

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF DELAWARE, THE DELAWARE DEPARTMENT OF PUBLIC SAFETY, AND THE DELAWARE DIVISION OF STATE POLICE,

Defendants.

Civil Action No. 01-020-KAJ

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
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CONSENT DECREE

I.

INTRODUCTION AND BACKGROUND

The United States brought this action against the State of Delaware ("State"), the Delaware Department of Public Safety, and the Division of State Police ("DSP") (collectively, the "Defendants"), pursuant to Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-6, *et seq.* ("Title VII"). In its Complaint, the United States alleged that Defendants' use of the Alert written examination, with a cutoff score of 75% (standardized), in the screening and selection of applicants for employment as DSP Troopers from 1992-98 (Trooper Recruit Class Nos. 61-69) violated Title VII by disproportionately excluding African-Americans from employment, without being demonstrated by Defendants to be job-related and consistent with business necessity.

The Court bifurcated this case into two phases: liability (Stage I) and relief (Stage II). (D.I. 14). On May 20, 2003, the Court granted partial summary judgment for the United States,

determining that the United States had established a *prima facie* case that Defendants' use of the Alert for Trooper Recruit Class Nos. 61-69 caused a disparate impact on African-American applicants. (D.I. 261). A bench trial was held August 13-20, 2003, during which Defendants attempted to demonstrate that their use of the Alert from 1992-98 was "job related for the position in question and consistent with business necessity." See 42 U.S.C. §2000e-2(k)(1)(A)(i). On March 22, 2004, the Court issued Post-Trial Findings of Fact and Conclusions of Law, determining that Defendants had failed to satisfy their burden of proof, that their use of the Alert at an impermissibly high cutoff score was not consistent with business necessity and, accordingly, that their use of the Alert violated Title VII. (D.I. 305). On August 24, 2004, the Court entered a Scheduling Order for Stage II, commencing the relief phase of this case.

The parties have agreed to enter into this Consent Decree to resolve this matter without further contested litigation. The parties agree that this Court has jurisdiction over them and over the subject matter of this litigation pursuant to Title VII, and 28 U.S.C. §§ 1331, 1343(a) and 1345. The parties further agree that this Consent Decree resolves all issues raised in the United States' Complaint, and is final and binding on the parties and their officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them. Defendants agree that they shall not seek judicial appeal of any of the findings and conclusions of this Court related to Defendants' liability under Title VII, including but not limited to the Court's determination that Defendants' use of the Alert caused a disparate impact on African-American applicants and that Defendants failed to establish the lawfulness of their use of the Alert in the screening and selection of applicants for hire as Troopers in Trooper Recruit Class Nos. 61-69.

Pending before the Court is a motion filed by Defendants on September 1, 2004. (D.I. 319) In that motion, Defendants request that the Court set the Alert cutoff score for Claimant eligibility at a minimum of 70% (standardized). The United States opposes Defendants' motion and requests that the Court set the Alert cutoff score for Claimant eligibility at a minimum of 66% (standardized). (D.I. 320) While the scope of Defendants' pending motion covers Claimant eligibility for all phases of relief, the United States and Defendants agree that the scope of that motion should be limited to the issue of a minimum Alert cutoff score for Claimants seeking priority hire and/or retroactive seniority and pension relief pursuant to this Consent Decree.

The United States and Defendants have been advised by the Court that, to facilitate a resolution of this case, the Court will rule on Defendants' pending motion and that such ruling will be limited to the issue of a minimum Alert cutoff score for Claimants seeking priority hire relief pursuant to this Consent Decree. The parties agree to be bound by the Court's ruling, provided that the Court approves and enters this Consent Decree.

To the extent that any provision(s) of this Consent Decree are inconsistent with the limitations on disclosure of information contained in the Global Agreed Protective Order previously entered by the Court in this case, such limitations are lifted and the Global Agreed Protective Order shall not apply to any actions necessary to implement the provision(s) of this Consent Decree.

II.  
SETTLEMENT OF CLAIMS AND ORDER OF RELIEF

This Consent Decree is intended to resolve: (i) all claims by the United States regarding Defendants' unlawful use of the Alert, and (ii) all claims - whether under federal, state or local equal employment opportunity law - by any person who accepts relief under this Consent Decree regarding Defendants' unlawful use of the Alert.

