

SETTLEMENT AGREEMENT

United States Department of Justice and the Evangeline Parish Sheriff's Office

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I. INTRODUCTION

1. The United States (United States or DOJ) has conducted an investigation into the policies and practices of the Evangeline Parish Sheriff's Office (EPSO) under the authority granted by the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141). At the conclusion of its investigation, on December 19, 2016, the United States issued a Report finding reasonable cause to believe that EPSO engages in a pattern or practice of conducting arrests without probable cause for the purposes of investigating crimes, termed "investigative holds" by EPSO. The United States also determined that these investigative holds resulted in problematic interrogation practices. Further, the United States determined that systemic deficiencies contribute to these patterns or practices, including deficiencies in EPSO's policies, training, interrogation practices, community policing practices, supervision, data collection, and transparency.

2. Although the Evangeline Parish Sheriff's Office does not necessarily agree with the characterizations and conclusions in the United States' Report, the Sheriff is committed to addressing the issues raised by the investigation by implementing the reforms in this Agreement.

3. Elimination of the pattern or practice of arresting persons without probable cause for investigative purposes is the paramount purpose of this Agreement. The elimination of this longstanding and pervasive practice requires adequate training, clear policy guidance, thorough documentation, supervisory oversight, and fair and reliable accountability systems.

II. FOURTH AMENDMENT ACTIVITY

4. The Sheriff will ensure that EPSO officers conduct all interactions with the public consistent with the requirements of the Fourth Amendment of the Constitution of the United States.

5. The Sheriff will ensure that EPSO officers do not rely on information known at the time of reliance to be materially false or incorrect to justify an investigatory stop, search, interrogation, citation, or arrest.

6. EPSO will explicitly prohibit the practice of "investigative holds," and will make clear in policy and training that investigative holds without probable cause violate the Constitution and will subject officers to discipline, including possible termination.

A. Arrests and Citations

7. The Sheriff will ensure that all arrests made by EPSO officers, including detentions that rise to the level of de facto arrests, are supported by probable cause that a person has committed or is committing a crime, based on reliable facts and evidence known to the officer at the time of the arrest. EPSO's need or desire to question a person about a crime will not be considered in determining whether probable cause exists for the arrest of that person.
8. Officers will not arrest persons for the sole purpose of questioning the person regarding criminal activity of another person, or because of personal animus.
9. The Sheriff will ensure that officers obtain a valid arrest warrant signed by a judge prior to making an arrest, unless an offense was committed in the officer's presence, or the officer has positive and reliable information establishing probable cause that an offense was committed outside the officer's presence.
 - a. If the arrest takes place inside a person's home, the Sheriff will ensure that officers obtain a valid arrest warrant signed by a judge prior to making the arrest, unless exigent circumstances exist.
 - b. Individuals may be arrested as material witnesses only pursuant to a valid court order for their arrest.
 - c. If a warrantless arrest is made, EPSO will ensure that the arresting officer fills out an affidavit of probable cause as soon as reasonably possible after the arrest, and in no case later than 6 hours after the arrest or at the conclusion of the officer's shift, whichever is earlier.
 - d. Once an affidavit of probable cause has been filled out, EPSO will ensure that it is immediately reviewed by a supervisor.
 - e. If a warrantless arrest is made, EPSO will ensure that the arresting officer also completes an arrest report that describes, in non-boilerplate language, the facts and circumstances leading up to and justifying the arrest.
 - f. Once approved by a supervisor, EPSO will ensure that the affidavit is immediately transmitted to a judge or magistrate for review. The transmission may be either physical or electronic.
10. EPSO will not book any person who was arrested without a warrant into the jail unless the affidavit of probable cause is filled out and approved by a supervisor.

11. EPSO will immediately and unconditionally release any person who is held at the jail or in EPSO's holding cell(s) if the judge or magistrate rejects the EPSO officer's affidavit of probable cause in support of that person's arrest, unless the court authorizes continued detention pending a timely submission of an affidavit supporting probable cause.

12. EPSO will ensure that all arrested persons are allowed to use a telephone or send a messenger for the purposes of communicating with friends or with counsel, as soon as reasonably possible.

