No. 26-3617

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

CITY OF CLEVELAND, OH,
Defendant-Appellee

LISA SCHIAVO BLATT; ERIN MARIE SIELAFF,
Amicae Curiae

On Appeal from the United States District Court
for the Northern District of Ohio
Case No. 1:15-cv-01046
The Honorable Solomon Oliver, Jr.

BRIEF OF AMICUS CURIAE SENATOR BERNIE MORENO IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, Senator Moreno makes the following disclosures:

1. Are any parties a subsidiary or affiliate of a publicly owned corporation?

   No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome?

   No.

Dated: November 10, 2026

/s/ Philip D. Williamson

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INTEREST OF AMICUS

Amicus Curiae Bernie Moreno is a longtime resident and business owner in Greater Cleveland. He is the senior United States Senator from the State of Ohio. Since his election, he has consistently called the public's attention to the failings of the Cleveland Settlement Agreement and its harsh impact on the City. Further, he is a member of the Senate Committee on Homeland Security and Government Affairs—one of the primary responsibilities of that committee is to "study intergovernmental relationship between the U.S. and states and municipalities."

RULE 29(A)(2) AND 29(A)(4)(E) STATEMENTS

All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund preparing or submitting this brief. No person other than amicus or its counsel contributed money intended to fund preparing or submitting this brief.

SUMMARY OF THE ARGUMENT

In 2015, the Department of Justice sued the City of Cleveland to address concerns about the Cleveland Division of Police. They executed a Settlement Agreement to remedy those concerns. After more than eleven years and eleven million dollars of taxpayer time and money, DOJ and the City jointly moved to terminate the Settlement Agreement, confident that the City could reliably police itself again. The district court should have granted that motion as a matter of course. Instead, the court seemed to take umbrage at the request itself, and retained plenary control of the Cleveland Division of Police.

The district court lacks constitutional and statutory authority to "adjudicate" a dispute that does not exist. The Settlement Agreement does not confer any free-standing authority on the court. Rather, the district court's management of the Cleveland Division of Police *in the absence of a live case* is usurpation of both horizontal separation of powers (unilateral judicial enforcement of a statute where Congress conferred enforcement power on the Executive Branch) and vertical separation of powers (with seemingly unending, unreviewable federal judicial management of a municipality). The result? the people of Cleveland have

lost control over both their police department and their municipal pocketbook. The district court's judgment must be vacated.

ARGUMENT

I. The district court lacks constitutional or statutory jurisdiction to retain control of the Cleveland Division of Police.

This case began as a dispute about policing practices between the Department of Justice and the City of Cleveland. They resolved that dispute. The case has now morphed into a dispute about first principles and power, contested between DOJ and the City on one side, and the district court on the other.

In May of 2015, the Department of Justice filed a complaint against the City of Cleveland under the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141). (Complaint, R. 1, at Page ID #1.) DOJ alleged that the Cleveland Division of Police was engaged in a "pattern or practice of conduct" that deprived persons of rights secured by the Constitution and laws of the United States. (*Id.*) DOJ and the City then entered into "Settlement Agreement" to remedy that perceived "pattern or practice." (Settlement Agreement, R. 7-1, at PageID #368–477.) Among other things, the Settlement Agreement called for appointment of an "Independent Monitor" to assess

and report on whether the requirements of the Settlement Agreement had been met. (*Id.* at PageID #452.) Right or wrong, that enforcement decision was DOJ's to make. Law *enforcement* is an Executive Branch function, under Legislative Branch guidance.

According to DOJ, the City made significant strides over the subsequent decade and "achieved the Agreement's core objective of constitutional policing," (Joint Motion to Terminate, R. 688-2, at PageID #15077–82), even while aspects of the Settlement Agreement were proving costly and potentially counterproductive. So, DOJ and the City jointly moved to terminate the Settlement Agreement. (*Id.*)

The district court refused. (May 8, 2026, Order Denying Motion to Terminate, R. 708, at PageID #15386–459.) Since none of the parties objected to terminating their own Settlement Agreement, the court first considered manufacturing an objection by asking the Independent Monitor to "file a response objectively stating where the City stood." (*Id.* at PageID #15386–87.) But the court concluded it did not need any outside input at all; it could manage enforcement of the Act from its own examination of the record. (*Id.*) Congress tasked DOJ with enforcing the

VCCLEA. The district court wrongfully usurped that role, and its judgment—like the Settlement Agreement—should be vacated.

A. There is no Article III case or controversy for the district court to resolve.

Federal courts resolve "cases" and "controversies." U.S. Const. art. III, § 2. It is practically axiomatic that a "controversy" requires a "contradiction" between adverse parties. *See United States v. Windsor*, 570 U.S. 744, 785 (2013) (Scalia, J., dissenting). In the absence of a live, concrete legal controversy, there is simply nothing for the court to do. *See* 3 Correspondence and Public Papers of John Jay 486–489 (H. Johnston ed. 1893).