III.  
INJUNCTIVE AND PROSPECTIVE RELIEF


1. Defendants, their officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not engage in any selection practice utilizing the Alert that has the purpose or effect of unlawfully discriminating against African-American applicants or potential applicants for the position of Trooper.

2. Defendants, their officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not discriminate or retaliate against any person because of his/her participation in the United States' investigation giving rise to this lawsuit, or any proceedings related to this lawsuit or arising under this Consent Decree, including, but not limited to, seeking or obtaining relief provided under this Consent Decree.

IV.  
INDIVIDUAL RELIEF

A. Persons Eligible for Relief

3. This Decree provides victim specific relief to Claimants. The following Claimants are eligible for relief under this Consent Decree:

All African-Americans amongst the applicants for a Trooper position with the DSP that resulted in Trooper Recruit Class Nos. 61-69 who met the minimum qualifications in effect at the time of application, took and attained a standardized score of at least 66% on the Alert for Claimants seeking monetary relief, or 66% on the Alert for Claimants seeking priority hire, retroactive seniority and/or pension relief, would not have been disqualified by Defendants in a subsequent stage in the selection process (e.g., would not have failed the background investigation, physical or medical examination, drug screening, etc.), did not voluntarily remove themselves from consideration (e.g., failed to appear at any stage in the selection process, declined an offer of hire, etc.), and were not hired to the position of Trooper in the Trooper Recruit Class that resulted from the Alert examination(s) they took. 

A list of Claimants is set forth in Appendix A, attached hereto.

B. Monetary Relief

4. Defendants shall provide the sum of One Million, Four Hundred and Twenty-Five Thousand Dollars (\$1,425,000) ("Settlement Fund") to be used to satisfy all back pay claims to be paid under this Consent Decree.

5. Only those Claimants described in Paragraph 3, *supra*, shall be eligible for monetary relief, including back pay, under this Consent Decree.

6. Within thirty (30) calendar days from the date of final entry of this Consent Decree by this Court, Defendants shall deposit the total sum of the Settlement Fund in a federally insured financial institution agreed to by the parties.

7. The Settlement Fund, including all interest that accrues on the fund after deposit, thereafter shall be distributed by Defendants to the Claimants at the direction and in the sole discretion of the United States, subject to review by the Court. While the distribution of the Settlement Fund by Defendants to the Claimants shall be at the direction and in the sole discretion of the United States subject only to review by the Court, Defendants may, at their



option, provide the United States with information and/or documentation regarding Claimants they would like the United States to consider relative to the distribution of the Settlement Fund. However, any such information and/or documentation shall be provided to the United States on a timely basis and shall be limited to the parameters of Paragraph 3, *supra*. Each Claimant shall be entitled to an increase in monetary relief due to accrual of interest by the following factor: the total amount of interest accruing to the principal of the Settlement Fund at the aforementioned financial institution, divided by the total principal amount of the Settlement Fund. Interest on the fund shall be compounded quarterly.

8. All monetary relief under this Consent Decree shall be paid directly by Defendants to the Claimants, as described in Paragraph 32, *infra*. The monetary relief to any Claimant who dies after having been identified by the United States as qualifying for relief shall be paid as directed by the United States and approved by the Court.

9. Defendants shall pay all employer contributions to Medicare due on monetary relief to Claimants who accept the relief provided by this Consent Decree, and any other federal, state or local tax or contribution normally paid by employers. Any employer contributions to Medicare or to federal, state or local tax shall not be deducted from either the Settlement Fund or any Claimant's monetary relief. Defendants shall withhold, to the extent required by law, all appropriate federal and state income taxes, employee contributions to Medicare, and any other required employee withholding or deduction from any monetary relief made under this Consent Decree, all of which shall be deducted by Defendants from such monetary relief and all of which shall be paid from the Settlement Fund.

10. A Claimant shall not be required to express an interest in priority hire on his/her

Interest in Relief form in order to receive monetary relief under this Consent Decree.