13. Officers will not arrest a person in lieu of issuing the person a citation for a quality of life offense for the purpose of subjecting the person to questioning or interrogation. EPSO will require officers to obtain supervisory approval, where reasonably practical, prior to making a custodial arrest for a quality of life offense. If an officer cannot obtain supervisory approval prior to making an arrest for a quality of life offense, he or she will obtain supervisory approval as soon as possible after the arrest and will explain why the officer could not obtain prior approval.

B. Investigatory Stops

14. EPSO will ensure that officers do not conduct investigatory stops unless they possess reasonable suspicion, based on specific and articulable facts, that a person has committed, is committing, or is about to commit a crime. EPSO will prohibit officers from relying on gossip, rumors, or hunches to justify an investigatory stop. EPSO's need or desire to question a person about a crime will not be considered in determining whether reasonable suspicion exists for the investigatory stop of that person.

15. Officers will not transport the subject of an investigatory stop to a different location for questioning or any other investigatory purpose unless the officer has probable cause to make an arrest or the stopped person requests to speak with officers in a different location. Where such a request is made, officers will document the request in writing and ask the person to sign the documentation verifying that the request was made.

16. Officers will not transport a person to jail or otherwise incarcerate a person as part of an investigatory stop unless there is probable cause that the person has committed a crime.

17. Officers will not stop a vehicle unless there is probable cause that the driver has committed a traffic violation, or reasonable suspicion based on specific and articulable facts that

the vehicle or an occupant of the vehicle has been, is, or is about to be engaged in the commission of a crime.

C. Documentation of Fourth Amendment Activities

18. EPSO will develop systems to ensure that all stops citations, arrests, and field interviews are properly documented and that the documentation for each type of activity includes all pertinent information, including the information required in the Data Collection section of this Agreement. EPSO will require officers to document the justification for the particular activity under the relevant legal standard for that activity, where applicable, and specific, individualized descriptions of the facts and circumstances in support of that justification.

19. EPSO will require officers to use specific, individually tailored descriptions of facts in their documentation of all stops, citations, and arrests.

20. EPSO officers will complete their documentation of their activities by the end of the officer's shift in which the activity occurred.

21. EPSO will develop systems for the storage and retention of this documentation, consistent with the Data Collection paragraphs of this Agreement [See Section VIII].

D. Supervision Regarding Fourth Amendment Activities

22. Absent exceptional circumstances, within 12 hours of receiving a report documenting a stop, citation, or arrest, a supervisor will conduct a review to determine whether the activity was based upon legally sufficient grounds and complied with EPSO policy, and document the results of their review in writing.

23. If an EPSO officer arrests a person and no warrant was previously issued, the supervisor will review the officer's probable cause affidavit immediately and prior to the person being booked into the jail, consistent with Paragraph 38 of this Agreement. If the activity resulted from an insufficient factual basis, such as a lack of reasonable suspicion or probable cause, the supervisor will immediately release the person and take additional remedial measures, as appropriate. The supervisor will document the review in a report.

24. Supervisors will take appropriate action to address all violations or deficiencies in law enforcement activities or the documentation thereof, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation.

25. Supervisors will track each violation or deficiency and the corrective action taken to identify officers needing repeated corrective action. Supervisors will ensure that any deficiencies, or patterns of deficiencies, are considered in officers' performance evaluations, as appropriate.

26. EPSO will take into account the quality and completeness of supervisory reviews in the supervisor's own performance evaluations and will take appropriate corrective or disciplinary actions against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' law enforcement activity.

III. CRIMINAL INVESTIGATIONS

A. Interrogations

27. The Sheriff will ensure that all interrogations conducted by EPSO employees occur in accordance with the Constitution and laws of the United States.

28. Prior to conducting a custodial interrogation, officers will provide a clear and understandable notification of *Miranda* rights to the person. Prior to any custodial interrogation, officers will have the person read a written waiver of rights form and provide a signature indicating whether the person will waive the rights.

29. If a person who has been notified of their *Miranda* rights indicates that they wish to speak to an attorney or does not wish to answer questions, officers will immediately stop the interrogation and will not ask any further questions.

30. If the person does not appear able to understand the rights or waiver form, or declines to waive the *Miranda* rights, officers will immediately stop the interrogation and not ask any further questions. Officers will not make threats, promises, inducements, or take any other coercive actions in order to obtain a waiver of *Miranda* rights.

