



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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April 6, 2017

The Honorable Jefferson B. Sessions III
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: *Justice Department's Review of Pattern-and-Practice Consent
Decrees with Police Departments and Cities*

Dear Attorney General Sessions:

On behalf of the NAACP, I write to urge you to act with utmost caution in the review that you announced on March 31, 2017 of consent decrees entered into with police departments across the country. The NAACP is prepared to take action in the community and in the courts to ensure that these consent decrees are enforced.

As consent decrees constitute not only agreements between the parties but enforceable court orders, courts have been reluctant to allow modifications of their terms absent compelling reasons to do so. Courts instead regard changes to consent decrees as an extraordinary remedy. *See United States v. City of New Orleans*, 947 F. Supp. 2d 601, 615 (E.D. La.) (citation omitted), *aff'd*, 731 F.3d 434 (5th Cir. 2013). Any change to the existing consent decrees agreed to by police departments and the United States therefore requires a party to demonstrate “a significant change in facts or law warrant[ing] revision of the decree and that the proposed modification is suitably tailored to the changed circumstance.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 393 (1992). As such, should the Department of Justice seek changes to the terms of existing policing consent decrees, it would be required to justify the changes based on something more than a shift in priorities. It would have to demonstrate a significant change in the facts or the law. Based on the justifications put forth by the Department thus far in its public statements on the subject, we doubt that the Department could satisfy this test.

As you undoubtedly appreciate, the consent decrees entered into by the United States and municipal police departments represent the considered judgment of the parties, reflecting significant community effort and input, about how best to address critical problems that warranted the attention of the Department of Justice and necessitated the expenditure of substantial resources by all of the parties concerned. In addition, as noted above, courts have been reluctant to permit amendments to consent decrees absent compelling bases to do so. We trust, therefore, that the Department will give appropriate deference to the terms of the consent decrees as they currently

exist and will recommend changes only in the event that they reflect the wishes of all concerned parties and serve the interests of the communities in which the consent decrees have been implemented. It is not enough, we submit, that the current administration might have chosen not to include certain provisions in the consent decrees or not to have instituted a pattern or practice investigation in the first instance. The investigations have been conducted, the facts have been found, and the agreed-upon remedies are being implemented. The current leadership of the Department of Justice should support the meaningful progress that has been made in reforming policing practices in these jurisdictions rather than deliberately impeding that progress.

It is beyond serious dispute that consent decrees play an important role in resolving legal disputes, as they not only reflect a meeting of the minds of the parties to the agreement, but also constitute an order of the court that presides over the matter. Inevitably, the consent decrees entered into by the United States and various police departments across the country reflect the result of careful, arms'-length negotiations between the parties most familiar with the best ways to resolve the underlying disputes. As a result, these consent decrees have been critical for improving the relationships between police forces and the communities they serve and reducing instances of excessive use of force. They have also served to protect police officers in the line of duty and have been credited with improving the working conditions and job satisfaction of officers under their auspices. *See, e.g.,* Civil Rights Division, U.S. Dep't of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present* (Jan. 2017), available at <https://www.justice.gov/crt/file/922421/download>; Samuel Walker, *Twenty Years of DOJ "Pattern or Practice" Investigations of Local Police: Achievements, Limitations, and Questions*, at 3-7 (Feb. 2017), available at <http://samuelwalker.net/wp-content/uploads/2017/02/DOJ-PP-Program-Feb24.pdf>. For these reasons, the consent decrees entered between the Department of Justice and the subject municipalities and police departments underscore many of the best practices of modern law enforcement, and they certainly represent substantially better practices than those which prompted the investigations.

NAACP members around the country are beneficiaries of the policing consent decrees in question and, therefore, may be able to provide insights about the merits of the terms that were adopted in those decrees. Should the Department attempt to make changes to the consent decrees that do not satisfy the applicable legal standards, the NAACP would be compelled to oppose those efforts most strenuously. As always, we would be happy to meet with you to discuss this matter and we appreciate your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Cornell William Brooks". The signature is written in black ink and is positioned above the printed name.

Cornell William Brooks