C. Priority Hire to the Position of Trooper

11. Defendants shall provide up to, but no more than, twelve (12) priority Trooper hires to Claimants pursuant to the terms of this Consent Decree. The maximum number of Claimants who shall be entitled to priority hire by Defendants by Recruit Class are as follows:

- a. Recruit Class No. 61: 1
- b. Recruit Class No. 62: 1
- c. Recruit Class No. 63: 1
- d. Recruit Class No. 64: 1
- e. Recruit Class No. 65: 1
- f. Recruit Class No. 66: 2
- g. Recruit Class No. 67: 2
- h. Recruit Class No. 68: 1
- i. Recruit Class No. 69: 2

12. To be eligible for priority hire to the position of Trooper, such Claimants must satisfy all of the requirements set forth in Paragraph 3, *supra*, including the requirement that such Claimants must have attained a standardized score of at least 66 % on the Alert. In addition, such Claimants must: (a) timely submit Interest in Relief and Release forms as described in Paragraphs 26 and 32, *infra*; and (b) pass the selection procedures listed in Appendix H.

13. Within thirty (30) calendar days from the date Defendants receive from the United States the "Interest in Relief" forms and list of Claimants requesting priority hire pursuant to Paragraph 27, *infra*, Defendants shall initiate the process of evaluating

such Claimants for priority hire. Upon completing the evaluation of Claimants for priority hire, Defendants shall establish nine (9) separate Priority Hire Lists, designated A through I, with Priority Hire List A corresponding to Claimants who failed the Alert that resulted in Trooper Recruit Class No. 61, Priority Hire List B corresponding to Claimants who failed the Alert that resulted in Trooper Recruit Class No. 62, and so on. Each Priority Hire List shall consist of the rank-ordered results of the Claimants' composite scores on the selection procedures set forth in Appendix H. Pursuant to Del. Code Ann. tit. 29, § 5935, Claimants who are veterans of the armed forces of the United States who served during wartime, and were Delaware residents at the time of their induction, shall be given a preference in terms of rank-order. Disabled veteran Claimants, as the term "disabled veteran" is defined under § 5935, shall receive credit of no more than ten (10) additional points on their composite score from the selection procedures set forth in Appendix H. Other veterans shall receive credit of no more than five (5) additional points on their composite score from the selection procedures set forth in Appendix H. In the event of a tie among Claimants, rank-order shall be determined randomly by computer.

14. The scheduling of the selection procedures and submission of Priority Hire Lists A through I shall be completed by Defendants within ninety (90) calendar days from the date Defendants receive the "Interest in Relief" forms and list of Claimants requesting priority hire from the United States pursuant to Paragraph 27, *infra*. Upon completion of the evaluation of Claimants for priority hire, Defendants shall serve upon the United States the Priority Hire Lists. After receiving approval from the United States, Defendants shall incorporate the priority hire Claimants into the first two recruit classes that commence after the Court rules on the Claimants' eligibility for priority hire relief, pursuant to Paragraph 31, *infra*. Should the number of Priority Hires total less than ten



(10) Claimants, Defendants shall incorporate the Priority Hires into the first recruit class that commences after the Court rules on the Claimants' eligibility. Defendants shall rank priority hire Claimants from Paragraph 3, *supra*, who pass the selection procedures listed in Appendix H by a composite score of their performance on the selection procedures.

15. A Claimant who is placed on a Priority Hire List shall be entitled to an offer of hire as a Trooper by Defendants, as set forth in this Decree. As between Claimants on Priority Hire Lists A through I, Defendants shall first make offers to Claimants on Priority Hire List A, based on their rank-order placement, until List A is exhausted or the numerical limitation in Subparagraph 11a, *supra*, has been met, whichever comes first. Defendants shall then make offers to Claimants on Priority Hire List B, based on their rank-order placement until List B is exhausted or the numerical limitation in Subparagraph 11b, *supra*, has been met, whichever comes first. Defendants shall continue this process, going through the Priority Hire Lists in alphabetical order and making offers from each Priority Hire List based on rank-order, until the lists are exhausted or up to twelve (12) priority hire offers have been accepted, whichever comes first.

16. Defendants' notification of an offer of hire pursuant to Paragraph 15, *supra*, shall be made in writing and accomplished by certified mail (return receipt requested) to a Claimant. A Claimant who receives a written offer of priority hire from Defendants shall have ten (10) calendar days from the date of receipt to notify Defendants that he/she accepts such offer. Notification by a Claimant shall be in writing and shall be accomplished either by first class mail postmarked on or before the tenth calendar day from the date of receipt of Defendants' written offer or delivered in person at the offices of the Delaware State Police on or before the tenth calendar day from the

date of his/her receipt of Defendants' written offer. If a Claimant provides Defendants with such notification timely, Defendants shall provide him/her with a priority hire. However, if a Claimant fails to timely accept Defendants' offer, Defendants' obligation to provide him/her with priority hire under this Consent Decree ceases, except for reasonable cause as determined by the United States, subject to approval by the Court.