31. If a person who has declined to waive their rights informs an officer of their own volition that they have changed their mind and wish to participate in an interrogation, officers may restart the process described in Paragraph 28.

B. Documentation of Criminal Investigations

32. EPSO will develop systems to ensure that all interrogations are documented, including the date, time, location, and duration of the interrogation, and all persons present for the interrogation.

33. EPSO will continue to record all interrogations on audio or video and ensure that all recordings are preserved in the investigative file.
34. EPSO will ensure that an investigative file is created and maintained for all criminal investigations, to contain all reports and documentation associated with the investigation, including all recordings of interrogations. Investigative files will be maintained in good order, preserved in a secure manner, and effectively organized to provide for accessibility by EPSO employees.
35. EPSO will ensure that every investigative file contains a unique tracking number that may be cross-referenced with other associated files and documents.
36. EPSO will ensure that a copy of all documentation related to investigatory stops, interrogations, citations, arrests, interrogations, and *Miranda* waivers, and all documents related to court proceedings, including all affidavits, warrants, reports, and supervisory reviews, are included in the corresponding investigative file(s).

C. Community Engagement

37. Within 120 of the Effective Date, EPSO will develop a public education effort to notify the public about changes to EPSO's practices, including that it will no longer conduct investigative holds. As part of this effort, EPSO will also educate the public on EPSO's practices and the constitutional limits on EPSO's ability to stop, search, and arrest members of the Ville Platte community.

IV. JAIL OPERATIONS

38. Prior to booking any person into the EPSO jail, EPSO employees will ensure that either a valid arrest warrant was issued prior to arrest, or an affidavit of probable cause has been completed by the arresting officer and approved by a supervisor.
39. Absent exigent circumstances, EPSO will not conduct a strip search or book the person into the jail before an affidavit of probable cause is entered in the case file or an arrest warrant is issued.
40. Strip searches may only be conducted pursuant to a standardized protocol for persons admitted to jail.
41. No body cavity search, other than the mouth, may be performed without a warrant, unless the search is part of a standardized protocol for persons admitted to jail and a body cavity search

is determined to be necessary for security of the facility. Unless exigent circumstances exist, all body cavity searches must be conducted by qualified, trained personnel of the same gender as the individual being searched, or if such personnel are unavailable, by a trained medical professional. Opposite-gender supervisors and staff or other non-medical personnel will not be permitted to observe the search.

42. For each arrested person detained in the EPSO jail, EPSO will maintain a case file that contains copies of the warrant or affidavit of probable cause with documentation of supervisor approval and all other documentation related to the person's incarceration, such as booking forms, transportation logs, hygiene and bedding allocation, health and screening forms, and classification. The case file will be assigned a unique identifying number that will allow it to be cross-referenced with the investigative file and other relevant files. EPSO will maintain case files for a period of no less than 10 years from when they are released from the EPSO jail.

43. Within 60 of the Effective Date, EPSO will create an electronic list or spreadsheet of all persons incarcerated in the EPSO jail. The list will be updated every time a person is booked into or released from the jail. The list will contain, at a minimum, the following information:

- a. Name;
- b. Date of birth;
- c. Sex;
- d. Race and/or ethnicity;
- e. Case status (e.g. pre-trial, post-conviction, parole revocation, etc.);
- f. Offense(s) for which the person is detained, along with applicable statute or code provision;
- g. Date and time of booking;
- h. Amount of bond, if any;
- i. Next court date; and
- j. Release date, if known.

44. EPSO's list of incarcerated persons will be maintained so that information on incarcerated persons, including the information listed above, may be reviewed and audited for a period of no less than 10 years from the date the person is released from EPSO jail.

45. EPSO will ensure that, at least once per day, a supervisory employee of EPSO reviews the list of incarcerated persons to ensure that each person's incarceration is consistent with EPSO

policy and the Constitution and that the database contains all information required by EPSO policy and this Agreement. The supervisory employee also will review the case file of each person arrested that day to ensure that documentation of probable cause exists.

46. If, at any time, a EPSO employee becomes aware that information required to be kept on the list of incarcerated persons is missing, that a person is improperly detained, or that the case file of an arrested person does not contain a warrant or affidavit of probable cause, the employee will immediately notify the Chief of Police or the Chief's designee. The Chief of Police or designee will take immediate and appropriate action, up to and including immediate release of the incarcerated person. EPSO will ensure that the notification and responsive action is made part of the case file.