This case arrives in an unusual posture, to say the least. Courts typically analyze the "case or controversy" requirement in the context of standing or mootness. *See, e.g.*, *Patton v. Fitzhugh*, 131 F.4th 383, 391–393 (6th Cir. 2025). Both doctrines assume that at least one party has a dispute that it wants the court to resolve. Standing asks whether that party has a sufficiently concrete interest in the outcome to bring the case in the first place, while mootness asks whether the relief sought would make any practical difference to that interest. *Id.* This case turns on something more fundamental: Here, the parties *do not* have a live

disagreement. They have jointly asked the district court *not* to resolve anything, but instead to release them from a settlement agreement and allow them to go their separate ways.

In a remarkable grab of authority, the district court said no. Instead, the court has locked the Department of Justice and the City of Cleveland into a case they believe is fully resolved, and into a settlement agreement neither side wants. The result? Judicial and third-party management of the Cleveland Division of Police—at taxpayer expense, and without escape or recourse. Article III does not contemplate this exercise of raw (extra-)judicial power.

There are no examples of a district court refusing to dismiss an action or vacate a settlement where the parties no longer have a live dispute. Certainly no examples of a court holding parties to a settlement *neither side* wants to maintain. To be sure, it is easy to imagine a district court denying a joint motion for relief when it concerns the court's management of its own docket. A court could refuse to extend briefing deadlines in a civil case or decline to continue a criminal trial out of concern for the Speedy Trial Act. But denying a joint request to dismiss a case or vacate a settlement is nigh unheard of.

As this Court has repeatedly observed, debates about the scope of judicial power are quite literally as old as the Republic itself. *In re University of Michigan*, 936 F.3d 460, 461 (6th Cir. 2019). Hamilton's observation in Federalist No. 78 is worth considering in full:

> The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

The Federalist No. 78, at 465 (Alexander Hamilton) (J. Cooke ed., 1961). Little of that observation survives the district court's decision here. The district court effectively took control of the "sword" and the "purse"—of a separate sovereign, no less—by retaining control over the Cleveland Division of Police and obligating the City to pay for the privilege.

Hamilton went on to warn against exactly what happened here: "liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."

Id. This Court should break up that union and vacate the district court's judgment.

B. The district court does not have free-standing authority to enforce the statute undergirding the Settlement Agreement.

The Court usurped DOJ's statutory authority too. DOJ brought this action under the VCCLEA. By statutory design, DOJ is responsible for investigating violations of the Act and bringing actions to enforce it. DOJ has concluded—as is its right, conferred by Congress—that the City no longer has a "pattern or practice of conduct" violating the Act. So, it moved to terminate the Settlement Agreement meant to remedy violations of the Act—again, as is its right. Nothing in the Act gives courts authority to override DOJ's judgment and conclude that there *is* a pattern or practice to remedy, and to maintain that remedy against the judgment of DOJ.

The district court concluded that the City had not sufficiently complied with the Settlement Agreement. (Order, R. 708, at PageID #15418–54. That might be relevant if the parties disagreed about whether the City was entitled to terminate the Settlement Agreement unilaterally. (*See* Settlement Agreement ¶ 402, R. 7-1, at PageID #469.)

But that's not a basis for locking *both* parties into a settlement they no longer desire. As a practical matter, the district court has transferred DOJ's statutory supervisory and enforcement role into its own chambers and left the parties with no prospect of escape until the court is satisfied. That is simply not a role assigned to the court by Congress. The district court's judgment should be vacated.

II. The district court does not have authority to refuse to terminate the Settlement Agreement under the terms of the Agreement itself.

The Settlement Agreement terminates on its own terms when the City has been in "substantial and effective compliance" for a specified period. (Settlement Agreement ¶ 401, R. 7-1, at PageID #469.) The City may also unilaterally move to terminate the Agreement, and the court may grant the motion—without a hearing—if DOJ does not object. (*Id.*) Indeed, the only time the court is meaningfully involved in assessing compliance is if the City and DOJ disagree about whether the City is in compliance. (*Id.*) Further, the Settlement Agreement is enforceable only by the "Parties" (*i.e.* the City and DOJ), (*Id.* ¶ 403), so there's no one for the Court to enforce the decree on behalf of if the "Parties" jointly wish to dissolve it.

While the Court retains jurisdiction to enforce the terms of the Settlement Agreement, (*Id.* ¶ 397, at PageID #467–68), DOJ retains the right to *seek* enforcement. (*Id.*) So yet again, there is no freestanding power for the court to disregard a joint request to terminate the Settlement Agreement. The district court's order is untenable under the terms of the Settlement Agreement, and so must be vacated.