17. Nothing in this Consent Decree precludes Claimants from applying for hire, or being appointed, as Troopers under Defendants' regular selection and hiring process for Troopers.

D. Retroactive Seniority

18. Any Claimant who accepts priority hire under this Consent Decree and who achieves permanent status in that position, as well as any Claimant who otherwise would have been entitled to a priority hire under this Consent Decree but already is an incumbent Trooper, shall be entitled to retroactive seniority credit in that position as of the following retroactive seniority date.

- a. Priority Hire List A — July 20, 1992;
- b. Priority Hire List B — November 15, 1993;
- c. Priority Hire List C — November 1, 1994;
- d. Priority Hire List D — July 24, 1995;
- e. Priority Hire List E — March 19, 1996;
- f. Priority Hire List F — January 20, 1997;
- g. Priority Hire List G — September 22, 1997;
- h. Priority Hire List H — April 6, 1998; and
- i. Priority Hire List I — October 19, 1998.

19. As used in this Consent Decree, the term “retroactive seniority” shall

mean the crediting of seniority for all purposes for which seniority is used in the DSP, except that retroactive seniority credit shall not affect consideration or eligibility for either promotion or time-in-grade requirements for purposes of completing any probationary period or eligibility for promotion. Claimants who receive retroactive seniority shall receive salary and vacation at the same level as the salary and vacation they would currently be receiving if they had been hired on their retroactive seniority dates. However, Claimants shall not be entitled to any retroactive accruals of vacation or sick leave benefits, including sick leave incentive benefits. Claimants shall not be entitled any back pay, or retroactive overtime payments apart from whatever monetary relief such Claimants receive pursuant to this Consent Decree. Additionally, retroactive seniority shall not be used for purposes of meeting any qualifying period pertaining to duty disability or duty death benefits.

20. For Claimants with multiple test dates and failures, their retroactive seniority date shall be the earliest date upon which the Claimants meet the qualifications set forth in Paragraph 3, *supra*.

E. Pension Benefits

21. Any Claimant who accepts priority hire under this Consent Decree and who achieves permanent status in that position, as well as any Claimant who otherwise would have been entitled to a priority hire under this Consent Decree but already is an incumbent Trooper, shall have the opportunity to retroactively fund their employee pension contributions. To do so, a Claimant may contribute an additional portion of his/her salary above and beyond the required employee pension contribution that shall go towards retroactively funding his/her pension. A Claimant shall have up to eight (8) years to contribute an amount totaling 5% of the salary the Claimant would have earned

between the retroactive seniority date, set pursuant to Paragraph 18, *supra*, and the date on which the Claimant becomes, or became, a permanent employee. Any retroactive pension fund contributions a Claimant chooses to make shall be credited first to the initial year of retroactive seniority. After reaching 5% of the salary to which the Claimant would have received for the first year of employment, any retroactive pension fund contributions a Claimant chooses to make shall be credited to the next year, until the contributions reach 5% of the salary to which the Claimant would have received for the second year of employment. This sequence of crediting retroactive employee pension contributions shall continue year-by-year for up to, but no more than eight (8) years. For each year funded by a Claimant's retroactive pension fund contributions, Defendants shall provide all required employer contributions to the employee retirement system sufficient to fully fund that Claimant's pension benefits for that year. The Defendants may elect, in their sole discretion, to pay an estimate of any or all such employer contributions in advance of the Claimant's payment of employee contributions. However, Defendants' election to make an advance contribution shall not, negatively impact or decrease the amount of pension to which a Claimant is entitled under the law. In all events, the amount of a Claimant's pension payments shall be calculated in accordance with the defined benefit formula. Any such contributions by Defendants to the employee retirement system shall not be deducted from the Settlement Fund or any Claimant's monetary relief.

F. Fairness Hearing on Consent Decree

22. Upon provisional approval, this Court will set a date for a fairness hearing to consider giving its final approval to this Consent Decree and hear any objections filed by individuals affected by this Consent Decree. The fairness hearing shall

be held within sixty (60) calendar days after provisional approval of this Consent Decree.