47. Once per week, EPSO will provide the list of incarcerated persons and related information, including bond status and amount, to Ville Platte and Evangeline Parish judges for review.

48. EPSO will ensure that all incarcerated persons in the EPSO jail are provided with reasonable access to a telephone, or other means to contact friends, family members and/or counsel. Efforts to procure a statement or other information from the person will not be considered a legitimate reason to restrict access to a telephone or other means of contact.

49. EPSO will ensure that all incarcerated persons in the EPSO jail are provided with access to appropriate sanitation supplies, including toilet paper, prescription medications, and menstrual supplies (where applicable).

V. POLICIES

50. Within 270 days of the Effective Date, EPSO will ensure that its policies incorporate the requirements of this Agreement, and that the policies related to this Agreement comply with applicable law and are consistent with best practices. EPSO policies will be plainly written, logically organized, use clearly defined terms, and sufficiently instructive to effectively guide employees' conduct. To the extent that existing policies meet the requirements of this Agreement, they do not need to be revised. If policies do not yet exist, EPSO will work with DOJ to identify model policies that may be adapted to fit the needs of EPSO and the terms of this Agreement. EPSO will implement all policies required by this agreement.

51. The Sheriff will submit all policies related to this Agreement, as well as any proposed policy revisions, to DOJ for review and approval prior to publication and implementation, which approval will not be unreasonably withheld. DOJ will approve policies based upon consistency with this Agreement, best practices, and applicable law.

52. The Parties will act with reasonable diligence to timely draft and respond to proposed policies.

53. EPSO will maintain a complete, up-to-date, indexed policy manual. Employees will have ready access to hard or electronic copies of the manual. EPSO will promptly incorporate policy revisions or updates in their manuals.

54. The Sheriff will make all EPSO policies publically available on its websites, except for policies that are reasonably deemed sensitive, such as procedures regarding undercover officers or operations.

VI. TRAINING

55. EPSO will ensure that its officers receive basic training and certification prior to commencing work, as well as ongoing in-service and remedial training in order to ensure that officers are aware of their Fourth Amendment obligations and all policies incorporating the terms of this Agreement.

56. No EPSO employee, whether full-time or part-time, will be allowed to perform the full duties of a law enforcement officer until they have successfully completed all requirements for POST certification under state law, including training requirements. Duties performed by employees without POST certification may include non-law enforcement functions, such as administrative work or augmenting neighborhood policing efforts, that the employee has been trained to perform. Uncertified officers may not interact with members of the community while armed with a service weapon, respond to calls for service, or perform or issue any stop, search, interrogation, citation, or arrest. Part-time officers who are firearm qualified and whose duties are restricted to paper service may perform paper service while armed with a service weapon. EPSO will comply with this paragraph within 270 days of the Effective Date.

57. EPSO's two current non-certified, full-time officers will be POST certified by February 1, 2019 and may continue their current duties until that time.

58. The Parties may agree that full and part-time officers who are not POST certified may temporarily perform some law-enforcement functions if they have received additional training sufficient to allow them to perform those tasks. The law enforcement functions and training will be subject to DOJ review and approval.

59. In addition to POST-required training, prior to commencing service involving the full duties of a law enforcement officer, all EPSO employees will receive at least eight hours of EPSO-specific supplemental training on EPSO policies. EPSO will ensure that officers understand the requirements of the Fourth Amendment, including prohibitions on “investigative holds.”

60. Within 365 days of the Effective Date, EPSO will ensure that its field training program incorporates best practices for police training officer programs in similarly-sized agencies. EPSO will ensure that there are sufficient and appropriate policies governing the operation of the field training program.

61. EPSO, will train all lateral police hires, within 30 days date of joining the EPSO, on EPSO policy and ensure that they understand the requirements of the Fourth Amendment, including prohibitions on “investigative holds.”

62. EPSO will ensure its officers receive at least eight hours of annual in-service training.

VII. ACCOUNTABILITY AND OVERSIGHT

63. Within 180 days of the Effective Date, EPSO will develop and implement policies to ensure that all allegations of misconduct, whether internally or externally generated, are courteously received by a EPSO supervisor, centrally documented and tracked, and fully and fairly investigated as required by best practices.