III. The district court's usurpation of power has worked to the public's detriment.

The district court's decision sidelined the elected branches—state and federal alike. The district court alone (perhaps in concert with the Independent Monitor) decides when the City has paid enough or accomplished enough. To be sure, the district court no doubt believes it is doing what is best for the City. But unfortunately, that risks becoming "a tyranny sincerely exercised for the good of its victims," which C.S. Lewis warned "may be the most oppressive" because it can be impossible to satiate. C.S. Lewis, *God in the Dock: Essays on Theology*, 292 (1970).

With respect to the Independent Monitors, it is not clear that the proverbial "tyranny" has even been exercised wholly for the good of its victims. The City paid more than $7.2 million for Independent Monitors between the filing of the Complaint and April 2023. (Ex. A to City Status

Conference Statement, R. 515-1, at PageID #12027.) Then came the too-long tenure of Karl Racine. The former Attorney General for the District of Columbia served as the Independent Monitor for the Settlement Agreement between April 2023 and August 2025. (April 12, 2023, Order appointing Karl Racine as Monitor, R. 474, at PageID #10559-60; Aug. 13, 2025, Order Appointing Interim Monitor, R. 654, at PageID #14414-16.) During those 28 months, Mr. Racine and his firm collected more than $3.2 million from the City in legal fees.[1] The City repeatedly objected to Mr. Racine's bills, which reflected questionable-at-best billing practices at exorbitant rates for ostensibly public service.[2]

Money wasn't the only problem. While Mr. Racine was in Cleveland in January 2025, an off-duty Cleveland police officer had to call for backup at 2:30am outside of a casino to deal with a "pretty intoxicated" Mr. Racine who was "refusing to leave."[3] Mr. Racine apparently tried to

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[1] As measured by the district court entries ordering disbursements to Mr. Racine or Hogan Lovells LLP. (R. 494, 503, 520, 530, 531, 551, 574, 611, 620, 629, 668, 669, 676, and 679.)

[2] R. 575, 580, 587, 589, 615, 653, 657, 666.

[3] Ed Gallek & Peggy Gallek. *I-Team: Federal Monitor Over Cleveland Police Involved in Incident at JACK Casino*, FOX 8, Mar. 13, 2025, https://foxg.com/news/i-team/i-team-federal-monitor-over-cleveland-police-involved-in•incident• at-jack-casino/.

avoid the confrontation by announcing that he was "with the Department of Justice"—at best an inebriated outburst, and at worst an attempt to use his position to secure special treatment from the very officers he was to oversee.[4] After the incident, he attempted to paint the officers as the offending parties, stating that he "raised the incident with the Chief of Police," but "chose not to proceed with a formal complaint."[5] The result? The City's Office of Professional Standards had to investigate the officer rather than the Monitor.[6] The district court acknowledged the event but deemed it relatively unserious. (April 4, 2025, Order, at PageID #13880-81.) So Mr. Racine stayed in his role for months before resigning. While the Settlement Agreement has a new monitor (the fifth in the decade-long saga), the concerns remain. The Independent Monitor continues to drain the City's financial resources, billing nearly $1 million for services between Mr. Racine's resignation and July of this year.[7]

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[4] *Id.*

[5] *Id.*

[6] Ed Gallek & Peggy Gallek. *I-Team: Investigation opened into casino incident involving head of federal group overseeing Cleveland police*, Fox 8, Mar. 17, 2025, https://fox8.com/news/i-team-investigation-opened-into-casino-incident-involving-head-of-federal-group-overseeing-cleveland-police/.

[7] R. 677, 693, 694, 695, 705, 709, 718, 724, 731, 736, 740.

Fundamentally, the Department of Justice is responsible for enforcing the VCCLEA. It is satisfied that the City has remedied the violations of the Act that DOJ identified a decade ago. But the court decided it knew better. So the district court has taken over management of the City's police, while Independent Monitors continue to enrich themselves at taxpayer expense. And crucially, there is now no way to terminate this arrangement. The district court's judgment must be vacated, and control of both police and purse returned to the elected branches.

CONCLUSION

The district court had no basis for denying the parties' joint request to terminate the Consent Decree. District courts exist to resolve disputes, not independently manage police departments. The district court's judgment should be vacated and this case remanded with instructions to terminate the consent decree and dismiss this action.

Dated: November 10, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 2438 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Century Schoolbook font.

Dated: November 10, 2026

/s/ *Philip D. Williamson*
Philip D. Williamson

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Senator Bernie Moreno

CERTIFICATE OF SERVICE

I certify that on November 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the ECF system. I also certify that all participants in the case are registered ECF users and that service will be accomplished by the ECF system.

/s/ *Philip D. Williamson*
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