23. Within ten (10) calendar days from the date of the Court's provisional approval of this Consent Decree, Defendants shall provide written notice of the Court's provisional approval to all Claimants listed in Appendix A and to all incumbent Troopers. The notice shall provide a description of the proposed settlement embodied in this Consent Decree, specify the date, time and place for a fairness hearing, and describe the procedure for filing objections with the Court. Notice for purposes of this paragraph shall be by regular first class mail to the individual's last known address listed in Defendants' records. An example of such notice is attached hereto as Appendix B.

G. Notice to Claimants of Final Entry of Consent Decree

24. Within ten (10) calendar days from the date of final entry of this Consent Decree by this Court, and upon agreement of the parties regarding the most current available information, Defendants shall send the following by certified mail (return receipt requested), to the last known address of those Claimants identified in Paragraph 3, *supra*:

- a. Notice of Settlement (as set forth as Appendix C); and
- b. "Interest in Relief" form (as set forth as Appendix D).

25. Defendants shall bear the cost of all mailing Defendants are required to make under this Consent Decree.

H. Claimants to Submit "Interest in Relief" Forms

26. Any Claimant who fails to forward an "Interest in Relief" form to the United States within fourteen (14) calendar days from the date of the last mailing by Defendants of the Notice of Settlement described in Paragraph 24, *supra*, shall be deemed to have waived any right to be considered for remedial relief under this Consent



Decree except for reasonable cause shown, as determined by the United States, subject to approval by the Court.

27. The United States shall provide Defendants with all "Interest in Relief" forms, as well as a list of Claimants requesting priority hire, within ten (10) calendar days from the last date for submission of such forms by the Claimants.

I. Fairness Hearing on Individual Relief

28. Within ten (10) calendar days from the date Defendants have established Priority Hire Lists A through I, Defendants shall provide the United States with copies of such Lists and, for any Claimant who applied for priority hire but does not appear on a Priority Hire List, a statement describing the reason(s) why the Claimant is not on such List. The Parties shall seek to resolve any dispute concerning the Priority Hire Lists.

29. Within ten (10) calendar days from the date Defendants have provided the United States with Priority Hire Lists A through I, the United States shall notify each Claimant listed in Paragraph 3, *supra*, who forwarded an "Interest in Relief" form under this Consent Decree, as to:

- (a) specific relief, if any, the United States has proposed on behalf of the Claimant;
- (b) whether Defendants dispute this claim;
- (c) the opportunity to file, under Paragraph 30, *infra*, an objection with respect to that relief; and
- (d) the date, time and place of a hearing by the Court to consider the objection.

The United States shall at the same time provide the same notice to Defendants.

30. Any objections by Claimants to the claims for relief under this Consent Decree shall be filed in writing with the Court and shall be served upon counsel for the

United States and Defendants at least twenty (20) calendar days before the commencement of the hearing described in Paragraph 31, *infra*. The United States and/or Defendants may timely file with the Court a written reply to any such objection they deem appropriate.

31. This Court shall conduct a fairness hearing for the purpose of resolving any dispute among the parties over the Priority Hire Lists, as well as to resolve any objections filed by Claimants under Paragraph 30, *supra*, regarding the individual relief to be awarded under this Consent Decree.

J. Notice of Determination, Acceptance of Relief and Payment of Monetary Relief

32. Within ten (10) calendar days from the date of the Court's determination of all claims for remedial relief under this Consent Decree following the fairness hearing referenced in Paragraph 31, *supra*, Defendants shall send by certified mail (return receipt requested) a "Notice of Determination" (as set forth in Appendix E) to each Claimant entitled to relief. The Notice of Determination shall be accompanied by a self-addressed stamped envelope and an "Acceptance of Relief and Release" form (as set forth in Appendix F), which the Claimant shall use to notify Defendants as to whether he/she desires accepts the relief offered. The Claimant shall have fifteen (15) calendar days from his/her receipt of the Notice of Determination and accompanying Acceptance of Relief and Release form in which to properly execute and return his/her Acceptance of Relief and Release form in order to receive any relief under this Consent Decree. If the Claimant notifies Defendants that he/she does not accept the relief, or does not return a properly executed Acceptance of Relief and Release form within the fifteen (15) day period, Defendants shall be released from any and all obligations to him/her under this

Consent Decree except for good cause, as determined by the United States, subject to approval by the Court. If the Claimant notifies Defendants within the fifteen (15) day period that he/she accepts the relief, Defendants shall within forty-five (45) calendar days of the last timely returned Acceptance of Relief and Release form, pay the Claimant the relief to which he/she is entitled.

