



June 4, 2014

VIA E-FILING

Hon. Loretta A. Preska
Chief U.S. District Judge
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *United States of America v. Int'l Bhd. of Teamsters, et al.*,
No. 88 Civ. 4486 (LAP)

Dear Chief Judge Preska:

The International Brotherhood of Teamsters (“IBT”) writes to request a pre-motion conference and inform the Court that it intends to file a motion, pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure, to vacate the March 14, 1989 Consent Decree in the above-captioned case. In light of the dramatic changes since the Decree was entered 25 years ago, continued enforcement of the Decree is inequitable. After a quarter-century of government oversight, the Union’s rank-and-file members and duly elected officers should be allowed to reclaim control over their Union’s affairs.

The Supreme Court has repeatedly made clear that judicial decrees, including consent decrees, should be revised upon a showing that circumstances have changed since entry of the decree. *See Horne v. Flores*, 557 U.S. 433 (2009); *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367 (1992). Consequently, monitoring courts have been instructed to adopt a “flexible” approach toward modification of consent decrees under Rule 60(b)(5), *see Rufo*, 502 U.S. at 383, and to terminate enforcement of a decree’s provisions if they are not necessary to remedy ongoing violations of law. *See Flores*, 557 U.S. at 450. Broad prophylactic remedies—*i.e.*, remedies that, despite the absence of present-day legal violations, restrict officials’ ability to manage their organizations simply to prevent potential future lapses—are impermissible. Under those controlling principles, enforcement of the Consent Decree can no longer be justified.

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Since entry of the Decree in 1989, the Union has undergone a striking transformation. The government's original civil RICO complaint alleged that organized crime families had seized "an interest in and control of" the Union to implement an extensive "pattern of racketeering activity" in violation of 18 U.S.C. §1964. Compl. ¶55. The claimed pattern of racketeering further encompassed the "use of force, violence and fear to intimidate union members," Compl. ¶¶72-73, and the systemic racketeering activities by which corrupt union officers engaged in "fraudulent deprivation of union members' money and property rights," Compl. ¶¶74-80. Those three interrelated activities—mob-controlled union leadership, violence against union dissidents, and the defrauding of union members—formed the core of the government's civil RICO charge.

No such violations could be made out today. In contrast to the days of mob-controlled union leadership, all union leaders now serve at the behest of the rank-and-file members. IBT has now had five successive one-member, one-vote general elections in which the rank-and-file have directly voted on International officers by secret ballot. Furthermore, any acts of violence targeted against union dissidents ended long ago. Union officials conduct their activities under a Code of Conduct that, among other things, commands them to "respect and obey the law," requires that union property, funds, and assets be used only for proper union purposes, and prohibits association with members of organized crime.

The comprehensive reforms of the Union have eradicated the civil RICO violations charged in the original complaint and used to justify the Consent Decree's far-reaching prescriptions. Any present-day misconduct is limited to sporadic transgressions like those found in many large organizations. And the Union has adopted meaningful procedures to deal with any such misconduct. For over two decades, the Union has had in place an effective disciplinary infrastructure with a demonstrable public record of punishing infractions.

That record demonstrates the diminishing number and gravity of disciplinary offenses within the Union. The Independent Review Board's Cases Repository and recent Quarterly Reports to the Court reflect 224 disciplined persons within the first five years of the Consent Decree's operation (1989-1993), including 72 in 1991 alone. Yet that same data set reflects just 92 disciplined persons in the past *decade* (2004-2013). As for the nature of the cases, charges even tenuously connected to those that motivated the original lawsuit—"racketeering," "membership" in organized crime, "associating" with organized crime, and

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“embezzlement”—have plummeted from 144 charges in the first five years, to 97 in the next decade, to just 33 in the last ten years. Not one of those 33 charges since 2004 was against an International officer.

Given these changes, there is no continuing RICO violation to which the Decree is now tailored, making further enforcement of the Decree a mere injunction against future commission of crimes. That is an improper use of judicial power and government resources. Absent ongoing violations of law, officials are entitled to operate their institutions independently, without judicial superintendence. *See Flores*, 557 U.S. at 450; *Patterson v. Newspapers Mail Deliverers’ Union of N.Y. & Vicinity*, 15 F.3d 33 (2d Cir. 1993). Indeed, the First Amendment bars unjustified government interference with the right of private individuals to associate for their collective benefit, *see Smith v. Ark. State Highway Empls.*, 441 U.S. 463, 464 (1979), a right that unquestionably “extends to labor union activities.” *Int’l Longshoremen’s Ass’n v. Waterfront Comm’n of N.Y. Harbor*, 642 F.2d 662, 670 (2d Cir. 1981).

The Decree has thus become a remedy without a rationale. It has served its purpose and should be terminated. The parties have conferred but were unable to reach agreement pretermittting this contemplated motion.

Respectfully submitted,

s/Viet D. Dinh

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cc: Counsel of Record (by CM/ECF)

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2014, a copy of the foregoing document was filed electronically and served by mail to anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by cooperation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

Dated: June 4, 2014

s/Viet D. Dinh
Viet D. Dinh
*Counsel for the International
Brotherhood of Teamsters*