

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF FORT LAUDERDALE, FLORIDA,  
et al.

Defendants.

Civil Action No. 0:80-cv-06289-AJ

## I. INTRODUCTION

The Parties agree that the City is in substantial compliance with the Decree and has achieved its central objective of eliminating the vestiges of employment discrimination in the

Fire Department that existed when the United States brought this lawsuit. The City's substantial compliance is reflected in substantial increases in black representation throughout its sworn workforce, and termination of the 41-year-old Decree is now appropriate.

## II. BACKGROUND

### A. Consent Decree

As relevant to black employment in the Fire Department, the Decree prohibited the City from engaging in any act or practice that has the purpose or effect of discriminating against any employee of, or any applicant or potential applicant for employment with, the City in its Fire Department because of such individual's race. The Decree prohibited the City from discriminating against any individual in hiring, promotion, assignment, training, compensation, discipline, or discharge because of such individual's race. Under the Decree, the City was required to implement a recruitment program to increase awareness of job opportunities among black individuals. The City was also required to make available to the United States, on request, records relating to recruitment, job applications, records relating to promotion, assignment, discipline, or discharge of sworn employees, and other employment information. The Decree established an ultimate employment goal of increasing the black percentage of the sworn ranks of the Fire Department to 11.25%. Decree at ¶ 3.<sup>1</sup>

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<sup>1</sup> Though not relevant to this joint motion by the United States and the City, the Decree provided that City may move on its own for dissolution. The Decree stated that, in considering whether the Decree should be dissolved, the court "will take into account whether the City has substantially complied with this Decree and whether the basic objectives of the Decree have been achieved." Decree at ¶ 15.

**B. The Court's 2008 Partial Dissolution of the Decree**

In 2008, this Court granted the Parties' joint motion for dissolution of the Decree as to blacks and women in the Police Department and women in the Fire Department. In support, the motion cited significant increases in the representation of those groups in the sworn workforce since 1980. Regarding progress in black employment in the Police Department, the supporting memorandum noted that, whereas, in 1980, just six (1.5%) of 405 police officers were black, none in promotional positions, in 2006, 55 (11.9%) of 461 were black, exceeding the long-term goal of 11.25%. See Memo in Support of Jt. Mtn. (ECF No. 57) at 4. In stark contrast to the earlier absence of black employees in any promotional positions in the Police Department, in 2006, five (26.3%) of 19 Captains were black, as well as five (8.1%) of 62 Sergeants. Id.

**C. Increases in Number of Black Sworn Employees in the Fire Department since 1980 Decree**

Since 1980, the Fire Department has seen substantial increases in the number of black employees in both entry-level and promotional sworn positions comparable to the increases in black employment in Police Department that supported dissolution of the Decree as to that agency in 2008. The increases in black employment in the Fire Department are shown in the table below.

<b>Positions</b>	<b>1980</b>		<b>2020</b>		<b>Change 1980-2020</b>	
	Total Sworn Workforce	Black Sworn Workforce	Total Sworn Workforce	Black Sworn Workforce	Increase in Black Sworn Workforce	% Increase in Black % of Sworn Workforce
<b>All sworn</b>	265	5 (1.8%)	415	39 (9.4%)	+34	522%
<b>Entry level</b>	101	4 (3.9%)	198	21 (10.6%)	+17	172%
<b>Promotional</b>	164	1 (0.6%)	217	18 (8.3%)	+17	1283%

In 1980, just five (1.8%) of the Department's 265 firefighters were black. But, in 2020, 39 (9.6%) of its 415 firefighters were black, a 522% increase in the black percentage of the sworn workforce over the 1980 level. In entry-level sworn positions, the number of black employees increased from four (3.9%) of 101 in 1980 to 21 (10.6%) of 198 in 2020, while the number of blacks employees in promotional sworn positions increased from one among 164 in 1980 to 18 (8.3%) of 217 in 2020.

Also noteworthy, since 1980, the City has promoted two black employees to the position of Fire Chief, the Department's highest position. Together, their service as Fire Chief spanned a ten-year period: Otis Latin (from 1997 to 2006), the City's first black Fire Chief, and Gerald Simon (from 2006 to 2007). The Fire Chief, who is selected by the City Manager, has final authority over all hiring and promotions within the Department.