64. Where allegations of misconduct are sustained, EPSO will ensure that discipline is imposed fairly and consistently and that officers and complainants are provided information as appropriate and consistent with best practices.

65. EPSO currently equips its officers with body-worn cameras. If EPSO continues to equip its officers with body-worn cameras, it will utilize this technology consistent with best practices, and to ensure officers are complying with this agreement.

VIII. DATA COLLECTION AND REPORTING

66. Elimination of the harmful and unlawful practice of arrests for investigative purposes without probable cause requires ongoing and active collection of data, analysis, and periodic review to ensure that the practice has been eliminated and does not recur. EPSO will collect and maintain all data and records necessary to review EPSO's compliance with this Agreement, and to ensure transparency and wide public access to information related to the lawfulness of EPSO's field interviews, investigatory stops, interrogations, and citations as permitted by law.

67. Within 365 days of the Effective Date, EPSO will develop a data collection system that will provide for the review of officer investigatory stops, citations, arrests, and interrogations to ensure that officers comply with constitutional standards and this Agreement.

68. EPSO will regularly analyze the data collected to ensure that all stops, arrests, and interrogations are lawfully conducted and meet constitutional standards, and to inform necessary changes to policies and training.

69. Within 90 days of the Effective Date, EPSO will develop a system to track interrogations conducted by EPSO officers or detectives. The system will include documentation of the person interrogated, the date and time of the interrogation, the length of the interrogation, the officer(s) present, and the corresponding investigative file number.

70. EPSO's data collection system will require officers to document the following for investigatory stops and arrests:

- a. The identity of the person(s), if known;
- b. The officer's name and badge number;
- c. The date, time, and location of the stop;
- d. The approximate duration of the stop;
- e. If a non-vehicle stop (e.g., pedestrian or bicycle), the number of persons stopped;
- f. The reason for the stop, including a specific, individualized description of the facts creating reasonable suspicion;
- g. If a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and reason;
- h. Whether any person was asked to consent to a search and whether such consent was given;

- i. Whether officers conducted a weapons frisk during the stop and, if so, the specific and articulable facts establishing reasonable suspicion that the person was armed and dangerous;
- j. Whether officers conducted a search based on probable cause and, if so, the facts establishing probable cause to conduct a search;
- k. Whether any weapon, contraband or evidence was seized from any person, and nature of the weapon, contraband or evidence;
- l. The outcome of the stop, including whether officers issued a civil or criminal citation, made an arrest, or issued a warning; and
- m. A unique identifying report number, allowing the documentation to be matched with the investigative file and documentation of any criminal or civil citations or arrests that result from the stop.

71. The Sheriff will produce an annual report describing EPSO activity and will make that report publicly available on the Sheriff's website and also upon request. The Sheriff will not be required to make public information that must remain confidential to protect public safety. The annual report will further provide information regarding the Sheriff's implementation and status of this Agreement.

72. Subject to applicable law, the annual report will address:

- a. Stop and arrest data and any analysis of that data that was undertaken;
- b. Data related to complaints of improper stops, arrests, or interrogations, including but not limited to the number of misconduct complaints made and investigated; the outcome of the investigations; and the mode of resolution, as well as analysis of that data to identify trends;
- c. Additional topics as deemed appropriate by the Sheriff in its discretion to promote transparency and identify the accomplishments, actions, and continuing needs of the Sheriff.

73. Within six months of the Effective Date, the Sheriff will publically post a status report. This report will delineate the steps taken by the Sheriff during the reporting period to implement this Agreement; the Sheriff's assessment of the status of its progress; and plans to correct any problems. Following this initial status report, EPSO will file a status report every six months

thereafter while this Agreement is in effect, in which it will additionally respond to any concerns raised by the DOJ or identified in the previous report.

IX. OUTCOME ASSESSMENTS

74. The Sheriff will conduct Outcome Assessments on an annual basis, as specified by this section of the Agreement, to measure whether EPSO's revised practices and procedures are achieving the purposes of this Agreement and are having an overall beneficial effect on policing in Ville Platte. Outcome Assessments should be conducted in a reliable, cost-effective manner based on accepted and trustworthy means and methods. Any statistical analysis used as part of an Outcome Assessment must conform to statistical techniques that are accepted in the relevant field. The Sheriff will provide DOJ with the underlying data, analysis, methods, and sources relied upon in the Assessments.

