in United States v. The Territory of the Virgin Islands; and the Virgin Islands Police Department was served by electronic mail and regular mail on December 23, 2008, on the following:

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