### III. DISCUSSION

The Supreme Court has recognized that federal decrees intended to remedy civil rights violations are "not intended to operate in perpetuity," but rather are temporary measures to eliminate vestiges of past discrimination to the extent practicable. Bd. of Educ. of Oklahoma City Public Schools v. Dowell, 498 U.S. 237, 247-48 (1991). In deciding whether to terminate a decree, courts have considered such factors as: the length of time the decree has been in effect, McDonald v. Carnahan, 109 F.3d 1319, 1321 (8th Cir. 1997); the employer's progress toward the long-term goal of work force parity and elimination of the vestiges of past discrimination to the extent practicable, City of Miami, 2 F.3d 1497, 1508 (11th Cir. 1991); and the employer's good faith compliance with the decree, id. Here, these considerations all weigh in favor of dissolving the remainder of the Decree governing the Fire Department, just as they supported partial dissolution in 2008.

Regarding length of time, the Decree was issued in 1980, forty-one years ago. Courts have often found decrees to have outlived their usefulness as temporary remedies after much shorter time periods. See, e.g., City of Miami, 2 F.3d at 1507 (urging the lower court on remand to seek termination of 15-year-old decree); Dudley v. City of Macon, No. 5:00–CV–515 (HL), 2009 WL 2566987, at \*1 (M.D. Ga. Aug. 14, 2009) (terminating 28-year-old employment-discrimination consent decree); North State Law Enforcement Officers Ass’n v. Charlotte-Mecklenburg Police Dept., 862 F. Supp. 1445, 1460 (W.D.N.C. 1994) (terminating 20-year-old employment-discrimination consent decree); Rowe v. General Motors Corp., 586 F. Supp. 372, 373-74 (N.D. Ga. 1984) (terminating 12-year-old employment-discrimination consent decree).

As for the City’s progress towards the objective of remedying the gross underrepresentation of black employees in sworn positions in 1980, substantial progress has been made, as discussed above. Of the sworn workforce of 415 in 2020, 39 (9.6%) were black, a dramatic increase over the five black firefighters employed in 1980. Moreover, the 9.6% figure approximates the Decree’s long-term employment goal of 11.25% for black representation.<sup>2</sup> Beyond that, the representation of black employees in the entry level ranks is consistent with their representation among those who applied for those positions. Other evidence of progress is that twice during a ten-year period, the Fire Department was headed by a black Fire Chief with final authority over hiring and promotions.

Regarding good faith compliance with the Decree, the City has been fully compliant with its obligations. Since the issuance of the 1980 Decree, the United States has had no compliance disputes with the City, as reflected in the court docket. To the contrary, the City has consistently responded in a full and timely manner to the United States’ requests for information relating to

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<sup>2</sup> City of Miami, 2 F.3d at 1497 (employer’s failure to fully meet specific numerical employment goals in the decree would not preclude dissolution provided failure cannot be attributed to past discriminatory employment practices).

its compliance with the Decree, including about hiring and promotion of black applicants for firefighter positions and the racial composition of its sworn workforce. The significant increases in black employment over the 1980 levels is testament to the City's compliance with the Decree's provisions.

With regard to its recruitment obligations under the Decree, the City has proactively recruited black applicants for firefighter jobs through various outreach activities. These efforts include its Survival Methods and Rescue Techniques (SMART) classes on what it takes to become a firefighter. These classes are held at recreational facilities in neighborhoods with high percentages of black residents, providing guidance on completing job applications, preparing for interviews, making a good appearance, and being the kind of candidate the Fire Department is looking for. SMART classes are advertised on radio stations whose audiences include high percentages of black listeners. In other outreach, the Fire Department participates in Career Days at area high schools and has formed relationships with area colleges and training facilities, where some of its firefighters work as instructors, to promote community awareness of job opportunities at the Department.

For the foregoing reasons, the Parties respectfully move the Court to dissolve the remaining part of the Decree. In 2008, the Court granted the Parties' joint motion that argued for terminating the Decree as to blacks and women in the Police Department and women in the Fire Department based on the decades the Decree had been in effect (then 28 years) and the considerable progress made in integrating those protected groups into the sworn workforce of the Departments. Now, 13 years later, the Parties urge dissolution of the rest of the Decree for similar reasons.

#### IV. CONCLUSION

In conclusion, the objective of the 41-year-old Decree was to remedy the severe underrepresentation of blacks in the City's firefighter workforce that existed in 1980. Based on the substantial increase in the representation of black employees among the Fire Department's sworn workforce, the goals of the Decree have been substantially achieved. Accordingly, the Parties respectfully ask the Court to dissolve and vacate the remainder of the Decree and bring this longstanding matter to a close.

Dated: \_\_\_\_\_

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