75. The Sheriff will develop a plan and protocol within 365 days of the Effective Date to conduct these assessments. The plan and protocol will be subject to the approval of DOJ, which approval shall not be unreasonably withheld.

76. The outcome assessments will include analysis:

- a. To determine whether EPSO is conducting stops consistent with the Constitution and this Agreement, analysis of the rate at which stops uncover criminal activity;
- b. To determine whether arrests are consistent with the Constitution and this Agreement, analysis of the rate at which arrests are found to lack probable cause or otherwise violate the Fourth Amendment; the number of probable cause affidavits rejected by supervisors or the criminal courts; and a qualitative analysis of the sufficiency of probable cause affidavits and other documentation supporting arrests;
- c. To determine whether EPSO officers are providing adequate *Miranda* warnings and conducting interrogations consistent with the Constitution and this Agreement, an analysis of data related to the length and frequency of interrogations and documentation of *Miranda* warnings and waivers; and analysis of the rate at which motions to exclude confessions are granted by the criminal courts;

- d. To assess whether EPSO officers receive sufficient training on the Fourth Amendment and proper interrogation techniques, an analysis of the rate of completed trainings, performance evaluations from field trainings, and qualitative analysis of the content, structure, adequacy, and efficacy of trainings provided under this Agreement; and
- e. To determine that all detentions are appropriately documented and supported by probable cause, audit data of all investigative files and jail detention files to ensure there is a file on each person detained by EPSO and that files contain adequate documentation in support of the detention.

77. The Sheriff will include the results of all outcome assessments in its status reports and in its annual report published pursuant to Paragraph 71, above.

X. MONITORING AND REPORTING

78. DOJ will assess and monitor EPSO's compliance with the Agreement.

79. On an annual basis, DOJ will issue a public report assessing EPSO's compliance with the Agreement and the status of implementation of the Agreement's requirements. The report will be made public on DOJ and the Sheriff's web sites.

80. For the purpose of assessing implementation this Agreement, DOJ and its consultants and agents will have full and direct access to all EPSO staff, employees, facilities, documents, and data. DOJ and its consultants and agents will cooperate with EPSO to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce this Agreement, minimizes interference with daily operations.

81. To facilitate monitoring of this Agreement, DOJ may conduct on-site visits and assessments with reasonable prior notice to EPSO and, when necessary to assess compliance, may conduct on-site visits and assessment without prior notice to EPSO.

82. DOJ will provide EPSO with reasonable notice of a request for copies of documents. Upon such request, EPSO will provide copies in a timely manner (electronic, where readily available) of the requested documents to DOJ.

83. DOJ will maintain all non-public information provided by EPSO in a confidential manner. Other than as expressly provided in this Agreement, this Agreement will not be deemed a waiver of any privilege or right that EPSO 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.

84. EPSO will designate an EPSO employee to serve as the Agreement Coordinator. The Coordinator will serve as a liaison between and DOJ, and will assist with EPSO's implementation of this Agreement.

85. EPSO will collect and maintain all data and records necessary to: (1) document implementation of and compliance with this Agreement, including data and records necessary to conduct reliable outcome assessments, reviews, and audits; and (2) allow EPSO or other entities to perform ongoing quality assurance in each of the areas addressed by this Agreement. EPSO will regularly report relevant data to DOJ.

XI. AGREEMENT ENFORCEMENT AND TERMINATION

86. This Agreement will become effective upon signature by the Parties (Effective Date).

87. This Agreement will be interpreted in accordance with the laws of the United States without respect to the law of any particular state, except where explicitly stated.

88. This Agreement will terminate when EPSO has achieved substantial compliance. The parties anticipate that substantial compliance will take three years, but this Agreement will not terminate unless the Sheriff achieves substantial compliance consistent with the terms of this paragraph. At all times, the Sheriff will bear the burden of demonstrating by a preponderance of the evidence its substantial compliance with this Agreement. "Substantial compliance" means achieving either compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated by the outcome assessments discussed in Paragraph 74 of this Agreement.

89. If the Sheriff has reached substantial compliance with a part of the Agreement, the Parties may agree to terminate that part of the Agreement if it is sufficiently severable from the other requirements of the Agreement that noncompliance with those other requirements does not implicate EPSO's ability to police in accordance with federal law and this Agreement in the part to be terminated. In determining whether there is substantial compliance with a part of the Agreement, all the requirements of the Agreement may be assessed collectively to determine whether the intended outcome of the part has been achieved.