K. Hiring of Claimants

33. No less than ten (10) calendar days prior to Defendants' confirmation of hire of Priority Hire List A through I Claimants as candidates to Trooper recruit class(es) pursuant to this Consent Decree, Defendants shall provide the United States with a list of Claimants whom Defendants intend to hire, and identify those Claimants whom it has disqualified, stating the reasons for such disqualification. The parties shall seek to resolve any dispute concerning the disqualification of a Priority Hire List Claimant. If the parties are unable to agree, the United States may move the Court for a resolution. However, Defendants shall not be enjoined from enrolling and commencing the remainder of the recruit class as planned. The burdens of proof for the resolution of any priority hire, retroactive seniority and/or pension claim for individual relief under this Consent Decree that is disputed by Defendants shall be those set forth by the Supreme Court for Stage II proceedings after a finding of liability in International Brotherhood of Teamsters v. United States, 431 U. S. 324 (1977). If such claim is successfully disputed by Defendants, the monetary relief that had been allocated by the United States for the Claimant may be reallocated by the United States for distribution among non-disputed and successful Claimants, subject to approval by the Court. However, no Claimant shall be denied monetary relief on the basis of being disqualified for priority hire so long as the Claimant met the qualifications for hire that were in effect at the time he or she

initially applied.

L. Information, Records, and Final Accounting

34. During the remedial relief process described herein, Defendants shall maintain and retain all documents and information relevant to the dissemination of remedial relief under this Consent Decree, and shall make such documents and information available to the United States upon request.

35. Within forty-five (45) calendar days from the date of making the last monetary relief payments provided in Paragraphs 32 and 33, *supra*, or the last priority hire provided in Paragraphs 15 and 16, *supra*, whichever is later, Defendants shall file with the Court and serve upon the United States a written report setting forth who accepted relief (both monetary and non-monetary), a description of the nature and amount of relief, whether any relief went undistributed and, if so, the reasons the relief was not distributed. As of the date of the issuance of such written report, back pay relief which remains undistributed due to Defendants' inability to locate Claimants after all reasonable efforts have been made shall revert to Defendants upon consent of the United States and approval of this Court.

V.  
ADDITIONAL PROVISIONS

36. If the parties are unable to agree on a specific matter falling within the general provisions of this Consent Decree that contemplates mutual agreement, either party may move the Court for a resolution.

37. In the event this Consent Decree or its implementation is challenged, including any action claiming entitlement to damages against Defendants arising out of the implementation of this Consent Decree, Defendants and the United States shall fully

defend the lawfulness of this Consent Decree. If any such collateral challenge arises in state court, Defendants shall promptly seek to remove such action to this Court.

38. The United States and Defendants shall bear their own costs and attorneys' fees in this action.

39. Defendants may designate an agent to administer Defendants' administrative and financial obligations under this Consent Decree. The designated agent shall not be liable for any actions it takes in good faith and in a manner consistent with this Consent Decree. However, the designation of such an agent by Defendants in no way relieves Defendants from their obligations under this Consent Decree.

VI.  
EXPIRATION OF CONSENT DECREE

40. This Decree shall dissolve, and this action shall be dismissed, without further order of this Court at the end of thirty (30) months from the date of final approval and entry of this Consent Decree. The United States may move, for good cause, to extend the Consent Decree if the remedial relief called for herein has not been effectuated. The Consent Decree will not be extended, however, unless the Court grants the United States' motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Consent Decree.

PROVISIONALLY APPROVED subject to the fairness hearing this <sup>4th</sup> day of August, 2005.

  
UNITED STATES DISTRICT JUDGE



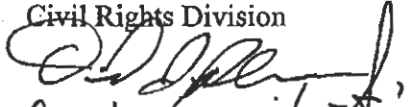


Case 1:01-cv-00020-KAJ

APPROVED and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

On behalf of plaintiff  
United States of America:

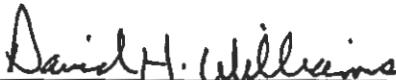
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