90. The Parties enter this Agreement to resolve DOJ's findings as detailed in its December 19, 2016, Findings Report. The United States will not file an action pursuant to 34 U.S.C. § 12601 alleging a pattern or practice of unlawful searches and seizures as described in the Findings Report as long as the Sheriff is actively making a good faith effort to substantially comply with this Agreement. Nothing in this Agreement will preclude the United States from filing an action under any other provision of law.

91. If, after reasonable notice to the Sheriff and a reasonable opportunity to cure any deficiencies identified in writing, DOJ determines that the Sheriff has not substantially complied with this Agreement, or is not actively making a good faith effort to substantially comply with this Agreement, the United States may file an action in the United States District Court for the Western District of Louisiana (the Federal Court Action) against the Sheriff for breach of contract or any other appropriate cause of action.

92. In connection with the Federal Court Action, the Sheriff agrees as follows:

- a. The Sheriff will stipulate to subject matter and in personam jurisdiction and to venue.
- b. The Sheriff waives the right to file, and agrees not to file or otherwise assert, any motion to dismiss (except for failure to state a claim), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under the Agreement.
- c. The Sheriff agrees to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint, or (b) the Court's earliest availability, whichever is later. The Parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The Parties agree to submit all discovery requests and to schedule all depositions to occur within 75 days after the service of the summons and complaint.

93. In the event the Court finds that the Sheriff has engaged in a material breach of the Agreement, the United States may file an action under the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. § 12601) alleging a pattern or practice of violating the

Fourth Amendment and the Parties hereby stipulate that they will move jointly for the Court to enter this Agreement as an order of the court to resolve the claims alleged in the complaint.

94. In the event that any such action is filed, the Sheriff hereby waives and agrees not to assert any defense to that action based on statute of limitations, laches, estoppel, or any demurrer relating to the timeliness of filing such an action.

95. The United States reserves the right to file an action under 34 U.S.C. § 12601 to remedy a pattern or practice of violations of the constitution or federal law not addressed in the Findings Report. In the event that the allegations in such an action are litigated, this Agreement will not be introduced or used as evidence. Nothing in this Agreement will preclude the United States from filing an action under any other provision of law.

96. Failure by either party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

97. This Agreement will not be construed as an admission or evidence of liability under any federal, State, or municipal law including 42 U.S. C. § 1983. Nor is the Sheriff's entry into this Agreement an admission by the Sheriff, EPSO, or their officers and employees that they have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.

98. The Sheriff will appropriate or otherwise obtain the financial resources necessary to fulfill its obligations under the Agreement.

99. 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. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

100. The Parties agree to defend the provisions of this Agreement. The Parties will notify each other of any court, union, or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any city or state court, the Parties will consent to removal to Federal Court.

101. Should any provision of this Agreement be declared or determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions will not be affected. The Parties will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.

102. This Agreement is enforceable in the United States District Court for the Western District of Louisiana or any other federal court of competent jurisdiction. This provision does not constitute a waiver of sovereign immunity or any other defense the United States might have to a claim of enforcement by the Sheriff.

103. This Agreement constitutes the entire integrated Agreement of the Parties. No prior or contemporaneous communications, oral or written, other than DOJ's Findings Report, will be relevant or admissible for the purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

104. The Agreement will be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.

105. Each Party will bear the cost of its fees and expenses incurred in connection with this cause.

106. This Agreement may be posted on the web site of the U.S. Department of Justice, Civil Rights Division, Special Litigation Section.

XII. DEFINITIONS

This section defines the terms used in this Agreement. Other terms used in this Agreement will be defined consistent with relevant case law and applicable principles of contractual interpretation:

“Arrest.” Taking of one person into custody by another. To constitute an arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the person arresting him or her. An arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is only lawful when supported by probable cause.

“Body Cavity Search.” Any search of a person involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach.

“Case File.” A file maintained by EPSO for each person detained within the EPSO jail, to include specific information required by this Agreement, and subject to regular auditing and supervisory review.

“Citation.” Official documentation stating that a person has been made aware of an infraction, either civil or criminal, by a law enforcement officer.

“Custodial Interrogation.” Any words or actions on the part of an officer that the officer should know are reasonably likely to elicit an incriminating response from a person who is in custody.

“Effective Date.” The date on which this Agreement is signed by all Parties.

“Frisk.” A brief, non-invasive search of the outer layers of a person’s clothing for weapons only.

“Including, includes, or include.” Including, but not limited to.

“Investigative hold.” The practice of arresting and detaining an individual for the purpose of questioning the individual about criminal activity that the individual may have witnessed or otherwise has information about, or to gain information about other individuals who may have witnessed or have information about a crime, where there is no probable cause to believe that individual committed a crime.

“Investigatory stop.” A brief, involuntary restraint of a person not in a vehicle for investigatory purposes by an officer when the officer has reasonable suspicion, based on specific and articulable facts, that the detained person has been, is, or is about to be engaged in the commission of a crime. An investigatory stop occurs when a person reasonably believes that he or she is not free to leave based on the circumstances and the conduct of the officer(s), regardless of intent.

“Misconduct.” A violation of EPSO policies or procedures; violation of federal, state, or local criminal or applicable civil laws, including the U.S. and/or Louisiana State Constitutions; violation of administrative rules; or violation of regulations.

“Officer.” Any Deputy or other sworn member of the EPSO.

“Paper service.” Paper service is *civil* service of process that is not related to any criminal investigative actions or proceedings. It includes service of civil legal documents, notices and subpoenas; execution of civil writs and court orders; execution of civil notice of seizure; civil execution of writ of possession or ejectment; and civil notices to vacate and other eviction actions. Paper service also includes *criminal* subpoenas.

“Policies” or “Procedures.” Includes regulations or directives, regardless of their official title, describing the duties, functions, and obligations of EPSO officers and/or employees, specifically directing how to fulfill those duties, functions, or obligations.

“Quality of Life Offenses.” Infractions of statutes and ordinances enumerated in the Ville Platte Municipal Code, Evangeline Parish Code of Ordinances, and Louisiana Statutes, (a) for which no penalty of incarceration greater than 30 days can be imposed; and (b) do not involve an assault, battery, or other offense against a person.

“Search.” Exploration or inspection of a person’s house, body, clothing, property, or other intrusion on a privacy interest by a law enforcement officer for the purpose of discovering evidence of a crime or a person who is accused of a crime.

“Strip Search.” A search of a person for contraband, including weapons or drugs, that involves either (a) removing or moving at least some of a person’s clothing not including shoes, jackets, or other outer wear and searching part of the person’s body; or (b) visual inspection without touching the inside of a person’s mouth, nose, or ears.

“Supervisor.” A sworn EPSO employee at the rank of Sergeant or above (or anyone acting in those capacities) with oversight responsibility for EPSO personnel.

“Vehicle Stop.” The involuntary detention of a vehicle and the person driving the vehicle or an occupant based on probable cause that the driver has committed a traffic violation, or reasonable suspicion based on specific and articulable facts that the vehicle or an occupant of the vehicle has been, is, or is about to be engaged in the commission of a crime.

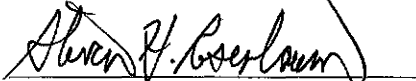
“Will” means that the provision imposes a mandatory duty.

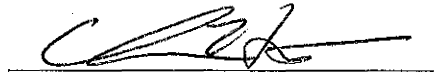
FOR THE UNITED STATES

Agreed to this 4th day of June, 2018.

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

By:


STEVEN H. ROSENBAUM
Chief
Special Litigation Section


EMILY A. GUNSTON
Deputy Chief
CHARLES HART
Trial Attorney
Special Litigation Section
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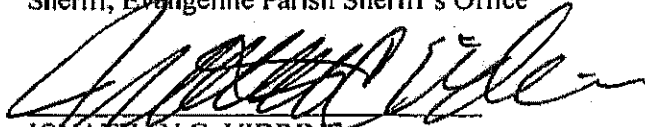
FOR THE EVANGELINE PARISH SHERIFF'S OFFICE

Agreed to this 29 day of May, 2018.

By:



EDDIE SOILEAU
Sheriff, Evangeline Parish Sheriff's Office



JONATHAN C. VIDRINE
Attorney for Evangeline Parish Sheriff's Office